

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the repeal)	NOTICE OF PROPOSED
of ARM 2.21.410 through	)	REPEAL
2.21.419 and 2.21.422)	
pertaining to Military Leave	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On July 15, 2005, the Department of Administration proposes to repeal ARM 2.21.410 through 2.21.419, and 2.21.422 pertaining to Military Leave.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process 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 June 22, 2005, to advise us of the nature of the accommodation that you need. Please contact Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; Montana Relay Service 711; FAX (406) 444-0703; or e-mail hpeck@mt.gov.

3. The Department proposes to repeal the rules as follows:

2.21.410 SHORT TITLE found at ARM page 2-642.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.411 POLICY AND OBJECTIVES found at ARM page 2-642.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.412 DEFINITIONS found at ARM page 2-642.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.413 ELIGIBILITY found at ARM page 2-642.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.414 RATE OF COMPENSATION found at ARM page 2-643.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.415 LEAVE NOT CUMULATIVE found at ARM page 2-643.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.416 REQUESTS FOR LEAVE found at ARM page 2-643.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.417 MILITARY LEAVE TAKEN OVER A HOLIDAY found at ARM page 2-643.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.418 MEMBERS OF THE NATIONAL GUARD OF THE STATE OF MONTANA found at ARM page 2-643.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.419 ACCOMODATING REQUIRED DUTY found at ARM page 2-643.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

2.21.422 CLOSING found at ARM page 2-647.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 10-1-604, MCA

REASONS: Through the passage of Senate Bill 118, the 59th regular session of the Montana Legislature substantially changed Title 10, Chapter 1 of the Montana Code Annotated. The Department's current Military Leave rules are based on this section of the Code. Therefore, most of the rules have become obsolete. The Department also believes that interpretive guidelines, which explain the new Military Leave statutes in layman's terms, may be more useful to government managers than the Department's outdated Military Leave rules. The Department intends to collaborate with other government agencies and publish interpretive guidelines that may be used by all public employers in Montana who are subject to the new Military Leave provisions of the Montana Code.

In addition, the Legislature, through passage of Senate Bill 118, granted rulemaking authority for Title 10, Chapter 1 of the Montana Code to the Department of Labor and Industry and the Department of Justice. If it becomes necessary to create new rules, those Departments will be responsible for their adoption.

Finally, the Department has been repealing some of its rules from the Administrative Rules of Montana because the 58th regular session of the Montana Legislature amended the Montana Administrative Procedure Act at 2-4-102(11), MCA. In doing so, the Legislature clarified that rules concerning the internal management of state government are excluded from the Montana Administrative Procedure Act provided they do not affect the private rights or procedures available to the public. The Department of Administration believes the current Military Leave rules only concern the implementation of Military Leave for state employees; they have no effect on the general public. Therefore, in the interests of administrative efficiency and cost savings, it is necessary to repeal these rules from ARM.

4. Concerned persons may submit their data, views or arguments in writing to Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or e-mail hpeck@mt.gov. Comments must be received no later than 5:00 p.m. June 27, 2005.

5. If persons who are directly affected by the proposed repeal wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or e-mail hpeck@mt.gov to be received no later than 5:00 p.m. June 27, 2005.

6. If the Department of Administration receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected is greater than 25 based on the number of state employees.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. 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 personnel rules. Such written request may be mailed or delivered to Hal Peck, Department of Administration, State Personnel Division, P.O. Box 200127, Helena, MT 59620-0127; e-mailed to hpeck@mt.gov; or made by

completing a request form at any rules hearing held by the Department of Administration.

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

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

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State May 16, 2005.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
adoption of New Rules I)	ADOPTION
through III relating to the)	
cherry research and marketing)	NO PUBLIC HEARING
development program)	CONTEMPLATED

TO: All Concerned Persons

1. On June 25, 2005, the Montana Department of Agriculture proposes to adopt new rules I through III relating to the cherry research and marketing development program.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on June 9, 2005 to advise us of the nature of the accommodation that you need. Please contact Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I MONTANA CHERRY ADVISORY COMMITTEE (1) The committee shall be a five member committee consisting of individuals actively involved in the cherry industry in either production, research, or marketing of cherries.

(2) A majority of the committee members must be cherry "producers" per 80-11-510(3), MCA. "Producer" is defined in 80-11-503(5), MCA.

(3) On initial appointment by the director of the Montana department of agriculture, one member shall be appointed for a one-year term, two members for a two-year term, and two members for a three-year term at the director's discretion. After the initial term, all members will serve three-year terms with a maximum of three terms allowed.

AUTH: 80-11-504, MCA
IMP: 80-11-510, MCA

NEW RULE II ANNUAL CHERRY COMMODITY ASSESSMENT-COLLECTION (1) Sections 80-11-515 and 80-11-516, MCA, charge the Montana department of agriculture with collecting the commodity assessment.

(2) The assessment shall be one cent per pound on all cherries grown and marketed commercially in Montana by those growers producing and marketing more than 200 pounds annually.

(3) The assessment will be at the time of first sale by a seller and must be collected by the first purchaser of the commodity from the seller at the time of each settlement for the commodity purchased or by invoice from the Montana department of agriculture.

AUTH: 80-11-504, MCA

IMP: 80-11-515 and 80-11-516, MCA

NEW RULE III APPLICATION FOR CHERRY RESEARCH AND MARKETING PROJECT FUNDS (1) Applications for project funding shall be filed with the department on or before January 1. Filing requirements will be satisfied by receipt of the original and 10 copies of each application at the Montana department of agriculture two weeks prior to the first regular advisory committee meeting.

(2) The advisory committee, at the first regular meeting each year, will review research and marketing project applications and make a recommendation to the department as to which projects they would like to fund and the amount of funding suggested. Recommended projects will be determined by amount of funds, type of project, need and whether the project is new or ongoing.

(3) Applicants shall be notified within 30 days after the committee's first annual meeting whether or not their application(s) has been granted and the amount to be funded for each approved project.

(4) The department shall periodically evaluate all outstanding project agreements for adequate and satisfactory financial control, accounting, and performance by project participants.

(5) The department may modify or terminate the funding of any project if a determination is made that the grantee has not complied or cannot comply with a provision of the project agreement. The department shall notify the grantee in writing within 30 days of such determination of the reasons for the determination, and the effective date of the modification or termination.

AUTH: 80-11-504, MCA

IMP: 80-11-511, MCA

REASON: The Montana cherry industry passed by a positive referendum vote to establish a cherry research and market development program. This program, created under 80-11-501 through 80-11-519, MCA, is funded from a portion of the proceeds at the first point of sale of the commodity. These rules are necessary to establish the method by which these funds are collected and expended as well as defining duties of the advisory committee not stated in Montana Code.

It is estimated that this program will impact 75-100 cherry producers in Montana and will raise approximately \$20,000 per year for cherry research and market development.

4. Concerned persons may submit their data, views or arguments concerning the proposed adoption in writing to Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. Any comments must be received no later than June 23, 2005.

5. If persons who are directly affected by the proposed adoption wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. A written request for hearing must be received no later than June 23, 2005.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons based on 100 cherry producers.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Adoption is available through the Department's website at www.agr.mt.gov, under the Administrative Rules section. The Department strives to make the electronic copy of the 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, May 16, 2005.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 4.13.1001A and) AMENDMENT AND REPEAL
repeal of 4.13.1004 relating)
to the state grain lab fee) NO PUBLIC HEARING
schedule) CONTEMPLATED

TO: All Concerned Persons

1. On June 25, 2005, the Montana Department of Agriculture proposes to amend and repeal the above-stated rules relating to the state grain lab fee schedule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on June 9, 2005 to advise us of the nature of the accommodation that you need. Please contact Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@mt.gov.

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

4.13.1001A GRAIN FEE SCHEDULE (1) The effective date of this rule is July ~~2, 2004~~ 15, 2005.
(2) through (3)(f) remain the same.
(i) near infrared transmittance (NIRT)
wheat, barley and corn..... \$5.50
(ii) and (iii) remain the same.
(g) corn, oil and/or starch..... \$3.00
(g) through (k)(i) remain the same but are renumbered (h) through (l)(i).
(4) through (5)(i)(i) remain the same.
~~(ii) kjeldahl method (e.g., malting barley)~~..... ~~\$8.00~~
(iii) and (iv) remain the same but are renumbered (ii) and (iii).
(j) through (n) remain the same.

AUTH: 80-4-721, MCA
IMP: 80-4-721, MCA

REASON: The state of Montana grain laboratory is a designated lab by the Federal Grain Inspection Service (FGIS), and subject to its supervision. Effective July 1, 2005, FGIS will require the near infrared transmittance (NIRT) method for testing for all proteins, and necessitates the discontinuance of the kjeldahl method. Because of this change, barley and corn

proteins, which had been analyzed under the kjeldahl method, will now be added as a NIRT test.

Corn, oil and/or starch and a fee are added because the lab has recently acquired the capability to do the test. An economic impact statement is not required, as the fees are a voluntary fee for obtaining services of the lab.

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

4.13.1004 BARLEY PROTEIN is found on page 4-560 of the Administrative Rules of Montana.

AUTH: 80-4-721, MCA

IMP: 80-4-721, MCA

REASON: Effective July 1, 2005, the State Grain Lab will no longer use the kjeldahl method to do analysis.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment and repeal in writing to Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. Any comments must be received no later than June 23, 2005.

6. If persons who are directly affected by the proposed amendment and repeal wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. A written request for hearing must be received no later than June 23, 2005.

7. If the agency receives requests for a public hearing on the proposed amendment and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 650 persons based on 6500 grain producers in Montana.

8. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage,

noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

9. An electronic copy of this Notice of Proposed Amendment and Repeal is available through the Department's website at www.agr.mt.gov, under the Administrative Rules section. The Department strives to make the electronic copy of the 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, May 16, 2005.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC
of ARM 20.27.101 and) HEARING ON PROPOSED
20.27.102 pertaining to) AMENDMENT
siting and construction)
standards)

TO: All Concerned Persons

1. On June 16, 2005, at 10:00 a.m., a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on June 9, 2005, to advise us of the nature of the accommodation that you need. Please contact Sherri Townsend, P.O. Box 201301, Helena, MT 59620-1301; phone: (406) 444-7843; fax: (406) 444-4920; e-mail: stownsend@state.mt.us.

3. The change in ARM 20.27.101 is necessary to resolve a conflict between the agency's definition of "private correctional facility" and the legislature's definition of "private correctional facility" at 53-30-602(2)(b), MCA. The change in ARM 20.27.102 is necessary to allow the agency flexibility to operate a private correctional facility with fewer than 500 beds.

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

20.27.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) remains the same.

(2) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated. ~~The term includes a regional correctional facility, as defined in 53-30-503, MCA, if privately operated or privately owned and operated.~~

(a) through (5) remain the same.

AUTH: 53-30-604, MCA

IMP: 53-30-604, MCA

20.27.102 SITE SELECTION OF PRIVATE CORRECTIONAL FACILITIES (1) through (3)(a) remain the same.

(b) facility size ~~of at least 500 beds, as determined by~~

the department, with expansion capability;
(c) through (8)(c) remain the same.

AUTH: 53-30-604, MCA
IMP: 53-30-604, MCA

5. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Sherri Townsend at the contact information listed in paragraph 2, and must be received no later than 5:00 p.m. on June 24, 2005.

6. Colleen A. White, Hearings Examiner, will preside over and conduct the hearing.

7. The Department of Corrections maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding community corrections, juvenile corrections, board of pardons and parole, private correctional facilities or general departmental rulemakings. Such written request may be mailed or delivered to Sherri Townsend, at the contact information listed in paragraph 2, or may be made by completing a request form at any rules hearing held by the Department of Corrections.

8. An electronic copy of this Notice of Public Hearing is available through the department's web site at www.cor.state.mt.us.

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

/s/ Bill Slaughter
BILL SLAUGHTER, Director
Department of Corrections

/s/ Colleen A. White
Colleen A. White, Rule Reviewer
Department of Corrections

Certified to the Secretary of State May 16, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC
adoption of New Rule I	)	HEARING ON
creating a separate endorsement	)	PROPOSED ADOPTION
and qualification for commercial)	
drivers who operate school buses)	

TO: All Concerned Persons

1. On June 17, 2005, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption of New Rule I pertaining to creating a separate endorsement and qualification for commercial drivers who operate school buses.

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 of Justice no later than 5:00 p.m. on June 13, 2005, to advise us of the nature of the accommodation that you need. Please contact Brenda Nordlund, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Fax (406) 444-3549; or e-mail bnordlund@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I REQUIREMENTS FOR A SCHOOL BUS ENDORSEMENT

(1) An applicant for a school bus endorsement must satisfy the following requirements:

(a) the applicant must pass the knowledge and skills test for obtaining a passenger endorsement;

(b) the applicant must pass a knowledge test concerning the loading and unloading of children, including the safe operation of stop signal devices, external mirror systems, flashing light and other warning and passenger safety devices required for school buses by state or federal law or regulation; emergency exits and procedures for safely evacuating passengers in an emergency; and state and federal laws and regulations related to safely traversing highway rail grade crossings; and

(c) except as provided in (2), the applicant must take a driving skills test in a school bus of the same vehicle group as the school bus that the applicant will drive.

(2) On or before September 30, 2005, the driving skills test required under (1)(c) may be waived by the department for an applicant who currently holds a valid commercial driver's license (CDL) with a passenger endorsement if:

(a) the applicant certifies, and the department confirms, that during the two-year period immediately prior to

applying for the school bus endorsement, the applicant meets the requirements set forth in (3); and

(b) the applicant provides evidence from an employer of the applicant's regular employment as a school bus driver and operation of a school bus representative of the group the applicant seeks to drive for the two-year period immediately preceding application for the school bus endorsement.

(3) Before the driving skills test may be waived under (2), the applicant must be able to certify to the following:

(a) the applicant has held a valid CDL with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving;

(b) the applicant has been regularly employed as a school bus driver, driver's license or commercial driver's license has not been suspended, revoked or cancelled and the applicant has not been disqualified from operating a commercial motor vehicle;

(c) the applicant has not been convicted of any of the disqualifying offenses in 49 CFR 383.51(b) while operating a commercial motor vehicle or of any offense in a noncommercial motor vehicle that would be disqualifying under 49 CFR 383.51(b) if committed in a commercial motor vehicle;

(d) the applicant has not had more than one conviction of any of the serious traffic violations defined in 49 CFR 383.5 while operating a commercial or noncommercial motor vehicle;

(e) the applicant has not had any conviction for a violation of state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident; and

(f) the applicant has not been convicted of any motor vehicle traffic violation that resulted in an accident.

(4) Effective October 1, 2005, a commercial driver's license with a passenger endorsement is not valid for the operation of a school bus and a separate school bus endorsement must be held.

AUTH: 61-5-112, MCA
IMP: 61-1-134, 61-5-102, 61-5-110, MCA

4. The new rule is necessary to comport with the requirements of 49 CFR Part 383 creating a separate endorsement under the commercial driver licensing standards for operating a school bus as a class of commercial motor vehicle (CMV). Under the Motor Carrier Safety Improvement Act of 1999, Congress directed the Secretary of the United States Department of Transportation, acting through the Federal Motor Carrier Safety Administration (FMCSA), to conduct a rulemaking to establish a special commercial driver's license endorsement for driver of school buses.

On September 30, 2002, new federal regulations were adopted that defined "school bus" as "a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-

sponsored events. School bus does not include a bus used as a common carrier." See, 49 CFR 383.5. The new regulations also mandated creation of a school bus endorsement, separate from a passenger endorsement to a commercial driver's license, and established specific knowledge and skills testing requirements to obtain a school bus endorsement. See, 49 CFR 383.93 and 49 CFR 383.123. The federal regulations allow a state to waive the road or skills test for a person applying for the new school bus endorsement if certain conditions are met. This waiver is only allowed through September 30, 2005. After that date, any person applying for a school bus endorsement must pass the knowledge and skills test for obtaining a passenger vehicle endorsement, a separate knowledge test particular to school bus operation and safety, and a road or skills test in a school bus of the same vehicle group as the applicant will drive.

The new federal school bus definition was incorporated into Montana's commercial motor vehicle definition with the passage of Mont. Laws 2005, Ch. 428, sec. 10(1)(d) and (3)(d), which took effect on April 28, 2005. Between now and October 1, 2005, consistent with federal regulations, the Department may waive the road or skills test for certain applicants for the new school bus endorsement if the applicants meet the standards set forth in the federal rule. To take advantage of the federal regulation that allows drivers with two years of school bus experience and a good driving record to waive the road or skills test for a school bus endorsement and to avoid long lines at driver examination stations when current CDL holders with a passenger endorsement apply to upgrade to the new school bus endorsement, the Department will begin issuing the school bus endorsement immediately upon adoption of this rule. To further maximize the federally allowed waiver, the Department will begin administering the special school bus knowledge test to any interested applicants and accepting waiver information upon behalf of qualified applicants in anticipation of the impending adoption of this new rule.

Under the minimum standards for substantial compliance by states with the federal regulations governing commercial driver licensing programs, no state may authorize a person to operate a CMV unless such person passes a knowledge test and driving skills test for the operation of a CMV in accordance with 49 CFR part 383. See, 49 CFR 384.202. As pertains to the new school bus endorsement, substantial compliance must be attained no later than three years after September 30, 2002. See, 49 CFR 384.301(b).

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Brenda Nordlund, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; Fax (406) 444-3549; or e-mail bnordlund@mt.gov to be received no later than June 24, 2005.

6. Brenda Nordlund, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, 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 May 16, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rule I) ON PROPOSED ADOPTION,
concerning bonus games,) AMENDMENT AND REPEAL
amendment of ARM)
23.16.209, 23.16.1802,)
23.16.1803, 23.16.1805,)
23.16.1823, 23.16.1901,)
23.16.1906, 23.16.1907,)
23.16.1908, 23.16.1909,)
23.16.1909A, 23.16.1910,)
23.16.1911, 23.16.1931,)
23.16.2001, 23.16.2305,)
23.16.2401, 23.16.2406,)
concerning definitions, display)
of antique slot machines,)
elimination of the video)
gambling machine permit fee)
surcharge, general)
specifications and software)
specifications for video)
gambling machines, the addition)
of testing to purposes for which)
illegal video gambling devices)
may be imported or exported by)
a video gambling machine)
manufacturer, allowable winning)
patterns for bingo and the)
repeal of ARM 23.16.1809 and)
23.16.1810 concerning the permit)
surcharge which was eliminated)

TO: All Concerned Persons

1. On June 16, 2005, at 1:00 p.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the adoption, amendment, and repeal of the above-stated rules.

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 June 8, 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 proposed new rule provides as follows:

NEW RULE I BONUS GAMES (1) The department may approve bonus games and free games that can be offered to the player as a result of playing video poker, keno, or bingo under the following conditions:

(a) before a bonus game may be offered to the player, the player must achieve a win by playing a video game authorized in Title 23, chapter 6, MCA; and

(b) the theoretical return of the bonus game must be less than 50% of the overall theoretical return.

(2) Bonus games can be offered to determine any one of the following at no risk to the player:

(a) payable multipliers to be applied to the award obtained in the trigger game;

(b) paytables and/or payable multipliers for subsequent games;

(c) the number of free video games awarded as authorized in Title 23, chapter 6, MCA;

(d) the award of cash; or

(e) any combination of (2)(a) through (d).

(3) Poker, keno, and bingo games can be offered free to the player as a result of playing a video game authorized in Title 23, chapter 6, MCA, but cannot affect the corresponding trigger game in any way.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-112, 23-5-602, MCA

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

23.16.209 DISPLAY OF ILLEGAL GAMBLING DEVICES AND ANTIQUE SLOT MACHINES (1) If an illegal gambling device as defined in 23-5-112, MCA, or an antique slot machine is displayed in a public place other than a museum, it must be:

(a) through (2) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-152, 23-5-153, MCA

23.16.1802 DEFINITIONS (1) and (2) remain the same.

(3) "Conventional ROM device" means a device that cannot be altered while installed in a gaming device and may contain executable programs or data that are directly addressed by a processor.

(3) and (4) remain the same but are renumbered (4) and (5).

~~(5) "Draw poker" means a game of poker in which the player makes a wager, then the initial cards are dealt. After the initial deal, the player may raise his wager (if that option is available), discard and replace any unwanted cards prior to playing out the hand. The image or images projected on the video display of video draw poker gambling machines are a material component of the game and shall not simulate an illegal gambling device or enterprise. Varieties of poker simulated by video gambling machines must be found in the department's~~

~~authority reference used for the live game of draw poker.~~

(6) through (9) remain the same.

(10) "Modification" means a change or alteration to a video gambling machine that affects the manner or mode of play of the machine. The term includes any change to the control program, graphics program, or theoretical ~~hold~~ return percentage. The term does not include:

(a) through (12) remain the same.

(13) "Predominant game" means an authorized game that contributes more than 50% of the theoretical return.

(13) remains the same but is renumbered (14).

(15) "Royalty" means a defined hand combination, card value and/or card position in the game of video poker which determines the award of free games, altered play in subsequent games and/or the award of cash.

(14) remains the same but is renumbered (16).

(17) "Theoretical return" means the calculation of expected payback per 23-5-607, MCA, computed by summing the award and probability products for all advertised payable combinations.

(18) "Trigger game" means a game authorized under 23-5-603(2), MCA, the playing of which determines progression to bonus games, free games, or altered play in subsequent games.

(15) and (16) remain the same but are renumbered (19) and (20).

~~(17)~~(21) "Video gambling machine" means a video ~~draw~~ poker, video keno, or video bingo machine as defined in 23-5-112, MCA, and including a multi-game machine as defined in this rule and authorized in 23-5-621, MCA.

(18) remains the same but is renumbered (22).

(23) "Video poker" means the games of draw poker, stud, or hold'em as defined in this rule when offered and simulated by a video gambling machine which uses video images and a random number generator.

(a) The images projected on the video display of video poker gambling machines are a material component of the game and shall not simulate an illegal gambling device or enterprise.

(b) Varieties of draw poker, stud, and hold'em must be found in the department's authority reference used for the live game of poker.

(24) "Win" means playing a video game authorized in Title 23, chapter 6, MCA, as defined by rule, achieving a defined payable combination and receiving an award that can be redeemed for cash.

AUTH: 23-5-115, ~~23-5-605~~, 23-5-621, MCA
IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602,
23-5-603, 23-5-607, ~~23-5-609~~, 23-5-610, 23-5-612,
23-5-621, 23-5-637, MCA

23.16.1803 APPLICATION FOR PERMIT, FEE AND PERMIT REQUIREMENTS (1) through (3) remain the same.

~~(4) The annual permit surcharge required by 23-5-612, MCA, must accompany each permit application.~~

AUTH: 23-5-115, ~~23-5-605~~, 23-5-621, MCA
IMP: 23-5-602, ~~23-5-609~~, 23-5-611, 23-5-612, 23-5-621,
23-5-637, MCA

23.16.1805 REFUND OF PERMIT FEE (1) Refund of a permit fee ~~or an annual permit surcharge~~ will be allowed only if the application for a permit is denied or withdrawn before issuance of the permit. No permit fee ~~or annual permit surcharge~~, in part or whole, will be refunded after a permit is issued, regardless of whether the permit is used after issuance.

AUTH: 23-5-115, ~~23-5-605~~, MCA
IMP: ~~23-5-605~~, 23-5-612(1), MCA

23.16.1823 PRORATION OF PERMIT FEE AND ANNUAL PERMIT SURCHARGE - RENEWAL (1) The department shall prorate the permit fee ~~and the annual permit surcharge~~ for a video gambling machine on a quarterly basis according to the following schedule:

~~For premises with a 20 machine designation~~

Effective Dates For Permit	Permit Fee	Surcharge	Total
July 1 through June 30	\$220	\$20	\$240
October 1 through June 30	\$165	\$15	\$180
January 1 through June 30	\$110	\$10	\$120
April 1 through June 30	\$55	\$5	\$60

~~For premises with a less than 20 machines designation~~

Effective Dates For Permit	Permit Fee	Surcharge	Total
July 1 through June 30	\$220	\$10	\$230
October 1 through June 30	\$165	\$7.50	\$172.50
January 1 through June 30	\$110	\$5	\$115
April 1 through June 30	\$55	\$2.50	\$57.50

(2) through (6) remain the same.

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

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) through (1)(d) remain the same.

(i) in the case of ~~draw~~ poker, after the initial cards have been dealt, the player may be allowed to raise his wager but the player may not exceed the overall statutory bet limit;

(ii) and (iii) remain the same.

(iv) the machine must have locked doors to two separate areas, one containing the logic board and software for the game and the other housing the cash. ~~Game EPROMs~~ Conventional ROM devices ~~contained on the logic board~~ must be readily accessible from the front of the machine. Access from one area to another must not be allowed;

(v) through (vii)(C) remain the same.

(D) the time of day in hours and minutes in a 24-hour format. The clock must automatically account for daylight savings time and indicate "S" for standard time and "D" for daylight savings time;

(E) through (I) remain the same.

(viii) the printing mechanism must be located in a locked area of the machine to ~~insure~~ ensure the safekeeping of the audit copy. ~~The logic board shall be mounted within the logic area so it is not visible upon opening the logic area door.~~ The printing mechanism must have a paper sensing device that upon sensing a "low paper" condition will allow the machine to finish printing the ticket and prevent further play. The machine must recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket;

(ix) the machine must have seven digit nonresettable mechanical meters housed in a readily accessible locked machine area. These meters must be in a configuration prescribed by the department. The mechanical meters must be manufactured in such a way as to prevent access to the internal parts without destroying the meter. Meters must be hardwired (no quick connects will be allowed in the meter wiring system). The department may require and provide a validating identification sticker to attach to the mechanical meters to verify the meters are assigned to a specific licensed machine. The meters must keep a permanent record of:

(A) through (3) remain the same.

AUTH: ~~23-5-605,~~ 23-5-621, MCA
IMP: 23-5-115, 23-5-136, 23-5-602, 23-5-606, 23-5-610,
23-5-621, 23-5-637, MCA

23.16.1906 GENERAL SOFTWARE SPECIFICATIONS FOR VIDEO GAMBLING MACHINES (1) through (1)(c) remain the same.

(d) any variable data, e.g., location name, shall not reside on ~~EPROMs~~ conventional ROM storage devices that contain game programs;

~~(e) must payback or award credits at a minimum rate of 80%;~~

(f) and (g) remain the same but are renumbered (e) and (f).

~~(h)~~(g) for any game played, the payable for that game must be prominently displayed and understandable to the player; ~~and~~

~~(i)~~(h) poker, keno or bingo game programs submitted for approval on or after October 1, 2003, and all multi-game programs must comply with ARM 23.16.1920-~~i~~

(i) poker, keno or bingo games submitted for approval shall be subject to the laws in effect at the time of submission; and

(j) approved poker, keno, or bingo games, which do not meet requirements of ARM 23.16.1910A, must remain intact, without change, regardless of resubmission as part of another multi-variation or multi-game game software modification until

July 1, 2008, at which time the game software set containing the game will be rendered obsolete and unapproved.

(2) remains the same.

(a) ~~paytable (limited to one per program);~~

(b) through (3) remain the same.

AUTH: 23-5-115, ~~23-5-605~~, 23-5-621, MCA

IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602,
23-5-603, ~~23-5-606~~, 23-5-607, ~~23-5-609~~, 23-5-621,
23-5-637, MCA

23.16.1907 SOFTWARE SPECIFICATIONS FOR VIDEO DRAW POKER MACHINES

(1) Each video draw poker machine must meet the following specifications for approval for use within the state of Montana. In order to be approved the machine must:

(a) remains the same.

(b) conform to the standard rules of video poker in the following manner:

(i) paytables must be static and displayed in a form that is readable and clearly defined prior to the start of the game;

(ii) the theoretical return of a royalty must be less than 50% of the overall theoretical return;

(iii) "hand" means the cards dealt to or drawn by a player and retained at the completion of a game;

(iv) "game" means a period of play, using a single deck of cards, starting with the first card dealt and ending with the last card dealt or drawn;

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

~~(c)~~(d) replace any discarded cards, if applicable, with remaining cards in the frozen field starting with the ~~sixth card top of the frozen~~ field and drawing any additional cards in the order of that frozen field; and

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

AUTH: ~~23-5-605~~, 23-5-621, MCA

IMP: 23-5-602, ~~23-5-606~~, 23-5-607, ~~23-5-609~~, 23-5-621,
MCA

23.16.1908 SOFTWARE SPECIFICATIONS FOR VIDEO KENO MACHINES

(1) and (1)(a) remain the same.

(b) only accept ~~a~~ bets on a minimum of two spots and maximum of ~~ten~~ 10 spots per game;

(c) remains the same.

(d) conform to standard rules of video keno in the following manner:

(i) paytables must be static and displayed in a form that is readable and clearly defined prior to the start of the game;

(ii) "game" means a period of play starting with the first random number drawn and ending with the last random number drawn;

(iii) game marked spots can be used to trigger free games and bonus games;

(iv) the position or order of a drawn ball can affect the payable; and

(e) remains the same.

AUTH: ~~23-5-605,~~ 23-5-621, MCA
IMP: 23-5-602, ~~23-5-609,~~ 23-5-621, MCA

23.16.1909 SOFTWARE SPECIFICATIONS FOR VIDEO BINGO MACHINES (1) through (1)(c) remain the same.

(d) conform to standard rules of video bingo in the following manner:

(i) paytables must be static and displayed in a form that is readable and clearly defined prior to the start of the game;

(ii) "game" means a period of play starting with the first random number drawn and ending with the last random number drawn;

(iii) the position of a drawn ball can be a material component of the game;

~~(c) produce a bingo during each game;~~

(f) through (h) remain the same but are renumbered (e) through (g).

AUTH: ~~23-5-605,~~ 23-5-621, MCA
IMP: ~~23-5-609,~~ 23-5-621, MCA

23.16.1909A SOFTWARE SPECIFICATIONS FOR VIDEO MULTI-GAME MACHINES (1) remains the same.

(a) video ~~draw~~ poker games must comply with ARM 23.16.1907;

(b) and (c) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-602, 23-5-603, 23-5-621, 23-5-631, 23-5-637,
MCA

23.16.1910 RESTRICTIONS ON OPTIONAL GAME FORMAT OR FEATURES (1) The department shall determine what optional features may be allowed and such features must be approved by the department prior to inclusion in a machine's game format. For ~~draw~~ video poker machines the department will evaluate only those draw poker, stud poker, and hold'em games described in the authority references identified in the department's card game rules.

AUTH: 23-5-115, ~~23-5-605,~~ MCA
IMP: 23-5-602, ~~23-5-606,~~ 23-5-607, 23-5-608, ~~23-5-609,~~
23-5-621, MCA

23.16.1911 INFORMATION TO BE PROVIDED TO THE DEPARTMENT

(1) through (1)(e) remain the same.

(f) ~~master EPROMs~~ conventional ROM storage devices containing compiled game programs and character sets, including those that may reside on the ~~printer interface board peripheral devices;~~

(g) through (n) remain the same.

AUTH: 23-5-115, ~~23-5-605~~, MCA
IMP: ~~23-5-605~~, ~~23-5-606~~, 23-5-607, 23-5-621, 23-5-631,
23-5-637, MCA

23.16.1931 INSPECTION AND SEIZURE OF MACHINES (1) The department has the right at all times to make an examination of any machine being used to play or simulate video ~~draw~~ poker, video keno or video bingo. Such right of inspection includes immediate access to all machines and unlimited inspection of all machine parts. The department may immediately seize and remove any machine or device which violates state law or these rules.

(2) and (3) remain the same.

AUTH: 23-5-115, ~~23-5-605~~, MCA
IMP: 23-5-113, 23-5-602, ~~23-5-605~~, 23-5-613, MCA

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) through (5)(b)(iv)(B) remain the same.

(C) illegal devices and/or associated equipment that will be imported and tested, reconditioned, refurbished, repaired, or otherwise substantially modified in preparation for export from the state;

(D) through (9) remain the same.

AUTH: 23-5-115, 23-5-152, MCA
IMP: 16-4-414, ~~23-5-112~~, 23-5-115, 23-5-152, 23-5-611,
23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

23.16.2305 EQUIPMENT SPECIFICATIONS (1) and (2) remain the same.

~~(a) have at least one locked area containing the electronics and software for the equipment;~~

~~(b)(a) allow easy access to the equipment's erasable and programmable read only memory (i.e., EPROMs) conventional ROM devices;~~

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

(i) through (6) remain the same.

AUTH: 23-5-115, 23-5-426, MCA
IMP: 23-5-115, 23-5-426, MCA

23.16.2401 DEFINITIONS Throughout this subchapter, the following definitions apply:

(1) remains the same.

(2) "Bingo" means a game of chance played for prizes with cards bearing numbers as described in law, in which the holder covers such numbers when objects similarly numbered are drawn or electronically determined, and in which the game is won by ~~the~~ first persons covering a one or more previously designated arrangements of numbers on such cards. A game of bingo begins with the first number called and ends when an individual or individuals covers the previously designated arrangements,

declares bingo, and the game is verified. The value of prizes awarded during the game may not exceed a total of \$100, or for approved variations, \$100 for each winning pattern.

(3) through (14) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-409, 23-5-412, MCA

23.16.2406 PRIZE AWARDS FOR LIVE KENO AND BINGO GAMES

(1) remains the same.

(2) All live bingo operators must provide a list of general game rules and normal prize payouts. This provision does not preclude bingo operators from conducting games not listed in their rules or adjusting payouts, as long as the games are legal under the provisions of the statutes and administrative rules and the changes are announced to the players before the game begins.

(a) All valid winning patterns on bingo cards must be paid in full as per the listed or announced prizes.

(b) In no case may:

(i) the prizes paid out exceed \$100 per winning pattern; individual bingo game. ~~In no case may~~

(ii) bingo games be extended in any manner so as to exceed the prize limitations; and

(iii) identical cards ~~may not~~ be played so as to exceed prize limitations.

AUTH: 23-5-115, MCA
IMP: 23-5-412, MCA

5. The rules proposed to be repealed provide as follows:

23.16.1809 DETERMINATION OF ANNUAL PERMIT SURCHARGE found at page 23-774 of the Administrative Rules of Montana.

AUTH: 23-5-115, MCA
IMP: 23-5-612, MCA

23.16.1810 CHANGE IN DESIGNATION OF NUMBER OF MACHINES FOR ANNUAL PERMIT SURCHARGE found at page 23-775 of the Administrative Rules of Montana.

AUTH: 23-5-115, MCA
IMP: 23-5-612, MCA

6. RATIONALE

New Rule I Bonus Games: Senate Bill 84 authorized and defines "bonus games." This rule sets out the general requirements for bonus games that must be approved by the Department as part of the software for video gambling machines. The Department is charged, by 23-5-431, MCA, with approving all video gambling machines prior to the video gambling machine being played. The new definition takes effect on July 1, 2005,

and the Division needs to define the requirements for software being submitted for approval. Manufacturers of video gambling machines are constantly developing new games, so it is difficult to estimate if the new rules will have any financial impact on manufacturers. The ability to provide new bonus games will provide the manufacturers with potential new products to sell to customers.

23.16.209: Provides for display of an antique slot machine in a public place. The proposed change will modify the rule to be consistent with changes made in 23-5-153, MCA by Senate Bill 84. The change in statute and law will allow antique slot machines to be publicly displayed in the same manner as other illegal gambling devices if the machine is disabled. No monetary impact is anticipated; the change in rule will potentially affect six licensed antique slot machine dealers.

23.16.1802: Provides definitions for rules to implement changes made by the 2005 Legislature related to game software that can be approved for video gambling machines. These changes are a result of Senate Bill 84. These changes will not impose any new fees or monetary impact on video gambling machine manufacturers and distributors. In fiscal year 2004, the Department of Justice licensed three video gambling machine manufacturers, two video gambling machine distributors and seven combined manufacturer/distributors.

23.16.1803, 23.16.1805, 23.16.1809, 23.16.1810, 23.16.1823: These changes will eliminate all references to the video gambling machine permit fee surcharge that was eliminated by the 2005 Legislature in House Bill 802. House Bill 802 reduces general fund revenue in an estimated amount of \$267,000 each fiscal year. No estimate can be made of the small number of potential refunds that would have been made had the Legislature not repealed the surcharge. House Bill 802 eliminates the surcharge tables and the process for collecting it from department rules. The legislative action and the related rules will affect approximately 1,600 video gambling machine owners.

23.16.1901: New definitions will also be added to more accurately describe the technology used in current video gambling machines and to modify requirements to reflect current technology. These changes will not impose any new fees or monetary impact on video gambling machine manufacturers and distributors. In fiscal year 2004, the Department of Justice licensed three video gambling machine manufacturers, two video gambling machine distributors, and seven combined manufacturer/distributors.

23.16.1906: The term "conventional ROM storage devices" is changed to reflect changes in technology. The term "EPROMs" no longer reflects the types of storage devices utilized in video gambling machines. The change in term does not create any new requirements or costs for video gambling machine manufacturers.

Other changes in the rule provide for a transition for any video gambling machine software games that may not comply with the changes in law and rules when the law takes effect on July 1, 2005. The rules would allow 36 months for the software to come into compliance. The 36 months is the estimated life of game software. Two games on existing software have been identified as not being in compliance with the new law and proposed rules. The cost to manufacturers of changing their software as a part of cyclical software updates is difficult to estimate.

23.16.1907, 23.16.1908, 23.16.1909: Senate Bill 84 provides new definitions of "bonus games" and "video poker." The rules are necessary to define the basic game or "trigger game" apart from the bonus game and to define the feature of poker known as a "royalty" apart from a bonus game. The definition of bonus games requires that keno, poker, or bingo be the "predominant game." These rules provide that a royalty could not become the predominant game. Two games on existing software have been identified as not being in compliance with the new law and proposed rules. The cost to manufacturers of changing their software as a part of cyclical software changes is difficult to estimate.

23.16.1909A, 23.16.1910, 23.16.1931: Senate Bill 84 changed the definition of "draw poker machine" to "poker machine." These rules will make the terms and definition consistent with the new law.

23.16.1911, 23.16.2305: The changes reflect changes in technology as a wider variety of storage devices are available. They do not create a new requirement, but update the language to reflect current technology.

23.16.2001: This change will add testing to the purposes for which a video gambling machine manufacturer can import or export an illegal gambling device. This change will conform department rules to changes made by Senate Bill 84. This rule change will have no monetary impact and at this point will affect only one known party.

23.16.2401, 23.16.2406: This change will conform definitions for live bingo to changes made in Senate Bill 84. The changes allow for more than one winning arrangement on a bingo card. This change should not have any monetary affect. In fiscal year 2004 the division issued permits to 27 live bingo operators.

7. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424, and must be received no later than June 23, 2005.

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

9. 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 Bovington, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Ali Bovington, e-mailed to abovington@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

10. 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 Bovington
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State May 16, 2005.

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

In the matter of the proposed	)	NOTICE OF PUBLIC
amendment of ARM 24.138.301	)	HEARING ON PROPOSED
definitions, ARM 24.138.502 initial	)	AMENDMENT
licensure of dentists by)	
examination, ARM 24.138.503 initial)	
licensure of dental hygienists by)	
examination, ARM 24.138.505 dentist)	
licensure by credentials,)	
ARM 24.138.506 dental hygienist)	
licensure by credentials,)	
ARM 24.138.510 denturist)	
examination, ARM 24.138.511)	
denturist application requirements,)	
ARM 24.138.2101 definition of)	
continuing education,)	
ARM 24.138.2104 requirements and)	
restrictions, and ARM 24.138.3207)	
requirements for continuing)	
education in anesthesia)	

1. On June 16, 2005, at 10:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry no later than 5:00 p.m. on June 9, 2005, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Dentistry, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdden@mt.gov.

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

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) through (3) remain the same.

(4) "Direct supervision", for the purpose of ARM 24.138.406, means the provisions of allowable functions by dental auxiliaries with the intent and knowledge of the dentist and while the supervising dentist is on the premises.

(4) through (8) remain the same but are renumbered (5) through (9).

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-29-201, MCA
IMP: 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

REASON: It is reasonable and necessary to provide a definition for "direct supervision" as it relates specifically to dental assistants and auxiliaries. The Board concluded that adopting the definition would provide relevant information to lessen confusion among licensees and license applicants. The authorization citations are being amended to show additional statutory bases for the Board's authority to adopt rules. The implementation cites are being amended to include all statutes implemented through the rule. The citation amendments are reasonable and necessary to make while the rule is being otherwise amended.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION

- (1) through (1)(j) remain the same.
- (k) the license application fee.
- (2) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-301, MCA
IMP: 37-4-301, MCA

REASON: As part of the Board's ongoing rule review process, the Board determined it is reasonable and necessary to update language in this rule to correspond with the use of "application fee" elsewhere in the Board statutes and rules. It is reasonable to use consistent terminology throughout the administrative rules to provide greater clarity and to avoid potential areas of confusion.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION

- (1) through (1)(f) remain the same.
- (g) a copy of a self-query of the national practitioner data bank;
- (g) through (i) remain the same but are renumbered (h) through (j).
- ~~(j)~~ (k) the licensure application fee.
- (2) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-401~~, 37-4-402, 37-4-403, ~~37-4-406~~, MCA
IMP: 37-4-401, 37-4-402, 37-4-403, MCA

REASON: The Board determined it is reasonable and necessary to amend this rule to require dental hygienist applicants to submit to the Board a self-query of the National Practitioner Data Bank (NPDB) as part of the licensure process. The Board has required this self-query of dentist applicants for years and the NPDB has now expanded to include information on dental hygienists and denturists, as well. This additional requirement assists the Board in obtaining all information regarding an applicant's prior discipline as reported to the NPDB prior to initial licensure.

As part of the Board's ongoing rule review process, the Board determined it is reasonable and necessary to update language in this rule to correspond with the use of "application fee" elsewhere in the Board statutes and rules. It is reasonable to use consistent terminology throughout the administrative rules to provide greater clarity and to avoid potential areas of confusion. Finally, it is reasonable and necessary to amend the implementation citations to delete references to rule-making authority of the Board that are not directly applicable to this particular rule or are otherwise inappropriate, while otherwise amending the rule.

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) and (1)(a) remain the same.

(b) pays the appropriate fees, including credentialing fee, jurisprudence exam fee and ~~license~~ application fee;

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

(v) is currently engaged in the practice of clinical, direct patient care dentistry, and has been actively practicing ~~for a minimum of five years immediately preceding application within the last five years immediately preceding application, for a total accumulation of 3,000 hours of experience,~~ as demonstrated by the following information:

(A) and (B) remain the same.

~~(C) certification of not less than 1,000 hours per year in clinical direct patient care dentistry;~~

(D) through (H) remain the same but are renumbered (C) through (G).

(vi) through (2) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-304, MCA

REASON: As part of the Board's ongoing rule review process, the Board determined it is reasonable and necessary to update language in this rule to correspond with the use of "application fee" elsewhere in the Board statutes and rules. It is reasonable to use consistent terminology throughout the administrative rules to provide greater clarity and to avoid potential areas of confusion.

The Board determined it is reasonable and necessary to amend the clinical practice experience requirement for dentist licensure by credentialing. The amended requirement will allow more latitude to out-of-state dentist applicants seeking licensure through the credentialing process while continuing to ensure the licensure of qualified and safe dentists in Montana. The Board decided to amend the rule after several applicants, who didn't meet the current experience requirement, appeared before the Board and requested a waiver of the experience requirement.

24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

- (1) through (1)(g) remain the same.
- (h) copies of all other state professional licenses; ~~and~~
- (i) a copy of a self-query of the national practitioner data bank; and
- (i) remains the same but is renumbered (j).
- (2) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-304, MCA

REASON: The Board determined it is reasonable and necessary to amend this rule to require dental hygienist applicants to submit to the Board a self-query of the National Practitioner Data Bank (NPDB) as part of the licensure process. The Board has required this self-query of dentist applicants for years and the NPDB has now expanded to include information on dental hygienists and denturists, as well. This additional requirement assists the Board in obtaining all information regarding an applicant's prior discipline as reported to the NPDB prior to initial licensure.

24.138.510 DENTURIST EXAMINATION (1) through (6) remain the same.

(7) The applicant must be approved by the board for internship, ~~or meet the minimum experience requirements set forth in 37-29-303, MCA by the board, prior to taking the written examination.~~

(8) remains the same.

(9) The applicant shall take and verify successful passage of the clinical/practical examination, approved by the board, ~~after completion of the required internship as set forth in ARM 24.138.512.~~

(10) and (11) remain the same.

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-29-305, MCA

REASON: It is reasonable and necessary to amend the rule to remove unnecessary time constraints in the denturist licensure process. The Board is amending the rule to clarify that an applicant may complete a one-year internship or provide proof of three years experience, as provided in 37-29-303, MCA. The Board decided to allow greater flexibility in the order in which applicants can complete the internship and examination requirements, while still maintaining the necessary requirements for qualified licensed practitioners. In addition, it is reasonable and necessary to amend the authorization citation to reflect an additional base of the Board's rulemaking authority while otherwise amending the rule.

24.138.511 DENTURIST APPLICATION REQUIREMENTS

(1) remains the same.

(2) The application fee and required documentation must be submitted to the board of dentistry and must include: 20 days prior to the jurisprudence examination. The application must include:

(a) through (m) remain the same.

(n) a copy of a self-query of the national practitioner data bank;

(n) remains the same but is renumbered (o).

~~(o) (p) jurisprudence examination fee; and~~

~~(p) licensure fee; and~~

(q) remains the same.

(3) and (4) remain the same.

~~(5) Application material is valid for six months from the time it is received in the office. If the jurisprudence examination has not been taken at the end of six months, the application will be considered incomplete and a new application and fees will have to be submitted. The board may require application materials to be updated prior to the applicant taking the jurisprudence examination.~~

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-29-303, 37-29-304, 37-29-306, MCA

REASON: It is reasonable and necessary to remove the requirement of application submission 20 days prior to taking the jurisprudence examination. This time limitation unnecessarily slows down the application process in many cases and this requirement has already been removed from the dentist and dental hygienist rules.

The Board determined it is reasonable and necessary to amend this rule to require denturist applicants to submit to the Board a self-query of the National Practitioner Data Bank (NPDB) as part of the licensure process. The Board has required this self-query of dentist applicants for years and the NPDB has now expanded to include information on dental hygienists and denturists, as well. This additional requirement assists the Board in obtaining all information regarding an applicant's prior discipline as reported to the NPDB prior to initial licensure.

As part of the Board's ongoing rule review process, the Board determined it is reasonable and necessary to update language in this rule to correspond with the use of "application fee" elsewhere in the Board statutes and rules. It is reasonable to use consistent terminology throughout the administrative rules to provide greater clarity and to avoid potential areas of confusion.

It is reasonable and necessary to delete the six-month limit on application materials' validity, as there are instances when the application process cannot be completed due to the scheduling of the clinical examinations or other administrative processes outside the applicants' control. The

Board is amending the rule to clarify that some application materials may need updating if the application process has taken an extended amount of time to complete.

In addition, it is reasonable and necessary to amend the authorization citation to reflect an additional base of the Board's rulemaking authority while otherwise amending the rule.

24.138.2101 DEFINITION OF CONTINUING EDUCATION

(1) remains the same.

(2) Continuing education programs are designed for part-time enrollment and are usually of short duration, although longer programs with structured, sequential curricula may also be included within this definition. ~~Continuing dental education programs do not lead to eligibility for ethical announcement or certification in a specialty recognized by the American dental association.~~

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-205, 37-29-306, MCA

REASON: The Board determined it is reasonable and necessary to amend the rule to allow the Board to grant continuing education credit for otherwise acceptable education obtained in a residency program. The Board acknowledges that the education obtained during a residency is valid and that it is often difficult to take separate continuing education courses during a residency. The Board determined it is reasonable to allow applicants to submit educational coursework obtained in a residency for use in meeting the continuing education requirements for licensure by credentialing.

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) through

(4) remain the same.

(5) Continuing education credits will be allowed for attendance of multi-day convention type meetings per year as follows:

(a) two credits for dental hygienists;

(b) three credits for dentists; and

(c) two credits for denturists.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-205, 37-29-306, MCA

REASON: The Board determined it is reasonably necessary to amend the rule to allow dentists, dental hygienists and denturists to gain some continuing education credit for attendance at convention-type meetings. This amendment will provide additional flexibility for licensees in fulfilling their continuing education requirements. Additionally, the implementation cites are being amended to include all statutes implemented through the rule.

24.138.3207 REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) All dentists holding permits to provide general anesthesia must submit evidence of having attended a minimum of 20 clock hours of continuing education every three years, ~~in order to qualify for renewal of their permits.~~

(2) All dentists holding permits to provide conscious sedation must submit evidence of having attended a minimum of 12 clock hours of continuing education every three years, ~~in order to qualify for renewal of their permits.~~

(3) The education must be in one or more of the following fields:

(a) through (g) remain the same.

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

(5) All anesthesia permit holders shall affirm their understanding of and compliance with continuing education requirements on the annual license renewal.

(6) Failure of licensee to produce records of required continuing education may result in disciplinary action.

(7) A random audit of licensees may be conducted in every three-year cycle.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

IMP: 37-1-319, 37-4-511, MCA

REASON: It is reasonable and necessary to amend the rule to better facilitate the on-line renewal of dentist's anesthesia permits. The Board will no longer require proof of continuing education credits prior to renewal, but will instead perform random audits to determine compliance. These procedural amendments have already been implemented with regard to general continuing education requirements. Amendment of this rule will create greater consistency throughout all continuing education requirements. It is also reasonable and necessary to update the authorization and implementation citations for continuing education matters while otherwise amending the rule with respect to continuing education.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., June 24, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at www.dentistry.mt.gov. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In

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

6. The Board of Dentistry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Dentistry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdden@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 apply and have been fulfilled.

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

BOARD OF DENTISTRY
PAUL SIMS, DDS, PRESIDENT

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

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State May 16, 2005

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

In the matter of the amendment	)	NOTICE OF PROPOSED
of ARM 37.106.704 pertaining	)	AMENDMENT
to minimum standards for a)	
critical access hospital	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On June 25, 2005, the Department of Public Health and Human Services proposes to amend 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. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 13, 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@mt.gov.

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

37.106.704 MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) A critical access hospital shall comply with the conditions of participation for critical access hospitals as set forth in 42 CFR 485 Subpart F, updated through ~~March 2003~~ May 2005. The department adopts and incorporates by reference 42 CFR 485 Subpart F, updated through ~~March 2003~~ May 2005. A copy of the cited requirements is available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(2) A critical access hospital may maintain up to 25 inpatient beds that can be used interchangeably for acute care or swing-bed services.

(2) through (5) remain the same but are renumbered (3) through (6).

AUTH: Sec. 50-5-233, MCA

IMP: Sec. 50-5-233, MCA

3. This rule change is necessary to ensure that the Department's Quality Assurance Division Licensure Bureau complies with the requirements of 2005 Laws of Montana, Chapter 7 (SB 60) which was signed into effect by the Governor on February 23, 2005. SB 60 was required in order for the Department of Public Health and Human Services (department) to

comply with federal law. SB 60 requires the department to establish by rule a designation of the maximum number of beds allowed in a Critical Access Hospital (CAH) and to be consistent with federal law. SB 60 refers to the federal requirements for bed limitations and incorporates the Medicare Modernization Act (Act) pursuant to 42 USC 1395i-4(c)(2)(B), (c)(2)(E), and (f) and allows the department to increase the maximum allowable inpatient beds to 25 which can be used interchangeably for inpatient care or swing-bed services. 50-5-233(1)(c) of the Montana Code Annotated (MCA) states that the department may designate as a critical access hospital a facility that has no more than 15 acute care inpatient beds or in the case of a facility with swing-beds, 25 acute care inpatient beds, of which no more than 15 are used for acute care at any time.

This rule amendment shall be applied retroactively to February 23, 2005. SB 60 was effective on February 23, 2005 and facilities have already begun implementing the 25 bed increase. The application of this retroactive rule has no negative impact on providers, patients or the public. This rule shall effectively allow CAHs to provide services to more patients and would allow better access to quality care. Other options were not considered because this change is specified and enacted by the legislature and was signed into law by the Governor, on February 23, 2005. This rule amendment has no fiscal impact.

4. This rule will be applied retroactively to February 23, 2005 to implement the effective date of the legislation implementing this rule change.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on June 23, 2005. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. If a person who is directly affected by the proposed action wishes to express data, views or arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov no later than 5:00 p.m. on June 23, 2005.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are

directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 4 based on the 40 critical access hospitals affected by rules covering critical access hospitals.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State May 16, 2005.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 37.108.219	)	AMENDMENT
and 37.108.507 pertaining to)	
managed care quality assurance	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On July 1, 2005, the Department of Public Health and Human Services proposes to amend the above-stated rules.

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

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

37.108.219 GEOGRAPHIC ACCESS CRITERIA (1) In order to be deemed adequate, a provider network must fulfill all access criteria of the rules in this chapter within the following geographic restrictions:

(a) to the extent that services are covered by the health carrier, the health carrier must have an adequate network of primary care providers~~;~~ a hospital, critical access hospital, ~~and/or~~ medical assistance facility~~;~~ and a pharmacy that is located within a 30 mile radius of each enrollee's residence or place of work, unless:

(i) the usual and customary travel pattern of the general population within the service area to reach health care providers is further, and if the fact that the usual and customary travel pattern exists is documented by the health carrier; or

(ii) the provider is available but does not meet the health carrier's reasonable credentialing requirements; and

(b) if no qualified provider for a service covered by the plan exists within a 30 mile radius of an enrollee's residence or place of work, the health carrier must document how covered services will be provided at no additional charge to enrollees through referrals to qualified providers ~~both inside and~~ outside the 30 mile radius.

(2) Enrollees may, at their discretion, select participating primary care providers located farther than 30

miles from their homes and/or places of business.

(3) When an eligible employee in a group health plan neither resides nor works within a 30 mile radius of the network established pursuant to (1), the network may be deemed adequate subject to the following conditions:

(a) Insured employees living and working outside the 30 mile radius of the primary place of work of their employer, as well as their dependents, may not be penalized either in benefits or by being required to travel outside the 30 mile radius from their own place of work to receive routine treatment typically provided by a primary care provider.

(b) The health carrier may require employees to utilize a network primary care provider for referrals, including for referrals for routine treatment provided by a primary care provider. If such a requirement is imposed, access to the network primary care provider must be available to the insured by phone at no cost to the insured. A toll free number to the health carrier would satisfy this requirement.

(c) At the time of initial selection or the renewal of a managed care plan, ~~the~~ the maximum number of eligible employees residing and working outside the 30 mile radius of the primary place of work may not exceed, ~~at the time of application for network approval,~~ the following:

- (i) for groups with two to five employees, one;
- (ii) for groups with six to 15 employees, two;
- (iii) for groups with 16 to 30 employees, three, and
- (iv) for groups with 30 or more employees, 10% of the employees.

AUTH: Sec. 33-36-105, MCA

IMP: Sec. 33-36-105 and 33-36-201, MCA

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2004~~ 2005 measures:

- (a) childhood immunization;
- (b) breast cancer screening;
- (c) cervical cancer screening;
- (d) comprehensive diabetes care; and
- (e) HEDIS/consumer assessment of health plan survey (CAHPS) for adults.

(2) The health carrier shall record organizational components that affect accessibility, availability, comprehensiveness, and continuity of care, including:

- (a) referrals;
- (b) case management;
- (c) discharge planning;
- (d) appointment scheduling and waiting periods for all types of health care services;
- (e) second opinions, as applicable;
- (f) prior authorizations, as applicable;
- (g) provider reimbursement arrangements that contain financial incentives that may affect the care provided; and

(h) other systems, procedures, or administrative requirements used by the health carrier that affect the delivery of care.

(3) The health carrier may meet the requirements in (2) ~~of this rule~~ by submitting information to the department regarding network adequacy as specified in ARM 37.108.201, et seq., as long as the information is consistent with what is required in (2) ~~of this rule~~.

(4) The department adopts and incorporates by reference the HEDIS year ~~2004~~ 2005 measures for the categories listed in (1)(a) through ~~(1)~~(e). The HEDIS year ~~2004~~ 2005 measures are developed by the national committee for quality assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2004~~ 2005 measures are available from the National Committee for Quality Assurance, 2000 L Street NW, Suite 500, Washington, DC 20036 or on the internet at www.ncqa.org.

AUTH: Sec. 33-36-105, MCA

IMP: Sec. 33-36-105 and 33-36-302, MCA

3. The above proposed rule amendments are considered necessary by the department for the following reasons:

ARM 37.108.219

The proposed amendment to subsection (1)(a) is needed to conform to statutory changes. In 1999, when this rule was first adopted, the category of, and definition for, "critical access hospital" did not exist in the Montana Code Annotated and was therefore not included in the rule. Since that date, critical access hospitals have been recognized and defined in both federal and state law (Section 50-5-101(18), MCA, in Montana), and are closely akin to medical assistance facilities, which are already included in the rule. In Montana, there are currently no "medical assistance facilities" operating, all of them having been converted to "critical access hospitals". Therefore, the rule needs to be amended to include this type of facility explicitly. Failure to include critical access hospitals in the rule would handicap health carriers trying to comply with the rule by practically, effectively, and unreasonably requiring them to have a full-fledged hospital accessible within their network.

The proposed amendment to ARM 37.108.219(1)(b) is needed to delete a phrase that makes no sense in context. It is obviously not possible to make referrals to qualified providers inside the 30-mile radius if no qualified provider for a service exists within that 30-mile radius.

The proposed amendment to ARM 37.108.219(3)(b) is being done because while, elsewhere in the rules, the statutorily defined phrase "health carrier" is uniformly used, in this particular subsection the word "health" was inadvertently left out when the

rules were enacted. While "health carrier" is defined in Section 33-36-103, MCA, "carrier" is not. The proposed amendment is needed to provide additional consistency and clarity of meaning by utilizing a defined term.

The proposed amendment to ARM 37.108.219(3)(c) is needed to clarify that the provision applies at both the time of initial approval and whenever the plan is renewed, which was always the intent of the rule. The current language has caused confusion among health carriers over the years, so leaving the language as it currently stands is not a reasonable alternative to the clarifying amendment.

ARM 37.108.507

This rule requires health carriers to report their quality assessment activities to the department using health plan employer data and information set (HEDIS) measures, nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and thereby to ensure that national comparisons are possible. The changes from the already-adopted 2004 measures to the proposed 2005 measures are noted below, in reference to the portion of the HEDIS measures entitled "Updated Random Number Table for Measures Using the Hybrid Method":

Childhood Immunization Status

Table E-1A: Codes to Identify Childhood Immunizations -- replace the dash between CPT codes 90744 and 90747 with a comma.

Table E1-1/2: Data Elements for Childhood Immunization Status, remove the x from the admin. column in the denominator row.

Guidelines for Calculations and Sampling, Table 2 -- change Childhood and Adolescent Immunization Status measures to reflect Y² in the "prior year's rate may be used to reduce MY 2004 Sample Size" column.

Comprehensive Diabetes Care

Table E14-F: Codes to Identify Microalbuminuria tests -- remove CPT code 84155 and list the CPT codes as 82042, 82043, 82044, 84156 or [(84160, 84165) with code 81050].

Table E14-F: Codes to Identify Microalbuminuria Tests -- add (*) and a note to CPT 81050: may use LOINC codes if not able to link total volume urine to microalbumin test.

Tables E14-F and E14-G -- move LOINC codes from Table E14-G (macroalbuminuria test) to Table E14-F (microalbuminuria test):

Urine macroalbuminurea -- 1753-3, 1754-1, 1755-8, 9318-7, 13705-

9, 14585-4, 20621-9, 21059-1, 32294-1.

Urine protein -- 2887-8, 2888-6, 2889-4, 2890-2, 12842-1, 13801-6, 18373-1, 21482-5, 26801-1, 27298-9, 32209-9, 32551-4, 34366-5, 35663-4.

Guidelines for Calculations and Sampling, Table 2 -- in comprehensive diabetes care, place a Y in the column "prior year's rate may be used to reduce MY 2004 Sample Size."

The option of not updating the HEDIS measure was considered and rejected because these are national quality measures that allow comparison among health plans. If the measures are not kept current, this function is lost.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on June 23, 2005. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@mt.gov no later than 5:00 p.m. on June 23, 2005.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be in excess of 25 people based on the number of individuals enrolled in managed care and affected by managed care plan network adequacy and quality assurance rules.

Eleanor A. Parker
Rule Reviewer

Russell E. Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State May 16, 2005.

BEFORE THE MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.119.101 pertaining to)
the Tourism Advisory Council)

TO: All Concerned Persons

1. On March 31, 2005, the Montana Promotion Division published MAR Notice No. 8-119-46 regarding the proposed amendment of the above-stated rule at page 404 of the 2005 Montana Administrative Register, Issue No. 6.

2. No comments or testimony were received.

3. The department has amended the rule as proposed.

MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE

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

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

Certified to the Secretary of State, May 16, 2005.

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

In the matter of the)
adoption of New Rules I) NOTICE OF ADOPTION
through VII pertaining to)
exotic wildlife)

TO: All Concerned Persons

1. On March 17, 2005, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-311 regarding the adoption of New Rules I through VII (pertaining to exotic wildlife at page 358 of the 2005 Montana Administrative Register, Issue No. 5.

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

- Rule I (ARM 12.6.2201)
- Rule II (ARM 12.6.2205)
- Rule III (ARM 12.6.2210)
- Rule IV (ARM 12.6.2215)
- Rule V (ARM 12.6.2220)
- Rule VI (ARM 12.6.2225)
- Rule VII (ARM 12.6.2230)

NEW RULE I (ARM 12.6.2201) EXOTIC WILDLIFE: DEFINITIONS

The following definitions apply to this subchapter:

(1) through (7) remain as proposed.

(8) "~~Uncontrolled~~ Noncontrolled species" means a live, exotic wildlife species, subspecies, or hybrid of that species that may be possessed, sold, purchased or exchanged in the state without a permit, except as provided in this subchapter or in Montana statutes or federal statutes. ~~An uncontrolled noncontrolled~~ species may not be released into the wild unless authorized in writing by the department. This definition does not authorize the sale, possession, transportation, importation or exportation of ~~an uncontrolled noncontrolled~~ species in violation of any applicable federal or state statute or regulation or county or city ordinance.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-701, 87-5-703, 87-5-705, 87-5-707, 87-5-708,
87-5-709, 87-5-711, 87-5-712, MCA

NEW RULE II (ARM 12.6.2205) EXOTIC WILDLIFE: LIST OF UNCONTROLLED NONCONTROLLED SPECIES (1) The following mammals are classified as ~~uncontrolled noncontrolled~~ species:

(a) African pygmy hedgehog - Atelerix albiventris and Atelerix algirus;

(b) Wallaby (Bennets) - Macropus rufogriseus;

(c) Wallaby (Tammar) - Macropus eugenii; and

(d) Sugar gliders - Petaurus breviceps.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

NEW RULE III (ARM 12.6.2210) CONTROLLED SPECIES PERMITS

(1) remains as proposed.

(2) The department may amend, suspend, or cancel a permit if necessary to protect native wildlife, livestock, public health, public safety, or the environment.

(3) remains as proposed.

(4) A person that displays, exhibits or uses a controlled species for exhibition or commercial photography or television may import the species into Montana without a controlled species permit if:

(a) the species is accompanied by evidence of lawful possession;

(b) the species is not in this state for more than 90 days; ~~and~~

(c) the species is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting or using animals for commercial purposes other than food or fiber, he/she must possess the appropriate license issued by the United States department of agriculture; ~~and~~

(d) the species is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana department of livestock within 10 days of entry into Montana.

(5) An interstate shipment of a controlled species ~~listed in this rule~~ may be transported through this state, without a permit or license issued by the department, if:

(a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated;

(b) mammals, and birds ~~or fish~~ are accompanied by a health certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination, and origin ~~and proof of ownership~~ of the species being transported; ~~and~~

(c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and

~~(e)~~(d) the species is not unloaded or otherwise released while being transported through this state.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

NEW RULE IV (ARM 12.6.2215) LIST OF PROHIBITED SPECIES

(1) through (3) remain as proposed.

(4) The following mammals are classified as prohibited species:

~~(a) Short tailed opossum - Monodelphis domestica; and~~

~~(b)(a) Nutria - Myocastor coypus.~~

(5) remains as proposed.

(6) The following reptiles are classified as prohibited:

(a) Boomslang - Dispholidus typus;

(b) Burrowing asps (all species in family Atractaspidae);

(c) Coral snakes (all species in family Elapidae);

(d) Cobras (all species in family Elapidae);

(e) Kraits (all species in family Elapidae);

(f) Mambas (all species in family Elapidae); and

(g) Pit vipers and true vipers (all species in family Viperidae except species indigenous to Montana).

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

NEW RULE V (ARM 12.6.2220) PROHIBITED SPECIES PERMITS

(1) The department may issue a permit for possession of a prohibited species only to the following:

(a) though (e) remain the same.

(f) a person who, due to a medical necessity, has assistance requirements that may be provided by the prohibited species and that requirement is certified by a ~~doctor~~ physician licensed in the state of Montana.

(2) An interstate shipment of a prohibited species ~~listed in this rule~~ may be transported through this state, without a permit or license issued by the department, if:

(a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated;

(b) mammals, and birds ~~or fish~~ are accompanied by a health certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination, and origin ~~and proof of ownership~~ of the species being transported; and

(c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and

~~(e)(d)~~ the species is not unloaded or otherwise released while being transported through this state.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

NEW RULE VI (ARM 12.6.2225) DETERMINING EXOTIC WILDLIFE CLASSIFICATION

(1) remains as proposed.

(2) The classification review committee must make its recommendations based on the best available information and scientific knowledge of the following:

(a) the environmental impacts caused by the animal if it is released or escapes from captivity, including ecological and economic impacts;

(b) the risk the animal would pose to the health or safety of the public, wildlife, livestock, domestic animals and agriculture; and

(c) the ability of a person to readily control and contain the animal in captivity.

(3) Based on recommendations made by the classification review committee, the commission may classify exotic wildlife to either an ~~uncontrolled~~ noncontrolled, controlled, or prohibited list. The commission shall adopt exotic wildlife classifications as administrative rules, amendments, or repeals according to the Montana Administrative Procedure Act.

(4) Species of exotic wildlife may not be imported into Montana unless the following occur:

(a) the exotic wildlife species has been classified by the commission or by listing in state statutes;

(b) the department has issued the required permits for possession of exotic wildlife species classified as noncontrolled, controlled or prohibited; and

(c) the person has obtained authorization for importation from the department of livestock pursuant to Title 81, chapter 2, part 7, MCA.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

NEW RULE VII (ARM 12.6.2230) EXOTIC WILDLIFE PERMIT APPEAL PROCESS

(1) A person who has been denied a permit, denied renewal of a permit, or whose permit has been suspended or cancelled may appeal the permitting decision in writing to the department's director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

(2) The department's director or the director's designee shall issue a written decision on the appeal. The department director's decision is final.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-711, 87-5-712, MCA

3. The following comments were received and appear with the commission responses:

During the written comment period the commission received four comments supporting one or all of the new rules, 11 comments opposing all or one of the new rules, and one comment supporting the rule with editorial changes to rule language. A summary of the comments appears below:

COMMENT 1: The Department of Livestock (DoL) requested minor editorial changes to the language of the rules to maintain consistency with 87-5-702, MCA, and consistency with Department of Livestock import regulations. DoL also requested definitions for the terms "coming into contact" and "complete control" in NEW RULE III(4)(c) (ARM 12.6.2210). Additionally, DoL thought that species listed in 50-23-101, MCA, and ARM 12.6.1540 and 32.4.502 should be listed within the new rules to provide one location where all prohibited species are listed.

RESPONSE: The commission agreed that the language changes that DoL requested would be beneficial and made these changes. The commission thought that the commonly understood meanings of "complete control" and "coming into contact" were sufficiently clear and did not believe adding definitions of these terms would improve the rules. In compliance with 2-4-305(2), MCA, which states that rules may not unnecessarily repeat statutory language, the commission did not change NEW RULE IV (ARM 12.6.2215) to add all prohibited species listed in other statutes and rules. However, the commission directed the department to post complete lists of prohibited, controlled and noncontrolled species on the department website so that the public may locate a complete list in one place.

COMMENT 2: Seven individuals opposed the classification of short tailed opossums (Monodelphis domestica) as prohibited. These individuals disagreed that the short tailed opossum has the potential to become a significant agricultural pest and a household pest. The comments stated that opossums have difficulty breeding, will not travel far if they escape enclosure, will not chew wood or property, can be easily contained, will not survive the Montana climate, do not eat fruit or vegetables, need constant access to water, require high humidity and would readily be eaten by snakes, cats, dogs, and birds of prey if they escape.

RESPONSE: In light of the information gathered from the public comments and from further research conducted by the Classification Review Committee (committee), the committee has decided to reconsider classifying short tailed opossums as prohibited. At this time, short tailed opossums will be removed from NEW RULE IV (ARM 12.6.2215) which lists them as prohibited. Further research will be conducted to ascertain the potential for short tailed opossums to cause environmental impacts, the risk the animal would pose to health or safety of the public, wildlife or agriculture, and the ability to readily control and contain the animal in captivity.

COMMENT 3: Two individuals opposed classifying African clawed frogs (Xenopus laevis) as prohibited. The commentators stated that the threats of African clawed frogs are limited because they will not survive the Montana climate. One comment listed

areas where feral populations have become established after being released from research facilities. The comment also addressed the feeding habits of these frogs, which include eating small invertebrates, small fish, eggs, tadpoles and others. The use of these frogs as an educational and research tool was also addressed. One comment was received from a company in Florida that claimed to have been supplying schools, including some in Montana, with these frogs for 26 years.

RESPONSE: The use of live African clawed frogs as teaching tools accompanied by an increasing trend of aquarium releases in open waters resulted in this frog being considered as a high risk for release in large numbers into open waters. There are several areas in Montana where these frogs would be able to survive year round, including thermal spring areas. In addition, there is still a significant threat that they could introduce pathogens or parasites into the wild since they are an intermediate host for flukes. There is also the potential competition with native amphibians and fish for food and habitat, and they are voracious predators and scavengers. The committee maintains its position that the African clawed frog be listed as prohibited in Montana. They have a high probability of becoming introduced into the wild, and if they become established they would cause significant negative ecological impacts.

The committee recommends the use of alternative teaching tools in classrooms instead of relying on the use of live African clawed frogs. Alternatives include the use of preserved or model specimens, or media tools such as videos. If their use in research facilities is required, exceptions may be granted if the institution establishes that their proposed facility is adequate to provide secure confinement.

COMMENT 4: Four individuals supported the rules stating that the rules were necessary to protect Montana's natural resources.

RESPONSE: The commission agrees and appreciates this support.

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

By: /s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State May 16, 2005

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

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

TO: All Concerned Persons

1. On March 31, 2005, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice Number 38-2-189 regarding a public hearing on the proposed adoption of New Rule I, concerning Eligible Telecommunications Carriers, Lifeline/Link-Up, at page 423 of the 2005 Montana Administrative Register, issue number 6.

2. The PSC has adopted New Rule I with the following changes, stricken matter interlined, new matter underlined:

RULE I (38.5.3230) ELIGIBLE TELECOMMUNICATIONS CARRIERS
-- CERTIFICATION AND VERIFICATION OF SUBSCRIBER ELIGIBILITY FOR
FEDERAL LIFELINE/LINK-UP ON TRIBAL LANDS (1) Each eligible

telecommunications carrier providing federal lifeline/link-up service to a qualifying low-income subscriber who is an eligible resident of tribal lands, as defined at 47 CFR 54.400, must obtain that subscriber's signature on a document certifying under penalty of perjury that:

(a) the subscriber receives benefits from one of the qualifying low-income programs designated by the federal communications commission at 47 CFR ~~54.405~~ 54.409 and related provisions, and identifying the program or programs from which that ~~consumer~~ subscriber receives benefits; or

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

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

(2) If a subscriber is qualifying for the federal lifeline/link-up program under the criterion of household income below 135% of the federal poverty guidelines, an eligible telecommunications carrier must require the subscriber to present documentation of the subscriber's income prior to the subscriber's enrollment in the program that is in accordance with the requirements adopted by the federal communications commission at 47 CFR 54.410 and related provisions.

(3) In order to verify subscribers' continued eligibility for the federal lifeline program on tribal lands, each eligible telecommunications carrier must annually survey a statistically valid sample of subscribers who have qualified either as

recipients of one of the qualifying low-income programs designated by the federal communications commission or under the criterion of household income under 135% of federal poverty guidelines. A ~~consumer~~ subscriber contacted in the eligible telecommunications carrier's survey must either certify, under penalty of perjury, that the consumer continues to participate in the qualifying program (program based eligibility), or prove his or her continued eligibility and self-certify continued eligibility in accordance with the requirements adopted by the federal communications commission, at 47 CFR 54.410 and related provisions (income-based eligibility). A subscriber's failure to respond to a survey will be deemed a negative response for purposes of continued eligibility and, upon proper notice, the subscriber will be removed from the federal lifeline program.

(4) In lieu of the above statistically valid sample, an eligible telecommunications carrier may do annual notice to all subscribers requiring each subscriber to establish continued eligibility for support.

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

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

GENERAL: The Montana Independent Telecommunications Systems (MITS), the Montana Telecommunications Association (MTA), and Ronan Telephone Company and Hot Springs Telephone Company (RTC/HST), appeared at the hearing and also filed written comments to the proposed rule. MITS, MTA, and RTC/HST are generally supportive of the rule, but include suggestions for modifications. The PSC appreciates the efforts of these interested persons to assist the PSC in this rulemaking.

COMMENT 1: RTC/HST comment that the subsection (1)(a) citation to 54.405 should be 54.409 and "prove" in section (3) is not consistent with other law and is impractical.

RESPONSE: The PSC agrees the correct citation is 54.409 and amends the rule accordingly. The PSC agrees "prove" is problematic and amends the rule accordingly.

COMMENT 2: RTC/HST comment that the heading and first sentence of the rule both reference "tribal lands," but the underlying laws apply to all carriers, not just those serving tribal lands.

RESPONSE: The rule is applicable only to carriers whose service areas include tribal lands. Montana statutes address application to carriers' non-tribal land service areas.

COMMENT 3: MTA suggests a clarification of the effective date of underlying laws is needed. MTA asks whether rules and procedures must be adopted by June 22, 2005, or eligible

telecommunications carriers must be in compliance by June 22, 2005.

RESPONSE: The PSC rule will be effective May 27, 2005, after it is published in the MAR. The FCC must answer the question as to when carriers must be in compliance.

COMMENT 4: For clarity, MTA suggests "qualifying low-income" be inserted before "program or programs" in (1)(c). MTA suggests, dependent on the proper interpretation of whether Montana is a default state, the number of individuals in a household also be included in the rule's verification requirements.

RESPONSE: The PSC amends the rule to insert "qualifying low-income." The PSC determines the federal poverty guidelines include consideration of number of individuals in a household.

COMMENT 5: MTA suggests that more is required to describe the annual verification process, primarily in regard to surveys and failures to respond to surveys. MTA suggests a "consequences" provision be inserted in (3). MTA also suggests an "opt-in" provision (all customers are notified annually and must reply to remain in the program) might eliminate the need for surveys altogether.

RESPONSE: The PSC agrees in part and amends the rule accordingly.

COMMENT 6: MTA suggests the rule include a reference to annual certification requirements at 47 CFR 54.410(b) and 47 CFR 54.417. MTA comments the requirements of (2) and (3) reference 47 CFR 54.410, but 47 CFR 54.410 applies to states that mandate that support comply with state requirements. MTA suggests the rule is unclear and Montana should adopt the standards that apply in Montana.

RESPONSE: The PSC determines annual certification requirements are not a necessary part of this rule. The PSC determines Montana is a state that administers its own lifeline/link-up program (Montana telephone assistance program), except that the enhanced federal program is additionally available to subscribers who reside on tribal lands. In any event, 54.410 applies to both states that have their own programs and states that do not.

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

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

Certified to the Secretary of State May 16, 2005.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

and

- ▶ Office of Economic Development.

Education and Local Government Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

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

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

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

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2005. This table includes those rules adopted during the period April 1, 2005 through June 30, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2005, this table, and the table of contents of this issue of the MAR.

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

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

GENERAL PROVISIONS, Title 1

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

ADMINISTRATION, Department of, Title 2

- I-X State of Montana Voluntary Employees' Beneficiary Association (VEBA), p. 2779, 643
- 2.21.701 and other rules - Leave of Absence without Pay, p. 141, 372
- 2.21.1001 and other rules - Parental Leave, p. 286, 571
- 2.59.1701 and other rule - Definitions - License Renewal of Mortgage Brokers and Loan Originators, p. 2959, 320

(Public Employees' Retirement Board)

- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725
- 2.43.441 and other rule - Transfer of Funds for Certain Service Purchases, p. 400

(State Fund)

- 2.55.320 Classifications of Employments, p. 2429, 3013

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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 April 2005 appear. Vacancies scheduled to appear from June 1, 2005, through August 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 May 10, 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 APRIL 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Alternative Health Care (Labor and Industry)			
Ms. Molly Danison Missoula	Governor	Browder	4/8/2005 9/1/2005
Qualifications (if required): midwife			
Board of Athletics (Labor and Industry)			
Mr. Book St. Goddard Browning	Governor	reappointed	4/25/2005 4/25/2008
Qualifications (if required): public representative			
Board of Barbers and Cosmetologists (Labor and Industry)			
Ms. Jamie Crisafulli Glendive	Governor	French	4/8/2005 10/1/2008
Qualifications (if required): public representative			
Board of Chiropractors (Labor and Industry)			
Dr. Daniel Prideaux Missoula	Governor	not listed	4/8/2005 1/1/2008
Qualifications (if required): practicing chiropractor with at least one year experience			
Board of Dentistry (Labor and Industry)			
Dr. Paul Sims Butte	Governor	reappointed	4/8/2005 3/29/2010
Qualifications (if required): licensed dentist with at least five years experience			
Ms. Helen Waller Circle	Governor	Robinson	4/8/2005 3/29/2007
Qualifications (if required): public representative			
Board of Directors of the Montana Consensus Council (Administration)			
Rep. Scott Sales Bozeman	House Minority Leader	not listed	4/19/2005 4/19/2007
Qualifications (if required): Representative			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Investments (Commerce)			
Mr. John Paull Butte	Governor	Klawon	4/8/2005 1/1/2009
Qualifications (if required): representative of the Public Employees' Retirement Board			
Board of Occupational Therapy Practice (Labor and Industry)			
Ms. Lynn Yocom Anaconda	Governor	Berg	4/8/2005 12/31/2008
Qualifications (if required): licensed occupational therapist			
Board of Optometry (Labor and Industry)			
Dr. Rock Svennungsen Shelby	Governor	Johnson	4/8/2005 4/3/2009
Qualifications (if required): registered optometrist			
Board of Plumbers (Labor and Industry)			
Mr. David Lindeen Huntley	Governor	Mullowney	4/8/2005 5/4/2007
Qualifications (if required): public representative			
Board of Social Work Examiners and Professional Counselors (Labor and Industry)			
Ms. Linda Crummett Billings	Governor	Wolberd	4/8/2005 1/1/2009
Qualifications (if required): licensed social worker			
Ms. Treasa Glinnwater Ronan	Governor	Jeffrey	4/8/2005 1/1/2009
Qualifications (if required): licensed social worker			
Mr. John Lynn Missoula	Governor	Booth	4/8/2005 1/1/2009
Qualifications (if required): licensed counselor			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Social Work Examiners and Professional Counselors (Labor and Industry) cont.			
Mr. Henry Pretty On Top Crow Agency	Governor	Meis	4/8/2005 1/1/2009
Qualifications (if required): licensed social worker			
Board of Speech-Language Pathologists and Audiologists (Labor and Industry)			
Ms. Sharon Dinstel Colstrip	Governor	Skinner	4/8/2005 12/31/2007
Qualifications (if required): speech-language pathologist			
Mr. Darrell Micken Bozeman	Governor	reappointed	4/8/2005 12/31/2007
Qualifications (if required): audiologist			
Mr. James L. Sias Ronan	Governor	Fiske	4/8/2005 12/31/2007
Qualifications (if required): consumer representative			
Children's Trust Fund (Public Health and Human Services)			
Rep. Tim Dowell Kalispell	Governor	Kasten	4/13/2005 1/1/2007
Qualifications (if required): public member			
County Printing Board (Administration)			
Mr. Dan Killoy Miles City	Governor	Rademacher	4/8/2005 4/1/2007
Qualifications (if required): printing industry representative			
Mr. Gary MacDonald Wolf Point	Governor	Jordan	4/8/2005 4/1/2007
Qualifications (if required): County Commissioner			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
County Printing Board (Administration) cont.			
Mr. Calvin J. Oraw Sidney	Governor	Clark	4/8/2005 4/1/2007
Qualifications (if required): public representative			
Ms. Marianne Roose Eureka	Governor	reappointed	4/8/2005 4/1/2007
Qualifications (if required): County Commissioner			
Mr. Milt Wester Laurel	Governor	Starr	4/8/2005 4/1/2007
Qualifications (if required): printing industry representative			
Electrical Board (Labor and Industry)			
Mr. Jack Fisher Butte	Governor	French	4/8/2005 7/1/2008
Qualifications (if required): licensed electrician			
Mr. Fred Talarico Missoula	Governor	Wolfe	4/8/2005 7/1/2005
Qualifications (if required): master electrician			
Lewis and Clark Bicentennial Commission (Historical Society)			
Mr. Mark Sansaver Wolf Point	Governor	Martin	4/25/2005 10/1/2006
Qualifications (if required): tribal member			
Montana Council on Developmental Disabilities (Commerce)			
Rep. Don Roberts Billings	Governor	Lawson	4/25/2005 1/1/2006
Qualifications (if required): legislator			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Council on Developmental Disabilities (Commerce) cont.			
Sen. Carol Williams	Governor	McCarthy	4/25/2005
Missoula			1/1/2006
Qualifications (if required): legislator			
Petroleum Tank Release Compensation Board (Environmental Quality)			
Mr. Thomas Bateridge	Governor	Cosgrove	4/18/2005
Missoula			6/30/2006
Qualifications (if required): public member			
State Compensation Mutual Insurance Fund Board (Administration)			
Rep. Jane DeBruycker	Governor	Leuprecht	4/8/2005
Dutton			4/28/2009
Qualifications (if required): policy holder			
Mr. Ken Johnson	Governor	Morgenstern	4/8/2005
Missoula			4/28/2009
Qualifications (if required): private enterprise			
Mr. James Swanson	Governor	Grewatz	4/8/2005
Glendive			4/28/2009
Qualifications (if required): insurance producer/policy holder			
Mr. Lawrence Zanto	Governor	Cole	4/8/2005
Helena			4/28/2009
Qualifications (if required): private enterprise			

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

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

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Landscape Architects (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
Board of Nursing (Commerce) Ms. Kim Powell, Missoula Qualifications (if required): RN	Governor	7/1/2005
Board of Pharmacy (Commerce) Mr. Robert Mann, Plentywood Qualifications (if required): pharmacist	Governor	7/1/2005
Board of Physical Therapy Examiners (Labor and Industry) Mr. Jeff Swift, Great Falls Qualifications (if required): physical therapist	Governor	7/1/2005
Board of Private Security Patrol and Investigation (Labor and Industry) Dr. Raymond Murray, Missoula Qualifications (if required): representative of the Peace Officers Standards and Training Council	Governor	8/1/2005
Ms. Kathy Miller, Helena Qualifications (if required): public member	Governor	8/1/2005
Board of Professional Engineers and Land Surveyors (Labor and Industry) Mr. Daniel M. McCauley, Helena Qualifications (if required): professional engineer	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Professional Engineers and Land Surveyors (Labor and Industry) cont. Mr. Jake Neil, Great Falls Qualifications (if required): professional engineer	Governor	7/1/2005
Board of Public Accountants (Labor and Industry) Mr. Michael Johns, Deer Lodge Qualifications (if required): certified public accountant	Governor	7/1/2005
Board of Radiologic Technologists (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): permitholder	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
Board of Research and Commercialization (Commerce) Mr. John Youngberg, Bozeman Qualifications (if required): public member	Governor	7/1/2005
Board of Sanitarians (Labor and Industry) Mr. John Shea, Missoula Qualifications (if required): public member	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Veterans' Affairs (Military Affairs) Mr. Charles Van Gorden, Valier Qualifications (if required): veteran	Governor	8/1/2005
Board of Veterinary Medicine (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
Burial Preservation Board (Administration) Mr. Carl Fourstar, Poplar Qualifications (if required): representative of the Assiniboine Tribe	Governor	8/22/2005
Dr. Randall Skelton, Missoula Qualifications (if required): physical anthropologist	Governor	8/22/2005
Mr. Melbert Eaglefeathers, Butte Qualifications (if required): public member	Governor	8/22/2005
Mr. Tony Incashola, Pablo Qualifications (if required): representative of the Salish and Kootenai Tribe	Governor	8/22/2005
Mr. Stephen Platt, Helena Qualifications (if required): representative of the State Historical Preservation Office	Governor	8/22/2005
Mr. John Murray, Browning Qualifications (if required): representative of the Blackfeet Tribe	Governor	8/22/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Chief Water Judge (Supreme Court) Mr. C. Bruce Loble, Bozeman Qualifications (if required): none specified	Chief Justice	6/30/2005
Commission on Community Service (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
Mr. John Allen, Helena Qualifications (if required): representative of the National Service Corporation and an ex officio member	Governor	7/1/2005
Ms. Nan LeFebvre, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	7/1/2005
Rep. Margaret H. Campbell, Poplar Qualifications (if required): representative of tribal government	Governor	7/1/2005
Mr. Michael J. McGinley, Dillon Qualifications (if required): representative of local government	Governor	7/1/2005
Commission on Practice of the Supreme Court (Supreme Court) Mr. James A. Hubble, Stanford Qualifications (if required): none specified	elected	6/5/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)		
Mr. Edward Van Tighem, Great Falls Qualifications (if required): deaf	Governor	7/1/2005
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
District Court Council (Supreme Court)		
Judge John C. McKeon, Malta Qualifications (if required): none specified	Supreme Court	6/30/2005
Economic Development Advisory Council (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

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electrical Board (Labor and Industry) Mr. Fred Talarico, Missoula Qualifications (if required): master electrician	Governor	7/1/2005
Electronic Government Advisory Council (Administration) Director Jeff Hagener, Helena Qualifications (if required): representative of a state agency	Governor	6/18/2005
Mr. James E. Reno, Billings Qualifications (if required): representative of local government	Governor	6/18/2005
Mr. Gene Vuckovich, Anaconda Qualifications (if required): public member	Governor	6/18/2005
Ms. Wendy Keating, Helena Qualifications (if required): representative of a state agency	Governor	6/18/2005
Mr. Christian Mackay, Billings Qualifications (if required): public member	Governor	6/18/2005
Family Education Savings Program Oversight Committee (Commissioner of Higher Education) Auditor John Morrison, Helena Qualifications (if required): Commissioner of Insurance	Governor	7/1/2005
Mr. Donald Sterhan, Billings Qualifications (if required): public member with experience in investment management	Governor	7/1/2005
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Mr. Marko Lucich, Butte Qualifications (if required): representative of prevention programs and services	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) cont.		
Mr. William Snell, Billings Qualifications (if required): representative of prevention programs and services	Governor	7/1/2005
Judicial Standards Commission (Justice)		
Mr. Victor F. Valgenti, Missoula Qualifications (if required): attorney	Supreme Court	6/30/2005
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
Mental Disabilities Board of Visitors (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
Montana Agriculture Development Council (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

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Agriculture Development Council (Agriculture) cont. Ms. Cathy Cottom, Dillon Qualifications (if required): engaged in agriculture	Governor	7/1/2005
Montana Consensus Council (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
Montana Cooperative Agricultural Pest Survey Advisory Council (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

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Cooperative Agricultural Pest Survey Advisory Council (Agriculture) cont.		
Mr. Greg Denitto, Missoula	Director	7/1/2005
Qualifications (if required):	USDA Forest Service	
Mr. Gary Adams, Helena	Director	7/1/2005
Qualifications (if required):	USDA APHIS PPQ	
Mr. Steve Baril, Helena	Director	7/1/2005
Qualifications (if required):	Montana Department of Agriculture	
Montana Historical Society Board of Trustees (Historical Society)		
Mr. Burton O. Bosch, Havre	Governor	7/1/2005
Qualifications (if required):	public member	
Ms. Ana Brenden, Scobey	Governor	7/1/2005
Qualifications (if required):	public member	
Mr. Timothy C. Fox, Helena	Governor	7/1/2005
Qualifications (if required):	public member	
Ms. Shirley Groff, Butte	Governor	7/1/2005
Qualifications (if required):	public member	
Montana Mint Committee (Agriculture)		
Mr. Clyde Fisher, Columbia Falls	Governor	7/1/2005
Qualifications (if required):	representative of the mint industry research council	
Mr. Kirk Passmore, Kalispell	Governor	7/1/2005
Qualifications (if required):	mint grower	

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Power Authority (Natural Resources and Conservation)		
Lt. Governor Karl Ohs, Harrison	Governor	7/2/2005
Qualifications (if required): representing irrigated agriculture and residential energy consumption		
Ms. Karen B. Fagg, Billings	Governor	7/2/2005
Qualifications (if required): member at large with academic or business credentials		
Montana Special Education Advisory Panel (Office of Public Instruction)		
Mr. Bob Maffit, Helena	Superintendent	6/30/2005
Qualifications (if required): business concerned with transitions		
Rep. Holly Raser, Missoula	Superintendent	6/30/2005
Qualifications (if required): legislator		
Mr. Russ Bean, Augusta	Superintendent	6/30/2005
Qualifications (if required): state/local administrator		
Mr. Steve Gibson, Helena	Superintendent	6/30/2005
Qualifications (if required): representative from juvenile and adult corrections		
Ms. Diana Colgrove, Eureka	Superintendent	6/30/2005
Qualifications (if required): Part C/IDEA representative		
Mr. Jeff Stelloh, Billings	Superintendent	6/30/2005
Qualifications (if required): private school representative		
Mr. Gary Perleberg, Bigfork	Superintendent	6/30/2005
Qualifications (if required): parent of a child with disabilities		
Ms. Norma Wadsworth, Billings	Superintendent	6/30/2005
Qualifications (if required): higher education		

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont.		
Ms. WyAnn Northrop, Missoula Qualifications (if required): teacher of children with disabilities	Superintendent	6/30/2005
Ms. Janet Jansen, Lavina Qualifications (if required): regular classroom teacher	Superintendent	6/30/2005
Mr. Dick Slonaker, Chinook Qualifications (if required): special education program administrator	Superintendent	6/30/2005
Mr. Cody Sinnott, Helena Qualifications (if required): student representative	Superintendent	6/30/2005
Mr. Bob Peake, Helena Qualifications (if required): state agency	Superintendent	6/30/2005
Montana Vocational Rehabilitation Council (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
Montana Wheat and Barley Committee (Agriculture)		
Mr. Leonard Schock, Vida Qualifications (if required): representative of District VII and a Republican	Governor	8/20/2005
Mr. Daniel Kidd, Big Sandy Qualifications (if required): representative of District IV and a Republican	Governor	8/20/2005
Motorcycle Safety Advisory Committee (Office of Public Instruction)		
Ms. Michele Hand, Missoula Qualifications (if required): representative of a motorcycle group	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Management Advisory Council (Agriculture) Director W. Ralph Peck, Helena Qualifications (if required): Director	Director	6/30/2005
Mr. Jerry Weber, Joliet Qualifications (if required): Eastern County representative	Director	6/30/2005
Rep. Diane Rice, Harrison Qualifications (if required): Montana Weed Control Association	Director	6/30/2005
Ms. Carol Sparks, Plevna Qualifications (if required): livestock production	Director	6/30/2005
Ms. Josie Dahlberg, Brockton Qualifications (if required): agriculture crop production	Director	6/30/2005
Ms. Ramona Ehnes, Great Falls Qualifications (if required): sportsman/wildlife group	Director	6/30/2005
Mr. Jerry Marks, Missoula Qualifications (if required): biological research and control	Director	6/30/2005
Mr. Jack Eddie, Dillon Qualifications (if required): Western County representative	Director	6/30/2005
Mr. Dave Philipps, Lewistown Qualifications (if required): herbicide dealer and applicator	Director	6/30/2005
Ms. Pachy Burns, Big Timber Qualifications (if required): consumer group	Director	6/30/2005
Ms. Verna Billedeaux, Browning Qualifications (if required): at-large member	Director	6/30/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (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		
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks)		
Mr. Dan Walker, Billings	Governor	6/30/2005
Qualifications (if required): member of the Fish, Wildlife, and Parks Commission		
Ms. Darlyne Dascher, Fort Peck	Governor	6/30/2005
Qualifications (if required): landowner		
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 -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) cont.		
Mr. 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
Risk Management Advisory Council (Administration)		
Mr. Scott Darkenwald, Helena Qualifications (if required): Director of the Department of Administration	Governor	6/20/2005
Mr. Hal Luttschwager, Missoula Qualifications (if required): public member	Governor	6/20/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Advisory Council (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
State-Tribal Economic Development Commission (Indian Affairs)		
Mr. Lloyd Irvine, Pablo Qualifications (if required): representative of the Confederated Salish and Kootenai Tribe	Governor	6/30/2005
Mr. Jake Parker, Box Elder Qualifications (if required): representative of the Rocky Boy Tribe	Governor	6/30/2005
Mr. John Woodenlegs, Lame Deer Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	6/30/2005
Teachers' Retirement Board (Administration)		
Mr. James Turcotte, Helena Qualifications (if required): public member	Governor	7/1/2005

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (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
Water Court Judge (Supreme Court)		
Judge Joe L. Hegel, Forsyth Qualifications (if required): none specified	elected	6/30/2005
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

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Western Interstate Commission on Higher Education (Commissioner of Higher Education) Ms. Sheila Stearns, Helena Qualifications (if required): educator engaged in the field of higher education	Governor	6/19/2005
Youth Justice Council (Justice) Dr. Pedro Hernandez, Billings Qualifications (if required): public member	Governor	6/20/2005
Mr. Marko Lucich, Butte Qualifications (if required): public member	Governor	6/20/2005
Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	6/20/2005
Ms. Sally K. Stansberry, Missoula Qualifications (if required): public member	Governor	6/20/2005
Ms. Cathy Kendall, Helena Qualifications (if required): public member	Governor	6/20/2005
Commissioner Peggy Beltrone, Great Falls Qualifications (if required): public member	Governor	6/20/2005
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

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2005 through AUGUST 31, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont.		
Mr. Tracy King, Harlem Qualifications (if required): public member	Governor	6/20/2005
Mr. Tony Wagner, Browning Qualifications (if required): public member	Governor	6/20/2005
Mr. Joe Johnson, Butte Qualifications (if required): public member	Governor	6/20/2005
Mr. Steve Gibson, Helena Qualifications (if required): designee of the director of	Governor	6/20/2005
	the Department of Corrections	
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 Chappuis, Helena Qualifications (if required): public member	Governor	6/20/2005
Ms. Nancy Wikle, Helena Qualifications (if required): public member	Governor	6/20/2005
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