

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed)
adoption of NEW RULE I) NOTICE OF PUBLIC HEARING
Assignment of Persons Providing) ON PROPOSED ADOPTION
Instruction to Braille Students)

TO: All Concerned Persons

1. On December 21, 2006, at 9:00 a.m., a public hearing will be held in the conference room of the Office of the Commissioner of Higher Education at 46 North Last Chance Gulch, Helena, Montana, to consider the adoption of the above-stated rule.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on December 7, 2006 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.montana.edu.

3. The proposed new rule provides as follows:

NEW RULE I ASSIGNMENT OF PERSONS PROVIDING INSTRUCTION TO BRAILLE STUDENTS (1) No certified or classified employee of a school district, cooperative, or any contracted service provider shall be assigned to provide instruction of Braille to a student or produce Braille materials who has not demonstrated competency in "contracted" (grade two) standard literary Braille code by:

(a) successful completion of the National Literary Braille Competency Test;
or

(b) successful completion of the Braille competency test developed by Portland State University (Braille Literacy Usage Exam); or

(c) successful completion of Library of Congress transcriber's certificate; or

(d) successful completion of a program, for teaching visually impaired students, from an accredited college or university.

(2) The employing agency (school district and/or cooperative) is responsible for monitoring appropriate assignment of personnel under (1).

(3) Any person under (1) shall have two years, from the date that the individual has been initially assigned to provide instruction in Braille or to produce Braille materials, to successfully pass the testing requirements.

(4) A person who has met the requirements of (1) shall maintain their facility with "contracted" (grade two) standard literary Braille code through continuing education opportunities.

(5) For the purposes of (4), an approved provider of continuing education

may include any entity approved by the Montana Office of Public Instruction and/or the Montana Board of Education.

(6) Individuals who seek to remain eligible to work with visually impaired students are responsible for documenting completion of continuing education. Such individuals will provide a copy of their documentation to their employing school district.

(7) If a paraprofessional, who has not successfully met the requirements found in (1), is assigned to work with a student who has a visual impairment, the paraprofessional will be supervised by the district's special education teacher in collaboration with a teacher of the visually impaired who holds a credential from an accredited university. In addition, the assigned paraprofessional and the school district shall meet the requirements contained in (1) within two years of the date a student with a visual impairment has been identified as in need of Braille instruction and/or materials.

AUTH: 20-2-114, MCA

IMP: 20-1-121, 20-7-475, MCA

4. Statement of Reasonable Necessity: The proposed rule for instructors of Braille was developed in accordance with the requirements of House Bill 438 as approved by the 2005 Montana Legislature. House Bill 438 reads, in part, "Section 6. Personnel training. The board of public education shall establish standards to ensure that individuals who provide Braille Instruction are appropriately trained and supervised."

5. Pursuant to the agreement between the Board of Public Education and the Legislature, the board does not anticipate any implementation costs, but shall request and report in its adoption notice any cost estimates received from districts during the hearing.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on December 21, 2006.

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

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

made by completing a request form at any rules hearing held by the Board of Public Education.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Diane Fladmo
Diane Fladmo, Chairperson
Board of Public Education

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

Certified to the Secretary of State November 13, 2006.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules) NOTICE OF PUBLIC
I through XIX pertaining to regional) HEARING ON PROPOSED
correctional facilities) ADOPTION

TO: All Concerned Persons

1. On December 13, 2006, at 10:00 a.m. a public hearing will be held in Room 24 of the Department of Corrections Annex at 515 N. Sanders, Helena, Montana, to consider the proposed adoption 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 no later than 5:00 p.m. on December 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301, telephone: (406) 444-3930, FAX: (406) 444-4920, e-mail: momholt-mason@mt.gov.

3. The new rules are necessary to implement the provisions of Title 53, chapter 30, part 5, MCA, which allow the Department of Corrections to contract with a local governmental entity, individual, corporation, partnership, association, or other private organization to house convicted felony offenders in the state portion of a facility that is a joint local detention center and state correctional facility.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "ACA standards" means the most recent edition of the "American Correctional Association Standards for Adult Correctional Institutions" published by the American Correctional Association, 4380 Forbes Boulevard, Lanham, MD 20706-4322.

(2) "Actual prisoner days" means the sum of the number of inmates housed at the facility each day of the fiscal year, July 1 through June 30.

(3) "Allocated direct costs" means the costs that are common to more than one unit within the facility, such as food and utility costs. An allocated direct cost is divided between the departments within the facility using an appropriate ratio.

(4) "Allocation" means the assignment of costs, or a group of costs, to one or more areas in a reasonable and realistic proportion to the benefit each area receives.

(5) "Average daily population (ADP)" means the total number of inmates housed for the year divided by the number of days in the year and can reflect the average population for the state portion of the facility, the county portion of the facility, or the total facility average population.

(6) "Average population ratio" means the average daily state inmate population as a percentage of the total facility average daily population.

(7) "Bed ratio" means the number of contracted state prison beds as a percentage of total identified facility beds.

(8) "Capital costs" means the costs of the buildings, major improvements, and equipment (over \$5,000) reduced by the actual amount of any federal and Montana Department of Corrections capital improvement grants.

(9) "Chart of accounts" means a listing of specific accounts utilizing the state/county budget, accounting, and reporting system (BARS) to categorize expenditure types in accordance with the Montana Department of Corrections per diem worksheet.

(10) "Department" means the Montana Department of Corrections (MDOC) established in 2-15-2301, MCA.

(11) "Depreciation" means an accounting method of recovering a capital cost expenditure.

(12) "Facility" means a regional correctional facility.

(13) "NCCHC standards" means the most recent edition of the "National Commission of Correctional Health Care Standards for Adult Correctional Institutions" published by the National Commission on Correctional Health Care, P.O. Box 11117, Chicago, IL 60611.

(14) "Operating costs" means expenditures excluding personal services that relate to the operation of the facility and directly benefit state inmates.

(15) "Per diem rate" means the cost per inmate per day that the department pays to the operator of the regional correctional facility and reflects both the direct and indirect costs of the operation.

(16) "Per diem worksheet" means the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities that the regional correctional facility and the department must use to calculate the regional correctional facility per diem rate.

(17) "Shared or common areas" means areas of the facility that are used by, or for the benefit of, both state prisoners and other facility inmates.

(18) "Square footage ratio" means the square footage of the state portion of the facility compared to the square footage of the whole facility and is expressed as a percentage.

(19) "State portion" means that part of the regional correctional facility that is utilized for the confinement or benefit of state prisoners over which the department has responsibility for custody.

(20) "Unallowable costs" means programs and services that do not have a direct benefit to persons confined in a regional correctional facility.

(21) "Volume ratio" means the cubic footage of the state portion of the facility compared to the cubic footage of the whole facility and is expressed as a percentage.

AUTH: 53-30-507, MCA

IMP: 53-30-503, 53-30-504, 53-30-505, 53-30-506, MCA

REASONABLE NECESSITY: The agency proposes New Rule I, Definitions, to define terms used in the body of New Rules II through XIX.

NEW RULE II APPLICATION TO ESTABLISH A REGIONAL CORRECTIONAL FACILITY (1) A local government entity, individual, corporation, partnership, association, or other private organization or entity may not construct or operate a regional correctional facility without the authorization of the department.

(2) A public or private entity that wishes to establish a regional correctional facility must first submit an application to the department for the department's initial approval.

(3) The application must provide substantiation and documentary evidence of the following criteria:

- (a) the need for a regional correctional facility in the area;
- (b) the financial ability and, in the case of a public entity, an appropriate resolution by its governing body authorizing the entity to enter into a long-term contract with the department; and
- (c) the availability of rehabilitative services for inmates, including but not limited to providers of mental health and chemical dependency treatment, job, career, and vocational programming.

(4) A private entity must submit a resolution by the applicable local governmental governing body in which the local government states its approval for and willingness to have a regional correctional facility operated by a private entity within its jurisdiction.

(5) The department may not authorize a corporation to construct or operate a regional correctional facility unless it has first published a request for proposal for a regional correctional facility and it has selected the corporation using the competitive proposal process.

AUTH: 53-30-507, MCA

IMP: 53-30-504, 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule II in order to give entities who wish to erect or operate a regional correctional facility a mechanism by which they must comply to begin the process.

NEW RULE III SITING A REGIONAL CORRECTIONAL FACILITY (1) A local government entity, individual, corporation, partnership, association, or other private organization or entity that wishes to construct or operate a regional correctional facility must submit siting information to the department for its approval of the site. The siting information must document and show how the site conforms to the requirements listed below.

(2) The department will approve the site if the local government entity, individual, corporation, partnership, association, or other private organization or entity that wishes to construct or operate a regional correctional facility obtains a resolution from the governing body of the community authorizing the site. The community governing body must document to the department that the selected site:

- (a) can accommodate a secure facility;

- (b) can support unobstructed surveillance of the facility;
- (c) has appropriate access roads during both the construction and operation of the facility;
- (d) will conform to all applicable state statutes, rules and regulations, and applicable local zoning ordinances;
- (e) is within 30 minutes emergency response time of an accredited hospital licensed by the state;
- (f) is within 30 minutes emergency response time of a fulltime or volunteer fire department;
- (g) is within one hour driving time of scheduled public or private transportation services that provide regular travel to and from the area of the facility;
- (h) is within one hour driving time of an airport and landing field suitable for landing and take-off of charter-type aircraft and listed on the state system plan of airports as maintained by the Montana Department of Transportation, Aeronautics Division; and
- (i) is located above a 100-year flood plain.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule III to establish reasonable criteria with which an entity must comply if it wishes to site a regional correctional facility in a community in Montana.

NEW RULE IV CONSTRUCTION REQUIREMENTS FOR A REGIONAL CORRECTIONAL FACILITY (1) The facility shall be a secure facility and have controlled access to and from the facility and other appropriate security measures so as to prevent unauthorized access to and from the facility.

(2) The facility must comply with all applicable federal, state, and local building and fire safety codes.

(3) The facility must be constructed according to ACA standards for secure facilities.

(4) The facility must have mutual aid agreements in place with applicable local agencies.

(5) A regional correctional facility must obtain accreditation by both the ACA and the NCCHC within three years of the date the facility accepts state inmates and must maintain the accreditation thereafter.

(6) This rule applies only to facilities constructed after the effective date of these rules.

AUTH: 53-30-507, MCA

IMP: 53-30-504, 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule IV to set out the minimum construction requirements for a regional correctional facility.

NEW RULE V POLICIES, PROCEDURES, PRACTICES (1) The regional correctional facility must maintain appropriate written policies and procedures contained in a manual that is accessible to all employees and the department.

(2) The facility shall establish policies, procedures, and practices for the operation, security, and physical condition of the facility, as well as policies, procedures, and practices for the safety, health, treatment, and discipline of persons confined in the state correctional facility portion of the regional prison.

(3) The department will determine which department policies, procedures, and practices the facility must adopt.

(4) The policies, procedures, and practices must conform to ACA and NCCHC standards.

(5) The facility must gain the department's initial approval of its policies and procedures before the department may allow the facility to begin to accept inmates into the facility.

(6) The facility must review and update its policies and gain the department's approval yearly after the initial approval.

(7) The facility must pass a pre-occupational compliance review conducted by the department and shall maintain at least a 90% compliance rating on all future department compliance reviews.

(8) The policies and procedures must address the following areas:

(a) media access, confidentiality, and dissemination of information;

(b) inmate issues including:

(i) inmate funds and accounting;

(ii) inmate housing;

(iii) inmate exercise and recreation;

(iv) inmate visiting, telephone access, and mail;

(v) inmate work, religious, vocational, and treatment programs;

(vi) inmate personal property;

(vii) inmate legal assistance; and

(viii) inmate sanitation and hygiene;

(c) staff issues including:

(i) background/criminal record check;

(ii) personnel files; and

(iii) training and staff development;

(d) safety and security issues including:

(i) inmate movement and count;

(ii) building and safety codes;

(iii) fire and life safety;

(iv) disaster and emergency response plan;

(v) use of force, restraints, and chemical agents;

(vi) facility security;

(vii) control of contraband, keys, and tools; and

(viii) facility security threats and escapes;

(e) inmate discipline, special management, and classification;

(f) inmate food service; and

(g) inmate health care, screening, and pharmaceuticals.

(9) This rule does not apply to facilities that are operational on the effective date of these rules.

AUTH: 53-30-507, MCA

IMP: 53-30-504, 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule V to set out the minimum operational requirements with which a newly constructed regional correctional facility must comply.

NEW RULE VI LICENSING (1) A regional correctional facility constructed or operated by an individual, corporation, partnership, association, or other private organization or entity must be licensed by the department in order to operate.

(2) The facility must prominently display its license in the general administration area of the facility.

(3) A license is not transferable.

(4) The facility must renew its license annually on the expiration date of the previous year's license.

(a) The department may renew the facility's license only if the department determines the facility shows it is in at least 90% compliance with the department's applicable policies, procedures, and practices and with ACA and NCCHC standards as determined on the department's compliance reviews.

(5) The department may deny, suspend, restrict, revoke, or reduce to provisional status a facility's license if it determines:

(a) the facility is not in at least 90% compliance with the department's applicable policies and procedures and with ACA and NCCHC standards;

(b) the facility has made material misrepresentations to the department regarding the facility's management or operation;

(c) the facility has failed to comply with a plan of correction designed to correct deficiencies in the facility's management or operation; or

(d) the facility has failed to become accredited by the ACA or NCCHC within its first three years or has failed to maintain its accreditation.

(6) A regional correctional facility constructed or operated by an individual, corporation, partnership, association, or other private organization or entity must apply to the department in writing for its initial license at least 90 days before the date it accepts state inmates, and must apply in writing at least 60 days prior to its license expiration to renew a current license.

(7) This rule does not apply to facilities that are operational on the effective date of these rules.

AUTH: 53-30-507, MCA

IMP: 53-30-504, 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule VI to establish a licensing requirement for newly constructed regional correctional facilities and to establish the licensing requirements with which a regional correctional facility must comply before the department will license it.

NEW RULE VII CALCULATION OF A PER DIEM RATE-GENERAL PRINCIPLES (1) A per diem rate will be determined based on information provided by the regional correctional facility in accordance with the MDOC per diem calculation worksheet. The per diem rate will reflect actual allowable and allocable direct and indirect costs associated with the operation of the regional correctional facility that benefits state inmates. The rate represents the true cost of housing state inmates and is neither more than or less than the actual costs the regional correctional facility incurs because it houses state inmates. It reflects that neither the state nor the regional correctional facility subsidizes the operations of the other.

(2) The per diem rate the department pays the regional correctional facility will include payment for all the contractual provisions outlined in the contract between the facility and the department.

(3) The per diem rate will be calculated based on the information the regional correctional facility provides on the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities. The MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities and instructions for completing it can be found on the department's web site at www.cor.mt.gov.

(a) The regional correctional facility's governing body must submit information to the department to document the calculation:

(i) the documentation must be provided in the required format; and

(ii) it must be included in the governing body's published comprehensive annual financial report (CAFR).

(4) The per diem rate will be based on effective management and services that are substantially equivalent to the management and services provided by the department and are based on ACA standards. The per diem rate will not include costs for services or items the facility added without the mutual agreement of the department and the regional correctional facility governing body. Approval will not be unreasonably withheld.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule VII to establish the general principles that underlie the calculation of a per diem rate for regional correctional facilities, that the per diem rate reflects the actual cost the facility incurs, and the fact that the calculation will be accomplished using a standardized worksheet.

NEW RULE VIII GENERAL COST PRINCIPLES USED FOR CALCULATING PER DIEM (1) To be allowable, costs must be reasonable, ordinary, necessary, and to some degree, benefit inmates housed in the state portion of the facility.

(2) Allowable costs must be:

(a) accounted for in accordance with generally accepted accounting principles;

(b) net of all applicable credits;

(c) adequately documented; and

(d) calculated in accordance with the United States Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments. Copies of OMB Circular A-87 can be obtained from the federal government or found on the U.S. Management and Budget web site at <http://www.usdoj.gov/marshals/prisoner/omb87.pdf>.

(3) Costs that do not benefit state inmates cannot be claimed on the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities.

(4) Costs may be direct if they have a direct benefit to state inmates or indirect if they only indirectly accrue to the benefit of state inmates. An example of a direct cost is the cost of prescription medication for state inmates. An example of an indirect cost is the cost for legal services, insurance, accounting, payroll, and human resources.

(5) Direct costs are further divided into costs that are shared and costs that are unshared. An example of a shared cost is the salary of the warden or administrator who spends some of his or her time managing the entire facility, both local and state portions. An example of an unshared cost is the case manager's salary who works only in the state portion of the facility.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule VIII to establish the general cost principles that underlie the calculation of a per diem rate for regional correctional facilities and what costs generally are reflected in the cost calculation.

NEW RULE IX COMPLETING THE PER DIEM WORKSHEET DATA

SUMMARY (1) Section I-General Information: enter the name, telephone number, and physical address of the regional correctional facility, and the name of the facility administrator.

(2) Section II-Financial Data Summary: on Line A enter the most recently concluded fiscal year that corresponds to the accounting period of the cost submission.

(a) The form will automatically populate lines B through H with the totals from Schedules B through G.

(b) The form will automatically compute the total operating costs by adding the totals of Schedules B through G represented on lines B through H.

(c) The form will automatically calculate the actual operating per diem based on the costs divided by the number of actual prisoner days.

(3) Section III-Inmate Population Information: Inmate population data must be submitted for the same accounting period as the cost data submitted. Enter the total daily inmate capacity, total actual annual prisoner days, and the average daily population of the regional correctional facility by prisoner type in the appropriate blocks. The average daily prisoner population data should be verifiable to daily count logs or similar control documents. If the facility houses local prisoners elsewhere for a fee, related costs of such an arrangement are not allowable for this rate computation and, therefore, those prisoners must be excluded from the prisoner population data.

(4) Section IV-Per Diem: enter the requested per diem rate for housing state inmates and the per diem rate the federal government pays to house federal inmates at the facility if applicable.

(5) Section V-Governing Body Contract: enter the name or names of the individuals authorized to represent and to act for the government body in per diem rate negotiations.

(6) Section VI-Certification Statement: the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities form may be prepared by an individual who has knowledge of, and access to, the budget and accounting records for which the cost data are based; however, the form must be signed by the chief financial officer of the governing body or the equivalent officer.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule IX to establish instructions for regional correctional facilities to complete Schedule A of the per diem calculation worksheet.

NEW RULE X COMPLETING SCHEDULE B PART I-PERSONNEL

SALARIES (1) Regular and overtime salaries of personnel by position that work at the regional correctional facility on a full-time and part-time basis are allowable as direct operation costs. A list of these employees including name, title, and salary must be submitted to support Schedule B.

(2) The facility may list on Schedule B, Part I all personnel that work at or support the state portion of the facility, as long as the personnel's services in some way accrues to the benefit of state inmates and are listed on the staffing pattern attached to the contract. The facility shall use a bed ratio for shared direct personnel costs.

(3) Full-time and part-time salaries for the following personnel are usually allowable:

- (a) regional correctional facility management officials;
- (b) administrative support personnel;
- (c) detention officers and other uniformed personnel assigned to the state portion of the regional correctional facility;
- (d) maintenance personnel;
- (e) cooks and aides;
- (f) training officers;
- (g) on-site medical personnel; and
- (h) treatment counselors.

(4) Salaries of personnel who perform services that do not benefit state prisoners are not allowable. Examples are as follows:

(a) appointed and elected officials; e.g., the mayor, county attorney, county commissioners, state district court judges, justices of the peace, and city court judges;

(b) public defenders, probation and parole officers, other inmate attorneys, and other local court personnel; and

(c) law enforcement personnel assigned to nondetention functions; e.g., patrol officers, detectives, and investigators.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule X to establish guidelines for regional correctional facilities in order to complete Schedule B of the per diem calculation worksheet concerning personnel costs. The guidelines establish parameters for allowable and unallowable costs.

NEW RULE XI COMPLETING SCHEDULE B PART II-PERSONNEL BENEFITS (1) Generally, all related paid personnel benefit costs are allowable in the same ratio as the allocation in Part I.

- (2) The following are types of personnel benefits that are allowable:
- (a) retirement plan costs;
 - (b) FICA payroll taxes;
 - (c) life, health, and dental insurance plans;
 - (d) workers' compensation insurance; and
 - (e) employee uniforms, including shoes, if not claimed as a direct operating cost under Schedule D.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XI to establish guidelines for regional correctional facilities in order to complete Schedule B, Part II of the per diem calculation worksheet concerning personnel benefits. The guidelines establish parameters for allowable costs.

NEW RULE XII COMPLETING SCHEDULE C-CONSULTANTS AND CONTRACT SERVICES (1) Costs for consultant and contract services are allowable and can be included on Schedule C to the extent that they benefit state inmates and are required by contract.

(2) The following contract services are usually allowable either fully or using a bed ratio if only a portion of the cost benefits state inmates:

- (a) in-house medical, dental, and mental health care. Medical co-payments paid by inmates must be offset against any claimed medical costs;
- (b) custodial and maintenance;
- (c) legal services and nondenominational religious services;
- (d) GED and other educational or treatment programs; and
- (e) food service.

(3) The following types of contract costs are usually not allowable:

- (a) prescription/pharmacy, if the state is billed separately for such medication; and
- (b) electronic monitoring of inmates and home detention programs.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XII to establish guidelines for regional correctional facilities in order to complete Schedule C of the per diem calculation worksheet concerning consultants and contract services. The guidelines establish parameters for allowable costs.

NEW RULE XIII COMPLETING SCHEDULE D-OTHER DIRECT OPERATING COSTS (1) To be claimed on the MDOC per diem calculation worksheet, all direct costs must be reasonable and allowable under OMB Circular A-87 guidelines and supported by paid invoices, transactions listings, or general ledger entries. The following are examples of cost categories that can be claimed on the MDOC per diem calculation worksheet and the way in which they may be calculated:

- (a) inmate compensation (calculated as actual cost);
- (b) food and kitchen supplies (prorated using the bed ratio);
- (c) inmate clothing (calculated as actual cost or prorated using the bed ratio);
- (d) prescriptions (calculated as actual cost);
- (e) medical care supplies (prorated using the bed ratio);
- (f) bedding and linens (calculated as actual cost or prorated using the bed ratio);
- (g) toiletries (calculated as actual cost or prorated using the bed ratio);
- (h) employee uniforms, including shoes (only for facility staff, not including subcontractors and only if not included as a personnel benefit and prorated using the bed ratio);
- (i) safety and sanitation supplies and services (prorated using the bed ratio);
- (j) maintenance supplies (prorated using the bed ratio);
- (k) office supplies and postage (calculated as actual cost or prorated using the bed ratio);
- (l) minor tools and equipment. Current year purchases of equipment costing less than \$5,000 (prorated using the bed ratio if applicable). The cost of equipment claimed here cannot be included on Schedule F-Equipment Cost for the purpose of computing allowable depreciation charges;
- (m) recreation and education supplies. If any costs are reimbursed by the Inmate Welfare Fund, the reimbursement must be offset against the claimed cost (calculated as actual cost or prorated using the bed ratio);
- (n) telephone and communication supplies (calculated as actual cost or prorated using the bed ratio);
- (o) property insurance (prorated using the square footage ratio);
- (p) employee training, education, conferences, and subscriptions related to the operation of the state portion of the facility;
- (q) travel expenses (based on the regional correctional facility's per diem expense schedule or the state's schedule);
- (r) interest (prorated using the bed ratio). Debt services (principle) is unallowable and any earnings on debt service reserve funds and interest earned on the borrowed funds pending payment of expenses must be offset against the claimed cost; and

- (s) utilities (prorated using the square footage or volume ratio).
- (2) Any amounts incurred in support of local court and/or law enforcement activities are not allowable. The following direct costs are not allowable:
 - (a) fees paid to other local governments for the housing of local prisoners;
 - (b) off-site hospital and medical care for state inmates if billed and paid separately by the state;
 - (c) alcoholic beverages;
 - (d) costs for transporting and producing local inmates at local court proceedings;
 - (e) contributions to a contingency reserve or any similar provision, such as for future vehicle or equipment purchases, or for any other events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening;
 - (f) contributions and donations, including cash, property, and services regardless of the recipient;
 - (g) membership fees in organizations engaged in lobbying;
 - (h) legal expenses for prosecution of claims against the state and those incurred in connection with any criminal, civil, or administrative proceedings commenced by the state;
 - (i) fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with federal, state, local, or Indian tribal laws and regulations, except when incurred as a result of compliance with specific provisions of the contract between the state and the regional correctional facility;
 - (j) costs for entertainment, including amusement, diversion, and social activities and any costs directly associated with purchase of tickets to shows or sporting events, meals, lodging, rentals, transportation, and gratuities;
 - (k) required repayments of unused grant monies to grantors; and
 - (l) costs directly associated with any federal or state grants awarded to the regional correctional facility.
- (3) All revenue generated from the regional correctional facility's operation must be offset against the direct costs claimed on the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities, Schedule D. Examples of credits that must be reported are:
 - (a) insurance rebates, recoveries, or indemnities on losses;
 - (b) employee meal program charges; and
 - (c) fees, other than inmate lodging costs, received from other jurisdictions for services provided.

AUTH: 53-30-507, MCA
IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XIII to establish guidelines for regional correctional facilities in order to complete Schedule D of the per diem calculation worksheet concerning other direct costs. The guidelines establish parameters for other allowable and unallowable direct costs.

NEW RULE XIV COMPLETING SCHEDULE E-COST ALLOCATION PLANS/INDIRECT COST PROPOSALS (1) Other local units of the governing body provide certain services to the state portion of the regional correctional facility on a centralized basis. In order for the costs of those units of the governing body to be included in the per diem rate computation, a central service cost allocation plan is needed to identify and assign part of those costs to the state portion of the regional correctional facility's operation on a reasonable and consistent basis. All costs and other data used to distribute the cost included in the plan should be supported by formal accounting and other records that support the propriety of the cost assignments. To include indirect costs in the per diem rate computation:

- (a) cost allocation plans must be submitted to the department over the signature of the governing body's chief financial officer or equivalent officer. The department will certify the plan if the documentation reflects accurate financial information and is completed in accordance with guidelines in OMB Circular A-87;
 - (b) the costs must benefit both the state and other local governing body activities, must be distributed to all activities in reasonable proportions to the benefits received, and must be supported by subsidiary records that allow confirmation of the accuracy of the distributions;
 - (c) similar or identical costs cannot be charged as direct costs on the per diem worksheet. The following categories require scrutiny to ensure duplicate or unallowable claims are not made: travel expenses, legal expenses, conferences, professional services, and miscellaneous expenses; and
 - (d) the pre-allocation cost basis of each category claimed must be verifiable.
- (2) The following are examples of categories of indirect costs, a portion of which may be assigned to the detention facility for inclusion in the per diem rate computation provided they have not already been included as a direct cost:
- (a) motor pool operations, fuel, and maintenance provided that vehicle expense is not included as a separate line item on the per diem worksheet;
 - (b) procurement, personnel, administrative, financial, and accounting support provided by staff of the governing body and/or the nondetention operations of the police/sheriff department.
- (3) The governing body's operating costs not related to the detention facility's operation cannot be included for per diem rate computation purposes. For example, costs of a water treatment facility would not be allowed if the regional correctional facility is not served by the facility.
- (4) If the governing body does not calculate and submit to the department an indirect cost plan which reflects accurate financial information and is completed in accordance with guidelines in OMB Circular A-87, then the allowable rate for indirect costs is 8% of the governing body's direct operating costs.

AUTH: 53-30-507, MCA
IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XIV to establish guidelines for regional correctional facilities in order to complete Schedule E of the per diem calculation worksheet concerning an indirect cost plan. The rule is necessary to give regional correctional facilities a choice to either complete a

properly prepared indirect cost plan or take a flat 8% of direct costs to reflect the facility's indirect costs.

NEW RULE XV COMPLETING SCHEDULE F-EQUIPMENT COST

(1) Equipment is an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of more than \$5,000. Cost allowances relating to the use of fixed assets on hand may be made through depreciation or a use-allowance.

(2) If the depreciation method is used, records indicating the amount of depreciation taken each period must be maintained. For either method, charges must be supported by adequate property records, and physical inventories must be taken at least every two years (a statistical sampling approach is acceptable) to ensure that assets exist and are in use.

(3) Without a formalized equipment depreciation policy at the local level, a use-allowance of 6 2/3% with a 15-year write-off period is to be used to compute allowable equipment use-allowance charges.

(4) The following are allowable when computing equipment depreciation or use-allowance charges allocable to the state portion of the regional correctional facility:

(a) equipment meeting the governing body's established capitalization criteria;

(b) equipment used in the general operation of the regional correctional facility; and

(c) equipment used in programs in which state inmates participate.

(5) The following are not allowable when computing equipment depreciation or use-allowance charges allocable on the MDOC Per Diem Calculation Worksheet for Regional Correctional Facilities:

(a) payments to cash reserves for acquisitions made or planned after the accounting period of the cost submission;

(b) the cost of equipment received from the state government through the state surplus property program or similar programs or purchased with funds received from the state government;

(c) the cost of equipment contributed by or for the governing body, or a related donor organization, in satisfaction of a matching requirement;

(d) the cost of vehicles used for inmate transportation if the facility does not provide the state inmate transportation services;

(e) the cost of surplus, idle, fully depreciated, or inappropriate equipment items;

(f) the cost of equipment below the established capitalization threshold; and

(g) the cost of equipment in use in programs in which state inmates do not participate.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XV to establish guidelines for regional correctional facilities in order to complete Schedule F of the

per diem calculation worksheet concerning equipment costs. The guidelines establish parameters for allowable and unallowable equipment costs.

NEW RULE XVI COMPLETING SCHEDULE G-BUILDING DEPRECIATION

(1) A depreciation or use-allowance charge is allowed for all buildings utilized in the performance of the contract with the state. Without a formal building depreciation policy at the local level, a use-allowance not exceeding 2% of acquisition costs should be used to compute the allowable building use-allowance charge.

(2) The original construction cost must be reduced by the amount of any department or federal grants used for the construction.

(3) The following are allowable when computing building depreciation or use-allowance charges allocable to the contract with the department:

(a) the cost of building additions, renovations, and improvements; and

(b) the cost of land improvements, such as paved parking areas, fences, and sidewalks.

(4) The following are not allowable when computing building depreciation or use allowance charges allocable to the contract with the state:

(a) the cost of land;

(b) any portion of the cost of buildings borne by or donated by the federal or state government;

(c) any portion of the cost of buildings contributed by or for the governing body unit, or a related donor organization, in satisfaction of a matching requirement; and

(d) cost assignable to space occupied by nondetention functions of the governing body.

(5) Debt service is unallowable and any earning on debt service reserve funds and interest earned on the borrowed funds pending payment of expenses must be offset against the claimed cost.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XVI to establish guidelines for regional correctional facilities in order to complete Schedule G of the per diem calculation worksheet concerning building depreciation costs. The guidelines establish parameters for allowable and unallowable depreciation costs.

NEW RULE XVII REVIEW AND REVISION OF PER DIEM RATE

(1) The current year per diem rate will be calculated using the previous fiscal year's actual expenditures and adjustments for expected costs over the biennium.

(a) Appropriate adjustments will be mutually agreed upon by the governing body and the department.

(b) Examples of appropriate adjustments are: expected pay increases from union negotiations, food costs, utility increases, and other items that can change due to inflation.

(2) In the second year of a per diem calculation period, the governing body will receive adjustments to reflect actual costs incurred.

(a) The governing body must submit financial information to document actual expenditures.

(b) The DOC will reimburse the governing body in a lump sum for expenditures that were more than calculated.

(c) If the expenditures were less than the per diem calculation assumed, the governing body will reimburse the department.

(3) The per diem rate for the second year of a per diem period will be calculated based on the first year's per diem and adjustments in the cost allocation plan and indirect cost plan based on actual expenditure information submitted to the department.

(4) The per diem rate calculation and determination will respect the budget process timeframes of the state and the facility governing bodies.

(5) Thirty days before a per diem rate change goes into effect, the department will publish on its web site the calculation data for each facility and will send the data to interested persons. The department will accept public comment on the rate change for 20 days after it is published on the web site. The department will publish on the web site its responses to the comments.

AUTH: 53-30-507, MCA

IMP: 53-30-504, 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XVII to establish guidelines for the department and regional correctional facilities to review and adjust the per diem rate on a yearly basis. It is also necessary to establish a mechanism for public comment before a rate change goes into effect.

NEW RULE XVIII BILLING AND DEPARTMENT PAYMENT (1) For billing, facilities must submit a vendor invoice to the department monthly. The invoice must contain the following data for the preceding month:

(a) for each inmate incarcerated in the facility:

(i) the name and adult offender number of each inmate that was incarcerated in the facility the preceding month;

(ii) the date each inmate's incarceration began and if applicable, the date it ended; and

(iii) based on the dates of incarceration including the first day, but not the last, the total number of days each inmate spent incarcerated in the facility; and

(b) the amount due the facility based on the number of inmate days times the fixed rate per inmate per day.

(2) The department shall pay each correctly submitted invoice within 30 days of receipt. The department will make reasonable efforts to pay the governing body by wire transfer in accordance with the governing body's written instructions.

AUTH: 53-30-507, MCA

IMP: 53-30-504, 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XVIII to establish the guidelines regional correctional facilities must follow in order for the department to pay them. It also establishes timelines for department payment to the facilities.

NEW RULE XIX DISPUTE RESOLUTION (1) There will be a dispute resolution process for per diem calculation issues covered under these rules.

(2) In the event that the department and the operator of a regional correctional facility cannot reach agreement on any issue covered under these rules, either party may request mediation.

(3) The mediator shall be selected by mutual agreement of the department and operator of the facility from a list of settlement masters maintained by the district court of the first judicial district court.

(4) The cost of the mediator shall be equally divided by the parties who engage in the mediation. Each party shall bear its own costs for participation in and presentation to the mediator.

(5) If this dispute resolution process does not resolve the dispute, either party is free to pursue other appropriate remedies.

(6) This dispute resolution process is not available for disputes over contract matters. The parties must use the dispute resolution provisions outlined in the contract to resolve contract disputes.

AUTH: 53-30-507, MCA

IMP: 53-30-504, 53-30-507, MCA

REASONABLE NECESSITY: The agency proposes New Rule XIX to give regional correctional facilities and the department a dispute resolution process to resolve disputes over issues covered in these rules. This rule is necessary to add a venue in order to air disputes and keep them from infecting the relationship between the entity and the state and potentially avert court actions.

5. Concerned persons may present their data, views, or arguments, either in orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Myrna Omholt-Mason at the contact information listed in paragraph 2, and must be received no later than 5:00 p.m. on December 21, 2006.

6. 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 adult community corrections, youth services, Board of Pardons and Parole, private correctional facilities, or general departmental rulemakings. Such written request may be mailed or delivered to Myrna Omholt-Mason, 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.

7. An electronic copy of this Notice of Public Hearing will be available through the department's web site at www.cor.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register. However, the department advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, the department advises that the web site may be inaccessible at times, due to system maintenance or technical problems.

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

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

/s/ Mike Ferriter
MIKE FERRITER
Director of Corrections

/s/ Colleen A. White
COLLEEN A WHITE
Rule Reviewer

Certified to the Secretary of State November 13, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 23.16.1901)
concerning video gambling machine)
specifications)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 13, 2006, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 7, 2006, 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; Montana Relay Service 711; or e-mail rask@mt.gov.

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

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

(D) the video gambling machine identification number (VGMID) assigned to the machine;

(D) through (I) remain the same but are renumbered (E) through (J).
(viii) through (3) remain the same.

AUTH: 23-5-621, MCA
IMP: 23-5-115, 23-5-136, 23-5-602, 23-5-606, 23-5-609, 23-5-610,
23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: In order to implement requirements for an automated accounting and reporting system, the department created an electronic video gambling machine permitting process. This permitting process requires that the department issue a permanent identification decal which is affixed to the video gambling machine instead of a new decal each time the machine is moved to a new location or its permit renewed. This rule amendment requires the permanent decal identification number be included on the video gambling machine's audit and accounting tickets to ensure that required records are maintained and each machine properly tracked.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than December 20, 2006.

5. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

6. 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 Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

7. 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/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State November 13, 2006.

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.180.401, 24.180.404, and) ON PROPOSED AMENDMENT
24.180.407 general provisions, 24.180.504) AND ADOPTION
and 24.180.506 licensing and scope of)
practice, 24.180.601 and 24.180.604)
reciprocity licensure, and the proposed)
adoption of NEW RULE I temporary)
exemptions and NEW RULE II reciprocity)

TO: All Concerned Persons

1. On December 14, 2006, at 10:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Plumbers no later than 5:00 p.m., on December 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Dan Bernhardt, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2350; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdlu@mt.gov.

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

24.180.401 FEE SCHEDULE

- (1) Application fee (~~nonrefundable~~) \$ 30
- (2) through (11) remain the same.

AUTH: 37-1-134, 37-69-202, 37-69-401, MCA
IMP: 37-1-134, 37-1-304, 37-1-305, 37-69-202, 37-69-307, 37-69-401, MCA

REASON: The Board of Plumbers (board) determined it is reasonably necessary to amend ARM 24.180.401 and 24.180.404 to achieve consistency among the boards within the Business Standards Division of the department. Pursuant to 37-1-101, MCA, the department is required to standardize policies and procedures followed in providing administrative services to the licensing boards within the department. The department has mandated in rule at ARM 24.101.403 that all fees collected by and on behalf of the boards are nonrefundable. It has never been the board's practice to

refund any fees and the board is proposing to delete the provision at this time to abide by and not duplicate applicable department rules.

24.180.404 APPLICATIONS (1) through (3) remain the same.

~~(4) If an application is withdrawn, no refund of the application fee will be made.~~

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 37-69-202, MCA

IMP: 37-69-303, MCA

24.180.407 EXAMINATIONS (1) through (3) remain the same.

(4) Requests for administration of examination on an alternate date must be submitted in writing to the department and include the proper fee. Requests must include the reason for the request, and a desired date of the examination. If the department approves the alternate date, it shall set a time and place thereof in its discretion.

(4) remains the same but is renumbered (5).

~~(5) (6) Examination papers may be reviewed in the board office for a period of 60 days immediately following the examination date only. Note taking will be allowed during the time of review, but the notes must be left in the board office. Questions on the review must be submitted in writing for response by the board.~~

(7) Appeals concerning the examination must be submitted in writing for response by the board.

(6) remains the same but is renumbered (8).

~~(7) (9) When an applicant fails to take the first examination for which he was the applicant was scheduled, he may have his examination fee apply towards the next examination. However, if the applicant fails to take the next examination, his the fee shall be forfeited and application for any subsequent examination will require another examination fee.~~

AUTH: 37-69-202, MCA

IMP: 37-69-304, 37-69-305, 37-69-306, 37-69-307, MCA

REASON: It is reasonable and necessary to amend this rule as part of the board's periodic administrative rule review and to further the board's intent to provide current, clear, and well organized board rules. Section (4) is being added to specify the process for applicants to request alternate exam dates for reasons other than religious conflict, which is addressed in (3). This is not a new procedure, but the board determined that adding (4) will address confusion regarding alternate exam dates. The board estimates that one applicant a year will be affected by this rule change resulting in an estimated annual revenue increase of \$155.00, the difference between the regular examination fee of \$95.00 and the \$250.00 fee for administering the exam on an alternate date.

It is necessary to amend (6) and add (7) to this rule to clarify that the board will respond to written appeals of exam results, but not to questions during an exam review. Department staff administers the exam reviews, not board members.

The board determined it is reasonably necessary to amend (8) to delete the ability of applicants who miss the first examination to apply that fee to a subsequent exam. As the licensing examination is composed and administered by board staff, the same expenditure of staff time and effort is required, even when applicants fail to appear to take an exam. The board estimates that this amendment will affect approximately five license applicants a year, resulting in an annual revenue increase of \$475. At this time the board is also amending the rule to replace gender specific terms with gender neutral language.

24.180.504 QUALIFICATIONS - JOURNEYMAN (1) The board will accept the following documentation of experience for journeyman plumbers:

(a) a notarized statement ~~or letter~~ from a licensed master plumber(s) or a licensed plumbing contractor(s) certifying the time and dates of employment and the type of plumbing work that was performed during the applicant's employment. Verification statements ~~or letters~~ must verify five years of actual experience in the field of plumbing, at a minimum of 1500 hours per year;

(b) through (2) remain the same.

AUTH: 37-69-202, MCA

IMP: 37-69-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule as part of the board's periodic administrative rule review. The board concluded that the terms "notarized statement" and "notarized letter" are repetitive and that a notarized statement is sufficient to document applicant experience.

24.180.506 QUALIFICATIONS - MASTER (1) The board will accept the following documentation of experience for master plumbers:

(a) A notarized statement ~~or letter~~ from a licensed master plumber(s) or a licensed plumbing contractor(s) certifying time and dates of employment of applicant as a journeyman plumber and the type of plumbing work performed, which must include evidence ~~that three of the required four years were served in the supervisory capacity of three years of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing.~~

(b) through (2) remain the same.

AUTH: 37-69-202, MCA

IMP: 37-69-305, MCA

REASON: The board determined it is reasonably necessary to amend this rule as part of the board's periodic administrative rule review. The board concluded that the terms "notarized statement" and "notarized letter" are repetitive and that a notarized statement is sufficient to document applicant experience. Additionally, the board is amending the rule to be consistent with the requirements in 37-69-305, MCA, in that the experience can be obtained either working with a licensed master plumber or in a supervisory capacity in the field of plumbing.

24.180.601 INVESTIGATION (1) remains the same.

~~(2) The character, experience and fitness of the applicant shall also be taken into consideration.~~ The board reserves the right to investigate any applicant, or application filed, and approve or disapprove the same. Upon acceptance or rejection of any application, the board will immediately notify applicant at the address given in his the application.

AUTH: 37-69-202, MCA

IMP: 37-1-308, 37-69-304, 37-69-305, MCA

REASON: It is reasonable and necessary to amend this rule as part of the board's periodic administrative rule review. The board is deleting the language regarding applicants' character, experience, and fitness because it is wholly subjective, and there exist no tangible guidelines available to establish such qualifications. The board concluded that the licensure requirements in statute and rule are adequate to ensure the Montana public is protected through the licensure of qualified plumbers.

24.180.604 OUT-OF-STATE APPLICANTS -RECIPROCITY (1) and (2) remain the same.

~~(3) The board may enter into a written reciprocal agreement for a journeyman license with the license authority of another state or jurisdiction if the following conditions are met and are reviewed annually to ensure ongoing equivalent standards:~~

~~(a) the state requires five years of actual and documented experience in the field of plumbing;~~

~~(b) the state's examination is based on the uniform plumbing code;~~

~~(c) the state requires both a written and practical portion on their examination;~~

~~(d) the state requires a minimum passing score of 70% on their examination;~~

~~(e) a current copy of that state's requirements must be kept on file at the board office; and~~

~~(f) the reciprocal agreement must be approved by the board in open session and executed by signature of the presiding chairperson.~~

AUTH: 37-69-202, MCA

IMP: 37-1-304, MCA

REASON: It is reasonably necessary to amend this rule as part of the board's periodic administrative rule review and to further the board's intent to provide current, clear, and well organized board rules. The board determined that for purposes of clarity and ease of use, rules for out-of-state applicants and applicants by reciprocity should be addressed in separate rules. The board is proposing New Rule II to address licensure by reciprocity.

4. The proposed new rules provide as follows:

NEW RULE I TEMPORARY EXCEPTIONS (1) The board may approve a temporary resolution of a county, city, or town or the board of directors or managers of a water or sewer district or water utility to authorize an unlicensed person to perform plumbing work if:

(a) there is not a licensed plumber within a 100 mile radius; and
(b) reasonable notice has been submitted to the board in accordance with 37-69-102, MCA.

(2) The type of plumbing work is restricted to repair and maintenance of an existing plumbing system only.

(3) The county, city, or town or the board of directors or managers of a water or sewer district, or water utility shall be required to reapply for board approval every three years from the date of board approval, or at the time a new unlicensed person has been delegated, whichever occurs first.

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-69-102, 37-69-103, MCA

REASON: It is reasonable and necessary to propose New Rule I as part of the board's periodic administrative rule review and to further the board's intent to provide current, clear, and well organized board rules. The board determined there is a need to further implement and delineate by rule the requirements set forth at 37-69-102(3) and (4), MCA. The board concluded that adoption of this new rule will provide much needed guidelines to assist counties, cities, towns, water or sewer districts, or water utilities in seeking board exception to utilize unlicensed persons for plumbing work on a temporary basis.

NEW RULE II RECIPROCITY (1) The board may enter into a written reciprocal agreement for journeyman licensure with the license authority of another state or jurisdiction if the following conditions are met and are reviewed annually to ensure ongoing equivalent standards:

(a) the state requires five years of actual and documented experience in the field of plumbing;

(b) the state's examination is based on the uniform plumbing code;

(c) the state requires both a written and practical portion on the state's examination; and

(d) the state requires a minimum passing score of 70% on their examination.

(2) A current copy of the reciprocal state's requirements must be kept on file at the board office.

(3) The board shall approve the reciprocal agreement in open session and shall execute the agreement by the presiding chairperson's signature.

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to propose New Rule II in accordance with the proposed amendment to ARM 24.180.604. The board decided to maintain separate rules for licensure of out-of-state applicants separate and for licensure by

reciprocity. The requirements in this new rule are identical to those previously set forth in ARM 24.180.604 and have been renumbered solely for clarity and to comply with ARM formatting requirements.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsplu@mt.gov, and must be received no later than 5:00 p.m., December 22, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.plumbers.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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Plumbers 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 Plumbers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsplu@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PLUMBERS
TIM REGAN, CHAIRPERSON

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

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

Certified to the Secretary of State November 13, 2006

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

In the matter of the adoption of New)
Rule I pertaining to determining)
unenforceable case status in child)
support cases)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION

TO: All Interested Persons

1. On December 13, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 4, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rule as proposed to be adopted provides as follows:

RULE I DETERMINING UNENFORCEABLE CASE STATUS (1) This rule establishes the criteria which a IV-D case must satisfy to be categorized as unenforceable. All of the following criteria must be met:

- (a) no payments have been posted to the case in the last 12 months, and payments are not expected to be posted in the immediate future;
- (b) no payments from the federal offset program have been received during the past two years;
- (c) no payments from the state offset program have been received during the past two years;
- (d) if payments have been made in the past two years, collected by methods other than federal or state offset, those payments do not exceed \$1,000.00;
- (e) the CSED has not identified any attachable financial institution accounts belonging to the obligor parent;
- (f) the CSED has not identified any executable assets belonging to the noncustodial parent;
- (g) a credit bureau report accessed within the past six months indicates that income or asset information is unavailable; and
- (h) in a case involving Title IV-E funds, all of the children of the case have been emancipated, or parental rights of the noncustodial parent have been terminated.

AUTH: 40-5-203, MCA
IMP: 40-5-203, MCA

3. The proposed New Rule I is necessary to establish the criteria in categorizing a case as unenforceable. If a case is unenforceable, it may be closed under federal case closure criteria defined in 45 CFR 303.11.

The proposed new rule is necessary in order to provide criteria to determine that a case is unenforceable. 45 CFR 303.11 provides that a IV-D case qualifies for closure when support action is precluded or collection potential is limited as defined by closure criteria contained in 45 CFR 303.11. Because of the necessity to have criteria to determine that a case is unenforceable, there are no viable alternatives to adding this new rule.

The number of persons affected by the new rule is difficult to quantify. However, in Federal Fiscal Year 2006, the CSED reported a total of 11,833 cases in arrears with no collections made. In theory, these could all be reviewed for "unenforceability" under the proposed rules. However, how many of these will ultimately result in meeting the rule requirements for case closure is unknown. There will be little or no cost to close the cases under the new rule and because the CSED would no longer be required to keep unenforceable cases open there may be cost savings to the department.

It is not possible to determine a cumulative fiscal impact this new rule will have upon those affected by the changes because each case will depend on individual circumstances that cannot be predicted by CSED. At the time of closure under the new rule, collections for unenforceable child support are not possible and not likely in the future. It is believed that there will be no financial impact on parents by the case closure as a result.

While conceivably a parent could hire an attorney or private collection agency to try to enforce the child support order, it is improbable that any private attorney or collection agency would successfully collect child support from a case closed under the proposed new rule. The department considered this factor in its decision process. Should facts in an individual's case change in the future where the case would become enforceable, the individual can apply to the department to re-open the case file.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on December 21, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or

programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ John Koch for
Rule Reviewer

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

Certified to the Secretary of State November 13, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rules I & II, the amendment of ARM)	AMENDMENT, TRANSFER,
2.21.3702, 2.21.3703, 2.21.3704,)	AND REPEAL
2.21.3708, 2.21.3709, 2.21.3715,)	
2.21.3719, 2.21.3721, 2.21.3723,)	
2.21.3724, 2.21.3726, and 2.21.3728,)	
the amendment and transfer of ARM)	
2.21.3712, and the repeal of ARM)	
2.21.3718 and 2.21.3727 pertaining)	
to the Recruitment and Selection)	
Policy)	

TO: All Concerned Persons

1. On June 22, 2006, the Department of Administration published MAR Notice No. 2-2-372 regarding the proposed adoption, amendment, transfer, and repeal of the above-stated rules at page 1482 of the 2006 Montana Administrative Register, Issue No. 12.

2. The department has amended ARM 2.21.3709, 2.21.3715, 2.21.3721, 2.21.3724, 2.21.3726, and 2.21.3728, and amended and transferred ARM 2.21.3712 (2.21.3707), exactly as proposed. The department has adopted New Rule II (ARM 2.21.3705) and amended ARM 2.21.3702, 2.21.3703, 2.21.3704, 2.21.3708, 2.21.3719, and 2.21.3723, as proposed, but with the following changes. Matter to be added is underlined; matter to be deleted is interlined. The department has repealed ARM 2.21.3718 and 2.21.3727 as proposed. The department will not adopt New Rule I.

RULE II (2.21.3705) LIMITED REEMPLOYMENT FOR RETIREES (1) An agency may reemploy an employee who previously retired from the agency without a competitive hiring process if:

(a) the retiree possesses the requisite skills and qualifications to perform the duties and responsibilities of the position; ~~and~~

(b) the agency determines that reemployment is in the agency's best interests; ~~and~~

(c) the reemployment does not exceed 12 months.

(2) An agency must document the reasons for reemployment and why it was determined to be in the agency's best interests.

(3) Reemployment under this rule is subject to the hour and wage limitations set forth for retirees in 19-3-1106 and 19-20-731, MCA. ~~Limitation provision information is available from~~ Questions concerning hour and wage limitations should be directed to the Montana Public Employee Retirement Administration ~~and or~~ Montana Teachers' Retirement System.

2.21.3702 POLICY AND OBJECTIVES (1) and (2) remain as proposed.

(3) An agency may not select an individual for permanent status employment without a competitive recruitment process except as allowed in ~~[NEW RULE I]~~ ARM 2.21.3705.

(4) and (5) remain as proposed.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-103, 49-3-201, MCA

2.21.3703 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Adverse impact" means that members of a group identified and protected from discrimination such as sex, race, or ethnicity who experience a substantially lower rate of selection in hiring, promotion, pay rates, and other benefits of employment. ~~Groups protected from discrimination are referred to in ARM 2.21.3702.~~

(2) through (6) remain as proposed.

(7) "Internet applicant" means an individual who satisfies the following ~~four~~ three criteria:

(a) the agency has acted to fill a particular position ~~the individual submits an expression of interest in employment through the Internet or related electronic data technologies;~~

(b) the individual has followed the agency's standard procedures for submitting applications; and the agency considers the individual for employment in a particular position;

(c) the individual has indicated an interest in the particular position. ~~the individual's expression of interest indicates the individual possesses the basic qualifications for the position; and~~

~~(d) the individual at no point in the agency's selection process prior to receiving an offer of employment from the agency, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.~~

(8) through (11) remain as proposed.

(12) "Reasonable accommodation" means:

(a) a any change in the work environment or in the way work is accomplished ~~things are customarily done that enables an individual with a disability to enjoy equal employment opportunities; or~~

(b) ~~and means~~ adjustments to work schedules ~~made~~ to accommodate an individual's religious beliefs or practices.

2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT FOLLOWING LAY-OFF (1) through (3) remain as proposed.

(4) Agencies are encouraged, but not required, to consider applicants included in the job registry before recruiting from the general public, ~~but, pursuant to 2-18-1203, MCA, agencies are not required to utilize the job registry.~~

(5) through (7)(d) remain as proposed.

(8) An employee ~~who~~ is subsequently transferred to a different position in a

state agency is entitled to the same hourly salary as previously earned, provided that received if the new position is at the same grade level or higher ~~than the one previously held, as provided in 2-18-1204, MCA.~~

(9) and (10) remain as proposed.

(11) An employee who is hired from the job registry or a laid-off employee who is reemployed as a permanent employee within two years of the employee's effective date of lay-off in a position at a grade lower than the one held at lay-off is ~~treated as a voluntary demotion, using~~ will be treated as having accepted a voluntary demotion and the employee's pay will be established pursuant to pay plan rule 1812, demotions, MOM Policy 3-0505, revised July 1, 2003.

(12) Pay for an employee who is demoted as the result of a RIF reduction in force, but who is not laid-off, is administered using pay plan rule 1812, demotions, MOM Policy 3-0505, revised July 1, 2003.

(13) An agency may consider a demotion as a result of a RIF reduction in force as "exceptional circumstances" and ~~provide~~ grant a pay plan exception. ~~Pay plan exceptions are described in as provided in~~ pay plan rule 1828, individual pay plan exceptions, MOM Policy 3-0505, revised July 1, 2003.

(14) and (15) remain as proposed.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 2-18-1203, 2-18-1204, 49-3-201, MCA

2.21.3708 EXTERNAL RECRUITMENT (1) An agency must use an external recruitment process unless the agency:

(a) through (e) remain as proposed.

(f) the agency fills a position with a retiree noncompetitive reassignment or promotion in accordance with ~~[NEW RULE]~~ ARM 2.21.3705.

(2) through (6) remain as proposed.

2.21.3719 DEVELOPMENT OF SELECTION PROCEDURES (1) through (2)(a) remain as proposed.

(b) An agency should review and follow the procedures in the "Recruitment and Selection Manual" published by the State Personnel Division, Department of Administration, ~~and are~~ which is available on the State Personnel Division web site: <http://hr.mt.gov/HRServices/policiesguides.asp>.

(3) and (4) remain as proposed.

2.21.3723 INTENTIONAL MISREPRESENTATION (1) remains as proposed.

(2) Applicants shall be notified that willful misstatements of qualifications may exclude them from further consideration for the position or ~~lead to~~ may result in discharge from employment.

3. On July 19, 2006, a public hearing was held to take comments. No comments or testimony were received at the hearing. The department received comments requesting substantive changes to the proposed amendments. A summary of the substantive comments and the department's responses follow. The

department also received a few grammatical and housekeeping changes that the department agreed with and made.

Comment No. 1: The department received several comments regarding New Rule I NONCOMPETITIVE REASSIGNMENTS AND PROMOTIONS. The department received one comment to modify the rule to limit its use. "The State of Montana must strive to provide equal employment opportunity for all. The state employee profile and recent ICCW pay study performed by an economist at the Department of Labor and Industry Research and Analysis Bureau underscore how far we still have to go to break the glass ceiling, increase diversity and provide equal pay for decent opportunities for women, minorities and the disabled in state government. While a few Departments have made progress in this area most are lacking in how they recruit, let alone mentor and provide opportunities for women, minorities and the disabled once they are in state government. Leadership needs to constantly be involved in the recruitment and hiring process in their agencies if we are going to make improvements in the state employee profile. Toward that end external recruitment should be the highest priority in state agencies and I believe the rules should somehow reflect that priority. Having said that I recognize that there has been and will continue to be unique circumstances that require the use of internal non-competitive promotions and reassignments and sometimes internal competitive recruitment. Leadership should have the flexibility to use promotions; reassignments and internal recruitment in a limited manner provided the circumstances and need exists and that an equal employment opportunity assessment of some kind has been discussed and reviewed by the agency head before that limited hiring method is utilized. If the proposed rule could be modified to reflect external recruitment as the preferred method and the use of promotions, reassignments and competitive internal recruitment limited in the manner with the appropriate equal opportunity assessment I described, I could support the rules."

The department received one comment to add "OF CURRENT EMPLOYEES" to the rule catchphrase.

All other comments received were opposed to the rule. Comments in part included: "There is never a reason to allow a non-competitive promotion. If an employee has performed so well as to be considered for promotion, he or she should have a clear advantage in landing a promotion by competition. The first proposal does little more than legitimize cronyism. The rules will allow management to promote or reassign anyone and come up with the justification that the policy and objectives purport to require. The body considering these rules would have to be terribly naive to think that management couldn't write up a promotion justification for anyone."

"It is astounding to me that the Montana State government is considering establishing unfair personnel practices and rules that eliminate fair and competitive employment processes. This new rule is in direct violation of Title VII of the Civil Rights Act of 1964 which explicitly prohibits employers to 'limit... employees or applicants for employment in any way which would... tend to deprive any individual of employment opportunities...' and state law, MCA 2005 49-3-201 Employment of

"State and Local Government Personnel which states, "All state and local government agencies shall promulgate written directives to carry out this policy and to **guarantee** equal employment opportunities at all levels of state and local government.

"The current process for public comment discourages employees to comment due to the conveniently inconvenient schedule of the public hearing during the workday and lack of notification to all state employees. If the state government, as an equal employment opportunity employer, truly wants to seek comment from its employees, hold the public hearing meeting in the evening, and post a notice on newslink or on paychecks. Also, provide an opportunity for anonymous comments to lessen retaliation fears of state employees.

"I strongly oppose approval of proposed Rule I Noncompetitive Reassignments and Promotions into the State of Montana Recruitment and Selection Policy (MOM 3-0165)."

"I've reviewed the proposed Rule 1 Noncompetitive Reassignments and Promotions and find it to be in conflict with Title VII of the Civil Rights Act of 1964 and MCA 2005 49-3-201 Employment of State and Local Government Personnel. What is the purpose of this Rule?

"Does it really benefit the worker? Is it fair and ethical? Not hardly!"

"I am mystified at how it is that Proposed New Rule 1 furthers the mandate of Mont. Code Ann. § 2-18-102(2) to "foster and develop programs for recruitment and selection of capable persons for employment . . ." New Rule 1 is the antithesis of fostering and developing programs for the recruitment and selection of capable persons for employment. It allows political appointees to be placed [sic] into jobs without any process whatsoever. In fact, an agency could place a political appointee into a job for which the appointee had NO qualifications whatsoever. All the agency needs to do is establish a training program for position.

"The statement of reasonable necessity states that 'it is necessary to revise the Recruitment and Selection policy to comply with evolving state and federal requirements, to reflect current practices, and to enhance readability.' I note that the statement of reasonable necessity in this rulemaking does not comport with Mont. Code Ann. § 2-4-305(6). And what exactly is the reasonable necessity for Proposed New Rule 1? To comply with evolving state and federal requirements? I am not aware of any state or federal requirement for noncompetitive reassignments or promotions. I certainly hope that Proposed New Rule 1 does not reflect current practices in state government. And clearly it is not intended to enhance readability.

"The truth is that there is no reasonable necessity for Proposed New Rule 1. Any employee that deserves a promotion will get it on merit in a competitive process. The only reason for Proposed New Rule 1 is [to] avoid all the state recruitment and

selection processes. I urge you to withdraw Proposed New Rule 1 from consideration."

"These proposals (Rules I & II) are just basically wrong, contrived for the benefit of a few and to the disadvantage of the many. The positions at issue are funded by tax payer money. Non-competitive assignment to a position is totally subjective without consideration of qualifications of alternative candidates. It does not guarantee the best possible person fills the position, but leaves open the question whether the promoted person is there simply because of social affiliations or 'brown nosing' or subjective loyalty. It does not guarantee adequate performance but only an income for a 'crony' of the appointing official. Any person who could be considered to be appointed should also be able to survive a fair competitive selection process.

"To approve this process reeks of allowing 'favoritism' and can very well lead to increased complaints of discrimination, a lessening of morale among other employees who were 'bypassed' by an 'arbitrary' or 'discriminatory' management decision. The potential cost is greater than any benefit. If a position is to be filled, it is my belief that it should be by a fair, open, and competitive process."

"These rules are intended to apply to those public employees who are not governed by a collective bargaining agreement. For all those employees who are governed by a collective bargaining agreement, these proposals constitute a change in working conditions and are therefore mandatory subjects of bargaining. The proposed changes should clearly so state.

"It further appears that those employees not covered by a collective bargaining unit are going to be disadvantaged if these proposals are enacted. The hiring and promotion standards that were once objective would become very subjective--leading to favoritism and cronyism. The job registry program becomes meaningless and worthless under the proposed changes."

Response No. 1: The department agrees that employment practices be based on merit and qualifications and guarantee equal employment opportunities. The intent of the rule was to promote and reassign qualified employees and only use the rule on a limited basis. However, after considering all the comments, the department will not adopt RULE I.

With respect to the comment these rules apply to public employees who are not governed by a collective bargaining agreement, the department disagrees. These rules apply to all state employees unless a collective bargaining agreement is more specific than the rules.

Comment No. 2: The department received three comments regarding Rule II LIMITED REEMPLOYMENT OF RETIREES. Two comments opposed the rule and in part include: "There is never a reason to allow a non-competitive promotion. If an employee has performed so well as to be considered for promotion, he or she

should have a clear advantage in landing a promotion by competition. The same holds true for a retiree who wishes to rejoin an agency under proposed Rule II."

"These proposals (Rules I & II) are just basically wrong, contrived for the benefit of a few and to the disadvantage of the many."

The third commenter recommended striking the second sentence in (3) and inserting "Questions concerning hour and wage limitations should be directed to MPERA or TRS."

Response No. 2: The department believes that this rule will assist state government in workforce planning. The intent is to bring retirees back on a temporary basis for their expertise. The department has elected to include the language to limit the reemployment: "(c) the reemployment does not exceed 12 months."

The department agrees to amend the second sentence to state, "Questions concerning hour and wage limitations should be directed to the Montana Public Employee Retirement Administration or Montana Teachers' Retirement System."

Comment No. 3: The department received one comment regarding ARM 2.21.3702. The commenter proposed adding 49-3-103, MCA, as an implemented statute.

Response No. 3: The department agrees that 49-3-103, MCA, should be included as an implemented statute.

Comment No. 4: The department received one comment regarding ARM 2.21.3702(4) to amend the rule to read:

"(4) It is the objective of this policy to establish minimum standards for fair and consistent treatment of applicants and employees in recruitment and selection in accordance with applicable that comply with relevant state and federal laws, and regulations, and rules, and collective bargaining agreements."

Response No. 4: The department disagrees with adding "collective bargaining agreements" to ARM 2.21.3702(4). The department believes ARM 2.21.3735(1) deals with labor contracts. It reads: "This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable."

Comment No. 5: The department received one comment regarding ARM 2.21.3702(3). The commenter proposed inserting "employment" following "permanent status" and inserting "NEW RULE II" following "except as allowed in."

Response No. 5: The department agrees and has made the changes.

Comment No. 6: The department received one comment regarding ARM 2.21.3703(1) to remove the last sentence.

Response No. 6: The department agrees with the comment to remove the sentence "Groups protected from discrimination are referred to in ARM 2.21.3702." Therefore, this language has been removed from the definition of adverse impact because the sentence is not a definition.

Comment No. 7: The department received one comment regarding ARM 2.21.3703(7). The commenter stated that the definition is too complicated and doesn't clearly define what an internet applicant is. The commenter proposed changing the definition to read:

Internet applicant means an individual who satisfies the following three criteria:

- (a) the employer has acted to fill a particular position;
- (b) the individual has followed the employer's standard procedures for submitting applications; and
- (c) the individual has indicated an interest in the particular position.

Response No. 7: The department agrees and the definition of internet applicant has been changed.

Comment No. 8: The department received one comment regarding ARM 2.21.3703(12). The commenter suggested changing the definition to read: "Reasonable accommodation means (a) a change in the work environment or in the way work is accomplished that enables an individual with a disability to enjoy equal employment opportunities; or (b) adjustments to work schedules to accommodate an individual's religious beliefs of [sic] practices."

Response No. 8: The department agrees with the comment. Therefore, the definition of reasonable accommodation has been change.

Comment No. 9: The department received one comment regarding ARM 2.21.3704. The commenter proposed inserting "2-18-1203, 2-18-1204" as an implemented statute.

Response No. 9: The department agrees and has made the change.

Comment No. 10: The department received one comment regarding ARM 2.21.3704(4). The commenter suggested changing the language to read: "Agencies are encouraged, but not required, to consider applicants included in the job registry before recruiting from the general public."

Response No. 10: The department agrees and has made the change.

Comment No. 11: The department received one comment regarding ARM 2.21.3704(8). The commenter proposed changing the rule to read, "An employee subsequently transferred to a different position in a state agency, is entitled to the same hourly salary previously earned, provided that the new position is at the same or higher grade level."

Response No. 11: The department agrees and has made the proposed change.

Comment No. 12: The department received one comment regarding ARM 2.21.3704(11). The commenter proposed changing the rule to read: "An employee who is hired from the job registry or a laid-off employee who is reemployed as a permanent employee within two years of the employee's effective date of lay-off in a position at a grade lower than the one held at lay-off will be treated as having accepted a voluntary demotion and the employee's pay will be established pursuant to pay plan rule 1812, demotions, MOM Policy 3-0505, revised July 1, 2003."

Response No. 12: The department agrees and has made the proposed change.

Comment No. 13: The department received one comment regarding ARM 2.21.3704(13). The commenter proposed changing the rule to read: "An agency may consider a demotion as a result of a reduction in force as 'exceptional circumstances' and grant a pay plan exception as provided in pay plan rule 1828, individual pay plan exceptions, MOM Policy 3-0505, revised July 1, 2003."

Response No. 13: The department agrees and has made the proposed changes.

Comment No. 14: The department received one comment regarding ARM 2.21.3708(1)(e). The commenter suggested adding "temporary employee" to this rule so that a temporary employee may be selected without going through a competitive recruitment process. The commenter also suggested adding "NEW RULE II" to ARM 2.21.3708(1)(f).

Response No. 14: The department disagrees with this proposal. The department believes that ARM 2.21.3708(3) gives agencies flexibility to select a temporary employee without going through a competitive process.

The department agrees with adding New Rule II and has made the change.

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

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

Certified to the Secretary of State November 13, 2006.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 10.54.5010 through 10.54.5013,)	
10.54.5020 through 10.54.5023,)	
10.54.5030 through 10.54.5033,)	
10.54.5040 through 10.54.5043,)	
10.54.5050 through 10.54.5053,)	
10.54.5060 through 10.54.5063, and)	
10.54.5087 through 10.54.5098 relating)	
to science content standards and)	
performance descriptors)	

TO: All Concerned Persons

1. On October 5, 2006, the Board of Public Education published MAR Notice No. 10-54-240 regarding the public hearing on the proposed amendment of the above-stated rules at page 2175 of the 2006 Montana Administrative Register, Issue Number 19.

2. The Board of Public Education has amended ARM 10.54.5010 through 10.54.5013, 10.54.5020 through 10.54.5023, 10.54.5030 through 10.54.5033, 10.54.5040 through 10.54.5043, 10.54.5050 through 10.54.5053, and 10.54.5060 through 10.54.5063, as proposed.

3. The Board of Public Education has amended the following rules as proposed but with the following changes, stricken matter interlined, new matter underlined:

10.54.5087 ADVANCED SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 4 (1) remains as proposed.

(a) safely completes a simple investigation by asking questions, using appropriate tools and with identified variables, identifies relations and communicates results, and identifies that observation is a key inquiry process used by Montana American Indians;

(b) through (e) remain as proposed.

(f) independently ~~reads~~ identifies scientific information in the news and ~~is able to discuss~~ the possible impact on local problems;

(g) identifies ~~multiple attributes of~~ the historical significance of scientists, and discusses the impacts of their discoveries on humans today, and identifies influences of science and technology on the development of Montana American Indian cultures; and

(h) identifies ~~multiple attributes~~ examples of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5088 PROFICIENT SCIENCE PERFORMANCE DESCRIPTORS FOR

END OF GRADE 4 (1) remains as proposed.

(a) with direction, safely completes a simple investigation by asking questions with identified variables, uses appropriate tools, ~~and~~ communicates results, and identifies that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) identifies ~~attributes~~ of the historical significance of scientists, ~~and~~ identifies the impacts of their discoveries on humans today, and identifies influences of science and technology on the development of Montana American Indian cultures; and

(h) identifies ~~attributes~~ examples of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5089 NEARING-PROFICIENCY SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 4 (1) remains as proposed.

(a) identifies and describes a simple investigation, and with step-by-step direction, given the appropriate tools, identifies and describes a simple, safe investigation, and identifies that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) with direction, identifies some of the historical significance of scientists, ~~and~~ with direction, identifies the impacts of their discoveries on humans today, and with direction, identifies influences of science and technology on the development of Montana American Indian cultures; and

(h) with direction, identifies some ~~attributes~~ examples of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5090 NOVICE SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 4 (1) remains as proposed.

(a) with direction, identifies and describes a safe, simple investigation with identified variables, and identifies that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) with direction, identifies the basic historical significance of a prominent scientist, ~~and~~, with direction, identifies the impact of his or her discoveries on humans today, and, with direction, identifies influences of science and technology on the development of Montana American Indian cultures; and

(h) with direction, identifies ~~basic attributes~~ an example of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5091 ADVANCED SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8 (1) remains as proposed.

(a) generates testable questions, safely constructs a plan for a controlled investigation, makes logical inferences based on observations, accurately interprets data by identifying the strengths and weaknesses in an investigation design, ~~and~~ communicates results, and communicates that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) independently identifies and describes examples of how science and technology are the results of human activity throughout history, ~~and~~ independently seeks new information that connects past to present, and describes influences of science and technology on Montana American Indian cultures; and

(h) describes and explains multiple ~~attributes~~ examples of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5092 PROFICIENT SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8 (1) remains as proposed.

(a) identifies and communicates testable questions, safely plans and conducts experimental investigations, ~~and~~ communicates results, and communicates that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) ~~independently~~ identifies and describes examples of how science and technology are the results of human activity throughout history ~~and~~, with direction, seeks new information that connects past to present, and describes influences of science and technology on Montana American Indian cultures; and

(h) describes and explains ~~attributes~~ examples of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5093 NEARING-PROFICIENCY SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8 (1) remains as proposed.

(a) with step-by-step direction, identifies and communicates testable questions, ~~and~~ safely plans a controlled investigation, making simple inferences based on observations and interpretation of data, and communicates that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) with direction, identifies and describes examples of how science and technology are the results of human activity throughout history ~~and~~, with direction, seeks new information that connects past to present, and describes influences of science and technology on Montana American Indian cultures; and

(h) with direction, describes ~~attributes~~ examples of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5094 NOVICE SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8 (1) remains as proposed.

(a) identifies and describes a testable question, plans for a safely controlled investigation, ~~and~~ makes simple observations, and communicates that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) with direction, identifies and describes examples of how science and technology are the results of human activity throughout history and, with direction, describes influences of science and technology on Montana American Indian cultures; and

(h) with direction, describes ~~basic attributes~~ examples of Montana American Indian contributions to ~~science~~ scientific and technological knowledge.

10.54.5095 ADVANCED SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION (1) remains as proposed.

(a) formulates testable questions, safely constructs a plan, makes logical inferences, interprets data by identifying the strengths and weaknesses, communicates results, ~~and~~ presents another investigation that more accurately assesses the topic of study, and explains that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) identifies the positive and negative impacts of past, present, and future technological and scientific advances, ~~and~~ gives possible solutions that may minimize the negative impacts on the global community, and describes and explains how science and technology apply to contemporary Montana American Indian communities; and

(h) ~~explains and analyzes and explains multiple attributes of Montana American Indian contributions to science~~ scientific and technological knowledge and analyzes and explains the historical impact of scientific and technological advances, including Montana American Indian examples and the application and use of technology.

10.54.5096 PROFICIENT SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION (1) remains as proposed.

(a) generates testable questions, safely constructs a plan for a controlled investigation, makes logical inferences based on observations, accurately interprets data by identifying the strengths and weaknesses in an investigation design, ~~and~~ communicates results, and describes and explains that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) identifies the positive and negative impacts of past, present, and future technological and scientific advances ~~and~~, with direction, gives possible solutions that may minimize the negative impacts on the global community, and describes and explains how science and technology apply to contemporary Montana American Indian communities; and

(h) ~~explains and analyzes and explains attributes of Montana American Indian contributions to science~~ scientific and technological knowledge and analyzes and explains the historical impact of scientific and technological advances, including Montana American Indian examples and the application and use of technology.

10.54.5097 NEARING-PROFICIENCY SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION (1) remains as proposed.

(a) with step-by-step direction, safely conducts and communicates the results from simple investigations, sometimes inferring real world applications and explains that observation is a key inquiry process used by Montana American Indians;

(b) through (f) remain as proposed.

(g) identifies the positive and negative impacts of past, present, and future technological and scientific advances and describes how science and technology apply to contemporary Montana American Indian communities; and

(h) ~~explains attributes of Montana American Indian contributions to science scientific and technological knowledge and explains the historical impact of scientific and technological advances, including Montana American Indian examples and the application and use of technology.~~

10.54.5098 NOVICE SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION (1) remains as proposed.

(a) identifies, describes, and safely conducts a simple investigation, ~~and identifies a variable and makes real world applications, and, with direction, explains that observation is a key inquiry process used by Montana American Indians;~~

(b) through (f) remain as proposed.

(g) with direction, identifies the positive and negative impacts of past, present, and future technological and scientific advances and, with direction, describes how science and technology apply to contemporary Montana American Indian communities; and

(h) with direction, explains ~~attributes of Montana American Indian contributions to science~~ scientific and technological knowledge and with direction describes the historical impact of scientific and technological advances, including Montana American Indian examples ~~and the application and use of technology.~~

4. The following comments were received and appear with the Board of Public Education's responses:

COMMENT NO. 1: The Office of Public Instruction received a comment from an educator stating that the requirements for incorporating Indian Education for All were included in the content standards but not the performance descriptors. The State Superintendent concurred with the comment and proposes that ARM 10.54.5087 through 10.54.5098 be further amended to rectify this oversight and submitted proposed amendments.

RESPONSE: The Board of Public Education agrees with this comment and amends the subject rules as set forth above.

COMMENT NO. 2: Bob Vogel of the Montana School Boards Association commented that he appreciated the work of OPI's staff and others that contributed to the new science content standards and performance descriptors.

RESPONSE: The Board of Public Education thanks Mr. Vogel for his comment.

/s/ Diane Fladmo
Diane Fladmo, Chair
Board of Public Education

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

Certified to the Secretary of State November 13, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF ADOPTION
RULE I - frequency of reporting by)	AND AMENDMENT
approved accounting systems; and the)	
amendment of ARM 23.16.1802,)	
23.16.1822, and 23.16.1827 concerning)	
definitions, letters of withdrawal, and)	
record keeping requirements)	

TO: All Concerned Persons

1. On October 5, 2006, the Department of Justice published MAR Notice No. 23-16-182 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 2297, 2006 Montana Administrative Register, Issue Number 19.

2. The Department of Justice has adopted New Rule I (23.16.1826A) as proposed, and amended ARM 23.16.1802, 23.16.1822, and 23.16.1827 exactly as proposed.

3. A public hearing was held on October 26, 2006. No adverse comments or suggestions were offered at the public hearing and no changes have been made to the proposed rules.

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

/s/ Jon Ellingson
 JON ELLINGSON
 Rule Reviewer

Certified to the Secretary of State November 13, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	
23.17.101, and 23.17.103 through 23.17.108,)	
regarding MLEA attendance, 23.17.311)	NOTICE OF AMENDMENT
through 23.17.314, and 23.17.316, regarding)	
MLEA performance criteria; and the)	
adoption of NEW RULE I - rules, regulations,)	
policies, and procedures, and NEW)	
RULE II - waiver of rules)	

TO: All Concerned Persons

1. On July 6, 2006, the Montana Department of Justice published MAR Notice No. 23-17-178 providing notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1690 of the 2006 Montana Administrative Register, Issue No. 13. On October 5, 2006, the Montana Department of Justice published MAR Notice No. 23-17-181 amending the department's statement of reasonable necessity at page 2302 of the 2006 Montana Administrative Register, Issue No. 19.

2. On July 26, 2006, a public hearing was held in Helena on the proposed amendment and adoption of the above-stated rules. No comments or testimony were received.

3. The Department of Justice has adopted the amendments as proposed.

4. The Department of Justice is not adopting proposed New Rule I or II.

5. No requests for public hearing were received in response to MAR Notice No. 23-17-181.

6. No comments were received to MAR Notice No. 23-17-181.

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State November 13, 2006.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT,
24.182.401 fee schedule, 24.182.501 and) ADOPTION, AND REPEAL
24.182.505 licensure requirements, the)
adoption of New Rule I type of firearm, New)
Rule II requirements for firearms instructor)
licensure, New Rule III armed requalification)
required annually, and New Rule IV company)
licensure and branch offices, and the repeal of)
24.182.413 rules for branch office)

TO: All Concerned Persons

1. On July 6, 2006, the Board of Private Security Patrol Officers and Investigators (board) published MAR Notice No. 24-182-30 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 1710 of the 2006 Montana Administrative Register, issue no. 13.

2. On July 27, 2006, a public hearing was held in Helena on the proposed amendment, adoption, and repeal of the above-stated rules. No members of the public appeared at the hearing and one comment was received by the August 4, 2006, deadline.

3. The board has thoroughly considered the comment received. A summary of the comment and the board's response is as follows:

COMMENT 1: One commenter opined that when the board repealed the old administrative rule that listed all board approved firearms, it left a wide open avenue for licensees to carry and use inappropriate firearms. The commenter stated that there should be an exclusion that lists the firearms considered inappropriate to be carried in the industry, such as rim fire calibers in .22 or .17, calibers larger than .45, black powder firearms, and single action firearms.

RESPONSE 1: The board determined that licensees should be allowed to carry the firearms they are qualified to carry through successful completion of board approved firearms training courses conducted by board approved and qualified instructors. The board reviews all qualifying firearms training courses for content and quality, and approves the weapons to be used in the courses. Through this process, the board concluded that it maintains sufficient control over which weapons licensees can qualify with and use during the course of their work, and ensures the adequate protection of the public. The board is adopting this rule exactly as proposed.

4. The board has amended ARM 24.182.401, 24.182.501, and 24.182.505,

exactly as proposed.

However, on February 23, 2006, the board published MAR Notice No. 24-101-202 regarding the proposed amendment to ARM 24.182.401 at page 383 of the Montana Administrative Register, issue no. 4. On June 22, 2006, the board amended this rule as proposed at page 1583 of the Montana Administrative Register, issue no. 12. This amendment was not effective until July 1, 2006. Therefore, when MAR Notice No. 24-182-30 was filed on June 26, 2006, for Montana Administrative Register issue no. 13, the proposal notice identified the sections and subsections that were in effect and shown in the existing rule. The earmarking shown as interlined (d) through (g) identifies the earmarking as amended by MAR Notice No. 24-101-202 and the earmarking shown as underlined (b) through (e) identifies the earmarking as amended by MAR Notice No. 24-182-30. In order to correctly identify the earmarking from these two proposals, the earmarking is clarified as shown:

24.182.401 FEE SCHEDULE (1) through (3)(a) remain as proposed in MAR Notice No. 24-182-30.

(b) and (c) deleted as proposed in MAR Notice No. 24-182-30.

~~(d)~~ (b) Temporary practice permit 25

~~(e)~~ (c) Changes of employer, address or name 10

~~(f)~~ (d) List of licensees for continuing education purposes only 40

~~(g)~~ (e) Training program certification (application and renewal) 50

~~(5)~~ (4) Fees for applicant fingerprint checks are set by the FBI and Montana Department of Justice, and are subject to change. Current fee amounts for fingerprint checks are available at the board office.

~~(4)~~ (5) Additional standardized fees are specified in ARM 24.101.403.

~~(5)~~ (6) Fees are deemed earned by the board upon receipt and all fees are nonrefundable.

AUTH: 37-1-134, 37-1-141, 37-60-202, MCA

IMP: 25-1-1104, 37-1-134, 37-1-141, 37-60-202, 37-60-304, MCA

5. The board has adopted NEW RULE I (24.182.420), NEW RULE II (24.182.520), NEW RULE III (24.182.421), and NEW RULE IV (24.182.525), exactly as proposed.

6. The board has repealed ARM 24.182.413 exactly as proposed.

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
LINDA SANEM, CHAIRPERSON

/s/ DARCEE L. MOE

Darcee L. Moe

Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 13, 2006

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2006. This table includes those rules adopted during the period July 1 through September 30, 2006 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2006, 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 2006 Montana Administrative Register.

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- 24.121.301 and other rules - Definitions - Fees - Variances - Applications for Licensure - Out-of-State Applicants - School Requirements - School Operating Standards - Student Withdrawal, Transfer, or Graduating - Teacher-Training Curriculum - Continuing Education - Instructors/Inactive Instructors - Unprofessional Conduct - Fee Abatement - Continuing Education - Licensees/Inactive Licensees - Field Trips, p. 629, 1383

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- 24.126.301 and other rules - Definitions - Fee Schedule - Licensing and Scope of Practice - Licensing and Board Specific Rules - Impairment Evaluators - Renewals - Continuing Education Requirements - Unprofessional Conduct - Fee Abatement - Participation in Disaster and Emergency Care - Liability of Chiropractor, p. 845, 1609

(Crane and Hoisting Operating Engineers Program)

I Incorporation by Reference of ANSI B30.5, p. 1509, 2042

(Board of Dentistry)

24.138.301 and other rules - General Provisions - Licensing - Renewals and Continuing Education - Unprofessional Conduct - Screening Panel - Anesthesia - Professional Assistance Program - Reactivation of a Lapsed License - Reactivation of an Expired License - Definition of Nonroutine Application - Fee Abatement - Reinstatement of License for Nonpayment of Renewal Fee - Denturist License Reinstatement - Complaint Procedure, p. 1795

(State Electrical Board)

24.141.405 and other rules - Fee Schedule - Continuing Education - Licensee Responsibilities - Fee Abatement, p. 17, 1278, 1612

(Board of Medical Examiners)

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24.156.1601 and other rules - Physician Assistant Licensure, p. 483, 1958

(Board of Nursing)

8.32.301 and other rules - Nursing, p. 956, 2035

(Board of Occupational Therapy Practice)

24.165.404 and other rules - Application for Licensure - Examinations - Continuing Education, p. 710, 1614

(Board of Optometry)

24.168.301 and other rules - Definitions - General Provisions - Diagnostic Permissible Drugs - Therapeutic Pharmaceutical Agents - Continuing Education - Screening Panel - Fee Abatement - Examinations - Approved Courses and Examinations - New Licensees - Applicants for Licensure - Therapeutic Pharmaceutical Agents-Complaint Procedure, p. 2450

(Board of Outfitters)

24.171.401 and other rules - Fees - Inactive License - Transfer of River-use Days - Unprofessional Conduct and Misconduct - Guide Logs, p. 2769

(Board of Pharmacy)

24.174.301 and other rules - Definitions - General Provisions - Licensing - Internship Regulations - Pharmacy Technicians - Certified Pharmacies - Mail Service Pharmacies - Institutional Pharmacies - Wholesale Drug Distributors Licensing - Dangerous Drugs - Renewals and Continuing Education - Screening Panel - Inactive License - Telepharmacy Operations - Remote Telepharmacy Dispensing Machine Sites -

Central Filling by Hub Pharmacies - Ambulatory Surgical Facilities - Fee Abatement, p. 23, 1615
24.174.401 and other rule - Fees - Dangerous Drug Fee Schedule, p. 1814, 2134

(Board of Private Security Patrol Officers and Investigators)

8.50.423 and other rules - Private Security Patrol Officers and Investigators - Fee Schedule - Firearms Training Course Curriculum and Standards, p. 605, 1926

24.182.401 and other rules - Fee Schedule - Licensure Requirements - Type of Firearm - Requirements for Firearms Instructor Licensure - Armed Requalification Required Annually - Company Licensure and Branch Offices - Rules for Branch Office, p. 1710

(Board of Professional Engineers and Professional Land Surveyors)

24.183.404 and other rules - Fee Schedule - License Seal - Classification of Experience for Engineering Applicants - Continuing Education - Safety, Health, and Welfare of the Public - Classification of Experience - Branch Offices - Fee Abatement, p. 303, 1630

24.183.2101 and other rule - Expiration of License - Renewal - Expired Certificate - Renewal Grace Period, p. 713, 1633

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24.189.301 and other rules - Definitions - Fee Schedule - Use of Title - Required Supervised Experience, p. 2461

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24.204.208 and other rules - Applications - Limited Permit Applications - Types - Permits - Practice Limitations - Permit Examinations - Renewal - Proof of Good Standing, p. 1819, 2659

24.204.401 and other rules - Fee Schedule - Limited Permit Holder Fees - Continuing Education - Unprofessional Conduct, p. 2314

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24.207.505 and other rules - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Trainee Requirements, p. 716, 1634

(Board of Realty Regulation)

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(Board of Respiratory Care Practitioners)

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- 37.37.101 and other rules - Implementation of a Children's Mental Health Direct Care Worker Wage Increase, p. 863, 1635
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- 37.85.212 Resource Based Relative Value Scale (RBRVS), p. 872, 1422
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- 37.86.2803 and other rules - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services, p. 2024, 2849
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- 37.95.102 and other rules - Licensure of Day Care Facilities, p. 2572, 201, 1424, 2136
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- 37.108.507 Components of Quality Assessment Activities, p. 520, 1642
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- 38.5.2001 and other rules - Energy Standards for Public Utilities, p. 878, 1461
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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 October 2006 appear. Vacancies scheduled to appear from December 1, 2006, through February 28, 2007, 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 November 1, 2006.

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 OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Health Care Board (Labor and Industry)			
Ms. Mary Anne Brown Great Falls Qualifications (if required): midwife	Governor	Dunham	10/24/2006 9/1/2010
Mr. Tom Mensing Red Lodge Qualifications (if required): public representative	Governor	Hargrove	10/24/2006 9/1/2010
Board of Medical Examiners (Labor and Industry)			
Dr. Anna Earl Chester Qualifications (if required): doctor of medicine	Governor	reappointed	10/6/2006 9/1/2010
Dr. Arthur K. Fink Glendive Qualifications (if required): osteopath	Governor	reappointed	10/6/2006 9/1/2010
Dr. Michael D. LaPan Sidney Qualifications (if required): podiatrist	Governor	reappointed	10/6/2006 9/1/2010
Board of Veterinary Medicine (Labor and Industry)			
Dr. Bob Sager Wilsall Qualifications (if required): veterinarian	Governor	Newman	10/6/2006 7/31/2011

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Coal Board (Commerce)			
Mr. Thomas Kalakay Billings	Governor	Hilyard	10/2/2006 1/1/2007
Qualifications (if required): resident of District 2			
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs)			
Ms. Donna Dukart Miles City	Director	not listed	10/1/2006 10/1/2008
Qualifications (if required): American Legion Aux			
Mr. Alan Armstrong Helena	Director	not listed	10/1/2006 9/13/2006
Qualifications (if required): Vietnam Veterans of America			
Mr. Keith Beach Ekalaka	Director	not listed	10/1/2006 9/13/2006
Qualifications (if required): DAV			
Mr. Bob Beals Forsyth	Director	not listed	10/1/2006 9/13/2006
Qualifications (if required): 40 & 8			
Ms. Sylvia Beals Forsyth	Director	not listed	10/1/2006 9/13/2006
Qualifications (if required): American Legion			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.			
Mr. Jim Bertrand Miles City Qualifications (if required): Military Order of the Cooties	Director	not listed	10/1/2006 9/13/2006
Ms. Clair Bolton Miles City Qualifications (if required): American Legion	Director	not listed	10/1/2006 9/13/2006
Ms. Pauline Bolton Miles City Qualifications (if required): American Legion Aux	Director	not listed	10/1/2006 9/13/2006
Mr. Bill Dolatta Terry Qualifications (if required): Vietnam Veterans of America	Director	not listed	10/1/2006 9/13/2006
Mr. Ralph Dukart Miles City Qualifications (if required): 40 & 8	Director	not listed	10/1/2006 9/13/2006
Mr. Joe Foster Helena Qualifications (if required): none specified	Director	not listed	10/1/2006 9/13/2006
Mr. Tom Handl Miles City Qualifications (if required): Military Order of the Cooties	Director	not listed	10/1/2006 9/13/2006

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.			
Mr. Tony Harbaugh Miles City Qualifications (if required): Custer County Sheriff/Coroner	Director	not listed	10/1/2006 9/13/2006
Mr. Henry "Bill" Hopkins Ismay Qualifications (if required): DAV	Director	not listed	10/1/2006 9/13/2006
Mr. Jerry LaFontaine Billings Qualifications (if required): Military Order of Purple Heart	Director	not listed	10/1/2006 9/13/2006
Ms. Myrtle Meissner Circle Qualifications (if required): VFW AUX	Director	not listed	10/1/2006 9/13/2006
Ms. Edith Pawlowski Circle Qualifications (if required): VFW AUX	Director	not listed	10/1/2006 9/13/2006
Mr. Frederick S. Rambur Miles City Qualifications (if required): Department of Military Affairs	Director	not listed	10/1/2006 9/13/2006
Mr. Pat Roos Miles City Qualifications (if required): Custer County Sheriff/Coroner	Director	not listed	10/1/2006 9/13/2006

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.			
Mr. Alexander Russell Melstone Qualifications (if required): Military Order of Purple Heart	Director	not listed	10/1/2006 9/13/2006
Mr. John S. Salazar Miles City Qualifications (if required): Department of Military Affairs	Director	not listed	10/1/2006 9/13/2006
Mr. Ray Sallgren Miles City Qualifications (if required): VFW	Director	not listed	10/1/2006 9/13/2006
Mr. Joe Stevenson Miles City Qualifications (if required): Custer County Commissioners	Director	not listed	10/1/2006 9/13/2006
Mr. Todd Stevenson Miles City Qualifications (if required): Custer County Commissioners	Director	not listed	10/1/2006 9/13/2006
Mr. Frank Stoltz Miles City Qualifications (if required): Prisoners of War	Director	not listed	10/1/2006 9/13/2006
Mr. Stanley Watson Forsyth Qualifications (if required): Marine Corps League	Director	not listed	10/1/2006 9/13/2006

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services)			
Director Mike Ferriter Helena	Governor	Slaughter	10/23/2006 0/0/0
Qualifications (if required): Director of the Department of Corrections			
Montana Wheat and Barley Committee (Agriculture)			
Mr. Mel Goffena Wilsall	Governor	not listed	10/2/2006 8/20/2009
Qualifications (if required): resident of District 6			
Ms. Kim Holzer Stanford	Governor	not listed	10/2/2006 8/20/2009
Qualifications (if required): resident of District 5			
Mr. Brian Kaae Dagmar	Governor	not listed	10/2/2006 8/20/2009
Qualifications (if required): resident of District 1			
Montana's Adult Interstate Compact Commissioner (Corrections)			
Ms. Pamela Bunke Helena	Governor	Ferriter	10/23/2006 0/0/0
Qualifications (if required): none specified			
Peace Officers Standards and Training Advisory Council (Justice)			
Mr. Hannah Tillman Crow Agency	Governor	Lance	10/6/2006 2/9/2008
Qualifications (if required): tribal law enforcement representative			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Private Alternative Adolescent Residential or Outdoor Programs Board (Labor and Industry)			
Mr. Daniel Bidegaray Bozeman	Governor	Neihart	10/6/2006 4/19/2008
Qualifications (if required): public member			
Speech-Language Pathologists and Audiologists (Labor and Industry)			
Ms. Lynn Harris Missoula	Governor	Thaden	10/24/2006 12/31/2008
Qualifications (if required): speech-language pathologist			
Ms. Tina Hoagland Billings	Governor	Hartze	10/24/2006 12/31/2008
Qualifications (if required): audiologist			
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services)			
Ms. Amber Lang Kalispell	Governor	Martin	10/18/2006 7/1/2007
Qualifications (if required): having a hearing disability			
Vocational Rehabilitation Council (Public Health and Human Services)			
Ms. Denise Corrao Miles City	Governor	reappointed	10/18/2006 10/1/2009
Qualifications (if required): representative of the disabilities community			
Ms. Andrea Falcon Kalispell	Governor	Dailey	10/18/2006 10/1/2009
Qualifications (if required): business representative			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Vocational Rehabilitation Council (Public Health and Human Services) cont.			
Mr. Don Jones Helena	Governor	reappointed	10/18/2006 10/1/2009
Qualifications (if required): representative of the Client Assistance Program			
Ms. Christina Mattlin Billings	Governor	Horn	10/18/2006 10/1/2008
Qualifications (if required): representative of the disabilities community			
Mr. Ronald Mills Miles City	Governor	reappointed	10/18/2006 10/1/2009
Qualifications (if required): representative of the disabilities community			
Mr. Dennis Moore Billings	Governor	reappointed	10/18/2006 10/1/2009
Qualifications (if required): representative of a parent organization			
Ms. Ruth Straley Helena	Governor	reappointed	10/18/2006 10/1/2009
Qualifications (if required): business representative			
Water and Waste Water Operators' Advisory Council (Environmental Quality)			
Mr. Tony Porrazzo Polson	Governor	reappointed	10/23/2006 10/16/2012
Qualifications (if required): water treatment plant operator			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Workforce Investment Board (Labor and Industry) Superintendent Linda McCulloch Helena Qualifications (if required): public sector/lead state agency	Governor	Messinger	10/6/2006 0/0/0
Ms. Sandi Miller Helena Qualifications (if required): private sector representative	Governor	Sargeson	10/6/2006 0/0/0

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Aeronautics (Transportation) Mr. John Rabenberg, Fort Peck Qualifications (if required): public member</p>	Governor	1/1/2007
<p>Mr. Craig Denney, Billings Qualifications (if required): commercial airlines representative</p>	Governor	1/1/2007
<p>Mr. Charles J. Manning, Kalispell Qualifications (if required): actively engaged in aviation education</p>	Governor	1/1/2007
<p>Mr. Lonnie Leslie, Miles City Qualifications (if required): fixed base operator</p>	Governor	1/1/2007
<p>Board of Crime Control (Justice) Mr. Marko Lucich, Butte Qualifications (if required): chief probation officer</p>	Governor	1/1/2007
<p>Mr. Dwight MacKay, Billings Qualifications (if required): public member</p>	Governor	1/1/2007
<p>Rev. Steven Rice, Miles City Qualifications (if required): representative of the Youth Justice Council</p>	Governor	1/1/2007
<p>Mr. Richard L. Kirn, Poplar Qualifications (if required): representative of local government</p>	Governor	1/1/2007
<p>Mr. Alex Capdeville, Havre Qualifications (if required): public member</p>	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Environmental Review (Environmental Quality) Ms. Susan Kirby Brooke, Helena Qualifications (if required): public member	Governor	1/1/2007
Ms. Kim Lacey, Glasgow Qualifications (if required): public member	Governor	1/1/2007
Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	1/1/2007
Ms. Heidi Kaiser, Park City Qualifications (if required): public member	Governor	1/1/2007
Board of Housing (Commerce) Mr. Bob Thomas, Stevensville Qualifications (if required): public member	Governor	1/1/2007
Ms. Susan Moyer, Kalispell Qualifications (if required): public member	Governor	1/1/2007
Ms. Judy Glendenning, Helena Qualifications (if required): public member	Governor	1/1/2007
Board of Investments (Commerce) Dr. Maureen J. Fleming, Missoula Qualifications (if required): labor representative	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Investments (Commerce) cont. Mr. Calvin Wilson, Busby Qualifications (if required): attorney and an agriculture representative</p>	Governor	1/1/2007
<p>Ms. Karen B. Fagg, Billings Qualifications (if required): business person</p>	Governor	1/1/2007
<p>Mr. Terrill R. Moore, Billings Qualifications (if required): financial representative</p>	Governor	1/1/2007
<p>Board of Labor Appeals (Labor and Industry) Mr. Jerome T. Loendorf, Helena Qualifications (if required): attorney</p>	Governor	1/1/2007
<p>Mr. Jack Calhoun, Helena Qualifications (if required): public representative</p>	Governor	1/1/2007
<p>Board of Milk Control (Livestock) Mr. Michael F. Kleese, Stevensville Qualifications (if required): attorney and a Democrat</p>	Governor	1/1/2007
<p>Dr. Robert Greer, Bozeman Qualifications (if required): public member and an Independent</p>	Governor	1/1/2007
<p>Board of Occupational Therapy Practice (Labor and Industry) Ms. Cindy Stergar, Butte Qualifications (if required): Public Representative</p>	Governor	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Occupational Therapy Practice (Labor and Industry) cont. Ms. Elspeth Richards, Missoula Qualifications (if required): occupational therapist</p>	Governor	12/31/2006
<p>Ms. L. Delores Gilbert, Sidney Qualifications (if required): public member</p>	Governor	12/31/2006
<p>Mr. Tim Tracy, Kalispell Qualifications (if required): Occupational Therapist</p>	Governor	12/31/2006
<p>Board of Oil and Gas Conservation (Natural Resources and Conservation) Mr. Denzil Young, Baker Qualifications (if required): landowner with no mineral rights</p>	Governor	1/1/2007
<p>Mr. Jack King, Billings Qualifications (if required): representative of the oil and gas industry</p>	Governor	1/1/2007
<p>Ms. Elaine Mitchell, Cut Bank Qualifications (if required): public member</p>	Governor	1/1/2007
<p>Board of Pardons and Parole (Corrections) Sen. Don Hargrove, Belgrade Qualifications (if required): auxiliary member</p>	Governor	1/1/2007
<p>Board of Personnel Appeals (Labor and Industry) Mr. Steve Johnson, Missoula Qualifications (if required): representative of management with collective bargaining experience</p>	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Personnel Appeals (Labor and Industry) cont. Mr. Joe Dwyer, Billings Qualifications (if required): representative of labor</p>	Governor	1/1/2007
<p>Mr. Patrick J. Dudley, Butte Qualifications (if required): representative of substitute management with collective bargaining experience</p>	Governor	1/1/2007
<p>Board of Public Assistance (Public Health and Human Services) Ms. Carole A. Graham, Missoula Qualifications (if required): public member</p>	Governor	1/1/2007
<p>Board of Public Education (Education) Ms. Patty Myers, Great Falls Qualifications (if required): Democrat from District 3</p>	Governor	1/1/2007
<p>Board of Regents of Higher Education (Education) Mr. Mark Semmens, Great Falls Qualifications (if required): Independent from District 3</p>	Governor	2/1/2007
<p>Board of Social Work Examiners and Professional Counselors (Labor and Industry) Dr. Leta Livoti, Thompson Falls Qualifications (if required): licensed professional counselor</p>	Governor	1/1/2007
<p>Ms. Antoinette Fraser Rosell, Billings Qualifications (if required): licensed professional counselor</p>	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Children's Trust Fund (Governor) Ms. Margaret (Peg) Shea, Missoula Qualifications (if required): public representative</p>	Governor	1/1/2007
<p>Ms. Tara Jensen, Helena Qualifications (if required): representative of the Office of Public Instruction</p>	Governor	1/1/2007
<p>Coal Board (Commerce) Ms. Janice B. Riebhoff, Belgrade Qualifications (if required): representative of education and District 2</p>	Governor	1/1/2007
<p>Mr. Jim Smitham, Butte Qualifications (if required): representative of business and District 2</p>	Governor	1/1/2007
<p>Mr. Thomas Kalakay, Billings Qualifications (if required): resident of District 2</p>	Governor	1/1/2007
<p>Commission for Human Rights (Labor and Industry) Mr. Jack Copps, Seeley Lake Qualifications (if required): public member</p>	Governor	1/1/2007
<p>Mr. Ryan C. Rusche, Wolf Point Qualifications (if required): attorney</p>	Governor	1/1/2007
<p>Country of Origin Labeling Advisory Council (Labor and Industry) Director Keith Kelly, Helena Qualifications (if required): Department of Labor and Industry Commissioner</p>	Governor	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Country of Origin Labeling Advisory Council (Labor and Industry) cont.		
Ms. Linda Nielsen, Nashua Qualifications (if required): Board of Livestock Representative	Governor	12/31/2006
Rep. Bob Bergren, Havre Qualifications (if required): Legislative Representative	Governor	12/31/2006
Director Nancy K. Peterson, Helena Qualifications (if required): Department of Agriculture Director	Governor	12/31/2006
Director Tony Preite, Helena Qualifications (if required): Department of Commerce Director	Governor	12/31/2006
Mr. Dan Teigen, Teigen Qualifications (if required): Livestock Industry Representative	Governor	12/31/2006
Ms. Margaret Novak, Chester Qualifications (if required): Retail Food Industry Representative	Governor	12/31/2006
Mr. John Munsell, Miles City Qualifications (if required): Consumer	Governor	12/31/2006
Mr. John Lehfeltdt, Lavina Qualifications (if required): Livestock Industry Representative	Governor	12/31/2006
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)		
Ms. Ramona Weber, Billings Qualifications (if required): primary consumer	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont.		
Ms. Suzie Twedt, Great Falls Qualifications (if required): parent of a developmentally disabled adult and a secondary consumer	Governor	1/1/2007
Mr. Jason Billehus, Missoula Qualifications (if required): primary consumer	Governor	1/1/2007
Mr. Darwin Nelson, Helena Qualifications (if required): primary consumer	Governor	1/1/2007
Ms. Karen Lundby, Miles City Qualifications (if required): parent of developmentally disabled adult and a secondary consumer	Governor	1/1/2007
Ms. Paula Lester, Butte Qualifications (if required): primary consumer	Governor	1/1/2007
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks)		
Sen. John Brenden, Scobey Qualifications (if required): representative of District 4	Governor	1/1/2007
Mr. Tim Mulligan, Whitehall Qualifications (if required): representative of District 2	Governor	1/1/2007
Hard-Rock Mining Impact Board (Commerce)		
Mr. Donald B. Kinsey, Big Timber Qualifications (if required): public member residing in District 4, an impact area	Governor	1/1/2007

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Hard-Rock Mining Impact Board (Commerce) cont. Ms. Sandra Muster, Thompson Falls Qualifications (if required): school district trustee residing in District 1, an impact area	Governor	1/1/2007
Historic and Cultural Advisory Council (Governor's Office) Lt. Governor John Bohlinger, Helena Qualifications (if required): public member	Governor	1/15/2007
Commissioner Chris King, Winnett Qualifications (if required): public member	Governor	1/15/2007
Sen. Lynda Bourque Moss, Billings Qualifications (if required): public member	Governor	1/15/2007
Mr. Randy Hafer, Billings Qualifications (if required): public member	Governor	1/15/2007
Mr. Bob McCarthy, Butte Qualifications (if required): public member	Governor	1/15/2007
Ms. Wendy Raney, Wolf Creek Qualifications (if required): public member	Governor	1/15/2007
Ms. Marilyn Ross, Twin Bridges Qualifications (if required): public member	Governor	1/15/2007

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Horse Racing Task Force (Governor) Sen. Dale Mahlum, Missoula Qualifications (if required): public representative	Governor	12/31/2006
Mr. Shawn Real Bird, Garryowen Qualifications (if required): public representative	Governor	12/31/2006
Ms. Sherry Meador, Clancy Qualifications (if required): public representative	Governor	12/31/2006
Mr. Joe Birdrattler, Browning Qualifications (if required): public representative	Governor	12/31/2006
Mr. Ben Carlson, Billings Qualifications (if required): public representative	Governor	12/31/2006
Mr. Bill Schmitt, Great Falls Qualifications (if required): public representative	Governor	12/31/2006
Mr. Ron Thiebert, Kalispell Qualifications (if required): public representative	Governor	12/31/2006
Mr. John Tooke, Miles City Qualifications (if required): public representative	Governor	12/31/2006
Independent Living Council (Public Health and Human Services) Mr. Bob Maffit, Helena Qualifications (if required): Independent Living Center representative	Governor	12/1/2006

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Judicial Nomination Commission (Justice) Sen. Jack Galt, Martinsdale Qualifications (if required): public member</p>	Governor	1/1/2007
<p>Montana Arts Council (Education) Mr. John B. Dudis, Kalispell Qualifications (if required): public member</p>	Governor	2/1/2007
<p>Ms. Mary Crippen, Billings Qualifications (if required): public member</p>	Governor	2/1/2007
<p>Mr. Neal Lewing, Polson Qualifications (if required): public member</p>	Governor	2/1/2007
<p>Ms. Delores Heltne, Havre Qualifications (if required): public member</p>	Governor	2/1/2007
<p>Ms. Cindy Andrus, Bozeman Qualifications (if required): public member</p>	Governor	2/1/2007
<p>Montana Council on Developmental Disabilities (Commerce) Ms. Connie Wethern, Glasgow Qualifications (if required): secondary consumer representative</p>	Governor	1/1/2007
<p>Ms. Janet Carlson, Malta Qualifications (if required): primary consumer representative</p>	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Facility Finance Authority (Commerce) Mr. John B. Dudis, Kalispell Qualifications (if required): attorney	Governor	1/1/2007
Rep. Joe Quilici, Butte Qualifications (if required): public member	Governor	1/1/2007
Mr. John Bartos, Corvallis Qualifications (if required): public member	Governor	1/1/2007
Montana Pulse Crop Advisory Committee (Agriculture) Ms. Leta Campbell, Harlem Qualifications (if required): Marketing	Director	2/14/2007
Montana Small Business Development Center Advisory Council (Commerce) Mr. Andy Poole, Helena Qualifications (if required): none specified	Director	12/15/2006
Sen. Jon Tester, Big Sandy Qualifications (if required): none specified	Director	12/15/2006
Ms. Shirley Beck, Philipsburg Qualifications (if required): none specified	Director	12/15/2006
Mr. Ken Green, Whitefish Qualifications (if required): none specified	Director	12/15/2006

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Small Business Development Center Advisory Council (Commerce) cont. Mr. Paul Tuss, Havre Qualifications (if required): none specified	Director	12/15/2006
Mr. John Langenheim, Bozeman Qualifications (if required): none specified	Director	12/15/2006
Ms. Michelle Johnston, Helena Qualifications (if required): none specified	Director	12/15/2006
Mr. Steve Holland, Bozeman Qualifications (if required): none specified	Director	12/15/2006
Ms. Kathy Jones, Great Falls Qualifications (if required): none specified	Director	12/15/2006
Mr. Dan Killoy, Miles City Qualifications (if required): none specified	Director	12/15/2006
Mr. Joe Unterreiner, Kalispell Qualifications (if required): none specified	Director	12/15/2006
Ms. Reatha Montoya, Colstrip Qualifications (if required): none specified	Director	12/15/2006
Mr. Steve Louttit, Helena Qualifications (if required): none specified	Director	12/15/2006

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Small Business Development Center Advisory Council (Commerce) cont. Ms. Sara Hamlen, Townsend Qualifications (if required): none specified	Director	12/15/2006
Mr. Scott Atwood, Billings Qualifications (if required): none specified	Director	12/15/2006
Mr. Hale Williams, Missoula Qualifications (if required): none specified	Director	12/15/2006
Small Business Health Insurance Pool Board (Auditor) Mr. Christian Mackay, Billings Qualifications (if required): consumer representing the public interest	Governor	1/1/2007
Ms. Gail Briese-Zimmer, Helena Qualifications (if required): management-level individual with knowledge of Medicaid services	Governor	1/1/2007
State Employee Group Benefits Advisory Council (Administration) Sen. Mike Cooney, Helena Qualifications (if required): representing the Legislature	Director	12/31/2006
Mr. Thomas Schneider, Helena Qualifications (if required): representing the Labor Organization	Director	12/31/2006
Mr. Dale Taliaferro, Helena Qualifications (if required): representing Retired State Employees	Director	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont. Ms. Mary Dalton, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Mr. Bartley J. Campbell, Helena Qualifications (if required): representing the Legislative Branch	Director	12/31/2006
Mr. Steve Barry, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Mr. Richard Cooley, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Mr. Monte Brown, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Ms. Amy Carlson, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Ms. Connie Welsh, Helena Qualifications (if required): Ex-Officio Member	Director	12/31/2006
Mr. Eric Feaver, Helena Qualifications (if required): representing the Labor Organization	Director	12/31/2006
Ms. Christi Jacobsen, Helena Qualifications (if required): representing State Employees	Director	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2006 through FEBRUARY 28, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Lottery Commission (Administration) Mr. Robert Crippen, Butte Qualifications (if required): certified public accountant	Governor	1/1/2007
State Tax Appeal Board (Administration) Mr. Joe Roberts, Helena Qualifications (if required): public member	Governor	1/1/2007
Transportation Commission (Transportation) Ms. Nancy Espy, Broadus Qualifications (if required): representative of District 4 and a Republican	Governor	1/1/2007
Mr. S. Kevin Howlett, Arlee Qualifications (if required): representative of District 1 and an Independent	Governor	1/1/2007