

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) NOTICE OF PUBLIC HEARING
amendment of ARM 10.55.603 and) ON PROPOSED AMENDMENT
10.56.101 relating to assessment)

TO: All Concerned Persons

1. On February 27, 2006 at 9:00 a.m. a public hearing will be held in the conference room at the Office of the Commissioner of Higher Education, in the NY Building at 46 North Last Chance Gulch, Helena, Montana, to consider the amendment of the above-stated rules relating to assessment.

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 February 13, 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 rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

10.55.603 CURRICULUM AND ASSESSMENT (1) Local school districts shall incorporate all content and performance standards into their curriculum, implementing them sequentially and developmentally. School districts shall assess the progress of all students toward achieving content and performance standards in all program areas. Assessment of all students, whether enrolled full or part-time, shall be used to examine the educational program and measure its effectiveness based on the content and performance standards.

(a) through (4)(c) remain the same.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.56.101 STUDENT ASSESSMENT (1) and (2) remain the same.

(3) In order to obtain state-level achievement information, all accredited schools shall ~~annually~~ administer a single system of state-level assessments approved by the board when selected to participate in the state-level assessment.

(a) When selected to participate in the ~~S~~state-level assessments, schools shall administer the assessment ~~shall be administered~~ to all students in grades four, eight and eleven in reading, communication arts, mathematics, science, and social studies. For planning purposes, state-level assessments shall be given during a week in the ~~spring~~ fall of the year, identified by the Office of Public Instruction ~~a year~~ six months prior to the assessment date.

(b) through (8)(c) remain the same.

AUTH: 20-2-121, MCA
IMP: 20-2-121, 20-7-402, MCA

4. Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend these rules because the Board has determined a need to explore options for obtaining valid state-level achievement information in grades four, eight and eleven. The Board has also determined that the state-level assessment shall be given in the fall of the year.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than the close of the hearing on February 27, 2006.

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

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

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

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

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

Certified to the Secretary of State January 13, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
17.56.101, 17.56.102, 17.56.308,	)	PROPOSED AMENDMENT
17.56.309, 17.56.310, 17.56.701,)	
17.56.815, 17.56.903, and 17.56.1001	)	(UNDERGROUND STORAGE
pertaining to underground storage tanks	)	TANKS)

TO: All Concerned Persons

1. On March 9, 2006, at 10:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The 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 Department no later than 5:00 p.m., February 27, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov.

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

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and shall be used in conjunction with those definitions in 75-11-503, MCA.

(1) through (40) remain the same.

(41) "Oil/water separator" means a flow-through tank designed to separate petroleum from water. The term does not include piping or tanks that contain petroleum effluent.

(41) through (43) remain the same, but are renumbered (42) through (44).

(45) "Out of service" means that the normal operation of the UST system is discontinued as characterized by the fact that no regulated substances are being deposited into or drawn from the system, and:

(a) leak detection or leak prevention procedures are not conducted in a manner normally associated with an in-service system of a similar type and purpose;
or

(b) for emergency generator tanks, used oil tanks, heating oil tanks, or hazardous substance tanks, the infrequent use of the UST system cannot be justified as part of its purpose.

(44) remains the same, but is renumbered (46).

~~(45)~~ (47) "Owner" means:

~~(a) in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;~~

~~(b) in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use; for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA; and~~

~~(c) unless otherwise provided in statute or rule, for purposes of administration of Title 75, chapter 11, part 5, MCA, any person who:~~

~~(i) holds title to, controls, or possesses an interest in an UST system; or~~

~~(ii) owns the property on which an UST system is located. The term does not include a person who holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.~~

~~(46) through (60) remain the same, but are renumbered (48) through (62).~~

~~(63) "Significant noncompliance" means the existence of one or more violations that:~~

~~(a) cause, or may cause, a substantial, continuing risk to public health and the environment;~~

~~(b) substantially deviate from a requirement of this chapter; or~~

~~(c) include failure to install, maintain, or operate equipment essential to preventing or detecting leaks.~~

~~(61) through (69) remain the same, but are renumbered (64) through (72).~~

AUTH: 75-11-204, 75-11-319, 75-11-505, MCA

IMP: 75-11-203, 75-11-302, 75-11-319, 75-11-505, MCA

REASON: The proposed addition of ARM 17.56.101(41) is necessary to implement the exemption for oil/water separators that is proposed in the amendments to ARM 17.56.102(3)(g), below. This definition will allow the Department to adopt rules applicable to these specific USTs.

The proposed addition of (45) is necessary because earlier rule changes replaced "temporary closure" with "inactive status" and added the condition that the owner/operator must notify the department to place UST systems into inactive status. There remains a category of tanks that are not being operated but that have not been reported to the department as inactive. This definition will allow the department to adopt rules for maintenance and closure relative to that category of tanks.

The proposed addition of (47) is necessary because the rules, to which this definition applies, implement Title 75, chapter 11, parts 2, 3, and 5, MCA. Parts 2 and 3 contain definitions of the term that are referenced in the proposed amendments. Part 5 contains no definition of the term. The proposed definition, which is the definition in 75-11-302, MCA, applicable to part 3, defines the term in accordance with the plain meaning of the term under general property law, under which an owner is a person who has ownership of, dominion over, or title to property. It incorporates the law of fixtures under which the owner of real property to

which a fixture is attached is owner of the fixture unless ownership is reserved by another person. The Department proposes to substitute this definition for the current definition because the current definition conflicts with the definitions contained in 75-11-203 and 75-11-302, MCA. The Department proposes to amend the definition to implement the intent of the Legislature. The current definition, which comes from federal regulations, excludes persons who currently own tanks that have not been used since November 7, 1984. Neither the language of Title 75, chapter 11, part 5, nor the legislative history of that Act, indicate that the Legislature intended that the term be given this narrower meaning. In the absence of express language or legislative intent to the contrary, case law on statutory interpretation indicates that terms are to be given their commonly accepted or plain meaning.

The proposed addition of (63) is necessary to establish a definition of "significant noncompliance", as the phrase is used in 75-11-509(9), MCA.

17.56.102 APPLICABILITY (1) through (2)(b) remain the same.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, and 14 do not apply to any of the following types of PSTs and UST systems:

(a) through (d) remain the same.

(e) an aboveground storage tank with a capacity less than 30,000 gallons; ~~or~~

(f) aboveground pipes associated with tanks under (3)(d) ~~and~~ or (e), except that pipelines regulated under the following laws are excluded:

(i) remains the same.

(ii) state law comparable to the provisions of law referred to in ~~(4)(3)(f)(i)~~, if the facility is intrastate; or

(g) oil/water separators.

(4) through (6) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-319, 75-11-505, MCA

REASON: The proposed amendment to ARM 17.56.102(3)(f)(ii) is necessary to correct an internal reference. Proposed new (3)(g) is necessary because oil/water separators are USTs by definition, but in isolation, they neither pose a significant environmental risk nor lend themselves to application of leak prevention or leak detection requirements.

17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in (9), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit ~~and an operating tag~~ for the system.

(2) The department shall issue an operating permit when the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector and the department determines, on the basis of the inspection report and other relevant information, that the operation and maintenance of the underground storage tank systems at that facility are not in significant noncompliance with Title 75, chapter 11, part 5, MCA, ~~and the~~ or rules adopted

thereunder, on the date of the inspection. The department may issue and renew permits for tanks that are in significant noncompliance with applicable requirements. The department may take enforcement actions, including actions for penalties, and may pursue any other remedy available to the department to address noncompliance with statutes, rules, permits, or orders issued pursuant to this chapter.

(3) remains the same.

(4) An operating permit must be issued for three years and ~~is renewable upon demonstration that the underground storage tank system is in compliance with Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder.~~

(5) ~~The department shall issue an operating tag for each underground storage tank for which the department has issued an operating permit as described in (2) and (4). The operating tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. If an operating permit expires or is revoked, the owner or operator must remove each operating tag and return it to the department within 30 days of receipt of expiration or revocation. Operating permits must be kept legible and must be posted in a place that is visible to delivery personnel whenever petroleum deliveries are conducted.~~

(6) ~~The department may suspend, or revoke, or determine not to renew an operating permit and tag issued under this rule upon its finding that there is substantial evidence that:~~

(a) ~~the underground storage tank system for which the permit was issued is no longer in compliance with operation and maintenance requirements set out in ARM 17.56.309(1)(a) in significant noncompliance with Title 75, chapter 11, part 5, MCA, or with rules, permits or orders issued pursuant to Title 75, chapter 11, part 5, MCA;~~

(b) and (c) remain the same.

(7) ~~Except as provided in (8), the department shall suspend or revoke an operating permit and tag issued under this rule according to the provisions of 75-11-512, MCA.~~

(8) ~~If the department determines that noncompliance with Title 75, chapter 11, part 5, MCA, or the rules adopted thereunder, poses an immediate or substantial threat to the public health, safety, or environment, it may immediately revoke the operating permit and tag. A permittee whose operating permit and tag have has been revoked in accordance with this rule may request a hearing before the department. The department shall schedule a hearing within 10 days of the request for hearing.~~

(9) For the first 45 days after an operating permit expires, an UST is considered not operating if no regulated substance is deposited into or dispensed from the system.

AUTH: 75-11-505, MCA

IMP: 75-11-509, MCA

REASON: The proposed amendments to ARM 17.56.308(1) and (5) through (8) eliminate operating tag requirements. The Department believes that tags are an

ineffective way to communicate authorization to deposit fuel to distributors. Tags are difficult to see because their typical location near spill buckets covers them with dirt and because of darkness during after-hours delivery. Delivery drivers often do not check for tags because they do not expect tank owners to have current tags in place, and because it is cumbersome to locate the tags. The Department believes that the new permit display requirement in (5) will be more effective and will be sufficient to communicate fill authorization.

The proposed amendments to (2) and (6) are necessary because House Bill 78 (2005) revised 75-11-509, MCA, by eliminating mandatory, formal enforcement, concurrent with issuance or renewal of a permit for significant noncompliance with tank operation and maintenance requirements. The proposed revisions to (2) reflect the statutory changes. The Department has implemented enforcement measures to ensure that a facility will come into compliance within the earliest practicable time or face formal enforcement. Full compliance is not a reasonable measure for issuing an operating permit. The Department's determination to not renew an operating permit may substantially impact operation of an entire business. The Department recognizes the magnitude of such a determination and, in general, anticipates taking such an action only when an inspection has not been conducted or when a potential imminent risk to the environment or human health is evident.

The proposed addition of new (9) is necessary to allow temporary storage of product in tanks while an operating permit is being renewed. Under the existing rules, an UST is considered to be in operation if it is storing a regulated substance. ARM 17.56.308 prohibits storage without an operating permit. However, when an operating permit expires, a facility is generally closed only for a few days, if at all, until the owner can satisfy requirements for issuance of a new operating permit. It is not reasonable to require the facility to empty its tanks for this short period of time and then have to refill them.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS

(1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems at an individual facility inspected by a licensed compliance inspector, certified under this chapter, at least every three years for compliance with the operation and maintenance requirements of Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder.

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

~~(b) If the department determines that a tank is not in full compliance with the requirements in the operation and maintenance categories in (1)(a), the department may issue or renew an operating permit under ARM 17.56.308 only if the department requires, in a compliance order issued pursuant to 75-11-512 or 75-11-525, MCA, that the noncompliance be corrected at the earliest practicable time. The department may also take other enforcement actions, and may pursue any other remedy available to the department, to address the noncompliance.~~

~~(c) The inspection may assess compliance with requirements in categories other than those listed in (1)(a). If the department determines that there is a violation in a category other than those listed in (1)(a), the department may issue or renew an operating permit and may pursue enforcement action to address the violation.~~

(d) remains the same, but is renumbered (b).

(2) through (4) remain the same.

(5) No later than ~~40~~ 15 days after any inspection conducted pursuant to this rule, the owner or operator, or the compliance inspector, ~~acting on behalf of the owner or operator~~, shall provide to the department the results of the compliance inspection on a form approved by the department. The form must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

(6) remains the same.

(7) The owner or operator shall correct the all violations noted in a compliance inspection report as follows:

~~(a) leak detection violations must be corrected within 60 days of receipt of the inspection report by the owner or operator; and~~

~~(b) all other violations must be corrected~~ either within 90 days of receipt of the inspection report by the owner or operator, or at least 14 days prior to the expiration of the facility's operating permit, whichever occurs first.

(8) The owner or operator shall ~~obtain~~ submit to the department a follow-up inspection report either within 30 days of after completion of the corrective actions required under (7)(a) and (b), or at least 14 days before the expiration of the facility's operating permit, whichever occurs first.

AUTH: 75-11-505, 75-11-509, MCA

IMP: 75-11-509, MCA

REASON: The proposed deletion of ARM 17.56.309(1)(b) and (c) is necessary because HB 78 (2005) revised 75-11-509, MCA, by eliminating mandatory formal enforcement on all violations, concurrent with issuance of an operating permit for noncompliant UST systems, without regard to significance of the violations. The proposed amendments reflect the statutory changes and their impacts on the rule.

The proposed revisions to (5) are necessary because the Department has received comments that the 10-day window is too short for inspectors and owners/operators to coordinate signing the inspection review forms and submitting them to the Department. The proposed revisions address these comments by adding five days, which allows inspectors and owners/operators more time while ensuring timely submittal. The requirement that the inspector act "on behalf of the owner or operator" is proposed to be deleted because it is unnecessary.

The proposed deletion of (7)(a) and the amendment of (b) are necessary to provide one compliance deadline for a given inspection. This simplifies corrective action and relieves administrative burdens and confusion caused by multiple corrective action deadlines. The proposed amendments to (7) and (8) would be amended to require the owner or operator to complete corrective action and submit documentation to the Department such that the Department has enough time to issue an operating permit. This documentation is necessary for the Department to determine whether there are outstanding noncompliance issues when it issues an operating permit.

17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY

OPERATING PERMITS (1) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit ~~and tag~~ upon the submission of all documentation required by ARM 17.56.1305, related to the installation of that underground storage tank system.

(2) remains the same.

(3) A conditional operating permit ~~and tag~~ issued under (1) or (2) expires 180 days after issuance.

(4) through (5)(b) remain the same.

(6) The department may issue an emergency operating permit to allow operation of an UST without a valid operating permit ~~and tag~~ when operation of the UST is necessary to protect the safety and welfare of persons, property, or national security from imminent harm or threat of harm.

(a) through (d) remain the same.

AUTH: 75-11-505, 75-11-509, MCA

IMP: 75-11-509, 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.310 are necessary because the operating tag requirement is proposed to be eliminated. See the Reason for the proposed amendments to ARM 17.56.308, above.

17.56.701 INACTIVE AND OUT OF SERVICE UST SYSTEMS (1) remains the same.

(2) When an UST system is inactive or out of service for three months or more, owners and operators shall also:

(a) through (c) remain the same.

(3) Out of service UST system components that do not meet the corrosion protection requirements of ARM 17.56.201 or 17.56.202 must, within 12 months of being taken out of service or, in the case of a found tank, within 12 months of its discovery, be:

(a) permanently closed in accordance with ARM 17.56.702 through 17.56.705 17.56.706; or

(b) brought into compliance with ARM Title 17, chapter 56, subchapter 2.

(4) through (4)(e)(ii) remain the same.

AUTH: 75-11-505, 75-11-509, MCA

IMP: 75-11-505, 75-11-509, MCA

REASON: Previous rule changes replaced "temporarily closed" with "inactive" and added the condition that, for a tank system to be inactive, the owner/operator must notify the Department of the inactive status of the UST system. However, the same closure requirements should apply to an out of service tank whether or not the owner has notified the Department of the inactive status. The proposed revision to ARM 17.56.701(2) is necessary to apply the same closure requirements to inactive and out of service tanks.

The revisions to (3) would clarify that the Department does not intend to require owner/operators to close out of service tanks that they wish to upgrade within a year. ARM 17.56.706 is not referenced in the current rule because it was added later. The Department proposes to reference ARM 17.56.706 now because it contains closure requirements. A 12-month timeframe, which is based on federal regulations, would be included to facilitate enforcement of this rule.

17.56.815 MONTANA PETROLEUM TANK RELEASE CLEANUP FUND

(1) remains the same.

(2) If an owner or operator applies the petroleum tank release cleanup fund as partial satisfaction of the coverage requirements of ARM 17.56.805, the owner or operator may satisfy the remaining portion of the required coverage by certifying a tangible net worth equal to that amount.

(3) Certification of tangible net worth must be based on year-end financial statements for the latest completed calendar year and documented on a form approved by the department.

AUTH: ~~75-10-405~~, 75-11-505, MCA

IMP: ~~75-10-405~~, 75-11-505, MCA

REASON: Because upgrade requirements, third-party inspections, and market forces have driven many fueling facilities out of business, the Department does not wish to burden facilities more than necessary in meeting financial responsibility requirements. Therefore, the Department is proposing that the owner or operator may satisfy the remaining portion of financial responsibility coverage, not covered by the petroleum tank release cleanup fund, by certifying a tangible net worth equal to that amount.

The proposed amendments to ARM 17.56.815 are permissible because EPA has approved Montana's Petroleum Tank Release Cleanup Fund as a "partial coverage fund" for demonstrating financial responsibility by UST owners.

The EPA publication, "Financial Responsibility for Underground Storage Tanks, A Reference Manual", EPA 51-B-00-003, (January 2000), states: "To help owners and operators comply with deductible requirements, EPA allows states to establish their own financial tests of self insurance for deductible amounts."

17.56.903 CHANGE IN OWNERSHIP (1) The purchaser ~~and seller~~ of an UST system shall ~~each~~ provide written notification to the department within 30 days after any sale. ~~Such notification must be made by both parties signing and submitting a form provided by the department.~~

(2) and (3) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.903(1) are necessary because, when the Department has accepted a notification form from a new owner

taking responsibility for the tank systems, it is burdensome and unnecessary to require paperwork from a then disinterested party.

17.56.1001 TANK FEE SCHEDULE (1) Owners or operators of underground storage tanks which have not been closed in accordance with ARM 17.56.702 shall pay an annual registration fee ~~to the department~~ for each underground storage tank owned or operated. In order to schedule annual renewal dates, the department may prorate the registration fee to cover registration periods not equal to 12 months.

(2) through (3) remain the same.

~~(4) Upon receipt of the appropriate registration fee, the department shall issue a facility registration certificate listing each underground storage tank for which the fee was paid.~~

~~(5) The department shall issue a replacement registration certificate to an owner or operator after submission of satisfactory evidence that the certificate has been lost or destroyed.~~

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.1001(1) and deletion of (4) and (5) are necessary because the Department no longer collects fees. This function is served by the "One-stop Licensing" program in the Department of Revenue. They send a registration certificate when fees are paid. The requirements in the rule now are superfluous.

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 Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov, no later than March 16, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. James Madden, attorney, has been designated to preside over and conduct the hearing.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA;

underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

BY: /s/ Richard H. Oppen
RICHARD H. OPPER, Director

Certified to the Secretary of State, January 13, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
17.74.343, the adoption of New Rules I	)	PROPOSED AMENDMENT,
through XIX, and the repeal of ARM	)	ADOPTION AND REPEAL
17.74.302, 17.74.303, 17.74.307 through)	
17.24.310, 17.74.314 through 17.74.319,	)	(ASBESTOS CONTROL)
17.74.325 through 17.74.331, 17.74.335)	
through 17.74.338, 17.74.341 and)	
17.74.342 pertaining to the asbestos control))	
program)	

TO: All Concerned Persons

1. On March 6, 2006, at 10:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The 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 Department no later than 5:00 p.m., February 20, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov.

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

17.74.343 RECIPROCITY (1) ~~Each applicant for accreditation~~ The
department may accredit a person in an asbestos-type related occupation who is
accredited in another state, ~~may request accreditation from the department~~ Upon
receipt of an application for accreditation based upon accreditation requirements of
the state where the applicant is accredited, ~~the department shall evaluate the~~
~~requirements for accreditation in the other state, and may provide an accreditation if~~
~~the requirements for accreditation in of the other state are equal to, or more stringent~~
~~than, and accredit the person if the requirements in the other state are at least as~~
stringent as the accreditation requirements under this subchapter.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

4. The proposed new rules provide as follows:

NEW RULE I INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to:

(a) a federal regulation, the reference is to the July 1, 2005, edition of the Code of Federal Regulations (CFR);

(b) a section of the United States Code (USC), the reference is to the 2000 edition of the USC and Supplement 1 (2002);

(c) a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA; or

(d) a rule of another agency of the state of Montana, the reference is to the December 31, 2004, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE II INCORPORATION BY REFERENCE (1) For the purposes of

this subchapter, the department adopts and incorporates by reference:

(a) 40 CFR 61, subparts A and M, pertaining to national emission standards for hazardous air pollutants (NESHAPs) for asbestos, with the following exception:

(i) 40 CFR 61.145(a)(2) and (4) are not incorporated by reference.

(b) National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, fourth edition, August 1994, which contains a description of the 7400 Analytical Method for detecting asbestos and other fibers by phase contrast microscopy (PCM) and a description of the 7402 Analytical Method for detecting asbestos by transmission electron microscopy (TEM);

(c) Montana Asbestos Work Practices and Procedures Manual (2005).

(2) Copies of these materials may be obtained from the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.access.gpo.gov/nara/cfr/index.html>.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE III DEFINITIONS For purposes of this subchapter the following

definitions apply:

(1) "Approved asbestos disposal facility" means a licensed Class II landfill as described in ARM 17.50.504.

(2) "Asbestos-containing material (ACM)" means any material containing more than 1% asbestos.

(3) "Asbestos inspector" means any person who inspects a facility for the presence of asbestos-containing material.

(4) "Asbestos management planner" means any person who develops plans for the management of asbestos-containing material.

(5) "Asbestos project" has the meaning given in 75-2-502(3), MCA. "Pipe,"

as the term is used in this definition and 75-2-503(3), MCA, includes any coating or wrap made of regulated asbestos-containing material that partially or wholly surrounds the pipe.

(6) "Asbestos project contractor" means any person who contracts to perform an asbestos project for another person.

(7) "Asbestos project contractor/supervisor" means a person who provides supervision and/or direction to asbestos workers engaged in an asbestos project.

(8) "Asbestos project designer" means a person who develops the plans, specifications, and/or designs for an asbestos project.

(9) "Asbestos project worker" means any person other than those listed in (4) and (6) through (8) who is engaged in an asbestos project.

(10) "Asbestos-related occupation" has the meaning given in 75-2-502(4), MCA.

(11) "Category I non-friable ACM" has the meaning given in 40 CFR 61.141.

(12) "Category II non-friable ACM" has the meaning given in 40 CFR 61.141.

(13) "Clean room" means an uncontaminated room having facilities for the storage of employees' street clothing and uncontaminated materials and equipment.

(14) "Containment area" means a negative-pressure asbestos project work area and decontamination unit that is configured to isolate asbestos project activities from areas that are to remain uncontaminated.

(15) "Critical barrier" means one or more layers of plastic sealed over all openings into a work area or any other similarly placed physical barrier sufficient to prevent airborne asbestos in a work area from migrating to an adjacent area.

(16) "Decontamination area" means an enclosed area adjacent and connected to the regulated area and consisting of an equipment room, shower area, and clean room, which is used for the decontamination of workers, materials, and equipment that are contaminated with asbestos.

(17) "Demolition" has the meaning given in 40 CFR 61.141.

(18) "Department", as defined in 75-2-502(5), MCA, means the Department of Environmental Quality, provided for in 2-15-3501, MCA.

(19) "Emergency renovation operation" has the meaning given in 40 CFR 61.141.

(20) "Encapsulation" means the treatment of regulated asbestos-containing material (RACM) with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant). This definition does not include the repainting of a previously painted, undamaged, non-friable RACM surface primarily to improve the appearance of the surface.

(21) "Enclosure" has the meaning given in 40 CFR 763.83.

(22) "Equipment room (change room)" means a contaminated room located within the contamination area that is supplied with impermeable bags or containers for the disposal of contaminated protective clothing and equipment.

(23) "Facility" has the meaning given in 40 CFR 61.141.

(24) "Friable asbestos-containing material" or "friable ACM" means any ACM that when dry may be crumbled, pulverized, or reduced to powder by hand pressure.

(25) "Glove bag" has the meaning given in 40 CFR 61.141.

(26) "Inspection" means an activity undertaken in a facility to determine the presence or location, or to assess the condition, of friable or non-friable RACM or suspected RACM, whether by visual or physical examination, or by collecting samples of the material. This term includes reinspections of friable and/or non-friable known or assumed RACM which has been previously identified. The term does not include the following:

(a) inspections performed by employees or agents of federal, state, or local government solely to determine compliance with applicable statutes or regulations; or

(b) visual inspections performed solely to determine completion of response actions.

(27) "Local education agency" or "LEA" has the meaning given in 40 CFR 763.83.

(28) "Non-friable asbestos-containing material (non-friable ACM)" has the meaning given in 40 CFR 61.141.

(29) "Nonoccupational setting" means an environment in which the occupants are not handling, working with, or exposed to asbestos resulting from an asbestos project.

(30) "Person" has the meaning given in 75-2-502(6), MCA.

(31) "Regulated area" means an area established by an asbestos contractor or building owner to demarcate areas in which an asbestos project is being conducted, and any adjoining area where debris and waste from such asbestos work accumulate.

(32) "Regulated asbestos-containing material (RACM)" has the meaning given in 40 CFR 61.141.

(33) "Renovation" means altering (including modifying and/or remodeling) a facility or any of its components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

(34) "Repair" means returning damaged RACM to an undamaged condition or to an intact state so as to prevent fiber release.

(35) "Structural member" has the meaning given in 40 CFR 61.141.

(36) "Visible emissions" has the meaning given in 40 CFR 61.141.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE IV APPLICABILITY--ASBESTOS PROJECT REQUIREMENTS

(1) All asbestos projects must be performed in accordance with the requirements of the Montana Asbestos Work Practices and Procedures Manual and 40 CFR 61, subpart M, with the following exceptions:

(a) the minimum quantities of regulated asbestos-containing material (RACM) specified in 40 CFR 61.145(a)(1)(i) and (ii) and (4)(i) and (ii) do not apply; and

(b) for purposes of 40 CFR 61.145(a)(1) and (4), the minimum quantities of RACM provided in 75-2-502(3), MCA, shall apply.

(2) For purposes of this subchapter, inspections required by 40 CFR

61.145(a) must be conducted by a Montana-accredited asbestos inspector.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE V INSPECTION OF DEMOLITION AND RENOVATION

ACTIVITIES (1) Prior to any demolition or renovation of a facility, the owner or operator shall have the facility inspected for the presence of asbestos by a Montana-accredited asbestos inspector.

(2) An inspection required under this rule must be conducted in conformance with the Montana Asbestos Work Practices and Procedures Manual.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE VI ASBESTOS PROJECT PERMITS (1) Pursuant to 75-2-511,

MCA, a person may not conduct an asbestos project without a permit issued by the department, or violate the conditions of the permit.

(2) The owner, or the asbestos project contractor, of the facility where an asbestos project is to be conducted shall submit to the department, on a form provided by the department, an application for a project permit that contains the following:

(a) a completed original Montana Asbestos Project Permit Application and NESHAP Demolition/Renovation Notification form;

(b) a description of the facility, the asbestos project to be performed, and the dates during which the asbestos project will be performed;

(c) a signed statement by the owner or the asbestos project contractor/supervisor that all work performed under authorization of the requested permit will be performed in accordance with this subchapter;

(d) a list of the asbestos project workers and contractor/supervisors who will be performing functions on the project, including their Montana accreditation identification numbers and accreditation expiration dates;

(e) the permit fee required under ARM 17.74.401;

(f) a project design prepared by an asbestos project designer. At a minimum, the asbestos project design must contain the following information:

(i) a description of the physical work area, including a drawing (not necessarily to scale), indicating the location of exhaust ventilation machines, decontamination enclosures and waste load-out area;

(ii) a description of the amount of RACM to be removed, encapsulated, enclosed, repaired, transported, or disposed;

(iii) a description of how the project will shut down and lock out electric power and heating, ventilation, and air conditioning systems;

(iv) a description of precleaning and removal of objects from the work area;

(v) a schedule for sealing off all openings with critical barriers including, but not limited to, corridors, doorways, skylights, ducts, grills, diffusers, and other penetrations of the work area;

- (vi) a description of containment barriers including airlocks, fire and emergency exits, and labeling procedures to be used on barriers;
- (vii) a description of the worker decontamination enclosure system to be used;
- (viii) a description of exhaust ventilation systems to be used;
- (ix) a description of alternate methods of containment to be used, such as glove bags, removal of the entire asbestos covered pipe or structure, and construction of mini-enclosures, which, if used, must comply with the Montana Asbestos Work Practices and Procedures Manual.
- (x) a description of personal protective equipment and clothing to be worn by asbestos project workers;
- (xi) a description of work practices to be followed by asbestos project workers;
- (xii) a description of methods to be used to remove, encapsulate, repair, or enclose RACM;
- (xiii) a description of wetting agents, encapsulants, and sealants to be used;
- (xiv) a description of the air monitoring plan and the identity of the individual conducting the air monitoring; and
- (xv) a description of the procedures to be used for transportation and disposal of RACM.

(3) If an application is deficient or incomplete, the department shall notify the applicant of the information necessary to complete the application. If the department has not received the information within its established time frame, the application will be considered withdrawn.

(4) If the dates during which an asbestos project is to be conducted change, the asbestos project contractor/supervisor or the owner of the facility shall notify the department of the change at least 24 hours prior to:

- (a) implementation of the new scheduled date; or
- (b) the original scheduled date, whichever comes first.

(5) Within 72 hours after any initial verbal notice to the department of a change in the dates during which an asbestos project is to be performed, the permittee shall submit to the department a signed, original written notice of the newly-scheduled dates, using an application form provided by the department. If the new dates are substantially different from those specified in the permit, the department may require the permittee to apply for an amendment to the permit.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-511 MCA

NEW RULE VII ASBESTOS PROJECT CONTROL MEASURES (1) An asbestos project contractor/supervisor shall be physically present at all times at the work site where an asbestos project is being conducted. The asbestos project contractor/supervisor shall be accessible to all asbestos project workers.

(2) Asbestos projects, including any on-site air monitoring, must comply with the requirements of the Montana Asbestos Work Practices and Procedures Manual.

(3) Upon written request, the department may approve alternate control measures that are equivalent to those required under this rule.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

NEW RULE VIII CLEARING ASBESTOS PROJECTS (1) At the conclusion of any asbestos project conducted in a facility, the owner of the facility shall sample the air to ensure that the indoor concentration of airborne fibers in a nonoccupational setting for each of five samples is less than or equal to 0.01 fibers per cubic centimeter of air or 70 structures per square millimeter of filter. Clearance sampling is not required if an asbestos project in a facility has occurred immediately prior to demolition of the entire facility, and the facility is not reoccupied prior to demolition. The five air samples must be taken in accordance with the Montana Asbestos Work Practices and Procedures Manual.

(2) The department may approve alternate work practices.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

NEW RULE IX EMERGENCY RENOVATION OPERATION PERMITS

(1) For an emergency renovation operation, as defined in 40 CFR 61.141, the asbestos project contractor or owner of the facility shall immediately notify the department by telephone or in person and submit to the department, on a form provided by the department, a completed application for an asbestos project permit pursuant to [NEW RULE VI] within five working days after the initial notice.

(2) An application for an emergency renovation operation permit must include a description of the emergency renovation operation and must demonstrate that an emergency, as defined in 40 CFR 61.141, existed that prevented the asbestos project contractor or owner of the facility from applying for a permit prior to initiation of the project.

AUTH: 75-2-503, MCA
IMP: 75-2-503, 75-2-511, MCA

NEW RULE X ANNUAL ASBESTOS PROJECT PERMITS (1) An annual asbestos project permit authorizes a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force.

(2) The owner or operator of a facility may apply to the department for an annual asbestos project permit if the facility:

- (a) continuously employs asbestos project workers; or
- (b) continuously contracts with outside contractors to perform asbestos projects for the facility; and
- (c) maintains an asbestos health and safety program that incorporates standard operating procedures for employees involved in asbestos projects in accordance with the Montana Asbestos Work Practices and Procedures Manual.

(3) An owner or operator conducting asbestos projects under an annual permit shall comply with all requirements pertaining to asbestos project notification.

(4) The owner or operator of a facility applying for an annual asbestos project permit shall submit to the department:

- (a) the fee required under ARM 17.74.401;
- (b) a copy of the facility's written health and safety program on asbestos; and
- (c) a completed application on a form provided by the department, including:
 - (i) a description of the structure and the asbestos work to be performed;
 - (ii) the name(s) and address(es) of any outside contractor or contractors who will be performing asbestos projects at the facility under the permit;
 - (iii) a signed statement that all work performed under the permit will be performed in accordance with this subchapter;
 - (iv) a signed statement that all work will be performed by persons accredited by the department; and
 - (v) a signed statement that removed RACM will be disposed of at an approved asbestos disposal facility and the name and location of the disposal facility.

(5) A facility owner or operator may apply annually for renewal of an annual permit.

(a) An application for renewal need address in detail only the portions of the permit application that require revision, updating, supplementation, or deletion, and may reference any required information that has been previously submitted.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-504, MCA

NEW RULE XI RECORDKEEPING (1) Records of asbestos projects that are being, or have been, conducted must be retained for at least 30 years and made available to the department upon request.

(2) Records must be retained and made available to the department by:

- (a) the asbestos project contractor/supervisor for the project; or
- (b) the owner of the facility in which the project is being or has been conducted if the owner is accredited by the department and is conducting the project without a contractor/supervisor.

(3) Records of asbestos projects must include, but are not limited to, the following:

- (a) the name, address, and accreditation identification number of the person who supervised each asbestos project, and of each person who worked on the project;
- (b) the location and description of each project and the amount of RACM that was enclosed, removed, repaired, encapsulated, or placed in new construction;
- (c) the starting and completion dates of each instance of enclosure, removal, repair, encapsulation, or placement in new construction;
- (d) the name and address of each facility where waste RACM was deposited for disposal. Holders of annual permits are not required to maintain records designating where wastes from specific asbestos projects are deposited, but holders of annual permits shall maintain records of each shipment of RACM;
- (e) a receipt from each disposal facility indicating the amount of RACM deposited at the site and the date of the deposit; and

(f) the transportation manifest records indicating the amount of RACM transported to each approved asbestos disposal facility and the name and location of each facility.

AUTH: 75-2-503, MCA

IMP: 75-2-513, MCA

NEW RULE XII DEPARTMENT INSPECTIONS (1) The owner of the facility where an asbestos project is being or was conducted, or a person conducting or in charge of an asbestos project shall:

(a) afford the department, at all reasonable times, the opportunity to inspect the project site;

(b) upon request, make records maintained pursuant to this subchapter available to the department for inspection and copying;

(c) allow department inspectors to consult privately with asbestos project workers concerning occupational exposure to asbestos and other matters related to the applicable provisions of this subchapter, to the extent necessary for an effective and thorough inspection; and

(d) maintain proof of accreditation and photo identification of all persons involved in the asbestos project. These documents must be available at the project site for the duration of the project and must be made available to the department upon request.

AUTH: 75-2-503, MCA

IMP: 75-2-518, MCA

NEW RULE XIII ACCREDITATION REQUIREMENTS FOR ASBESTOS-RELATED OCCUPATIONS (1) Pursuant to 75-2-511, MCA, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department; or

(b) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department.

(2) A person seeking initial accreditation in an asbestos-related occupation shall:

(a) successfully complete either a training course approved by the department pursuant to this subchapter, or a course approved by the U.S. environmental protection agency and shall pass an examination approved by the department; and

(b) submit to the department a completed application form provided by the department, with the fee required in ARM 17.74.402 and a copy of a certificate of satisfactory completion from the course approved for that occupation.

(3) The department may deny, suspend, or revoke accreditation of a person pursuant to 75-2-515, MCA.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XIV RENEWAL OF ACCREDITATION (1) A person may not engage in an asbestos-related occupation after the expiration of accreditation until accreditation is renewed.

(2) Accreditation for each asbestos-related occupation may be renewed annually on or before the expiration date of accreditation by submitting to the department a completed application form provided by the department, a certificate of satisfactory completion of a department approved refresher course, and the appropriate fee.

(3) An applicant for renewal of accreditation in an asbestos-related occupation, except asbestos project inspector and management planner, shall attend a one-day refresher course approved by the department or EPA for that specific occupation.

(4) For renewal of accreditation as an asbestos project inspector, a person shall attend a half-day refresher course approved by the department or EPA.

(5) Asbestos project management planners shall attend the half-day asbestos inspector refresher course plus an additional half-day refresher course on asbestos project management planning approved by the department or EPA.

(6) If a person does not apply for renewal of accreditation within one year following the expiration of accreditation, the person must obtain accreditation under [NEW RULE XIII] to engage in an asbestos-related occupation.

(7) An applicant for renewal of accreditation as instructor shall attend a refresher course taught by another instructor.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XV TRAINING PROVIDER REQUIREMENTS (1) Pursuant to 75-2-511, MCA, a person may not offer a training course in Montana for accreditation of persons in any asbestos-related occupation unless the department has approved the course.

(2) The department shall approve a training course if it meets the requirements listed in [NEW RULE XVI].

(3) For department approval of a training course, instructors' qualifications must include:

(a) significant academic and/or field experience in asbestos control; and

(b) current accreditation in the course(s) they teach.

(4) Except for the asbestos project worker course and the refresher courses, at least two approved instructors shall conduct all training courses.

(5) All training course materials and examinations must be submitted to the department for approval. A person may apply for approval of a training course by submitting all of the following to the department at least 45 calendar days prior to the proposed date of course presentation:

(a) a completed written application on a form provided by the department;

(b) a curriculum that includes the course topics specified in this subchapter;

(c) a copy of the course examination and all course materials (written and visual);

(d) a copy of the certification of satisfactory completion to be used for

certification at the end of the course;

(e) a list of the instructors who will teach the course and documentation of the instructors' qualifications, which must include significant academic and/or field experience in asbestos control;

(f) a description of hands-on training to be provided in the course;

(g) a course schedule indicating the time allotted and the instructor for each subject;

(h) the appropriate fee for approval of the course, specified in ARM 17.74.403; and

(i) documentation of EPA course approval if the course has been approved by EPA pursuant to 15 USC 2643.

(6) At least 10 working days before a course commences, the person providing the training course shall notify the department of the date, time, and location of the course.

(7) The department must be notified in advance of any proposed changes in the content of training courses, examinations, or instructors. The department shall approve or deny any proposed changes in training course or examination contents or change in instructor(s) prior to approving the course or examination.

(8) The department may audit an approved training course and examination and may audit a training course following any change in the course.

(9) Following an audit conducted under this rule, the course provider shall pay the audit fee specified in ARM 17.74.404.

(10) Department personnel may audit any training course offered for accreditation in an asbestos-related occupation without paying tuition or the cost of materials.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XVI TRAINING COURSE REQUIREMENTS (1) A training course for accreditation as an asbestos project worker must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.1, Workers.

(2) A training course for accreditation as an asbestos project contractor/supervisor must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.2, Contractor/Supervisor.

(3) A training course for accreditation as an asbestos project inspector must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.3, Inspector.

(4) A training course for accreditation as an asbestos project management planner must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.4, Management Planner.

(5) A training course for accreditation as an asbestos project designer must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.5, Project Designer.

(6) For purposes of this rule, the phrase "public and commercial building" has the meaning given in the definition of "facility" at [NEW RULE III(23)].

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XVII TRAINING COURSE EXAMINATIONS (1) The following requirements apply to asbestos-related occupation accreditation training course examinations:

(a) for asbestos project worker, asbestos inspector, and asbestos project management planner training courses, the examination must include 50 multiple choice questions with a passing score of at least 70%; and

(b) for asbestos project contractor/supervisor and asbestos project designer courses, the examination must include 100 multiple choice questions with a passing score of at least 70%.

(2) All examinations must be closed book.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XVIII REFRESHER COURSES (1) A person may not offer a refresher course for renewal of accreditation under [NEW RULE XIV] unless the department has approved the course.

(2) Refresher courses must relate to a particular asbestos-related occupation and must include review of changes in federal and state regulations, developments in state-of-the-art procedures, and key aspects of the initial training course.

(3) For department approval of a refresher course, a person shall submit to the department, on a form provided by the department, a completed application and the fee specified in ARM 17.74.403. The application must include:

(a) a description of the subject matter to be taught in the refresher course;

(b) the materials to be used;

(c) a description and example of the numbered certificates to be issued to students who successfully complete the course;

(d) the names of the instructors who will teach the course; and

(e) a description of the instructors' qualifications, which must include academic and/or field experience in asbestos control.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XIX TRAINING COURSE AND REFRESHER COURSE CERTIFICATE AND RECORDKEEPING REQUIREMENTS (1) A person providing a training course for accreditation in an asbestos-related occupation shall provide a certificate to all persons who successfully complete the course and the examination. The certificate must be numbered and include:

(a) the asbestos-related occupation course completed;

(b) the course participant's name and address;

(c) the date of the examination;

(d) the signature of at least one course instructor;

(e) the inclusive dates of the course;

- (f) the name, address, and telephone number of the training provider who issued the certificate;
 - (g) the name and address of the agency that approved the course;
 - (h) a statement that the person receiving the certificate has completed the training required for accreditation under this subchapter;
 - (i) a statement that the trainee, by name, has successfully passed the examination for the course; and
 - (j) an accreditation expiration date of one year after the date upon which the person successfully completed the course and examination.
- (2) A person providing a training course for accreditation or a refresher course for renewal of accreditation in an asbestos-related occupation shall retain:
- (a) copies of all training course materials used, including student manuals, instructor notebooks, and handouts;
 - (b) copies of all documents relating to that training course or refresher course issued to that person by the department;
 - (c) records that identify the instructors;
 - (d) records of the examinations, including:
 - (i) the date of the examination;
 - (ii) the name of the training course;
 - (iii) the name of the person who proctored the examination;
 - (iv) the name of each person taking the examination;
 - (v) each trainee's examination score; and
 - (vi) a copy of the examination; and
 - (e) records of all persons who have been awarded certificates, including:
 - (i) their names and certificate numbers;
 - (ii) their certified asbestos-related occupations;
 - (iii) the dates of their training;
 - (iv) the expiration dates of accreditation; and
 - (v) the training location.
- (3) A training course provider shall maintain all records required under this rule for at least three years.
- (4) A training course provider shall provide EPA and the department with reasonable access to all training records upon request.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

5. The rules proposed for repeal are as follows:

17.74.302 DEFINITIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8301 through 17-8306, Administrative Rules of Montana. This rule would be replaced by New Rule III Definitions.

17.74.303 EXCLUSIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8306, Administrative Rules of Montana. This rule would not be replaced.

17.74.307 EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8315 and 17-8316, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference.

17.74.308 CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8317 through 17-8320, Administrative Rules of Montana. This rule would be replaced by New Rule VIII Clearing Asbestos Projects.

17.74.309 EVALUATION OF ASBESTOS HAZARDS IN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8321, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference.

17.74.310 CLEARING ASBESTOS ABATEMENT PROJECTS IN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8321, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference.

17.74.314 REQUIREMENTS OF ACCREDITATION AND PERMITTING FOR PERSONS ENGAGED IN AN ASBESTOS-TYPE OCCUPATION (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8331, Administrative Rules of Montana. This rule would be replaced by New Rule XIII Accreditation Requirements for Asbestos-Related Occupations.

17.74.315 ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8331 and 17-8332, Administrative Rules of Montana. This rule would be replaced by New Rule XIII Accreditation Requirements for Asbestos-Related Occupations.

17.74.316 RENEWAL OF ACCREDITATION (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8332 and 17-8333, Administrative Rules of Montana. This rule would be replaced by New Rule XIV Renewal of Accreditation.

17.74.317 TRAINING COURSE AND EXAMINATION REQUIREMENTS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8333, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.318 APPLICATION FOR ACCREDITATION OF A TRAINING COURSE; CERTIFICATION (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511,

MCA), located at pages 17-8337 and 17-8338, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements and New Rule XIX Training Course and Refresher Course Certificate and Recordkeeping Requirements.

17.74.319 COURSE APPROVAL (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8339, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.325 ASBESTOS INSPECTOR'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8345 through 17-8347, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.326 ASBESTOS MANAGEMENT PLANNERS COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8351 through 17-8353, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.327 ASBESTOS ABATEMENT PROJECT DESIGNER'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8353 through 17-8355, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.328 ASBESTOS ABATEMENT CONTRACTOR'S AND SUPERVISOR'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8361 through 17-8363, Administrative Rules of Montana. This rule would be replaced with New Rule XVI Training Course Requirements.

17.74.329 ASBESTOS ABATEMENT WORKER'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8363 and 17-8364, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.330 EXAMINATIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8365, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Training Course Examinations.

17.74.331 REFRESHER COURSES (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8365, Administrative Rules of Montana. This rule would be replaced by New Rule XVIII Refresher Courses.

17.74.335 ASBESTOS ABATEMENT PROJECT PERMITS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8375 through 17-8377, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference, New Rule IV Applicability--Asbestos Project Requirements, and New Rule VI Asbestos Project Permits.

17.74.336 ANNUAL PERMITS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-504, MCA), located at pages 17-8381 and 17-8382, Administrative Rules of Montana. This rule would be replaced by New Rule X Annual Asbestos Project Permits.

17.74.337 EMERGENCY ASBESTOS PROJECT PERMITS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8382, Administrative Rules of Montana. This rule would be replaced by New Rule IX Emergency Renovation Operation Permits.

17.74.338 ASBESTOS ABATEMENT PROJECT CONTROL MEASURES (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8383, Administrative Rules of Montana. This rule would be replaced by New Rule VII Asbestos Project Control Measures.

17.74.341 RECORDKEEPING (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-513, MCA), located at page 17-8391, Administrative Rules of Montana. This rule would be replaced by New Rule XI Recordkeeping.

17.74.342 INSPECTIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8391 and 17-8392, Administrative Rules of Montana. This rule would be replaced by New Rule XII Department Inspections.

REASON: The Department is proposing the repeal of most (not including ARM 17.74.301 and 17.74.343) of the Administrative Rules in ARM Title 17, chapter 74, subchapter 3, General Provisions, and the adoption of new equivalent rules for most (not including ARM 17.74.303).

The new rules comprise an equivalent asbestos control program written in an incorporation by reference (IBR) format. The proposed IBR format references sections of the Code of Federal Regulations (CFR), the Administrative Rules of Montana, the U.S. Code, and the Montana Asbestos Work Practices and Procedures Manual. The format change is being proposed for the following reasons:

- a. the incorporation of new rules promulgated by EPA would be accomplished by annually updating the publication dates in New Rule I; and
- b. the current asbestos control program rules contain much language repeated from the CFR.

One "state only" rule, ARM 17.74.301, Applicability and Purpose, would remain the same.

The Department is proposing the repeal of ARM 17.74.303, Exclusions, and not replacing it with a new rule. ARM 17.74.303 is a "state only" rule that provides a conditional exclusion from the provisions of ARM Title 17, chapter 74, subchapter 3, for homeowners who are conducting an asbestos abatement project in their residence. The Asbestos Control Program does not have the resources to implement and enforce ARM 17.74.303.

Several grammatical revisions are proposed for ARM 17.74.343. These revisions clarify the rule, but do not change the meaning.

In New Rule II(1)(a)(i), sections 40 CFR 61.145(a)(2) and (4) are not incorporated by reference because the minimum quantities of requested asbestos-containing material provided in 75-2-502(3), MCA, apply.

The title of ARM Title 17, chapter 74, subchapter 3, would be revised from "General Provisions" to "Asbestos Control."

6. 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 Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov, no later than March 13, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Jane Amdahl, attorney, has been designated to preside over and conduct the hearing.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David M. Rusoff
DAVID M. RUSOFF
Rule Reviewer

BY: /s/ Richard H. Oppen
RICHARD H. OPPEN, Director

Certified to the Secretary of State, January 13, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I)	NOTICE OF PUBLIC HEARING ON
through XVIII pertaining to decontamination)	PROPOSED ADOPTION
of inhabitable property contaminated by)	
clandestine manufacture of)	(METHAMPHETAMINE CLEANUP
methamphetamine)	PROGRAM)

TO: All Concerned Persons

1. On March 7, 2006, at 10:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The 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 Department no later than 5:00 p.m., February 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I PURPOSE (1) This subchapter is adopted to protect the public health, safety, and welfare by providing specific cleanup standards for inhabitable property contaminated by clandestine methamphetamine labs (CML). This subchapter establishes a voluntary program for property owners to obtain department confirmation that the decontamination standards established by the department have been met, for purposes of liability immunity pursuant to 75-10-1305(4), MCA, and for purposes of removing property from the list of contaminated property maintained by the department pursuant to 75-10-1306, MCA.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE II INCORPORATION BY REFERENCE -- PUBLICATION DATES (1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to:

(a) a federal regulation, the reference is to the July 1, 2005, edition of the Code of Federal Regulations (CFR); or

(b) a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA.

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

NEW RULE III INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference the following:

- (a) 40 CFR Part 261, Identification and Listing of Hazardous Waste;
- (b) American Society for Testing and Materials, Method D5756-02, (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration;
- (c) National Institute for Occupational Health and Safety, Manual of Analytical Methods, 4th Ed., Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996); and
- (d) Montana Clandestine Methamphetamine Lab Decontamination Sampling and Analysis Plan (August 2005) pertaining to sampling methods and procedures and sample analysis.

(2) Copies of these materials may be obtained from the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402; phone (202) 512-1800. The CFR also can be accessed electronically at <http://www.access.gop.gov/nara/cfr/index.html>.

AUTH: 75-10-1303, 75-10-1304, MCA

IMP: 75-10-1303, 75-10-1304, MCA

NEW RULE IV DEFINITIONS For the purposes of this subchapter, unless the context clearly indicates otherwise:

(1) "Basic course" means a training course sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on CML sites.

(2) "Certificate" means a department-issued written approval under this subchapter.

(3) "Certificate of fitness" means a certificate issued for a particular inhabitable property by the department confirming that the property has been properly remediated to the standards provided in [NEW RULE V].

(4) "Certified contractor" means a person or company to whom the department has issued a CML decontamination contractor certificate under this subchapter.

(5) "Certified training provider" means a person to whom the department has issued a CML decontamination training provider certificate under this subchapter.

(6) "Certified person" means a person to whom the department has issued a CML decontamination worker certificate or a CML decontamination supervisor certificate under this subchapter.

(7) "Contaminated" or "contamination" means polluted by hazardous chemicals from a CML so that the inhabitable property may be unfit for human habitation or use due to immediate or long-term hazards. Inhabitable property that

at one time was contaminated, but has been decontaminated in conformance with the requirements of this subchapter, is not "contaminated."

(8) "Decontaminated" or "decontamination" means the process of reducing levels of hazardous chemicals from a CML in inhabitable property to the lowest practical level using currently available methods and processes.

(9) "Department" means the Montana Department of Environmental Quality.

(10) "Hazardous chemicals" means:

(a) methamphetamine as defined in (13); and

(b) precursor substances as defined in (15).

(11) "Inhabitable property" has the meaning provided in 75-10-1302, MCA.

(12) "Initial site assessment" means the first evaluation of inhabitable property to determine the nature and extent of observable contamination from a CML.

(13) "Methamphetamine" means dextro-methamphetamine, levo-methamphetamine, any racemic mixture of dextro/levo-methamphetamine, or any mixture of isomers of methamphetamine.

(14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(15) "Precursor substances" means the following compounds:

(a) anthranilic acid;

(b) barbituric acid;

(c) chlorephedrine;

(d) diethyl malonate;

(e) d-lysergic acid;

(f) ephedrine;

(g) ergotamine tartrate;

(h) ethylamine;

(i) ethyl malonate;

(j) ethylephedrine;

(k) lead acetate;

(l) methylamine;

(m) methylformamide;

(n) methylephedrine;

(o) methylpseudoephedrine;

(p) n-acetylanthranilic acid;

(q) norpseudoephedrine;

(r) phenylacetic acid;

(s) phenylpropanolamine;

(t) piperidine;

(u) pseudoephedrine;

(v) pyrrolidine; and

(w) any other chemical compound(s) that the department determines was used in the clandestine manufacture of methamphetamine, or produced from such manufacture.

(16) "Property owner" means a person with a lawful right of possession of inhabitable property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

(17) "Refresher course" means a department-sponsored or department-approved training course for previously certified CML decontamination workers and supervisors.

(18) "Supervisor" means a person who is employed by a contractor, is on site during the decontamination of a CML, and is responsible for the activities performed.

(19) "Surface material" has the meaning provided in 75-10-1302, MCA.

(20) "Vacuum sample" or "microvacuum sample" means a non-airborne dust sample collected from a known surface area of a porous surface or material using standard microvacuuming techniques described in American Society for Testing and Materials, Method D5756-02, (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration.

(21) "Wipe sample" means a surface sample collected by wiping a sample medium on surface materials in accordance with the field equipment and sampling guidance in National Institute for Occupational Health and Safety, Manual of Analytical Methods, 4th Ed., Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996).

(22) "Worker" means a person who is employed by a contractor and who performs decontamination of a CML.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE V DECONTAMINATION STANDARDS (1) The CML decontamination standards are as follows:

(a) surface wipe samples and vacuum samples for methamphetamine may not exceed 0.1 micrograms (10^{-6} gram) per 100 square centimeters;

(b) volatile organic compounds (VOCs) may not exceed 1.0 part per million VOCs in air; and

(c) in the event a phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used, surface wipe samples for lead may not exceed 20.0 micrograms per square foot, and vapor samples for mercury may not exceed 50.0 nanograms (10^{-9} gram) per cubic meter in air.

AUTH: 75-10-1303, MCA

IMP: 75-10-1303, MCA

NEW RULE VI DECONTAMINATION PERFORMANCE, ASSESSMENT, AND INSPECTION (1) For the department to confirm, pursuant to 75-10-1305(4), MCA, that the decontamination standards in [NEW RULE V] have been met for an inhabitable property where clandestine methamphetamine manufacturing has taken place, and for the department to remove the property from the list of contaminated property maintained pursuant to 75-10-1306, MCA, all sampling, submittal of samples, and work performed to assess the extent of contamination and comply with

CML decontamination standards and disposal of contaminated material must be performed by the department or by contractors, supervisors, and workers certified by the department pursuant to this subchapter to perform that work.

(2) Upon confirmation by the department that an inhabitable property has been properly remediated to the standards provided in [NEW RULE V], the department shall issue a certificate of fitness to the property owner of record.

(3) At any reasonable time, upon presentation of credentials, and for the purpose of determining compliance with the provisions of this subchapter, an employee or agent of the department may:

(a) enter and inspect any place at which a CML decontamination project is being conducted pursuant to this subchapter; or

(b) enter any place at which records pertinent to a CML decontamination project conducted pursuant to this subchapter are maintained, and examine or copy any such records.

AUTH: 75-10-1303, MCA

IMP: 75-10-1303, MCA

NEW RULE VII PERFORMANCE STANDARDS (1) A contractor performing a CML decontamination project pursuant to this subchapter shall:

(a) perform all contamination assessment and decontamination work and disposal of contaminated material only with certified workers and supervisors;

(b) file a work plan with, and obtain written approval of the plan from, the department prior to beginning the decontamination project;

(c) perform all work in accordance with the approved work plan; and

(d) station on site, at all times decontamination work is being performed, a contractor-employed certified supervisor to oversee the project.

(2) Department approval of a work plan does not relieve a contractor from compliance with any other applicable requirements including, but not limited to, state and local building codes, occupational safety and health standards, and the solid waste, hazardous waste, and asbestos requirements in ARM Title 17, chapters 50, 53, and 74.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE VIII CONTRACTOR CERTIFICATION AND RENEWAL (1) An applicant for department certification as a CML decontamination contractor shall submit to the department:

(a) evidence of department certification for each employee who will work on a CML decontamination project;

(b) documentation that the contractor has at least one department certified CML decontamination supervisor;

(c) a completed CML decontamination contractor certification application form; and

(d) the fee prescribed in [NEW RULE XVIII].

(2) CML decontamination contractor certification is valid for two years from the date of issuance.

(3) A certified CML decontamination contractor applying for renewal of certification prior to the expiration of the current certificate, or a previously certified contractor applying for certification following expiration of the previous certificate, shall follow the requirements of (1)(a) through (d).

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE IX WORKER AND SUPERVISOR CERTIFICATION (1) An applicant for department certification as a CML decontamination worker shall successfully complete a basic decontamination worker course and submit to the department within 60 days after completing the course:

- (a) a completed CML decontamination worker application;
- (b) evidence of successful completion of hazardous waste operations and emergency response (HAZWOPER) training including the initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher training, conducted pursuant to 29 CFR 1910.120;
- (c) the fee prescribed in [NEW RULE XVIII]; and
- (d) evidence of successful completion of a department sponsored or approved basic CML decontamination worker course with a score of 70% or higher.

(2) An applicant for department certification as a CML decontamination supervisor shall successfully complete the basic decontamination worker and decontamination supervisor courses and submit to the department within 60 days after completing the basic supervisor course:

- (a) a completed CML decontamination supervisor application;
- (b) evidence of successful completion of HAZWOPER training, including initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher, and HAZWOPER supervisor training, conducted pursuant to 29 CFR 1910.120;
- (c) the fee prescribed in [NEW RULE XVIII];
- (d) evidence of a valid Montana CML decontamination worker certificate;
- (e) evidence of 40 or more hours of on-site experience in hazardous material or CML decontamination projects; and
- (f) evidence of successful completion of a department sponsored or approved basic CML decontamination supervisor course.

(3) The department may waive some or all of the experience requirements for an applicant for certification as a CML decontamination supervisor whose application is received by the department prior to April 1, 2007.

(4) Worker and supervisor CML decontamination certificates are valid for two years from the date of issuance.

(5) Workers and supervisors shall make certificates or proof of certification available for inspection at all times during a CML decontamination project that is being performed pursuant to this subchapter.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE X WORKER AND SUPERVISOR CERTIFICATION RENEWAL

(1) An applicant for renewal of certification as a CML decontamination worker or supervisor shall successfully complete a department sponsored or approved refresher training course and submit to the department at least 30 days before expiration of the current certificate:

(a) a completed application, on a form provided by the department, for certificate renewal;

(b) the fee prescribed in [NEW RULE XVIII]; and

(c) evidence of successful completion of a department sponsored or approved refresher training course with a score of 70% or higher.

(2) If a previously certified worker applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the worker shall submit to the department:

(a) a completed application, on a form provided by the department, for certificate renewal;

(b) the fee prescribed in [NEW RULE XVIII]; and

(c) evidence of successful completion of the most recent department sponsored or approved basic CML decontamination worker course with a score of 70% or higher.

(3) If a previously certified supervisor applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the supervisor shall submit to the department:

(a) a completed application, on a form provided by the department, for certificate renewal;

(b) the fee prescribed in [NEW RULE XVIII]; and

(c) evidence of successful completion of the most recent department sponsored or approved basic CML decontamination supervisor course.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XI BASIC TRAINING COURSE CONTENT (1) For

departmental approval, basic worker and supervisor CML decontamination training courses must include, at a minimum:

(a) information on state and federal laws, rules, and regulations applicable to clandestine methamphetamine manufacturing sites including, but not limited to:

(i) precursor drugs;

(ii) the Federal Occupational Safety and Health Act, 29 USC 651 et seq.; and

(iii) this subchapter;

(b) chemical terminology, classifications, and properties related to clandestine methamphetamine manufacturing;

(c) clandestine methamphetamine laboratory characteristics;

(d) first aid;

(e) adverse health effects of exposure to clandestine methamphetamine manufacturing including, but not limited to:

(i) toxicology; and

- (ii) symptomology;
- (f) compatibility of chemicals related to CML decontamination;
- (g) techniques and equipment used for CML decontamination;
- (h) handling unknown substances;
- (i) state and federal requirements for hazardous substances including, but not limited to:
 - (i) disposal;
 - (ii) transportation;
 - (iii) storage; and
 - (iv) reporting.
- (2) Training for supervisors must also include:
 - (a) obtaining necessary information for making site assessments;
 - (b) initial site assessment;
 - (c) initial site sampling;
 - (d) work plan development;
 - (e) effective cleanup procedures;
 - (f) final site sampling; and
 - (g) report preparation.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XII REFRESHER TRAINING COURSE (1) For department approval, CML decontamination worker and supervisor refresher training courses must include, at a minimum:

- (a) a thorough review of the subjects required under [NEW RULE XI];
- (b) an update of information on state-of-the-art procedures and equipment;
- (c) a review of regulatory changes and interpretation; and
- (d) other subjects as necessary to update information on new technology and procedures.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XIII RECIPROCITY (1) The department shall provide reciprocal certification for contractors, supervisors, and workers trained and certified in another state when the standards and training of the other state are substantially similar to those of this subchapter.

- (2) An applicant for reciprocity shall submit to the department:
 - (a) a completed application form for the type of certification being requested;
 - (b) documentation of specialized training for CML decontamination;
 - (c) evidence of successful completion of HAZWOPER training including initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher, conducted pursuant to 29 CFR 1910.120;
 - (d) the fee prescribed in [NEW RULE XVIII]; and

(e) for supervisor reciprocal certification only, evidence of successful completion of HAZWOPER supervisor training, conducted pursuant to 29 CFR 1910.120.

- (3) Prior to certificate approval, the department may require the applicant to:
- (a) submit additional information;
 - (b) successfully complete a refresher course; or
 - (c) pass a department-administered examination.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XIV TRAINING PROVIDER CERTIFICATION (1) A person may not provide basic CML decontamination worker or supervisor or refresher training for department certification of decontamination workers or supervisors, unless the department has approved the instructors and courses and issued a training provider certificate to the person.

(2) An applicant for training provider certification shall submit to the department at least 60 days before the requested approval date:

- (a) a completed training provider application, on a form provided by the department;
 - (b) a list of all instructors and a description of their qualifications, including their knowledge and experience to properly train workers and supervisors, and documentation of academic or field experience in CML decontamination;
 - (c) a detailed description of course content and the amount of time allotted to each major topic;
 - (d) a description of teaching methods;
 - (e) a list of questions for development of an examination;
 - (f) copies of all materials proposed for use, when requested by the department; and
 - (g) the fee prescribed in [NEW RULE XVIII].
- (3) Training provider certification is valid for two years from the date of issuance.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XV CERTIFIED TRAINING PROVIDER RESPONSIBILITIES

(1) A certified CML decontamination training provider shall:

- (a) notify the department in writing at least 30 days before any training is scheduled to begin. The notification must include the dates and times of the training and the address of the location where training will be conducted;
- (b) limit the size of each class to a level that is appropriate for learning the course content;
- (c) incorporate into training any required subject matter developed by the department; and
- (d) obtain department approval in advance of any changes to the training.

(2) When requested by the department, a training provider shall confirm successful completion of training courses by applicants seeking worker or supervisor certification.

(3) At the department's request, a training provider shall allow a department representative to attend, without charge, a training course as an observer to verify that the training provider conducts the training in accordance with the training approved by the department.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XVI TRAINING PROVIDER CERTIFICATION RENEWAL

(1) An applicant for renewal of CML decontamination training provider certification shall submit the following to the department at least 30 days before expiration of the current certificate:

(a) a completed training provider application as prescribed in [NEW RULE XIV(2)]; and

(b) the fee prescribed in [NEW RULE XVIII].

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XVII DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATION

(1) The department may deny, suspend, or revoke the certification of a CML decontamination worker, supervisor, contractor, or training provider who fails to meet any of the requirements of this subchapter.

(2) The department may suspend or revoke the certification of a decontamination worker, supervisor, contractor, or training provider who obtains a certificate by error, fraud, or misrepresentation.

(3) When the department believes that a violation of a rule in this subchapter has occurred, it shall serve written notice of the violation personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must specify the provision of the rule alleged to have been violated and the facts alleged to constitute a violation. The notice shall include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, within 30 days after the order is received, the person named requests, in writing, a hearing before the department.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

NEW RULE XVIII FEES (1) For any CML decontamination training and testing of contractors, workers, or supervisors provided by the department, the department shall charge reasonable fees that cover the cost of the training and testing.

(2) Concurrent with submittal of an application under this subchapter, the applicant shall pay the following fees:

- (a) \$500 for each initial, renewal, or reciprocal CML decontamination worker certificate application;
 - (b) \$500 for each initial, renewal, or reciprocal CML decontamination supervisor certificate application;
 - (c) \$500 for each initial, renewal, or reciprocal CML contractor certificate application; and
 - (d) \$500 for each initial or renewal CML decontamination training provider certificate application.
- (3) Fees are nonrefundable and must be paid by check or money order made payable to the department.

AUTH: 75-10-1304, MCA

IMP: 75-10-1304, MCA

REASON: The adoption of proposed NEW RULES I through XVIII is necessary because, as stated in House Bill 60 (2005): "...some properties are being contaminated with hazardous chemical residues created by the manufacture of methamphetamine. Innocent members of the public may be harmed when they are unknowingly exposed to these residues if the properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by the lack of a decontamination standard. The purpose of [HB 60] is to protect the public health, safety, and welfare by providing specific cleanup standards and authorizing the department to establish a voluntary program that will provide for a property decontamination process that will meet state standards". HB 60, codified in Title 75, chapter 10, part 13, MCA, authorizes the department to adopt NEW RULES I through XVIII pertaining to the decontamination of property contaminated from clandestine manufacture of methamphetamine.

The Montana Clandestine Methamphetamine Lab Decontamination Sampling and Analysis Plan (August 2005), incorporated by reference in NEW RULE III, contains sampling methods and procedures for vacuum and wipe sampling, and analytical methods for methamphetamine, lead, mercury, and volatile organic compounds. Copies of the Sampling and Analysis Plan can be obtained from Deb Grimm, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by fax (406) 444-1374; or by email to dgrimm@mt.gov.

Proposed NEW RULE XVIII assesses fees for clandestine methamphetamine lab decontamination worker, supervisor and contractor application submittals, and for clandestine methamphetamine lab decontamination training course approval. The fiscal note accompanying HB 60 states: "For purposes of this fiscal note, we are estimating that 15 contractor and local health officials will become certified and that the fees will be \$500 for annual revenue of \$7,500 per year." However, the cumulative amount for all persons of the proposed fees, and the number of persons affected is not known.

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 Robert A. Martin, Waste and Underground Tank Management Bureau,

Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov, no later than March 14, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Jane Amdahl, attorney, has been designated to preside over and conduct the hearing.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; methamphetamine cleanup; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

BY: /s/ Richard H. Oppen

RICHARD H. OPPEN, Director

Certified to the Secretary of State, January 13, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	AMENDED NOTICE OF
17.24.116 pertaining to application)	PROPOSED AMENDMENT
requirements for operating permit)	
)	(HARD ROCK MINING)

TO: All Concerned Persons

1. On September 8, 2005, the Board of Environmental Review published MAR Notice No. 17-230 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1649, 2005 Montana Administrative Register, issue number 17. On December 22, 2005, the Board published an amended notice of public hearing on proposed amendment of the above-stated rule at page 2544, 2005 Montana Administrative Register, issue number 24, to change the time for the hearing at Fort Belknap on January 11, 2006, from 8:00 a.m. to 10:00 a.m. On January 6, 2006, the Department of Environmental Quality completed an economic impact statement pursuant to 2-4-405, MCA, on the proposed rule amendments.

2. This amended notice of proposed amendment is being published to extend the public comment period to March 17, 2006, to provide the public an additional opportunity to comment on the amendments proposed in MAR Notice No. 17-230, to provide the public with an opportunity to comment on potential modifications to the original rule amendments, and to provide the public an opportunity to comment on the existing and future economic impact statements on the proposed rules.

3. The Board is considering two modifications to the proposed rule amendment published in MAR Notice No. 17-230. One modification would expressly exempt from proposed ARM 17.24.116(6) mines that have permits on the date that ARM 17.24.116(6) becomes effective. This exemption would include permit amendments and revisions issued after the effective date of proposed ARM 17.24.116(6). The second modification would change the requirement that a reclamation plan must "conclusively demonstrate" that no long-term water treatment will be necessary to a requirement that the reclamation plan "demonstrate by clear and convincing evidence" that no long-term water treatment will be necessary. With these modifications, the rule amendments would read as follows:

"(6) Except as provided in (7), the reclamation plan must demonstrate by clear and convincing evidence that, after the period of time allotted by 82-4-336(3), MCA, no treatment of surface or ground water for carcinogens or toxins will be required to meet water quality standards at the point of discharge. For the purposes of this section, completion of mining operations is defined in ARM 17.24.150(1) and (2).

(7) Section (6) does not apply to mines with valid permits in existence on [the effective date of (6)] or to existing or future amendments or revisions to those permits.

4. The reason for (7) is that, for existing mines for which long-term water treatment will be necessary, the rule amendment would be impossible to implement. The rationale for the change in the standard of proof is that a conclusive demonstration, at the time of permit issuance, would be impossible in most situations, even in situations in which most evidence indicates that long-term water treatment would not be necessary. The clear and convincing evidence standard is less stringent. It is an intermediate standard between "preponderance of the evidence," which requires proof by more than 50% of the evidence, and the "beyond a reasonable doubt" standard.

5. The Board has also directed the Department of Environmental Quality to prepare an amended economic impact statement on adoption of the rule amendments with the modifications noted above. The amended economic impact statement will be available by February 15, 2006, and can be obtained by accessing the Department's website at www.deq.mt.gov or submitting a request to the address or telephone number provided in paragraph number 6.

6. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., March 7, 2006, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

7. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than March 17, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date. Written data, views or arguments may also be submitted by fax at (406) 444-4386 or electronically via email addressed to the Board Secretary at ber@mt.gov, no later than 5:00 p.m. March 17, 2006.

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA;

underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@mt.gov, or may be made by completing a request form at any rules hearing held by the Board.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

By: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State January 13, 2006.

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

In the matter of the proposed amendment	)	NOTICE OF PUBLIC
of ARM 24.117.301 definitions,	)	HEARING ON PROPOSED
24.117.401, 24.117.402, 24.117.403,	)	AMENDMENT, ADOPTION
24.117.404, 24.117.405 and 24.117.406	)	AND REPEAL
general provisions, 24.117.601)	
and 24.117.602 contest regulations,)	
24.117.702, 24.117.703, 24.117.705,)	
24.117.706, 24.117.709 and 24.117.710)	
boxing regulations, 24.117.801, 24.117.802,)	
24.117.803, 24.117.804, 24.117.805,)	
24.117.810, 24.117.811, 24.117.812 and)	
24.117.815 ring regulations, 24.117.901,)	
24.117.903, 24.117.904, 24.117.905,)	
24.117.906 and 24.117.907 boxing officials,)	
24.117.1001, 24.117.1002, 24.117.1005,)	
24.117.1006 and 24.117.1007 club boxing,)	
the proposed adoption of New Rule I promoter,)	
New Rule II bout approval, New Rule III referee))	
New Rule IV fee abatement, New Rule V)	
suspension and revocation, New Rules VI)	
through XIV mixed martial arts, and the)	
proposed repeal of 24.117.502, 24.117.902,)	
24.117.1003 and 24.117.1004)	

TO: All Concerned Persons

1. On February 17, 2006, at 2:30 p.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Athletics (Board) no later than 5:00 p.m., February 10, 2006, to advise us of the nature of the accommodation that you need. Please contact Chris Bernet, Board of Athletics, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2334; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdata@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its rules, the Board is proposing a substantial number of revisions to its rules. Some of the proposed amendments are technical in nature, such as

updating addresses, substituting modern language for archaic phrasing, omitting gender-specific references, amending for use of consistent terminology, reorganization and renumbering within the rules, and updating obsolete or inappropriate statutory references. Other rule changes reflect a decision by the Board to streamline its rules. In some instances, such substantial changes are being proposed to a rule that the Board determined the simplest solution is to draft a new rule to replace the old rule, which is then repealed. In other cases, new language is being proposed to clarify matters and processes that apparently are confusing to licensees and members of the public. The Board is also amending and updating the rules to coincide with the current regulations and safety codes of USA Boxing, as required pursuant to 23-3-405, MCA. Accordingly, the Board believes that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules, and adopt new rules at this time. Where there are additional specific bases for a proposed action, the Board will identify those reasons immediately following that rule.

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

24.117.301 DEFINITIONS (1) "Amateur" means an individual who has never been a professional boxer or professional wrestler, as defined in this chapter, as well as an individual who has never received nor competed for any purse, either for participating in any boxing contest or exhibition or for the expenses of training.

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

~~(6) (7)~~ "Kickboxing", or "full contact karate" is means the use of hands, feet or other striking techniques which are utilized to disable or cause injury to an opponent in a contest, exhibition or performance.

(8) "Manager" means a person in overall charge of a boxer and has the executive function of planning, organizing, coordinating, directing, contracting, and supervising any scheduling or business activity of a boxer and is responsible for the results of such activity.

~~(7) (9)~~ "Mud wrestling" is interpreted by the board to include means wrestling in ~~jello~~ Jell-o, natural dirt and water, ~~polyurethane~~, polyurethane, synthetic, or other unnatural or foreign substances. This rule is advisory only.

(8) remains the same but is renumbered (10).

(11) "Recognized amateur association", for the purposes of 23-3-404, MCA, means the United States Amateur Boxing, Inc.

(12) "Ring generalship" means having the ability to quickly grasp and take advantage of every opportunity offered, the capacity to cope with all kinds of situations which may arise, and to foresee and neutralize an opponent's method to adopt a style of boxing at which the contestant is not particularly skillful.

(13) "Ringside health care professional" means a licensed physician (M.D. or D.O.), a licensed physician-assistant certified, or a licensed advanced practice registered nurse (nurse practitioner, nurse-midwife, nurse anesthetist, or clinical nurse specialist).

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

AUTH: 23-3-405, MCA
IMP: 23-3-404, 23-3-405, MCA

REASON: The Board determined that it is reasonable and necessary to amend the definitions rule to add several definitions that are used within the Board rules, but have never been defined by the Board. Adding the definitions will provide greater clarity and will assist the Board in the application and enforcement of the Board rules.

It is reasonable and necessary to add a definition of "amateur" to address numerous inquiries to the Board and following lengthy Board review, research and discussion. The Board had never previously defined "amateur", but following the amendment of the rule there will exist definitions for "amateur", "semiprofessional", and "professional" with regard to athletes and athletic events regulated by the Board.

Section 23-3-404, MCA, provides that the Board has sole jurisdiction over professional or semiprofessional boxing or wrestling events in Montana. The statute further states that events for contestants under 16 years of age conducted by a recognized amateur association fall outside the Board's jurisdiction. The Board determined it is reasonably necessary to amend the rule to define "recognized amateur association" to alleviate confusion among licensees, clarify the Board's intent as to the exception to Board jurisdiction, and further implement the applicable statute.

The terms "manager" and "ring generalship" have existed in the Board's rules for many years, but have never before been defined. Upon review of the rules, the Board concluded that adding these two definitions would serve to clarify the rules for licensees and members of the public.

It is reasonable and necessary to amend the rule to include a definition of "ringside health care professional" to address changes to section 23-3-405, MCA, following the 2005 legislative session. Senate Bill 105 (Ch. 202, Laws of 2005) amended the statute to require the Board to adopt rules providing for the attendance at ringside of either a licensed physician, a licensed physician assistant-certified or a licensed advanced practice registered nurse, as defined in statute. The rule is being amended to coincide with the new legislation and further implement the statute.

24.117.401 GENERAL INFORMATION (1) The mailing address of the board is: Board of Athletics, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, ~~(406) 844-2350~~.

AUTH: 23-3-405, MCA
IMP: 23-3-405, MCA

24.117.402 FEES

(1) Promoters/ matchmakers	\$500, plus bonding requirements
<u>(a) Bonding requirements are in addition to the fee</u>	
(2) Boxers/kickboxers	35 <u>45</u>
(3) Wrestlers	35 <u>45</u>
(4) Referees	35 <u>45</u>
(5) Managers/trainers	35 <u>45</u>

(6) Seconds	35 <u>45</u>
(7) Judges	35 <u>45</u>
(8) Timekeeper/knockdown judge	35
(9) <u>(8)</u> Minimum kicking requirement	35 <u>45</u>
(10) Club boxing fees:	
(a) boxer	20
(b) seconds	20
(c) timekeeper	20
(d) manager/trainer	20
(e) promoter's application	100
<u>(9) Fees are nonrefundable.</u>	

AUTH: 23-3-405, 37-1-134, MCA

IMP: 23-3-405, 23-3-501, 37-1-134, MCA

REASON: The Board determined it is reasonable and necessary to amend the Board's fee schedule to delete fees applicable to only club boxing licensees. The general licensure fees will apply to all licensees following the amendment. The Board and Department concluded that Department staff expends a similar, if not greater, amount of time, expense and effort processing applications and regulating events for club boxing as compared to professional athletic events. In addition, the number of club boxing events has increased significantly since the inception in 2001, requiring the Board to hire additional inspectors to regulate the increasing number of events. Currently, Board inspectors attend approximately five club boxing events a week during the September to April club boxing season, for an estimated total of 160 events per season.

The Board has determined that it is reasonable and necessary to make the proposed fee increases to comply with provisions of 37-1-134, MCA, and keep the Board's fees commensurate with program costs. In providing administrative services to the Board, the Department has determined that unless licensure fees are increased immediately and as proposed, the Board will have a shortage of operating funds by the end of fiscal year 2006.

Licensing fees for all board licensees will be increased. Licensing fees for club boxing licensees, including boxers, seconds and managers/trainers, will increase from \$20 to \$45, resulting in a total revenue increase of \$24,175 and affecting approximately 967 licensees. The license fee for club boxing promoters will increase from \$100 to \$500, to coincide with the current license fee for professional promoters. This increase will affect approximately one licensee, with an estimated annual revenue increase of \$400. Licensing fees for professional boxers, kickboxers, wrestlers, referees, seconds, judges, managers/trainers and minimum kicking requirements for kickboxers, will increase from \$35 to \$45, resulting in a total revenue increase of \$2,390 and affecting approximately 239 licensees. The Board is also proposing to amend the rule to delete the licensure fees for timekeepers as the Board lacks statutory jurisdiction to license timekeepers. The Board is also adding a provision to clarify that all fees payable to the Board are nonrefundable.

24.117.403 PROHIBITIONS (1) The board will not sanction and will seek to enjoin the following ~~types of bouts and~~ athletic events:

(a) ~~bouts or athletic events~~ in which more than two boxing contestants are to appear in the ring at the same time; ~~and~~

(b) ~~bouts or athletic events~~ between members of the opposite sex.

(c) ~~any barroom type brawls, "so you think you're tough" type challenge contests and roughneck type bouts;~~

(d) ~~any exotic form of activity which is advertised as a form of wrestling, boxing or fighting including "ultimate challenge" contests and which involves recognition, a prize or a purse at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise.~~

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

REASON: The Board determined it is reasonable and necessary to amend this rule to account for changes in the types of current boxing and wrestling events. The Board acknowledges that events currently labeled as "ultimate challenge" or "so you think you're tough" events are not necessarily the types of events the Board would seek to enjoin, and the Board is amending the rule accordingly.

24.117.404 CONTRACTS AND PENALTIES (1) ~~Terms of all contracts~~ Contracts between promoters, managers, semiprofessional or professional boxing, club boxing, kickboxing, and wrestling organizations and contestants shall be completed on forms approved by the board. The original or a true copy of each contract shall be filed with the board at least 24 hours prior to the date of the event, unless ~~specific, individual delay is approved~~ otherwise allowed by the board. Contestants must sign contracts with their legal names.

(2) ~~Telegrams or letters~~ Letters, including faxed letters, showing acceptance of terms pending the signing of a contract, ~~will~~ shall be considered as an agreement between the contestant, ~~his~~ the contestant's manager, and the organization. No verbal agreements will be permitted.

(3) ~~In all cases in which performance under a contract has begun, if either~~ When a party to the a contract under which performance has begun finds it impossible or inconvenient to carry out the terms of the contract, or intends, for other reasons, to violate a condition of ~~his or her~~ the contract with another licensee, ~~he or she~~ the party shall notify the board immediately. Failure to provide such information shall ~~may~~ result in disciplinary action by the board.

(4) When a contestant ~~is under contract;~~ appears at weigh-in time, ~~and~~ is ready to fulfill ~~his~~ the contract, and neither ~~his~~ an opponent nor a substitute appears, the promoter must pay the contestant ~~his~~ the contract guarantee unless a forfeit is provided.

(5) remains the same.

(6) If a contestant fails, without good cause, to comply with ~~his or her~~ the terms of a contract with a promoter, ~~he~~ the contestant shall ~~may~~ be subject to disciplinary action by the board.

(7) If a promoter fails, without good cause, to comply with ~~his or her~~ the terms of a contract with a contestant, he shall the promoter may be subject to disciplinary action by the board.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-603, MCA

24.117.405 MEDICAL ADVISOR (1) The board ~~will~~ shall appoint a medical advisor ~~to the board~~ to provide the board competent medical advice regarding issues of health and safety implicated in the course and conduct of boxing contests. The duties of the medical advisor include:

(a) and (b) remain the same.

(2) ~~The medical advisor shall submit his recommendations in writing to the board. During board deliberations the~~ The medical advisor will be permitted to may participate, ~~however, will in board deliberations, but shall~~ not be permitted to vote on the board's adoption or rejection of the recommendation. ~~Any~~ The medical advisor shall submit recommendations in writing to the board and any recommendations accepted by the board ~~will~~ shall be adopted through a formal rulemaking process.

(3) remains the same.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.406 GENERAL LICENSING REQUIREMENTS (1) and (2) remain the same.

~~(3) Before holding any specific athletic event any club holding an annual license shall obtain a separate permit or sanction from the board at least 21 days prior to the event. This section shall not apply to club boxing events.~~

~~(a) The permit shall be posted and prominently displayed in the box office of the premises where the athletic event is held.~~

~~(4) Every contestant must compete consistently under the same name. Ring names may be used, but and must appear on the official license as issued by the board.~~

~~(5) Prior to issuance of a promoter's license, the promoter shall, on a form provided by the board, deliver to the board a surety bond in the amount of \$5,000, or 5% of projected gross revenue, whichever is greater. The board shall determine the amount of the surety bond based on the facts and circumstances of the particular event, including a projection of gross revenue submitted by the promoter. The bond shall be forfeited to the board as a penalty bond in the event the board finds that the promoter has violated any provision of Title 23, chapter 3, MCA, or rule promulgated thereunder.~~

~~(6) Promoters are responsible to insure shall ensure that adequate public safety is maintained.~~

~~(7) The promoter Promoters shall provide insurance to adequately protect the contestants, the officials and the attending public, and shall furnish proof of such insurance to the board before sanction shall be granted.~~

~~(8)~~ (3) Applications and fees shall be made to received by the board prior to or on the date of the athletic event.

(a) remains the same.

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

~~(10) The board must be notified of the names and weights of all contestants involved in an athletic event, at least 10 days before the athletic event. This section shall not apply to club boxing events.~~

~~(11) The board reserves the right to question any applicant. If, in the board's judgement, the applicant does not have sufficient knowledge of the sport or is otherwise not deemed responsible to act, such license may be denied.~~

~~(12) No applicant, licensee or official shall appear at ringside while under the influence of alcohol or mood-altering drugs, unless prescribed to the individual by a physician.~~

~~(13) The board shall be notified in such form and with such detailed information as the board may prescribe, that an athletic event is to be telecast, televised or broadcast in any manner, including but not limited to:~~

~~(a) television,~~

~~(b) radio,~~

~~(c) any transmission via a cable television system,~~

~~(d) any transmission via microwave, closed circuit, satellite or fiber optic link,~~

or

~~(e) any other method of limited distribution.~~

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

~~(15)~~ (6) All contestant applicants or contestant licensees must contestants shall submit a certified laboratory report documenting that the contestant has, within 30 days prior to the each bout or match in which the contestant is scheduled to appear, been administered an HIV test for the presence of AIDS antibodies and that the results of such test were negative.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, 23-3-502, MCA

24.117.601 CONTEST REGULATIONS ~~(1) Duly accredited news media representatives must, upon request, be admitted at the official weighing-in of all contestants.~~

~~(2)~~ (1) Smoking will not be permitted at athletic events licensed by the board, except outdoor athletic events. Signs reading "NO SMOKING" shall ~~There must be~~ displayed in conspicuous places throughout the building where the athletic event is held, ~~signs reading "NO SMOKING".~~

~~(3)~~ (2) Notice of any change in announced or advertised programs for any athletic event must be promptly filed with the board ~~and the press~~ at least 24 hours prior to the athletic event. Notices announcing such change or substitution must ~~also be conspicuously posted at the box office, and~~ announced from the ring before the opening athletic event.

~~(4)~~ (3) Only board members, contestants, seconds, managers, promoters, ~~physicians~~ ringside health care professionals, and representatives of the board will

be permitted in dressing rooms. ~~All of them must present~~ upon presentation of proper credentials issued by the board.

~~(5) Ushers are forbidden to seat anyone after the athletic event has commenced until the round of the athletic event going on has been completed.~~

~~(6) At all evening athletic events, the main or final bout must start no later than 10:00 p.m.~~

(4) No applicant, licensee, inspector, or official shall consume or appear under the influence of alcohol or mood-altering drugs at a venue, unless prescribed to the individual by a physician.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.602 TICKETS (1) No person shall be admitted to any athletic event unless ~~he~~ the person:

(a) holds a ticket;

(b) is a member of the board;

(c) holds an identification card issued by the board for official duty;

(d) is an official provided for the athletic event; or

(e) is a policeman or fireman in uniform and actually on duty.

(2) remains the same.

(3) No contestant ~~will be allowed to~~ shall sell tickets for any athletic event in which ~~he~~ the contestant is engaged on a commission basis, to serve as a remuneration for ~~his~~ services as a contestant.

(4) All tickets, exclusive of ~~except~~ press and complimentary tickets, shall:

(a) have clearly show the price and date of show printed plainly thereon; ;

(b) shall be consecutively numbered; and

(c) shall have a coupon attached, which may be held retained ~~held~~ by the purchaser.

~~(5) Licensed clubs are prohibited from selling any tickets for any price other than the price printed on the ticket, or to change the price of tickets at any time during the athletic event for a price less than tickets for the same seats were sold or offered before the athletic event.~~

~~(6) Licensed clubs must exercise caution to prevent speculation in tickets.~~

~~(7) Advance sales of tickets must be accounted for as part of the gross receipts.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.702 BOXING CONTESTANTS (1) All boxing contestants, ~~except amateur club boxers,~~ must file an application with the board, including a photograph of the applicant. ~~Contestants may also be required to file a birth certificate with the board.~~

(2) All contestants shall present a valid picture ID prior to participating in an athletic event.

(3) Contestants shall compete consistently under the same name. Ring names may be used and must appear on the official license as issued by the board.

~~(2) (4)~~ With the exception of club boxing, no ~~No~~ contestant under the age of 18 or over the age of 35 will ~~shall~~ be licensed to participate in Montana unless an exemption ~~exception~~ is granted by the board.

(a) Contestants over the age of 35 wishing to compete must provide to the board a written statement by the contestant's personal physician (M.D.) that:

(i) the physician has performed a full physical examination of the contestant within a year of the event; and

(ii) the contestant is medically fit to participate in the event.

~~(3)~~ remains the same but is renumbered (5).

~~(4) (6)~~ Contestants must ~~shall~~ wear proper athletic attire and appropriate protective devices, including:

(a) form-fitting mouthpiece; and

(b) protective foul proof athletic cup.

~~(5) (7)~~ All contestants to appear ~~Contestants competing~~ in the main event must train in the city where the bout is to be held, or another suitable place approved by the board, at least 24 hours prior to the date of their ~~the~~ bout.

~~(6) (8)~~ Any contestant who has participated in an athletic event, unless specifically granted an exception by the board, shall be placed under temporary suspension for the health and safety of the contestant as follows:

(a) physical injury or severe punishment - discretionary upon advice of ringside physician

(b) knockout (KO) - 60 days suspension

(c) technical knockout (TKO) - 30 days suspension

(d) Contestants receiving three medical suspensions in the contestant's boxing history shall be placed on indefinite suspension. The board may lift the suspension upon certification by the contestant's personal physician (M.D.) that:

(i) a complete physical examination of the contestant has been performed; and

(ii) the contestant is medically fit to participate.

~~(7) (9)~~ In any case where ~~An athletic bout shall be stopped and decision rendered upon determination by the referee decides that:~~

(a) the contestants ~~a contestant(s) is~~ are not honestly competing;

(b) that the knockout is a "dive"; or

(c) the foul is a prearranged action, ~~the athletic event shall be stopped and no decision rendered.~~

~~(8) (10)~~ Any contestant who participates ~~Contestants participating~~ in a sham or fake bout shall be disqualified and shall not thereafter be permitted to contend ~~be prohibited from participating in any bout or athletic event in this state as follows: for a period of at least six months for the first offense. For the second offense the contestant shall be disqualified from further admission or participation in any athletic event held or given in the state of Montana for a period of at least one year.~~

(a) six months for the first offense; or

(b) one year for subsequent offenses.

~~(9)~~ All contestants must be in the building or wherever the contest is to be held at least one hour prior to the commencement of the bout.

~~(10)~~ (11) All contestants must shall be ready to enter the ring immediately upon the finish completion of the preceding bout or athletic event. ~~The referee may disqualify a contestant breaking this rule. Should an emergency arise requiring a contestant to leave the ring during the minute intermission between rounds, permission must be secured from the referee. Failure to return before the gong sounds announcing the next round will result in disqualification.~~

~~(11)~~ (12) Whenever a contestant, because of injury or illness, is unable to take part in an athletic event for which the contestant is under contract, the contestant or the contestant's manager shall immediately report the fact to the board or inspector. The contestant must submit to an examination by a physician designated approved by the board, which examination must be made prior to the date set for the athletic event. The expense of the physician's examination is to be paid by the contestant.

~~(12)~~ Before a license is issued to any contestant, the contestant shall satisfy the board that the contestant has the ability to compete and is fit to participate in an athletic event. If, in the opinion of the board, a contestant's ability to perform is questionable, whether from causes of illness, mental condition or loss of the ability to compete, the board may:

- ~~(a) refuse to permit the contestant to participate,~~
- ~~(b) retire the contestant from further competition, or~~
- ~~(c) suspend the license.~~

~~(13)~~ Applicants shall furnish verified records of their last six athletic events involving boxing.

~~(14)~~ (13) During the a bout or athletic event, it is prohibited for a contestant to drink anything but water. The use of drugs of any kind, before or during the bout, shall be cause for disqualification and/or other disciplinary action by the board. All contestants may be required to submit to a drug test before and after a bout or athletic event in which the contestant is involved.

~~(15)~~ (14) The board may at its discretion allow limited professional and semi-professional boxing rounds at a club-boxing event. The professional and semi-professional rounds must conform to the all applicable statutes and rules governing professional and semi-professional events.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, 23-3-603, MCA

REASON: It is reasonable and necessary to amend the rule to provide for clear and consistent regulations regarding all boxing contestants and to further ensure the safety of all contestants. The Board determined that it is necessary to specify that boxers younger than 18 or older than 35 must seek and obtain an exception to compete from the Board. It is reasonably necessary to require all contestants over the age of 35 years to obtain a physical examination and a physician's statement that the boxer is medically fit to participate. The previous exceptions for club boxing contestants are being deleted from rule.

24.117.703 FEMALE CONTESTANTS (1) ~~All bouts~~ Bouts for female contestants shall be scheduled for no more than 10 rounds with each round lasting two minutes and one minute between rounds.

(2) Female boxers shall not use ~~no~~ facial cosmetics and ~~have~~ shall secure their hair ~~secured~~ with soft and non-abrasive material.

(3) ~~The~~ Female contestant weight classes shall be the same as used by male boxers.

(4) Female boxers shall wear properly fitted breast protectors and groin protectors ~~that are both properly fitted and a mouthpiece is also required.~~

(5) remains the same.

(6) All female boxers must provide proof of a negative pregnancy test prior to each bout and an attestation that the boxer has no knowledge of her pregnancy.

Evidence of a negative pregnancy test shall include either:

(a) a written certification by a physician of a negative pregnancy test previously administered within 14 days of the bout; or

(b) negative results of a pregnancy test administered at the venue.

~~(7) Promoters will provide adequate, separate dressing room facilities.~~

~~(8) Physical examinations shall be obtained annually and must include a pelvic examination. Within 24 hours of each contest, an examining physician shall make an abdominal examination, and a breast examination, noting any masses.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

REASON: The Board determined it is reasonable and necessary to update the rule regarding female boxers to conform to current USA Boxing safety standards. The Board determined it was reasonable to remove the requirement of abdominal and breast examinations prior to competing. The Board proposes to add the requirements of a recent negative pregnancy test and an attestation stating that the boxer has no knowledge of her pregnancy at the time of the bout to further ensure female contestants' safety.

24.117.705 MANAGERS (1) ~~A manager is a person who is in overall charge of a boxer, who has the executive function of planning, organizing, coordinating, directing, contracting and supervising any scheduling or business activity of a boxer and is responsible for the results of such activity.~~ Applicants for a managers license shall apply on forms prescribed by the board and furnish the following information:

(a) names and addresses of three references (excluding relatives, present employer, or employees) who can attest to the applicant's experience and integrity; and

(b) proof of applicant's familiarity with the laws and administrative rules of the board, as evidenced by attestation on the application.

~~(2) A contract between a manager and a boxer is not valid unless both parties appear at the same time before the board or a designated member of its staff and receive approval of the contract.~~

~~(3) All contracts between managers and boxers shall be filed with the board within 48 hours after execution of such contracts and at least 48 hours prior to any bouts to which they may relate.~~

~~(4) No manager shall be allowed to contract for services of a boxer under his management for a bout to take place after the expiration of the contract between the manager and his boxer, unless such bout has been approved in advance by the board.~~

~~(5) Copies of all contracts executed between managers and their boxers must be filed with and submitted to the board for approval. A contract, however, becomes null and void at any time the manager or the boxer loses his license through disciplinary action of the board or by refusal of the board to renew a license.~~

~~(6) (2) A boxer is permitted to~~ Contestants shall have one manager only.

~~(7) Contracts to participate in an athletic event must be signed by the boxer's manager, on the boxer's behalf or personally by the boxer when he has no licensed manager of record.~~

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-501, MCA

REASON: The Board determined it was reasonable and necessary to thoroughly review and update their rules for clarity and better organization. The Board is amending this rule to delete confusing and obsolete provisions and requirements that are duplicated elsewhere in the rules. The Board is adding licensure qualifications for managers in response to past legislative audit recommendations.

24.117.706 ELIMINATION-TYPE EVENTS (1) and (2) remain the same.

~~(3) No bout~~ Bouts shall not exceed three rounds of not more than 60 seconds in length, ~~with and provide~~ a minimum of one minute rest period between rounds. ~~There shall be a rest period of one minute between consecutive rounds.~~ Bouts must be staggered to ensure adequate rest time to all contestants.

~~(4) and (5) remain the same.~~

~~(6) Contestants will not be made~~ are not required to comply with the HIV testing required in ~~ARM 24.117.406(15).~~ Contestants must rule, but shall comply with all remaining requirements pertaining to physical condition.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

24.117.709 PHYSICAL EXAMINATION (1) Contestants, including substitutions and exhibition contestants, shall be examined by a physician ringside health care professional approved by the board, at the time of weigh-in or at least five hours prior to entering the ring. Only the contestant and his manager/trainer are allowed in the examination room during the physical.

~~(2) In case of substitution or exhibitions, the contestant shall be subject to the same examination as other contestants and must be approved by the physician and the board.~~

~~(3)~~ (2) Contestants ~~must~~ shall:

~~(a)~~ provide the board with written documentation of a current physical examination ~~and boxing records prior to or at the time of pre-fight examination~~; and

~~(b)~~ meet the following minimum physical requirements as determined by the preflight examination performed by either a medical doctor (M.D.) or doctor of osteopathy (D.O.) for professional boxing and wrestling events. Semiprofessional boxing and club boxing event examinations may be performed by either an M.D., D.O., physician assistant-certified (PA-C), or an advanced practice registered nurse (nurse practitioner, nurse-midwife, nurse anesthetist or clinical nurse specialist):

~~(a)~~ (i) blood pressure no higher than 150/90; (may be controlled by the use of diazide diuretic or low salt program);

~~(b)~~ (ii) temperature below 100 degrees F or 37 degrees C;

~~(c)~~ (iii) distant vision 20/100 each eye - near vision 20/40 by near vision chart;

~~(d)~~ (iv) fundi - no retinopathies or previous detachments (repaired or not);

~~(e)~~ (v) abdomen - no visceralmegaly;

~~(f)~~ (vi) no hernias, containing abdominal contents on coughing or straining;

~~(g)~~ (vii) normal Rhomberg or finger to nose tests;

~~(h)~~ (viii) no suppurative lesions on skin;

~~(i)~~ (ix) no indications of active renal disease or loss of one kidney;

~~(j)~~ (x) no perforated ear drum;

~~(k)~~ (xi) no changes in gait, mental status;

~~(l)~~ no electroencephalographic or CAT scan changes or abnormalities.

~~(m)~~ (xii) no changes in ring performance;

~~(n)~~ exam performed by medical doctor (M.D.) or doctor of osteopathy (D.O.) only for professional boxing and wrestling events. Semiprofessional boxing and club boxing event examinations can be performed by a M.D., D.O., doctor of chiropractic (D.C.), doctor of podiatric medicine (D.P.M.), nurse practitioner (N.P.) or physician's assistants (P.A.);

~~(o)~~ (xiii) no body deformity that would tend to promote injury; and

~~(p)~~ (xiv) no history of epilepsy or seizure disorder.

~~(4)~~ (3) The board may request the following of any ~~boxer or wrestler~~ contestant:

~~(a)~~ through ~~(c)~~ remain the same.

~~(5)~~ (4) The weigh-in shall be at least eight hours before the bout. ~~If a contestant appears~~ Contestants appearing at weigh-in and ~~his body weight is weighing 5% 3% over his the~~ contracted weight, without allowing for dehydration, ~~he will shall~~ be disqualified from the bout.

~~(a)~~ Contestants exhibiting Signs signs of dehydration as a result of taking diuretics or drugs ~~will shall~~ be cause for disqualification disqualified.

~~(6)~~ (5) No contestant shall take part in an athletic event until pronounced fit to do so by the ~~physician appointed by the commission~~ ringside health care professional. ~~The facts of physical~~ Physical fitness of contestants to participate shall be certified by the ~~physician~~ ringside health care professional to the board within 24 hours after the contest.

~~(7)~~ (6) The manager or ~~his~~ an authorized agent shall accompany the contestant to the weigh-in ~~at the designated time~~.

~~(8)~~ (7) If a contestant is late to weigh-in, his the opponent may be weighed in under the direction of the board ~~or inspector~~. ~~If a contestant is late to weigh-in, the contestant and manager are~~ Late contestants and their managers may be subject to disciplinary action by the board.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

24.117.710 PHYSICIAN RINGSIDE HEALTH CARE PROFESSIONAL REQUIREMENTS (1) The ~~examining health care provider identified in ARM 24.117.709~~ professional shall be present at ringside and be available to assist the referee until the conclusion of the final bout. ~~The health care provider will be compensated for the health care provider's services by the promoter.~~

(2) The ringside health care ~~provider~~ professional ~~will~~ shall perform a post-bout examination examinations of all contestants. The health care provider's professional's recommendations, medical disqualifications, reports of contestant injuries, ~~to contestants~~ and any other examination results shall be reported to the board within 24 hours after the athletic event.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

REASON: It is reasonable and necessary to amend the rule to coincide with current terminology used in Senate Bill 105 of the 2005 legislature. The Board determined it was reasonable and necessary to amend the rule to require postbout physical examinations of all boxing contestants for the protection of all contestants. The exception for club boxing contestants is being deleted elsewhere in rule and amendment of this rule clarifies the physical examination requirement.

24.117.801 POINT SYSTEM - SCORING ~~(1) Three judges shall score all athletic events and determine the winner through use of a 10-point must system.~~

~~(2)~~ (1) At the beginning of each round, the ~~contestant will be~~ contestants are given 10 points, from which the judges ~~will~~ deduct points according to his the performance in the round. ~~This deduction is based on the following norms as follows:~~

- ~~(a) 10-10 If the fight is even.~~
- ~~(b) 10-9 In favor of the contestant that has won a light margin.~~
- ~~(c) 10-8 If the contestant was severely punished or thoroughly dominated.~~
- ~~(d) 10-8 If the contestant was knocked down and got up right away in good condition for the protection count (mandatory 8 count).~~
- ~~(e) 10-7 If the contestant was knocked down once and received part of the count on the floor and then continued fighting before the count of 10 or 8.~~
- ~~(f) 10-7 If the contestant was knocked down twice and got up for the protection count.~~
- ~~(g) 10-6 Two knockdowns under the same conditions as above, that is received part of the count on the floor and got up before the count of 10 or 8.~~
- (a) round ends, no clear winner, score 10-10 (rare);

- (b) close round/winning of round by effective boxing, score 10-9;
- (c) one knockdown and a winning of the round, score 10-8;
- (d) no knockdowns, but a clear dominating winning of the round, score 10-8;
- (e) two knockdowns, score 10-7;
- (f) one knockdown and one point deduction to the same boxer, score 10-8
(minus 1) = 10-7;
- (g) more than two knockdowns, score 10-6; and
- (h) two knockdowns and one point deduction to the same boxer, score 10-7
(minus 1) = 10-6.

~~(3)~~ (2) A contestant who has been knocked down can recover his lost points if his the contestant's performance throughout the rest of the round is good. He The contestant will be given credit for ~~what he has~~ points recovered.

~~(4) Officials will have discretion at all times to decide what, in their opinion, constitutes points on behalf of the winner or the loser.~~

~~(5) Officials will use only ink or indelible pencil in scoring.~~

~~(6) When neither contestant has a decided margin, the winner should be determined on points scored and on aggressiveness.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.802 NUMBER AND DURATION OF ROUNDS (1) ~~No athletic event boxing match~~ shall be more than 12 rounds in length and such rounds shall be of not more than three minutes' duration, with one minute intermission between rounds.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.803 DOWN (1) through (5) remain the same.

~~(6) When a contestant's chief second considers the chance of winning hopeless, he may signify his willingness to have the bout stopped by stepping onto the apron of the ring.~~

(7) through (11) remain the same but are renumbered (6) through (10).

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.804 ACCIDENTAL AND INTENTIONAL BUTTS (1) and (1)(a) remain the same.

(b) if in following rounds, as a result of legal blows, the ~~accidental butt injury cut~~ worsens, and the injured contestant cannot continue, the referee shall stop the bout and declare a technical draw if this occurs before the end of the third round. If this occurs after the start of the fourth round, the referee shall declare a technical decision with the winner being the contestant who is ahead on points.

(2) remains the same.

(3) In the case of a clear and intentional butt when the bout can continue, the contestant who initiated the butt shall have a two point deduction. The referee shall stop the action and inform the judges of the two point deduction.

(4) In the case of a clear and intentional butt when the bout is stopped because of a cut, the contestant who initiated the butt shall lose by disqualification, even if he is the injured contestant.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.805 FOULS (1) remains the same.

~~(2) Except as provided otherwise in (9) and (10) of this section, there~~ The referee shall be a deduction of deduct points by the referee after two warnings for the same foul. A point or points shall be taken at the time of the third warning for the same foul or where there is a continued flagrant fouling by a contestant after a deduction of points from the fouling contestant.

(3) A contestant who commits a foul, intentional or unintentional, may be fined the total amount of his purse, not to exceed \$1,000 per violation, and suspended by the board and/or ~~he may be~~ fined only in such amount as the board may deem warranted by the offense. It will only be by unanimous opinion of the referee, judges, and the board inspector that the offender not be held responsible for the foul and the ~~club~~ promoter authorized to pay ~~his~~ the purse.

(4) Any contestant claiming to be struck by a foul blow must be immediately examined by the ~~board doctor~~ ringside health care professional, and ~~if he is not available, by some doctor procured by the referee, or the inspector.~~ If the examining ~~doctor~~ health care professional determines that the contestant is only temporarily injured, and can proceed after a short rest, the contestant shall be ordered to do so by the referee.

(5) Any contestant falsely claiming to have been struck by a foul blow will be punished in the same manner as provided for contestants who commit fouls.

~~(6) Any bout terminated by a foul must be reported to the board immediately by the board representative. Statements from the referee, judges, and examining doctor, and any other person deemed desirable must be submitted with such report.~~

~~(7) (6)~~ In no case shall the offender be paid any part of his purse until the final decision of the board.

~~(8) (7)~~ A referee may penalize a contestant guilty of committing any foul by deducting points from his score in the round or rounds such fouls are committed and shall notify the judges of the foul points deducted. If, as a result of a foul, the ability of a contestant is sufficiently impaired as to be a handicap in the opinion of the physician, the contest shall be stopped. If the defaulting fouled contestant is ahead on points or the points are equal, he shall be declared the winner. However, if the fouled contestant is not ahead on points, the contest shall be declared a draw. If in the referee's ~~judgement~~ judgment, the foul is of a serious nature, or intentionally inflicted, ~~he~~ the referee may award the bout to the contestant so fouled.

~~(9) In the case of a clear and intentional butt when the bout can continue, the contestant who initiated the butt shall have a two point deduction. The referee shall stop the action and inform the judges of the two point deduction.~~

~~(10) In the case of a clear and intentional butt when the bout is stopped because of a cut, the contestant who initiated the butt shall lose by disqualification, even if he is the injured contestant.~~

~~(11) (8) If any accidental foul occurs before the completion of four rounds and the injured boxer contestant cannot continue, the fight will be declared a technical draw. If the accidental foul occurs after the completion of four rounds and the fouled boxer contestant cannot continue, a technical decision shall be rendered by the judges and the boxer contestant ahead on points shall be declared the winner. Partial rounds shall be scored by the judges. If a boxer contestant is accidentally fouled and can continue, the referee must stop the action and inform the board representative and both boxers contestants that the foul is the result of an accidental foul. If in the later rounds the injury has worsened as a result of legal blows, and the injured boxer contestant cannot continue, a decision shall be rendered by going to the score cards scorecards. Partial rounds shall be scored.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.810 HANDWRAPS (1) remains the same.

(2) All handwraps shall be adjusted in the dressing room in the presence of a board representative and both contestants. ~~Either contestant may waive his privilege of witnessing the bandaging of his opponent's hands.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.811 OFFICIAL BOXING GLOVES (1) and (2) remain the same.

(3) Gloves and headgear shall be cleaned with a disinfectant between each bout.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.812 MOUTHPIECE (1) and (2) remain the same.

(3) If the referee believes that the participant contestant spit out or allowed the mouthpiece to fall out of his the contestant's mouth ~~he the referee~~ shall:

(a) upon the first occurrence, wait until the initial flurry subsides, proceed as in (2) ~~above~~ and warn the participant contestant that a point will be deducted if ~~he the contestant~~ subsequently spits out or allows the mouthpiece to fall out of ~~his the~~ contestant's mouth;

(b) upon the second occurrence, wait until the initial flurry subsides, proceed as in (2), warn the participant contestant that he or she will be disqualified if ~~he the~~ contestant subsequently spits out or allows the mouthpiece to fall out of ~~his the~~ contestant's mouth. The referee shall direct each judge to deduct a point from the participant's contestant's score and shall notify the board representative; and

(c) upon the third occurrence, disqualify the ~~participant~~ contestant who deliberately spit out or allowed his the mouthpiece to fall out of his the contestant's mouth. The opponent shall be declared the winner due to disqualification.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.815 RING--EQUIPMENT (1) ~~The boxing ring shall not be less than 16 feet nor more than 24 feet square within the ropes. The apron of the ring floor shall extend beyond the ropes not less than two feet. The ring shall not be more than four feet above the floor of the building or grounds of an outdoor arena and shall be provided with suitable steps for the use of the participants. The ring shall be no less than 16 or more than 20 feet square when measured inside the line of the ropes. The apron of the ring shall extend beyond the ropes not less than two feet. The ring shall be equipped with four ropes with two spacer ties on each side of the ring to secure the ropes.~~

~~(2) The ring shall be equipped with at least four ropes. The lower rope shall be 18 inches above the ring floor, the second rope 30 inches, the third ring 42 inches, and the top rope 54 inches above the ring floor. The lower rope shall be padded with safety foam or equal padding. The ring floor shall be padded with a one inch layer of unicellular safety mats two pound density, or equal padding.~~

~~(3) Ring posts shall not be less than three inches or more than four inches in diameter extending from the floor to a height of 58 inches above the ring floor. The ropes shall be connected to posts with extension not shorter than 18 inches. The turnbuckles must be covered with a protective padding. The corners should be padded with six inches padding of urethane or equal padding, with three pound density.~~

~~(4) through (6) remain the same but are renumbered (2) through (4).~~

~~(7) (5) There shall be a minimum of 12 feet from the outside of the ring apron to the first row of seats. There shall be a minimum three foot clear walkway from the ring through the seating area to the exit(s).~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

REASON: The Board determined it is reasonable and necessary to amend the allowable distance between the ring and the first row of seats. Following several promoter requests, the Board determined that the 12-foot space was not necessary to ensure public protection. It is reasonable and necessary to require the maintenance of a minimum three-foot clear walkway to allow the safe access of emergency personnel and any necessary equipment to the ring area through the spectator seating.

24.117.901 OFFICIALS REQUIRED (1) remains the same.

~~(2) Officials will shall be paid by the promoter for room and board and mileage, in addition to their fee for officiating.~~

~~(3)~~ (2) The Montana board of athletics shall have the right to appoint at least two officials of their choice for all title bouts licensed by the board.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, MCA

24.117.903 JUDGES (1) ~~Each applicant~~ Applicants for a judges license shall ~~make application~~ apply on forms prescribed by the board and shall furnish the following information:

(a) ~~must have proof of either: three years prior experience in judging athletic events involving boxing;~~

(i) three years prior experience in judging boxing events; or

(ii) two years prior experience in judging boxing events and additional experience as determined by the board to demonstrate competency;

(b) ~~must submit names and addresses of three references who can attest to the applicant's judging experience and integrity; and~~

(c) ~~must be familiar~~ proof of familiarity with the law laws and administrative rules of the board, as evidenced by attestation on the application.

~~(2) The judges shall be stationed at opposite sides of the ring.~~

~~(3) It shall be the duty of the judges to watch every phase of the bout and to make a decision, if the athletic event lasts the limit of rounds scheduled.~~

(4) (2) ~~They~~ Judges shall be ready at all times, if requested by the referee, to assist in deciding whether fouls have been committed, and may bring any other points to the attention of the referee at the end of the round.

~~(5) All three votes are of equal value in arriving at the decision as to the outcome of each athletic event. In the event of any two votes coinciding, the result shall be so determined. In the event of all three votes disagreeing, the athletic event shall be declared a draw. The decisions of the judges shall be based primarily on effectiveness, taking into account the following points:~~

~~(a) A clean, forceful hit, landed on any vulnerable part of the body above the belt should be credited in proportion to its effectiveness.~~

~~(b) Aggressiveness is the next in importance and points should be awarded to the contestant who sustains the action of a round by the greatest number of skillful attacks.~~

~~(c) Defensive work is relatively important and points should be given for cleverly avoiding or blocking a blow.~~

~~(d) Points should be awarded where ring generalship is conspicuous. This comprises such points as the ability to quickly grasp and take advantage of every opportunity offered; the capacity to cope with all kinds of situations which may arise to foresee and neutralize an opponent's method to adopt a style of boxing at which he is not particularly skillful.~~

~~(e) It is advisable to deduct points when a contestant persistently delays the action of an athletic event by clinching and/or lack of aggressiveness.~~

~~(f) Points should be deducted for a foul even though it is unintentional and not of a serious enough nature to warrant disqualification.~~

~~(g) A contestant should be given credit for sportsmanlike actions in the ring, close adherence to the spirit as well as the letter of the rules and for refraining from taking technical advantage of situations unfair to an opponent.~~

~~(h) In order to arrive at a true conclusion, every point should be carefully observed and noted as the round progresses. The winner of the round is to be determined by the contestant receiving the largest number of points scored in that round. At the end of the athletic event the contestant who has to his credit the greatest number of points is the winner of the bout. Each round is to be accounted for on the score card in figures. The 10-point system will be used.~~

~~(6) In the event a judge becomes incapacitated and is unable to finish scoring an athletic event, time out shall be called. The alternate referee shall immediately be assigned to score the event if a fourth judge is not available. The alternate referee shall continue scoring on the score cards used by the incapacitated judge.~~

(3) Scoring shall be done by three judges, approved by the board. The referee shall not score any bout or contest.

(4) Judges shall score bouts on a ten point must system, using the following criteria:

(a) clean punching (power versus quantity);

(b) effective aggressiveness;

(c) ring generalship; and

(d) defense.

(5) If a bout is stopped before the completion of a round, the judges shall score all incomplete or partial rounds as if they were a complete round.

(6) Judges shall only deduct points for fouls or knockdowns when designated as such and instructed to do so by the referee.

(7) Judges shall avoid scoring a round even. Complete concentration and application of the basic scoring concepts in ARM 24.117.801 will allow judges to choose the winner of each round.

(8) Judges shall not act as managers or promoters.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

REASON: The Board determined it was reasonable and necessary to amend the rule to allow the Board to accept two years judging experience plus additional relevant experience in evaluating applications for boxing judges. Previously, judging applicants were required to show a minimum of three years judging experience. The Board concluded that two years plus additional relevant experience would be acceptable on a case-by-case basis as reviewed and determined by the Board. It is reasonably necessary to incorporate into this rule language regarding athletic judges from elsewhere in the Board rules. This amendment will create a more concise judges rule and eliminate the reader's need to search and find various applicable judges rules in several different places.

24.117.904 TIMEKEEPER (1) The timekeeper shall be appointed by and the responsibility of the club promoter, and ~~shall be~~ known as the official timekeeper. ~~He~~ The timekeeper must shall be seated outside the ring close to the gong.

(2) ~~He~~ The timekeeper shall indicate the beginning and end of each round by striking the gong with a metal hammer.

(3) ~~He~~ The timekeeper shall ~~provide himself with~~ bring a whistle, and a stop watch ~~which shall have been properly examined and certified as to accuracy before~~ to the bout. Ten seconds before the beginning of each round, the timekeeper shall ~~give warnings to~~ warn the seconds of contestants by the blowing of the whistle.

(4) ~~In the event of~~ If an athletic event ~~terminating~~ terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the athletic event.

(5) Timekeepers ~~are~~ shall not to use a whistle, buzzer, or any other instruments instrument during the progress of a round. The whistle, buzzer, or other instrument ~~must shall~~ be used only 10 seconds prior to the beginning of the athletic event bout and 10 seconds prior to the beginning of each round.

(6) If a boxer is knocked down after two minutes and 50 seconds of the round, the bell will not sound until the boxer gets up. If the boxer does not get up before the count of 10, the boxer will lose by KO. The bell cannot save a boxer in any round.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, MCA

24.117.905 SECONDS/CORNERS (1) Applicants for a seconds/corners license ~~must shall~~ be at least 18 years of age and shall furnish to the board the following information:

(a) ~~must present~~ evidence of assisting at athletic events involving boxing; including:

(b) ~~(a) must submit~~ names and addresses of three references who can attest to ring experience; and

(c) ~~(b) name~~ names of contestant(s) contestants in whose corner ~~he usually~~ assists the applicant previously assisted at ringside.

(2) ~~Licensed contestants and managers shall be permitted to act as seconds without purchasing an additional license. However in so doing, they must observe all rules pertaining to the conduct of seconds.~~

(3) ~~Seconds shall not be more than two in number, one of whom will inform the referee that he is the chief second.~~

(2) Only three individuals shall be seconds/corners at an event and only one shall be designated as chief second.

(4) ~~For club boxing, only the chief second in each corner must be licensed and is the person responsible for assisting at ringside.~~

~~(5) (3)~~ Only one second/corner shall be inside the ring between rounds.

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

~~(7) (5) Seconds shall not coach principals during the progress of rounds and must remain seated and silent during the rounds. Fans may be used between rounds. The swinging of towels is prohibited. A wet sponge may be used to refresh~~

the contestant. Excess water on the ring floor shall be wiped up by the seconds/corners before the start of the next round.

~~(8)~~ (6) Seconds/corners shall not either:

(a) enter the ring until the timer indicates the termination of a round: ; or

(b) Seconds are prohibited from spraying or forcefully throwing spray or forcefully throw water on a contestant.

~~(9)~~ (7) Seconds/corners shall:

(a) leave the ring enclosure at the sound of the timekeeper's whistle 10 seconds before the beginning of each round: ; and

(b) ~~They shall~~ leave the ring platform and remove all obstructions, buckets, and stools, promptly when the gong sounds ~~for~~ at the beginning of each round.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, MCA

24.117.906 INSPECTORS ~~(1) The board shall appoint official representatives designated as "inspectors" and shall issue to each an authorization which will be his authority to act as a representative of the board. An inspector shall be present during the physical examinations and weigh-ins.~~

~~(2)~~ (1) The inspector may not have an interest in the management of any contestant, nor act as a referee, judge, timekeeper, or second/corner at ~~any~~ the same athletic event.

~~(3)~~ (2) A person who wishes to be appointed as an inspector shall submit to the board a resume indicating their boxing experience and the names of three references who can attest to their any applicable boxing experience and integrity.

AUTH: 23-3-405, MCA

IMP: 23-3-402, MCA

24.117.907 ANNOUNCER (1) remains the same.

~~(2) No introductions or announcements, except those pertaining to the athletic event, shall be made from the ring, unless authorized by a member of the board or inspector.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.1001 INTRODUCTION (1) In addition to the rules set forth in this sub-chapter, promoters and contestants involved in club boxing shall be required to abide by the provisions of ARM 24.117.301, 24.117.402, 24.117.404, 24.117.406, 24.117.502, 24.117.602, 24.117.705, 24.117.709, 24.117.801, 24.117.803, 24.117.804, 24.117.805, 24.117.806, 24.117.812, 24.117.815, 24.117.901, 24.117.902, 24.117.903, 24.117.904, 24.117.905, 24.117.906 and 24.117.907 elsewhere in ARM Title 24, chapter 117, except where specifically noted as not applicable to club boxing.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.1002 CLUB BOXING CONTESTANTS ~~(1) All club boxing~~

~~contestants, except amateur club boxers, must file an application with the board, including a photograph of the applicant. Contestants may also be required to file a birth certificate with the board.~~

~~(2) A contestant must be age 18 or over to enter and received prize money. The maximum age for a contestant is 45. Anyone over the age of 45 who wishes to compete must provide to the board a physician's (M.D.'s) statement that the contestant is medically fit to participate in the event.~~

~~(3) In the event a boxer is registered with the United States amateur boxing, inc. as an amateur boxer, the promoter must provide the boxer a form which clearly explains that the boxer will lose amateur status with the United States amateur boxing, inc. by participating in a club boxing event. The boxer must sign the form acknowledging that the boxer understands amateur status will be lost. The form must be submitted to the board with the fight results.~~

~~(4) A person age 16 or 17 can compete only as an amateur, but cannot receive any purse, remittance or monetary award.~~

~~(5) Contestants age 16 and 17 must provide the promoter a signed and notarized statement of permission from a parent or guardian.~~

~~(6) (1) Each participant must provide proof of medical insurance coverage or sign a waiver of liability for any medical bills incurred as a result of lack of coverage.~~

~~(7) Contestants must wear proper athletic attire and appropriate protective devices, including mouthpiece and protective foul proof cup.~~

~~(8) Any contestant who has participated in an athletic event, unless specifically granted an exception by the board, shall be placed under temporary suspension for the health and safety of the contestant in the event of the following:~~

~~(a) physical injury or severe punishment, suspension shall be discretionary upon advice of the health care provider or emergency medical technician (EMT);~~

~~(b) a knockout (KO) a 60 day suspension is required; and~~

~~(c) a technical knockout (TKO), because of a head blow that requires the referee to stop the bout, a 30 day suspension is required.~~

~~(9) In any case when the referee decides that the contestants are not honestly competing, that the knockout is a "dive" or the foul a prearranged action, the athletic event shall be stopped and no decision rendered.~~

~~(10) Any contestant who participates in a sham or fake bout shall be disqualified and shall not be permitted to contend in any bout in this state for a period of at least six months for the first offense. For the second offense the contestant shall be disqualified from further admission or participation in any athletic event held or given in the state of Montana for a period of at least one year.~~

~~(11) (2) All contestants must be in the building or wherever the contest is to be held at least one hour prior to the commencement of the bout.~~

~~(12) All contestants must be ready to enter the ring immediately upon the finish of the preceding bout or athletic event. The referee may disqualify a contestant breaking this rule. Should an emergency arise requiring a contestant to leave the ring during the 90 second intermission between rounds, permission must~~

~~be secured from the referee. Failure to return before the gong sounds announcing the next round will result in disqualification.~~

~~(13) Whenever a contestant, because of injury or illness, is unable to take part in an athletic event for which the contestant is under contract, the contestant or the contestant's manager shall immediately report the fact to the board or inspector. The contestant must submit to an examination by a physician designated by the board, which examination must be made prior to the date set for the athletic event. The expense of the physician's examination is to be paid by the contestant.~~

~~(14) Before a license is issued to any contestant, the contestant shall satisfy the board that the contestant has the ability to compete and is fit to participate in an athletic event. If, in the opinion of the board, a contestant's ability to perform is questionable, whether from causes of illness, mental condition or loss of the ability to compete, the board may:~~

- ~~(a) refuse to permit the contestant to participate;~~
- ~~(b) retire the contestant from further competition; or~~
- ~~(c) suspend the contestant's license.~~

~~(15) During the bout, it is prohibited for a contestant to drink anything but water. The use of drugs of any kind, before or during the bout, shall be cause for disqualification and/or other disciplinary action by the board. All contestants may be required to submit to a drug test before and after a bout in which the contestant is involved.~~

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, 23-3-603, MCA

REASON: The Board determined it is reasonable and necessary to amend this rule to eliminate duplicate requirements within the rules and further streamline and simplify the Board's administrative rules. Unless different rules specifically apply to club boxing contestants, the general boxing rules of the Board will apply. The deleted sections of this rule are already included in the general boxing contestant rules.

24.117.1005 CLUB BOXING--CONTEST REGULATIONS (1) remains the same.

~~(2) The promoter must, prior to the event, enter into an agreement with the boxing officials as to the amount of compensation the officials will receive for officiating the event.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.1006 CLUB BOXING--WEIGHTS AND CLASSES (1) The weights and classes for club boxing ~~events~~ contestants, both male and female, shall be as follows:

- (a) through (c) remain the same.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.1007 CLUB BOXING--REQUIRED EQUIPMENT (1) Club boxing contestants ~~are required to~~ shall use either training wraps or handwraps that comply with the provisions of ARM 24.117.810. ~~Contestants may use handwraps pursuant to the provisions of ARM 24.117.810 or use training wraps.~~

(2) Official boxing gloves ~~for used by~~ contestants shall be as follows:

(a) contestants weighing up to 150 pounds ~~must be~~ shall use no less than 14 ounces ~~and must have ounce gloves with the thumbs attached; ; and~~

(b) ~~Gloves for~~ contestants weighing 151 pounds and above ~~must be~~ shall use no less than 16 ounces ~~and must have ounce gloves with the thumbs attached.~~

(3) ~~If there are two contestants to in a bout at use~~ different glove weights, ~~they will be required to~~ both contestants shall use the glove required for the heavier contestant.

~~(a) (4)~~ No breaking, roughing, or twisting of gloves shall be permitted. ~~Gloves shall be examined by the~~ The inspector shall examine and approve all gloves. If padding is found to be misplaced or lumpy, or if gloves are found to be imperfect, other gloves shall be substituted.

~~(3) (5)~~ The All contestants shall use of protective headgear ~~is mandatory for all contestants.~~

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

5. New rules proposed to be adopted are as follows:

NEW RULE I PROMOTER (1) Applicants for a promoters license shall apply on forms prescribed by the board and shall furnish the following information:

(a) names and addresses of three references (excluding relatives, present employer, or employees) who can attest to the applicant's experience and integrity;

(b) proof of financial stability by providing a \$5,000 surety bond; and

(c) proof of applicant's familiarity with the laws and administrative rules of the board, as evidenced by attestation on the application.

(2) Promoters shall:

(a) obtain sanction for each athletic event at least 14 days prior to each specific event and before any ticket sales or publicity issuance;

(b) deliver to the board a surety bond in the amount of \$5,000, prior to issuance of a promoter's license. The bond shall be forfeited to the board as a penalty bond upon a board finding that the promoter has violated any provision of applicable board statutes or rules;

(c) provide insurance in the amount of \$10,000 medical coverage and \$10,000 death benefits for each participant and shall furnish proof of such insurance to the board before sanction shall be granted;

(d) report on the total number of tickets sold, the total of gross receipts and such other information as prescribed on forms provided by the board, within 24 hours after the conclusion of any live or televised athletic event;

(i) advance ticket sales must be included in the gross receipts; and

- (ii) complimentary, sponsor, or other gifted tickets must be included in the gross receipts;
- (e) announce all substitutions as soon as substitutions are known;
- (f) notify the board that an athletic event is to be telecast, televised, or broadcast in any manner, including but not limited to:
 - (i) television;
 - (ii) radio;
 - (iii) any transmission via a cable television system;
 - (iv) any transmission via closed circuit or satellite; or
 - (v) any other method of limited distribution;
- (g) provide the names and weights of all contestants scheduled for an athletic event to the board at least 10 days before the event. For club boxing events, names and weights shall be received at the board office by 10 o'clock a.m. on the day of the event;
- (h) ensure that adequate public safety is maintained;
- (i) provide all materials necessary for the athletic event, including ring, steps, stools, water buckets, resin, bell, buzzer or whistle, timer, gloves, gauze, and tape for hand wraps;
- (j) provide adequate, separate dressing room facilities for male and female contestants;
- (k) comply with any and all state or local health rules regarding sanitary conditions of dressing rooms, showers, towels, or other equipment;
- (l) provide for the attendance of a ringside health care professional and compensate the ringside health care professional for such attendance at all athletic events;
- (m) compensate the officials for services rendered at each event in addition to reasonable room and board and mileage, if any;
- (n) respect the authority of the board and its representatives;
- (o) ensure that the rules of the board are strictly observed and carried out;
- (p) make arrangements to have an ambulance or medical personnel with appropriate resuscitation equipment be continuously present on site for each event;
- (q) provide security guards who either hold a license issued by the state of Montana or are law enforcement officers; and
- (r) provide liability insurance to adequately protect the contestants, officials, and the attending public, and shall furnish proof of such insurance to the board prior to sanction being granted.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, 23-3-601, MCA

REASON: The Board determined it was reasonable and necessary to thoroughly review and update their rules for clarity and better organization. In deleting confusing and obsolete language, the Board made substantial amendments to the existing promoter rule. The Board decided to repeal the existing rule and adopt the New Rule so as to lessen confusion and provide a more easily understood format both during the rulemaking process and in reading and use of the final

administrative rule. The Board is adding licensure qualifications for promoters in response to past legislative audit recommendations.

NEW RULE II BOUT APPROVAL (1) The board shall approve all boxing contests and bouts. Board decisions are final.

(2) The board shall consider the following information and shall approve only those bouts where the information is similar between boxers and the board has no concerns regarding the safety and welfare of either boxer:

- (a) boxing record;
- (b) boxing experience;
- (c) boxing skill; and
- (d) physical condition.

(3) The board shall notify the promoter/matchmaker when a boxing bout/contest is approved.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

REASON: The Board is also proposing to adopt New Rule II regarding Board approval of bouts to coincide with the current regulations and safety codes of USA Boxing, as required pursuant to 23-3-405, MCA.

NEW RULE III REFEREE (1) Applicants for a referees license shall apply on forms prescribed by the board and furnish the following information:

- (a) evidence of either:
 - (i) three years prior experience in refereeing boxing events; or
 - (ii) two years prior experience in refereeing boxing events and additional experience as determined by the board to demonstrate competency;
- (b) names and addresses of three references who can attest to the applicant's refereeing experience and integrity; and
- (c) proof of applicant's familiarity with the laws and administrative rules of the board, as evidenced by attestation on the application.

(2) No persons other than the contestants and the referee may enter the ring during the progress of a round.

(3) The referee shall stop a bout for any of the following reasons:

- (a) due to the physical condition of one or both of the contestants;
- (b) when one of the contestants is clearly outclassed;
- (c) the referee decides a contestant is not putting forth the contestant's best effort; or

(d) any other reason the referee deems sufficient.

(4) Referees shall not act as managers or promoters.

(5) The referee shall meet with each contestant and chief second in the dressing room prior to the bout and the referee shall:

(a) warn the second of any existing rule violations and any disciplinary consequences that will result from further noncompliance;

(b) identify the belt/hip line and clarify that the equipment shall not extend above such line;

- (c) explain the proper procedures to occur when the warning sounds prior to the end of a round and when the bell sounds ending a round;
- (d) explain the duties expected of the chief second in managing the corner, including:
 - (i) cleaning up spills and ice;
 - (ii) wiping excess petroleum jelly from contestant; and
 - (iii) ensuring that the contestant has a mouthpiece in place prior to the start of each round;
- (e) explain the procedures to be used in directing contestants to break ("punch" or "get out" and, if necessary, "hold your punches" and step in and break the contestants);
- (f) review fouls, issuance of cautions, and point deductions;
- (g) inspect and sign handwraps (semiprofessional and professional boxing only); and
- (h) ask contestants and seconds if they have questions.
- (6) The referee shall meet with the ringside health care professional and the referee shall:
 - (a) determine the health care professional's ringside experience;
 - (b) determine the health care professional's location at ringside;
 - (c) clarify that the health care professional shall not enter the ring unless directed to do so by the referee or the board designee;
 - (d) specify the referee's signals for calling the health care professional into the ring or to a neutral corner;
 - (e) discuss and determine the health care professional's procedures if called to examine a contestant during a bout, including:
 - (i) mounting the ring apron quickly;
 - (ii) examinations to be no longer than ten seconds; and
 - (iii) ways to communicate with the referee;
 - (f) direct the health care professional against making any statements following the examination of a contestant during a bout that could change the dynamics of the bout ("Let it go one more round."); and
 - (g) discuss any known traits or tendencies of contestants that the health care professional may observe during the bout (ex. common nosebleeds).
- (7) The referee shall check the condition of the ring, including:
 - (a) presence of buckets and stairs in corners;
 - (b) correct rope tension; and
 - (c) acceptable condition of the floor and canvas.
- (8) When the contestants enter the ring, the referee shall:
 - (a) inspect the contestants as follows:
 - (i) gloves (no foreign substances);
 - (ii) trunks;
 - (iii) shoes (double knot and/or laces taped);
 - (iv) hair;
 - (v) mouthpiece;
 - (vi) safety equipment (reestablish the belt/hip line); and
 - (vii) presence of jewelry;
 - (b) upon contestant introductions, the referee shall:

- (i) call contestants to center ring;
 - (ii) present final instructions;
 - (iii) direct contestants to return to the corners;
 - (iv) clear the ring and ring apron;
 - (v) ensure readiness of judges, timekeeper, and ringside healthcare professional; and
 - (vi) signal timekeeper to start the bout.
- (9) During the bout, the referee shall:
- (a) ensure the safety of all contestants;
 - (b) enforce all applicable board laws and rules;
 - (c) maintain control of all stages of the contest to include issuance of cautions and deduction of points;
- (i) In case of a knockdown, the referee shall require the fallen contestant to take a count of eight.
- (ii) When a contestant is down, the referee shall direct the opponent to the farthest neutral corner and instruct the opponent to remain there until the count is completed. If the opponent fails to do so, the referee may cease counting until the opponent has complied.
- (iii) If a fallen contestant arises before the count of eight and again goes down due to weakness, or is unable to arise, the referee shall continue the count from the point where the referee ceased counting.
- (iv) If a contestant appears to be in distress or not giving the best effort, the referee may intervene and give a "standing 8 count".
- (v) When a contestant has been knocked down three times in one round, the referee will declare the contestant the loser by a technical knockout.
- (A) In championship matches, the board may waive subsection (9)(c)(v) if agreed to in writing by both contestants, and the agreement is filed with the board prior to the beginning of the athletic event;
- (d) physically inspect and wipe clean all contestant gloves that touch the canvas floor;
- (e) interrupt the bout if a contestant is cut and consult with the health care professional to determine if the injured contestant may continue;
- (i) If a cut is produced by a legal punch and the bout is stopped, the injured contestant shall be declared the loser by technical knockout, with the designation of TKOC to indicate the cut as the reason for the technical knockout;
- (f) immediately stop a bout in the case of an injury caused by a head butt or foul, determine whether the act was intentional or accidental and determine whether to continue or stop the bout;
- (g) instruct the judges to mark the scorecards accordingly when assessing fouls;
- (h) wave both arms to indicate a knockout when:
- (i) a contestant is still down following the referee's count of ten; or
 - (ii) the referee has determined that the contestant who was knocked down is in no condition to continue; and
- (i) continue counting when both contestants go down simultaneously as long as one contestant remains down. If both contestants remain down at the end of the count, the referee shall stop the bout and render a technical draw decision.

- (10) At the conclusion of a bout, the referee shall:
 - (a) collect scorecards from the judges and present them to the inspector;
 - (b) call contestants to center ring and raise hand of winner when the contestant's name is announced; and
 - (c) maintain control of the ring, contestants, and seconds until all persons have exited the ring.
- (11) The board shall appoint the referees and the board decisions are final.
- (12) The referee is the sole arbiter of a bout and is the only individual authorized to stop a bout.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

REASON: The Board determined it was reasonable and necessary to thoroughly review and update their rules for clarity and better organization. In deleting confusing and obsolete language, and reorganizing the rule, the Board made substantial amendments to the existing referee rule. The Board decided to repeal the existing rule and adopt New Rule III to lessen confusion and provide a more easily understood format both during the rulemaking process and in reading and use of the final administrative rule.

NEW RULE IV FEE ABATEMENT (1) The Board of Athletics adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

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

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

NEW RULE V LICENSE SUSPENSION AND REVOCATION (1) The board adopts and incorporates by reference, and shall follow all provisions regarding license suspension and revocation of the uniform professional licensing and regulation procedures as set forth in Title 37, chapter 1, part 3, MCA.

AUTH: 23-3-405, MCA

IMP: 23-3-405, 37-1-131, 37-1-136, 37-1-303, 37-1-307, 37-1-308, 37-1-309, 37-1-310, 37-1-311, 37-1-312, 37-1-313, 37-1-314, MCA

REASON: It is reasonable and necessary to adopt New Rule V in response to legislative audit recommendations regarding a statutory requirement for the Board's rules to include provisions for the suspension and revocation of licenses. The Board currently follows the uniform professional licensing procedures and adoption of New Rule V will clarify this.

NEW RULE VI RING AND ARENA REQUIREMENTS (1) Mixed martial arts contests and exhibitions may be held in a ring or in a fenced area.

(2) A ring specified in (1) must meet the following requirements:

(a) The ring must be no smaller than 20 feet square and no larger than 32 feet square within the ropes.

(b) The ring floor must extend at least 18 inches beyond the ropes. The ring floor must be padded with ensolite or another similar closed-cell foam, with at least a one-inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck, or similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps or ridges is not permitted.

(c) The ring platform must not be more than four feet above the floor of the building and must have suitable steps for the use of the unarmed combatants.

(d) Ring posts must be made of metal, not more than three inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the ring floor, and must be properly padded in a manner approved by the board. Ring posts must be at least 18 inches away from the ring ropes.

(e) Five ring ropes must be used, each rope not less than one inch in diameter and wrapped in a soft material. The lowest ring rope must be 12 inches above the ring floor.

(f) There must not be any obstruction or object, including, without limitation, a triangular border, on any part of the ring floor.

(3) A fenced area specified in (1) must meet the following requirements:

(a) The fenced area must be circular or have at least eight equal sides and must be no smaller than 20 feet wide and no larger than 32 feet wide.

(b) The floor must be padded with ensolite or another similar closed-cell foam, with at least a one-inch layer of foam padding, with a top covering of canvas, duck, or similar material tightly stretched and laced to the platform of the fenced area. Material that tends to gather in lumps or ridges is not permitted.

(c) The platform of the fenced area must not be more than four feet above the floor of the building and must have suitable steps for the use of the unarmed combatants.

(d) Fence posts must be made of metal, not more than six inches in diameter, extending from the floor of the building to between five and seven feet above the floor of the fenced area, and must be properly padded in a manner approved by the board.

(e) The fencing used to enclose the area must be made of a material that will prevent an unarmed combatant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, including without limitation, chain link fence coated with vinyl.

(f) Any metal portion of the fenced area must be covered and padded in a manner approved by the board and must not be abrasive to the unarmed combatants.

(g) The fenced area must have two entrances.

(h) There must not be any obstruction on any part of the fence surrounding the area in which the unarmed combatants are to be competing.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

REASON: The Board determined that it is reasonable and necessary to adopt New Rules VI through XIV pertaining to the regulation of professional mixed martial arts (MMA) contests and exhibitions. The Board has been approached by several MMA organizations and promoters requesting the Board's approval and regulation of professional mixed martial arts events in Montana. The Board concluded that it is necessary to adopt rules relating to the allowable equipment and attire, duration of contests, weight classes of combatants, contest scoring, fouls, point deduction for fouls, and contest outcomes in order to adequately protect the combatants and spectators at MMA events in Montana. The proposed New Rules are adapted from the Unified MMA Rules as developed and adopted by the professional MMCA sanctioning bodies of the International Sport Kickboxing Association and the International Fighting Championships. These Unified MMA Rules are currently adopted by the athletic commissions of California, New Jersey, Louisiana, Nevada and Quebec, Canada.

NEW RULE VII DURATION OF CONTESTS AND EXHIBITIONS (1) Except upon approval of the board, all nonchampionship contests or exhibitions of mixed martial arts must not exceed three rounds in duration.

(2) A championship contest or exhibition must be five rounds in duration.

(3) A period of unarmed combat in a contest or exhibition of mixed martial arts must be five minutes in duration. A period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts must be one minute in duration.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

NEW RULE VIII WEIGHT CLASSES OF UNARMED COMBATANTS - WEIGHT LOSS AFTER WEIGH IN (1) Except upon approval by the board, the weight classes for mixed martial arts unarmed combatants are as follows:

- | | |
|-------------------|----------------------|
| (a) Flyweight | up to 125 lbs. |
| (b) Bantamweight | over 125 to 135 lbs. |
| (c) Featherweight | over 135 to 145 lbs. |

- (d) Lightweight over 145 to 155 lbs.
- (e) Welterweight over 155 to 170 lbs.
- (f) Middleweight over 170 to 185 lbs.
- (g) Light heavyweight over 185 to 205 lbs.
- (h) Heavyweight over 205 to 265 lbs.
- (i) Super heavyweight over 265 lbs.

(2) Following weigh in of mixed martial arts unarmed combatants, the following weight loss is not permitted:

- (a) in excess of two pounds for combatants weighing in at 145 lbs. or less; and
 - (b) in excess of three pounds for combatants weighing in at over 145 pounds.
- (3) The above weight loss must not occur later than two hours after initial weigh in.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

NEW RULE IX PROPER ATTIRE (1) Mixed martial arts combatants shall wear shorts as approved by the board or the board's inspector and shall not wear shoes or any padding on the combatant's feet during the contest or exhibition.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

NEW RULE X METHOD OF JUDGING (1) Each judge shall score the contest or exhibition and determine the winner through the use of the following system:

- (a) The better combatant of a round received 10 points and the opponent proportionately less points.
 - (b) If a round is even, each combatant receives 10 points.
 - (c) Rounds shall be scored in full points and no fraction of points may be given.
 - (d) Points for each round must be awarded immediately after the end of the period of combat in the round.
- (2) The majority opinion is conclusive and, if there is no majority, the decision is scored a draw.
- (3) After the inspector has checked the scores, the inspector shall inform the announcer of the decision.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

NEW RULE XI ACTS CONSTITUTING FOULS (1) The following acts constitute fouls in a mixed martial arts contest or exhibition:

- (a) butting with the head;
- (b) eye gouging of any kind;
- (c) biting;

- (d) hair pulling;
- (e) fish hooking;
- (f) groin attacks of any kind;
- (g) putting a finger into any orifice or into any cut or laceration of an opponent;
- (h) small joint manipulation;
- (i) striking to the spine or the back of the head;
- (j) striking downward using the point of the elbow;
- (k) throat strikes of any kind, including without limitation, grabbing the trachea;
- (l) clawing, pinching or twisting the flesh;
- (m) grabbing the clavicle;
- (n) kicking the head of a grounded opponent;
- (o) kneeing the head of a grounded opponent;
- (p) stomping a grounded opponent;
- (q) kicking to the kidney with the heel;
- (r) spiking an opponent to the canvas on the opponent's head or neck;
- (s) throwing an opponent out of the ring or fenced area;
- (t) holding the shorts or gloves of an opponent;
- (u) spitting at an opponent;
- (v) engaging in any unsportsmanlike conduct that causes injury to an opponent;
- (w) holding the ropes or the fence;
- (x) using abusive language in the ring or fenced area;
- (y) attacking an opponent on or during a break;
- (z) attacking an opponent who is under the care of the referee;
- (aa) attacking an opponent after the bell has sounded the end of the period;
- (ab) flagrantly disregarding the instructions of the referee;
- (ac) timidity, including without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece, or faking an injury;
- (ad) interference by the corner person; and
- (ae) throwing in the towel during competition.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

NEW RULE XII DEDUCTION OF POINTS FOR FOULS (1) If a mixed martial arts combatant fouls an opponent during a contest or exhibition, the referee may penalize the combatant by deducting points from the score, whether or not the foul was intentional. Except as otherwise provided in rule, the referee may determine the number of points to be deducted in each instance and shall base the decision on the severity of the foul and its effect upon the opponent.

(2) When the referee decides to make a point deduction because of a foul, the referee shall warn the offender of the penalty to be assessed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both combatants of the number of points to be deducted from the offender's score.

(4) Any point or points must be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

NEW RULE XIII ACCIDENTAL FOULS (1) If a contest or exhibition is stopped because of an accidental foul, the referee shall determine whether or not the combatant who has been fouled can continue. If the fouled combatant's chance of winning has not been seriously jeopardized as a result of the accidental foul and if the foul did not involve a concussive impact to the head of the fouled combatant, the referee may order the contest or exhibition continued after a recuperative interval of not more than five minutes. Immediately after separating the combatants, the referee shall inform the board inspector of the determination that the foul was accidental.

(2) If the referee determines that a contest or exhibition may not continue because of an injury suffered as a result of an accidental foul, the contest or exhibition must be declared a no contest if the foul occurred during:

(a) the first two rounds of a contest or exhibition scheduled for three rounds or less; or

(b) the first three rounds of a contest or exhibition scheduled for more than three rounds.

(3) If an accidental foul renders a combatant unable to continue after the completed second round of a contest or exhibition scheduled for three rounds or less, or the completed third round of a contest or exhibition scheduled for more than three rounds, the judges shall score the completed rounds and the round during which the referee stops the contest or exhibition.

(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the judges shall score the completed rounds and the round during which the referee stops the contest or exhibition.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

NEW RULE XIV CONTEST RESULTS (1) A mixed martial arts contest or exhibition may end under the following results:

(a) submission by:

(i) physical tap out; or

(ii) verbal tap out;

(b) technical knockout by the referee stopping the contest or exhibition;

(c) decision via the scorecards, including:

(i) unanimous decision;

(ii) split decision;

(iii) majority decision; or

(iv) draw, including:

(A) unanimous draw;

- (B) majority draw; or
- (C) split draw;
- (d) technical decision;
- (e) technical draw;
- (f) disqualification;
- (g) forfeit; or
- (h) no contest.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

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

24.117.502 PROMOTER-MATCHMAKER found at ARM page 24-8561.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, 23-3-501, 23-3-601, MCA

24.117.902 REFEREE found at ARM page 24-8671.

AUTH: 23-3-405, MCA

IMP: 23-3-404, 23-3-405, MCA

24.117.1003 CLUB BOXING--FEMALE CONTESTANTS found at ARM page 24-8704.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

24.117.1004 CLUB BOXING--PHYSICIAN REQUIREMENTS found at ARM page 24-8704.

AUTH: 23-3-405, MCA

IMP: 23-3-405, MCA

REASON: It is reasonable and necessary to repeal ARM 24.117.1003 and 24.117.1004 to delete duplicate language as the Board is incorporating similar club boxing requirements into the general boxing rules, where possible. The rules regarding promoters (ARM 24.117.502) and referees (24.117.902) are being repealed as the Board is proposing new rules to replace them.

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Chris Bernet, Board of Athletics, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsath@mt.gov and must be received no later than 5:00 p.m., February 27, 2006.

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

9. The Board of Athletics maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Athletics administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Athletics, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsath@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF ATHLETICS
KEVIN MCCARL, CHAIRPERSON

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

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

Certified to the Secretary of State January 13, 2006

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 32.28.501	)	AMENDMENT
and 32.28.601 pertaining)	
to horse racing	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 25, 2006, the Board of Horse Racing proposes to amend the above-stated rules.

2. The Board of Horse Racing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Horse Racing no later than 5:00 p.m. on February 16, 2006 to advise us of the nature of the accommodation that you need. Please contact Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512; phone: (406) 444-4287; TTD number: 1-800-253-4091; fax: (406) 444-4305; e-mail: mstark@mt.gov.

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

32.28.501 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (15)(a) remain the same.

~~(b) at least two stewards;~~
(c) through (i) remain the same but are renumbered (b) through (h).
(16) through (47) remain the same.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-101, 23-4-104, 23-4-202, MCA

REASON: The Board had previously amended its rules, including ARM 32.28.609 on Stewards, in March, 2005. Those amendments required the Board to hire all stewards for each race meet, rather than the track licensees. Therefore, ARM 32.28.501(15) should have also been amended at that time to be consistent with the previous rule change. The proposed amendment is now necessary to make ARM 32.28.501 consistent with ARM 32.28.609 in requiring the Board to hire and compensate all stewards at each race meet.

32.28.601 GENERAL PROVISIONS (1) through (2)(h) remain the same.
(i) director of simulcast network; and
(j) horsemen's bookkeeper.

(3) and (4) remain the same.

(5) No major official specified in (2)(a) through ~~(i)~~ (j) may actively or passively participate in a race meet, nor may a major official's spouse nor any other person who has a permanent or continuous residence in the household of the official actively or passively participate in a race meet, at which the major official is serving in an official capacity. ~~A starter or an assistant racing secretary may, however, undertake passive participation.~~

(a) through (9) remain the same.

AUTH: 23-4-104, 23-4-202, ~~37-1-131~~, MCA

IMP: 23-4-104, 23-4-201, 23-4-202, ~~37-1-131~~, MCA

REASON: The proposed amendment is reasonably necessary to include horsemen's bookkeeper in the classification of "major official" at a race meet. The horsemen's bookkeeper position is an important part of the race meet, as the person is in charge of all finances, claims, etc., and has access to other confidential or sensitive information. Therefore, the horsemen's bookkeeper should be classified as a major official to restrict the person's participation in a race meet such that the horsemen's bookkeeper will now not be allowed to own, train, wager on, gallop, shoe, pony or transport a racehorse.

The proposed amendment is also reasonably necessary to delete the sentence which allows two of the "major officials" to conduct passive race activities such as galloping horses, as this type of direct participation with racing creates a conflict for a major official whose primary duty is to regulate at a race meet.

The proposed amendment will also delete the reference to 37-1-131, MCA, as an authority and implementing citation. That statute addresses professional and occupational licensing boards under the Department of Labor and is not an appropriate authority for the Board of Horse Racing under the Department of Livestock.

4. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Horse Racing, Attn: Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512, or by faxing to (406) 444-4305, or by e-mailing to mstark@mt.gov to be received no later than 5:00 p.m., February 23, 2006.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The request for hearing and comments must be received no later than 5:00 p.m., February 23, 2006.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 130 based on the 1,300 licensees in Montana.

7. An electronic copy of this proposal notice is available through the department's web site at <http://mt.gov/liv/default.asp>.

8. The Board of Horse Racing maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the 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 the Board of Horse Racing. Such written request may be mailed to Marlys Stark, Department of Livestock, Board of Horse Racing, P.O. Box 200512, Helena, MT 59620-0512, faxed to (406) 444-4305, or e-mailed to mstark@mt.gov.

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

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

/s/ Marc Bridges
Marc Bridges
Executive Officer
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State January 13, 2006.

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

In the matter of the adoption of a rule	)	NOTICE OF PROPOSED
specifying deadline for water rights	)	ADOPTION
adjudication fee appeals under)	
Adjudication Fee	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Concerned Persons

1. On March 9, 2006, the Department of Natural Resources and Conservation proposes to adopt a rule specifying a deadline for water rights adjudication fee appeals under Adjudication Fees.

2. The Department of Natural Resources and Conservation will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on February 23, 2006, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast; 1424 9th Ave, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-6614; fax (406) 444-0533; or e-mail to kovercast@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I APPEAL DEADLINE (1) An appeal filed with the department pursuant to 85-2-276(9), MCA, must be postmarked or faxed to the department by March 31 of the year in which the payment is due. Appeals after this date will not be accepted.

AUTH: 85-2-276(9), MCA
IMP: 15-1-216, 85-2-237, 85-2-270, 85-2-271, 85-2-272, 85-2-273,
85-2-276, 85-2-279, 85-2-280, 85-2-281, 85-2-282, 85-2-283,
MCA

4. REASONABLE NECESSITY: House Bill 22 enacted by the 2005 Legislature allows for an administrative appeal process. Water right owners are sent a bill and if payment is not received within 30 days, a second bill is sent that adds penalty and interest fees. If the second bill is not paid, then the bill will go to a debt collection status and a lien will be placed on the water right. A rule is necessary to set a deadline for administrative adjudication fee appeals during the year in which the fees are due, so it is known if water right fees are being appealed. Water right fees that are appealed will not be placed in debt collection status. The Department needs to know which rights will be appealed so that it can set funding levels for the adjudication program.

5. Concerned persons may submit their data, views, or arguments concerning the proposed rule in writing to Kim Overcast; 1424 9th Ave, P.O. Box 201601, Helena, MT 59620-1601; or e-mail to kovercast@mt.gov, and must be received no later than February 23, 2006.

6. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kim Overcast; 1424 9th Ave, P.O. Box 201601, Helena, MT 59620-1601. A request for hearing must be received no later than February 23, 2006.

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

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State January 13, 2006.

rules hearing held by the agency.

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

/s/ Mary Sexton

MARY SEXTON

Director, Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on January 13, 2006.

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

In the matter of the adoption of Rules I	)	AMENDED NOTICE OF
through XXIX and amendment of ARM	)	PROPOSED ADOPTION,
37.95.102, 37.95.106, 37.95.108,	)	AMENDMENT, AND REPEAL
37.95.121, 37.95.132, 37.95.139,)	
37.95.140, 37.95.141, 37.95.214,)	
37.95.215, 37.95.225, 37.95.602,)	
37.95.610, 37.95.611, 37.95.613,)	
37.95.702, 37.95.705, 37.95.706,)	
37.95.708 and 37.95.1005 and the)	
repeal of ARM 37.95.109, 37.95.618,)	
37.95.620, 37.95.701, and 37.95.907)	
pertaining to licensure of day care)	
facilities)	

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-366 regarding the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2572 of the 2005 Montana Administrative Register, issue number 24.

2. This amended notice is being filed to provide more information in the rationale regarding the necessity for the proposed changes.

3. The Department believes that rationale published on December 22, 2005, in support of the proposed changes to the day care licensure rules adequately identified the necessity for each of the proposed new rules or rule changes. However, in order to provide a more detailed statement of necessity regarding the proposed new Rules XXII and XXIV and regarding the proposed changes to ARM 37.95.108(7), 37.95.121(3), 37.95.132 and 37.95.140, the Department provides the following supplemental rationale on these specific rules:

Rule XXII

Under 52-2-702, MCA, the Department is charged with assuring that children are provided safety and security while in care. Part of this new rule currently exists in ARM 37.95.108. That existing rule is being repealed and broken into several new rules with separate headings to make it easier for providers to locate the information. The new rule also extends the protections of the existing rule. This is needed to broaden the means of protecting children. Currently, the existing rule provides that no caregiver charged with a crime involving children or a crime involving violence or drugs may be present in the day care or may provide care pending the outcome of the trial. The purpose of that provision is to protect the safety and well-being of the

children in care. The new rule extends that existing prohibition to the following other categories of persons who will not be able to be present in the day care or to provide care in the facility pending outcome of a trial on criminal charges for crimes involving children or for violent or drug related crimes: volunteers, support staff or other adults who are regularly or frequently in the facility. This addition to the existing rule language is needed to close the existing loophole that allows persons who may pose a risk to the children to regularly be present in the day care or to be providing care pending the outcome of the trial on such criminal charges.

Rule XXIV

Currently existing ARM 37.95.109(3) and (4) has provisions pertaining to requests by the department for psychological or psychiatric evaluations or for substance abuse evaluations. That rule is being repealed and broken down into shorter rules with individual headings to make the information easier for providers to locate. Rule XXIV changes the existing standards the department uses for requesting examinations. The current rule provides that no director, caregiver, or adult in residence in the day care facility shall be currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care, as determined by a licensed psychologist or psychiatrist. It then provides that if the department has reasonable cause to believe such a mental illness or emotional disturbance exists, it may request that the person obtain a psychological or psychiatric evaluation at the individual's expense.

Section (4) of the existing rule similarly allows the Department to request a person to obtain a chemical dependency evaluation at the provider's expense if the department has reasonable cause to believe chemical dependency exists.

The new rule changes the focus from a person's diagnosis to the person's behavior and provides that the Department may request an evaluation if the person has engaged in behaviors that may place others at risk. This rule change is needed to move the focus from the diagnosis of the person and a possible assumption that because a person has a particular diagnosis, the person may pose a risk to others. The rule change will require the department to focus on whether the person's behavior is such that it may pose a risk to others. This change is needed to make the rule language more consistent with anti-discrimination laws. The rule is within the Department's authority to provide protection for the health and safety of children in care. Where a person associated with a day care has engaged in behavior that provides reasonable cause to believe that the person may place others at risk, it is reasonable and necessary for the Department to investigate further and to require appropriate evaluations in order to protect children.

Rule 37.95.108(7)

In 52-2-721, MCA, the Department is given the authority to issue licenses for periods not to exceed three years. This rule amendment is needed to notify providers of the criteria the department uses for issuing a three-year license or registration certificate

and the criteria the department uses for issuing a two-year license or registration and to notify providers that under the Department's criteria for extended licenses a provider must operate for at least one year before he is eligible to apply for an extended license or registration. The Department is issuing multi-year licenses because it does not have sufficient staff to inspect every facility on a yearly basis. Providers having no or a limited number of deficiencies in their most recent inspection survey are likely to provide better care and safety for the children in their care. The multi-year licenses issued to some facilities will provide more time for department staff to concentrate on new providers or those with multiple deficiencies.

Rule 37.95.121(3)

Current ARM 37.95.121, which is being amended, is titled "Safety Requirements". It applies generally to all day care facilities. However, section (3) of the rule requires that any animal in "the home" be in good health. That language arguably limits application of the provision to home day cares and group day cares. The amendment to section (3) is therefore needed to resolve this inconsistency and to make it clear that this safety requirement applies to all day care facilities, not just home day cares or group day cares. Animal health is an important safety issue in all day care facilities.

Rule 37.95.132

ARM 37.95.132 addresses transportation of children in day care. All residents of the State of Montana who drive are required to have a current Montana drivers' license under 61-5-102 and 61-5-103, MCA. The change to ARM 37.95.132 clarifies that the operator of a vehicle transporting children in day care have a valid Montana driver's license, rather than being licensed in another state. This amendment is needed in order to ensure that a person transporting children in day care is familiar with Montana traffic laws in order to protect the health and safety of children. The changes to the rule also require that the person transporting a child must possess current CPR and 1st aid certification. This change is needed to provide for the health and safety of children in an emergency since the vehicle operator may be the only one with the child during the transport. The third proposed change to this rule requires that any child being transported must be placed in age appropriate child restraint seats that meet federal recommendations in order to bring the rule into compliance with National Highway Transportation Safety Administration (NHTSA) guidelines for transportation of children. Finally, the change is also needed to make the rule consistent with 61-9-420, MCA, 2003 Laws of Montana, Chapter 407.

Rule 37.95.140

The amendments to this rule are needed to protect the health and safety of children. The rule sets out immunization requirements for children in day care. The first amendment adds the requirement of the varicella vaccine, which is needed to protect the health and safety of children from varicella. Varicella is highly contagious in institutionalized settings such as day care facilities. The second amendment

establishes immunization standards that are consistent with those requirements for children ages five to 12 who are attending schools in Montana. Providing immunization standards that are consistent with school requirements will provide needed protection for children and make it easier for day care operators and parents to have a standard that is uniform with the standard that is also required in the school system.

4. All other rule changes proposed to be adopted, amended, and repealed remain as proposed.

5. The statement of reasonable necessity remains as proposed with the additions as set forth in this notice.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State January 13, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF REPEAL
of ARM 2.59.801, 2.59.802,)	
2.59.803, 2.59.804, 2.59.805,)	
2.59.806, 2.59.807 and 2.59.808)	
related to foreign capital)	
depositories)	

TO: All Concerned Persons

1. On November 10, 2005, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-367 regarding the proposed repeal of the above-stated rules at page 2130 of the 2005 Montana Administrative Register, issue number 21.

2. The Division of Banking and Financial Institutions has repealed ARM 2.59.801, 2.59.802, 2.59.803, 2.59.804, 2.59.805, 2.59.806, 2.59.807 and 2.59.808 exactly as proposed.

3. No comments or testimony were received.

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

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

Certified to the Secretary of State January 13, 2006.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I, II, and III, and the amendment of	)	AMENDMENT
ARM 18.8.101, 18.8.207, 18.8.415,)	
18.8.422, 18.8.431, 18.8.504, 18.8.508,)	
18.8.510A, 18.8.511A, and 18.8.517)	
concerning the Motor Carrier Services)	
regulations for over dimensional and)	
overweight vehicles and loads)	

TO: All Concerned Persons

1. On November 10, 2005, the agency published MAR Notice No. 18-110 regarding the proposed adoption of new RULES I, II, and III, and the amendment of ARM 18.8.101, 18.8.207, 18.8.415, 18.8.422, 18.8.431, 18.8.504, 18.8.508, 18.8.510A, 18.8.511A, and 18.8.517 concerning the Motor Carrier Services regulations for over dimensional and overweight vehicles and loads at page 2142 of the 2005 Montana Administrative Register, Issue Number 21.

2. The agency has adopted new RULE I, ARM 18.8.432, new RULE II, ARM 18.8.603, and new RULE III, ARM 18.8.604 exactly as proposed.

3. The agency has amended ARM 18.8.101, 18.8.207, 18.8.415, 18.8.422, 18.8.431, 18.8.504, 18.8.508, 18.8.510A, 18.8.511A, and 18.8.517 exactly as proposed.

4. No comments or testimony were received.

By: /s/ James D. Currie
James D. Currie, Deputy Director
Department of Transportation

/s/ Nick A. Rotering
Nick A. Rotering,
Alternate Rule Reviewer

Certified to the Secretary of State January 13, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rules I through V pertaining to credit)
counseling services)

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On December 8, 2005, the Department of Justice published MAR Notice No. 2-61-175 regarding the public hearing on the proposed adoption of the above-stated rules at page 2373, 2005 Montana Administrative Register, Issue No. 23.

2. The Department has adopted New Rules I through V (ARM 2.61.1001 through 2.61.1005) as proposed with only the following changes to New Rule I and New Rule III, stricken material interlined, new material underlined:

NEW RULE I LICENSE FEE (1) The required license fee will be \$5000. It must be paid every year on or before ~~July 1~~ February 1.

NEW RULE III LIST OF ACCREDITATION AND CERTIFICATION PROVIDERS (1) Accreditation must meet as they pertain to credit counseling the:
(a) ISO 9001:2000;
(b) BSI management;
(c) BYGI; or
(d) council on accreditation for children and families standards ~~as they pertain to credit counseling.~~
(2) remains as proposed.

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

COMMENT 1: The office of victim services and consumer protection noted that the date for license fee renewal should be moved to February, otherwise a licensee would be required to be licensed twice in calendar year 2006.

RESPONSE 1: The department has revised New Rule I to have a February 1 renewal date.

COMMENT 2: The department received two comments in support of the higher licensee fee. The department received three comments opposed to the higher fee. The department received two comments opposed to any fee due to the low number of consumers they had in Montana (four and ten respectively).

RESPONSE 2: The current fee is necessary in order for the department to have adequate funding to enforce and investigate the companies that provide debt

management services to Montanans. These companies service the most economically vulnerable Montanans and all enforcement will have to come from the office of victim services and consumer protection. Many of the companies in this industry are located out-of-state. The investigations of any violations would be costly and require resources that the Montana Code Annotated requires the industry to provide.

COMMENT 3: The department received three comments in full support of the rules.

RESPONSE 3: The department feels no response is necessary to this endorsement of the rules as proposed.

COMMENT 4: The department received two comments regarding what method would be allowed for accreditation, feeling that the rules did not allow enough options for accreditation.

RESPONSE 4: There was not enough information available on the various alternative accreditation companies provided to the department to allow for their inclusion in the list. Even the commenters, when urging for their adoption only provided their name. The neutral ISO 9001:2000 was deemed to be an acceptable standard for the rules until such time as more information is known about the companies that provide non-ISO 9001:2000 accreditation. The department did do additional research on the names provided and added those approved by many other states to the list as reflected in the changes to New Rule III.

COMMENT 5: The department received one comment requesting clarification between credit counseling and consumer debt management.

RESPONSE 5: The rules apply only to consumer debt management operations as defined in the code. There is no need to obtain a license if only credit counseling is provided.

COMMENT 6: The department received one comment requesting clarification of what happens to existing customers of debt management companies that will no longer operate in Montana.

RESPONSE 6: The companies would no longer be able to provide services after February 1, 2006.

COMMENT 7: The department received written comment from two parties wishing that the credit counselor certification process was more of an application and review process than a list of approved methods.

RESPONSE 7: The department believes an application and review process would require complicated rules and extensive time, including possible site visits to out-of-state locations to assure actual compliance with material provided to the state. It

would also radically complicate enforcement efforts as there would be no bright line test for compliance.

COMMENT 8: The department received one comment urging that New Rule IV be expanded to include all possible punishments beyond “fined and enjoined” as many in the industry are punished by other forms of state action.

RESPONSE 8: The department feels that “fined and enjoined” are broad enough terms to encompass nearly all enforcement actions by other governmental entities. A long list of terms would only confuse matters and add the impression that those terms not included were excluded. A debt management company will be required to list all times they had to pay money (fined) or were told to stop doing some activity (enjoined) regardless of whether it was an agreement of voluntary compliance, injunction, administrative order or other enforcement method.

COMMENT 9: The department received a comment requesting further clarification between a fee and a donation.

RESPONSE 9: What a licensee chooses to call money received by a consumer has no effect on the rules or laws. Any money given by a consumer to a licensee must comply with both the laws and rules which limit the amount of money that can be collected from a consumer. Labeling a charge as a donation will not allow for the collection of additional money from a consumer.

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State January 13, 2006.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.29.1409,)
relating to travel expense)
reimbursement for workers')
compensation medical services)

TO: All Concerned Persons

1. On July 28, 2005, the Department of Labor and Industry published MAR Notice No. 24-29-197 regarding the public hearing on the proposed amendment of ARM 24.29.1409 relating to travel expense reimbursement for workers' compensation medical services at page 1350 of the 2005 Montana Administrative Register, Issue no. 14.

2. On August 18, 2005, the Department held a public hearing in Helena regarding the above-stated rule at which oral comments were received. Additional written comments were received prior to the closing date of August 26, 2005.

3. The Department has thoroughly considered the comments and testimony received. The following is a summary of the comments received and the Department's response to those comments:

Comment 1: The Montana Contractor Compensation Fund and the Montana Self-Insurers Association commented that the rule should clarify that a claimant's physician must indicate the appropriate form of travel for a claimant's medical condition for travel reimbursement purposes, if the least costly form of travel is not suitable for the claimant's medical condition.

Response 1: The Department agrees that for travel expense reimbursement purposes, the claimant's physician should indicate the form of travel necessary for a claimant's medical condition if the least costly form of travel is not suitable. The Department is revising the rule, as indicated below in this notice, to require that the type of travel selected by a claimant must be the least costly form of travel unless the travel is not suitable for the claimant's medical condition, as certified by the claimant's physician.

Comment 2: The Montana Self-Insurers Association and the Montana Contractor Compensation Fund commented that the requirement for travel expense reimbursement is an atypical insurance benefit, that the additional cost of travel reimbursement will impact the overall cost of workers' compensation premiums, and finally, that Montana's geographic population distribution and the medical expertise geographic distribution create situations where the travel expense is substantial. The Montana Self-Insurers Association also commented that it was in the interest of all parties for the rule to define reimbursement specifically so as to make claimants

aware of the benefits and insurers aware of the costs. The Montana Self-Insurers Association noted that changing the definition of community from 30 to 15 miles would increase insurers' costs.

Response 2: The Department acknowledges the comments. The decision to reimburse workers' compensation claimants for travel expenses related to medical treatment was made by the Legislature and is codified at 39-71-704, MCA. One of the Department's goals in promulgating the current amendments to the travel rule is to eliminate the administrative costs created due to discrepancies between statute and administrative rule. Travel reimbursement under current statutory language establishes the insurer is not liable for the first 100 miles per month, nor is the insurer liable for travel to medical treatment within the injured worker's community. The Department believes the rule is sufficiently specific to make costs and benefits clear to all parties. Finally, the Department amended the original proposed rule from 30 to 15 miles in response to earlier comments that claimants could travel up to 700 miles a month without reimbursement in some parts of the state if the claimant needed to attend therapy appointments a few times a week. The Department believes 15 miles, for a total 30 mile round trip, represents a definition of community that properly balances the interests at issue.

Comment 3: One attorney commented that the 90-day deadline for submitting travel reimbursement receipts was onerous because billing deadlines for claims processing had never existed before for claimants. Another attorney commented that a refusal to reimburse a claimant for failure to submit their reimbursement receipts within 90 days might be unconstitutional because the attorney believed medical providers do not have the same burden to submit requests for payment within a certain timeline.

Response 3: The Department has incorporated the travel reimbursement requirements set out in 39-71-704(1)(d), MCA, enacted in 2001, for ease of use by the workers' compensation community. The 90-day deadline is specified in statute which reads in part: "Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition." The Department believes the proposed 90-day deadline is consistent with statute and does not create an undue burden for claimants.

The Department also believes there is not an unconstitutional infirmity in the rule. Under ARM 24.29.1513, medical providers are required to submit their initial bill within 7 days and subsequent bills within 30 days of providing services. Also, treating different classes of people differently is constitutionally permissible under workers' compensation if the differentiation is rationally related to a legitimate government interest. Therefore, it is permissible to treat claimants differently than medical providers if there is a rational reason to do so. Here, the Legislature established the 90-day requirement by statute in 39-71-704, MCA. The Department

believes this requirement for claimants is rational because only claimants are in possession of their travel receipts. The rule in effect sets a workable statute of limitations for travel reimbursement, just as 39-71-601, MCA, sets the statute of limitations that entirely bars late claims for workers' compensation.

Comment 4: The Montana Self-Insurers Association and an independent insurer commented that the notice to the injured worker of the 90-day deadline should be either written by the Department or use specific language provided by the Department. The Montana State Fund commented that the Department should add language to the rule specifying that written notice may be met by the insurer providing the benefit summary published by the Department as provided in 39-71-606(2), MCA.

Response 4: As with several aspects of Montana workers' compensation, the insurer and/or claims examiner determine the best practice for their unique business. The Department believes the exact form and content of the written notice to the claimant is a decision best made by the insurer/claims examiner, in light of their processes and procedures. However, the Department does make available the Benefit Pamphlet that is, pursuant to 39-71-606, to be provided to each injured worker. This Pamphlet includes basic travel reimbursement information. The Benefit Pamphlet is updated as changes in law and court decisions mandate. The Pamphlet is available in hardcopy from the Department, and also on our website. The Department believes the existing rule language contemplates either the benefit summary or a separate written notice to the claimant, and that the decision of which form to use is a business decision best left to the insurer.

Comment 5: An independent insurer commented that the Department should expand the travel reimbursement information contained in our Benefit Pamphlet.

Response 5: The Department is evaluating the Benefit Pamphlet in light of this comment. Any changes or additions will be available in hardcopy and on our website. The Benefit Pamphlet is updated as changes in law and court decisions mandate. The Department will be happy to work with anyone seeking to improve our Benefit Pamphlet, and is providing the commenter with the opportunity to help fine-tune the pamphlet.

Comment 6: The Montana Self-Insurers Association commented that the Department should address when the written notice of the 90-day deadline to request travel reimbursement should be sent.

Response 6: The Department believes the travel reimbursement statute and rule are clear in both construction and intent, and that the language in the existing rule is sufficient. Again, insurers can determine the best practice for their unique business.

Comment 7: The Montana Self-Insurers Association commented that the Department should address what to do if the injured worker moves.

Response 7: The Department believes the travel reimbursement statutes and rules are clear in both construction and intent, and that the language in the existing rule is sufficient. To avoid burdensome administrative rules, nothing in rule or law requires multiple notices to the injured worker in the event of a move. However, if the insurer or claims examiner believes that additional notice to the injured worker would be beneficial, nothing in rule or statute prohibits such additional notice. Again, it is up to the business practices of an insurer to determine whether to discuss the ramifications of a move with an injured worker on an active claim.

Comment 8: The Montana Self-Insurers Association and the Montana Contractor Compensation Fund commented that the Department should develop a form to be submitted to insurers by injured workers for travel reimbursement, and develop the specific data to be reported.

Response 8: Because the requirement that travel reimbursement requests be submitted "on a form furnished by the insurer" is consistent with the rule covering the time periods dating back to July 1, 1989, the Department believes that most workers' compensation claims examiners in Montana have already developed their own processes and forms, in light of their own unique business practices. Therefore, the Department will not develop a form at this time. The Department will continue to check with insurers and claims examiners to keep apprised of their needs. Should the situation change, the Department will develop such a form, and make it available on the internet.

Comment 9: The Montana Self-Insurers Association commented that the claimant's residence, used for determining mileage, should be defined because of construction workers and others who typically work far from home and may establish temporary residences near their work site.

Response 9: The Department acknowledges that potential problems could arise under the current rule. However, the Department believes that while the definition of residency may at some time in the future become an issue, it is important to publish updated travel rules as soon as possible. Adding an entirely new definition under this notice would require that the rest of the rule not be adopted. The Department will consider revising the rule to address the commenter's concerns, should the lack of definition of residency become an issue, or should the issue as to temporary versus permanent residence become an issue.

Comment 10: The Montana Contractor Compensation Fund commented that travel reimbursement must be reasonable in light of the fact that many construction workers commute long distances to work. It also commented that the statutory 100 mile per month exclusion should be extended to take into consideration the distance the injured worker chooses to travel to their work site if it is more than 100 miles.

Response 10: The Department may not expand or change statutory language, only clarify and provide procedures for implementation through the rules. In this case, the statute defines reimbursement relative to the locations of a claimant's community

and their medical provider and does not include consideration of a claimant's work site. The statute also sets the 100 mile exclusion. Therefore, the change suggested by the commenter would exceed the Department's delegated rulemaking authority.

Comment 11: The Montana Self-Insurers Association and the Montana Contractor Compensation Fund commented that the travel reimbursement amounts set for state employees that are then used to reimburse workers' compensation claimants must be furnished by the Department to every payer and kept current.

Response 11: The Department has, and will continue to, provide the current mileage and lodging reimbursement rates for state employees as the rates are updated. At least annually, and more frequently if changes in state employee reimbursement make it necessary, all insurers and claims examiners are provided a written notice of the updated rates. The Department also provides this notice via email to those who request it. The Department maintains the current and historical reimbursement amounts for mileage, lodging, and meals on the internet, which can be found at <http://erd.dli.state.mt.us/wecregs/travelrate.asp>.

Comment 12: The Montana Self-Insurers Association commented that the Department should change the method of computing distance by substituting the nearest community with a post office for the claimant's residence, indicating it would be easier to compute the distance.

Response 12: The Department sought a definition of community that would treat claimants equally and fairly. Given the number of people that live outside established communities, the Department determined that rather than use post offices, it would be clearer to compute mileage directly from the claimant's residence to the provider location. There are several websites that are free and easy to use that allow a person to establish highway mileage when two addresses are entered. The Department does not and cannot warrant the availability, reliability, or accuracy of any of these websites, and does not endorse any specific site. And as always, the Department encourages any user to check the privacy statements of any website. These websites include, but are not limited to, AAAmaps, (which requires free registration), Google Maps, Mapquest.com, MSN Maps and Directions, and Rand McNally Maps and Directions. If the claimant disputes the claims examiner's calculations, the Department encourages the claims examiner to double-check their calculations using a physical map or other websites, to ensure the accuracy of their calculations.

Comment 13: The Montana Self-Insurers Association commented that the Department should delete the reimbursement for non-receiptable lodging. Another commenter requested we include a requirement that a receipt for lodging must be presented for reimbursement in order to prevent fraudulent requests when claimants stay with family or friends.

Response 13: Section 39-71-704, MCA, requires reimbursement be based on the rate of reimbursement to state employees. Included in the state employee

reimbursement rate is \$12.00 for non-receipted lodging. Under this rule, reimbursement at \$12 is allowed when a claimant stays with family or friends. Also, the requirement for reimbursement for non-receiptable facilities is consistent with the rule covering every previous time period. To clarify the amount, the Department added this information to the webpage at <http://erd.dli.state.mt.us/wecregs/travelrate.asp>.

Comment 14: The Montana Self-Insurers Association requested clarification of mileage reimbursement calculations. Specifically, it asked if mileage is computed one-way or round trip, and asked if the injured worker is reimbursed for the first 15 miles if the provider is more than 15 miles away.

Response 14: Section 39-71-704(1)(d)(ii)(B), MCA, requires that travel within a claimant's community is not reimbursable. At the same time, under subsection (1)(d)(ii)(C), travel to a medical provider outside the claimant's community is reimbursed. Subsection (1)(d)(ii)(A) also requires that the first 100 miles be excluded. These subsections are joined by the word "and" so the exclusions provided by each must be added together before reimbursement is allowed. Therefore, read together, the statute requires reimbursement of any roundtrips outside the claimant's community after the first 100 miles. Under the rule's definition of community, a claimant is therefore reimbursed for all travel, including the first 15 miles of travel, if the 100 mile exclusion has been met and the claimant is traveling to a medical provider out of their community. Any travel within a 15 mile radius is excluded. By using the word "radius," the rule excludes 15 miles one way (30 miles round trip) because that travel falls within the claimant's "community."

Comment 15: The Montana Self-Insurers Association commented that the wording regarding occupational disease claims prior to July 1, 2005, is awkward. It suggested alternate language. The American Insurance Association commented that the rule should clarify it generally applies to occupational disease claims arising after the repeal of the Occupational Disease Act.

Response 15: The Department agrees the language could be clearer and is amending the rule to clarify it. To clarify that the specific provision of (6) only applies to claims that fall under the now repealed Occupational Disease Act, the date of loss is included in the first sentence of the rule. The Department does not believe it is necessary to also clarify that the rule generally applies to occupational disease claims arising after July 1, 2005, because those claims are to be treated like workers' compensation claims and therefore fall under the rule. In addition, the Department is preparing another rule notice to propose to amend the rules to clarify the treatment of occupational disease claims throughout all the rules.

Comment 16: The Montana Self-Insurers Association commented that the rule should clarify that prior authorization is required for travel out of Montana, and also commented that the catch phrase should be modified to indicate this rule only addresses intrastate travel.

Response 16: The travel reimbursement rule and statute include language that specifically holds down travel costs whether in or out of Montana, such as mileage reimbursement rate, least costly form of travel, lodging and meal reimbursement rates, etc. The change proposed by the commenter may create confusion as to whether the cost containment methods in the travel rule apply to out of state travel. The Department will consider addressing the issue of prior authorization for out-of-state travel to a medical provider in a future rules notice.

Comment 17: An independent insurer commented it opposed the requirement that the insurer provide written notice to the claimant of the 90-day deadline from the date of travel to request reimbursement. The commenter stated that requiring the insurer to write the language of this notice and supply it to the claimant is tantamount to forcing an insurance company to give legal advice to a claimant.

Response 17: The Department believes the injured worker must be advised of the 90-day limitation on requesting travel reimbursement, pursuant to 39-71-704(1)(d)(ii), MCA. The Department added the requirement that the notice be in writing in response to a comment from the first hearing, as a writing is the most straightforward way to prove notice was given. The Department is aware that each insurer has their own business practices. In light of this, the Department is not mandating a specific form of notice, other than it be written. Insurers and claims examiners are free to develop their own language and procedures for providing the claimant's notice. The Department does not agree that the requirement of written notice supplied by the insurer constitutes legal advice from the insurer to the claimant because the requirement merely clarifies the statutory requirement already set out in 39-71-704, MCA.

Comment 18: An independent insurer commented that it disagreed with the proposed subsection that clarifies the obligation of the insurer to reimburse travel expenses for occupational disease evaluations ordered by the Department. The commenter argues 39-72-608, MCA, enumerates the insurer's liability, and that travel reimbursement is not included. As a result, the commenter believes that (6) violates the Department's rulemaking authority.

Response 18: The Department believes that 39-72-608, MCA, clearly establishes insurer liability for travel to Department ordered occupational disease examinations because it requires the insurer to pay for "the expense of the medical examination and the report." The Department concludes that part of the "expense" of the examination includes getting the injured worker to and from the exam. Further, the Department believes it is both prudent and practical to ensure the injured worker is able to attend the exam by reimbursing associated travel expenses. For these reasons, the Department believes (6) is within its rulemaking authority.

Comment 19: The Montana State Fund testified at hearing in support of the Department's decision to update our rules. The American Insurance Association commented that it supports the amendments and appreciates the Department's clarifications that clear up confusions among insurance providers.

Response 19: The Department acknowledges the comments.

Comment 20: The Montana State Fund commented that the Department should add language excluding travel reimbursement when the medical travel occurs coincident with the claimant's travel to and from employment.

Response 20: The Department believes the statutory language of 39-71-704(1)(d), MCA, establishes the specific parameters for travel reimbursement and thereby limits the Department's authority. The travel rule and statute already exclude local mileage and impose a 100-mile per month deductible. The Department believes that incorporating such an exclusion and consequent reduction in mileage reimbursement would be beyond the Department's statutory authority.

Comment 21: An attorney commented that the rule unfairly favors insurers, creates a procedural hurdle for claimants that defeats the self administering nature of the Workers' Compensation Act, and interferes with physicians' treatment plans by discouraging them from sending claimants to superior providers out of their community because comparable treatment is available within the community.

Response 21: The Department believes that the rule balances the interests of insurers and claimants fairly because it reflects the legislative policy of the statute. Previous to the time period covered by this rule, travel was only reimbursed if the insurer requested the travel. The Department also believes the rule does not create an unduly burdensome hurdle for claimants in submitting travel reimbursement receipts because only the claimant can actually verify their travel plans. Finally, this rule only limits a physician's ability to refer a claimant to a provider in another community if there is comparable treatment in their own community. The limitation is in conformance with the statute.

Comment 22: A number of attorneys commented that the Department should define insurer requested travel to include compliance with recommended medical treatment because insurers threaten to suspend benefits pursuant to 39-71-607, MCA, if a claimant does not comply with the recommended treatment.

Response 22: The Department's rulemaking authority is limited to implementing statute. Section 39-71-704, MCA, is explicit in defining "requested or required by the insurer" as that treatment specified in 39-71-605, MCA. Compliance with scheduled medical treatment is not included in 39-71-605, MCA. Therefore, it would be outside the Department's rulemaking authority to add to the rule as requested. However, the Department is amending the rule as indicated below to clarify that insurer requested travel only includes travel pursuant to 39-71-605, MCA.

Comment 23: A physical therapist requested the Department to include functional capacity evaluations in reimbursable travel.

Response 23: Because functional capacity evaluations are included under 39-71-605, MCA, the Department believes the rule addresses this issue already. In other words, the Department believes travel at the request of the insurer already includes functional capacity evaluations. This will also be clarified by amending the rule as discussed in the previous response.

4. After consideration of the comments, the Department has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

24.29.1409 TRAVEL EXPENSE REIMBURSEMENT (1) through (4)(a) remain as proposed.

(b) The type of travel selected must be the least costly form of travel unless the travel is not suitable for the claimant's medical condition, as certified by the claimant's physician.

(c) remains as proposed.

(i) The first 100 miles of automobile travel are excluded each month unless the insurer requested the travel pursuant to 39-71-605, MCA.

(ii) through (f)(iv) remain as proposed.

(5) Preauthorized expenses incurred for direct commercial transportation by air or ground, including rental vehicles, shall be reimbursed when no other less costly form of travel is available to the claimant, or when less costly forms of travel are not suitable to the claimant's medical condition, as certified by the claimant's physician.

(a) If a claimant chooses to use commercial transportation when a less costly form of travel suitable to the claimant's medical condition is available, as certified by the claimant's physician, reimbursement shall be made according to the rates associated with the least costly form of travel.

(6) For occupational disease claims arising prior to July 1, 2005, ~~and therefore governed by the Occupational Disease Act~~, if liability has not been accepted on the claim and the department schedules a medical examination as provided in 39-72-602, MCA, the insurer shall reimburse the claimant for the travel expenses incurred for the examination pursuant to this rule.

(7) remains as proposed.

AUTH: 39-71-203, 39-72-203, 39-72-402, MCA

IMP: 39-71-704, 39-72-602, 39-72-608, MCA

/s/ MARK CADWALLADER

Mark Cadwallader,
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 13, 2006.

BEFORE THE CRANE AND HOISTING
OPERATING ENGINEERS PROGRAM
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
of ARM 24.135.501 pertaining to	)	AND ADOPTION
hoisting operators license requirements,)	
24.135.516 pertaining to crane hoisting)	
operators license requirements,)	
24.135.530 pertaining to mine hoisting)	
operators license requirements, and)	
NEW RULES I-VI pertaining to fee)	
schedule, renewals, national)	
commission certification, failed)	
examinations, applications, and)	
citations and fines)	

TO: All Concerned Persons

1. On October 6, 2005, the Department of Labor and Industry published MAR Notice No. 24-135-1 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1871 of the 2005 Montana Administrative Register, issue no. 19.

2. On November 1, 2005, at 1:00 p.m., a public hearing was held in Helena, Montana, and 18 members of the public spoke at the public hearing. In addition, one written comment was received prior to the closing of the comment period.

3. The Department has thoroughly considered all of the comments made. A summary of the comments received and the Department's responses are as follows:

COMMENT 1: A commenter stated that he doesn't feel that the Department has verified the need for an increase.

RESPONSE 1: The Department refers to the statement of reasonable necessity presented in the proposal notice immediately after the new fee rule, NEW RULE I. Projected revenues for fiscal year 2006, using the existing fee structure is estimated at \$66,640, but expenditures (expenses) are approximately \$105,640. This results in a projected deficit of \$39,000 by the end of fiscal year 2006. Pursuant to 50-76-104(2), MCA, fees must be commensurate with the costs of operating the crane and hoist program. Operating at a structural deficit is a violation of law.

Revenue and expense projections for the next five years show that if fees are not increased, revenue will not be sufficient to meet expenses. Expense projections are based on fiscal year 2005 expenses and can be seen in the following table:

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	
NO FEE INCREASE							
REVENUE	\$ 66,640.00	\$ 69,972.00	\$ 73,470.60	\$ 77,144.13	\$ 81,001.34	\$ 85,051.40	
EXPENSES	\$ 105,640.00	\$ 109,865.60	\$ 114,260.22	\$ 118,830.63	\$ 123,583.86	\$ 128,527.21	
BALANCE	\$ (39,000.00)	\$ (39,893.60)	\$ (40,789.62)	\$ (41,686.50)	\$ (42,582.52)	\$ (43,475.81)	\$ (247,428.06)
							TOTAL DEFICIT AFTER 5 YEARS
FEE INCREASES AS PROPOSED							
REVENUE	\$ 104,800.00	\$ 121,510.00	\$ 127,585.50	\$ 133,964.78	\$ 140,663.01	\$ 147,696.16	
EXPENSES	\$ 105,640.00	\$ 109,865.60	\$ 114,260.22	\$ 118,830.63	\$ 123,583.86	\$ 128,527.21	
BALANCE	\$ (840.00)	\$ 11,644.40	\$ 13,325.28	\$ 15,134.14	\$ 17,079.16	\$ 19,168.95	\$ 19,169.00
							TOTAL BALANCE AFTER 5 YEARS

Assumptions: 4% increase in expenses and 5% increase in income per year.

COMMENT 2: A commenter stated that he feels the Crane Program should increase the fee to \$60.00 instead of \$80.00.

RESPONSE 2: The Department refers to the statement of reasonable necessity presented in the proposal notice to point out that the proposed fee increases in renewal would generate approximately \$104,800 in revenue, plus new licensees. Keeping in mind that the projected expenditures are approximately \$105,640, the Department believes that any decrease in the proposed fees would not be in compliance with 50-76-104, MCA. Please refer to the response to Comment 1.

COMMENT 3: Comments asked the Department to explain why there is a \$105,000 loan, and where did the money go.

RESPONSE 3: The \$105,000 figure in question is actually \$105,640 in overall program expenditures. The program was required to take an inter-agency loan of \$4,200 at the end of fiscal year 2005 to allow the program to finish the fiscal year without a cash deficit. The \$4,200 was used to pay for the program's ordinary operating expenses. The inter-agency loan will be repaid with the revenue generated by the fees being adopted in NEW RULE I.

COMMENT 4: A commenter stated that the Department needs to deal with the issue of NCCO applicants.

RESPONSE 4: The Department has created NEW RULE III in direct response to the need to address NCCO applicants pursuant to Chapter 93, Laws of 2005 (HB 401) of the 2005 Legislative Session.

COMMENT 5: Comments were received regarding the need to address ANSI B30.5.

RESPONSE 5: The Department concurs and notes that while the requirements set forth by ANSI B30.5 are not a requirement pursuant to 50-76-110(2), MCA, the Department is in the process of drafting rules to incorporate specific sections.

COMMENT 6: A commenter stated that the rules pertaining to ANSI B30.5 were very sketchy.

RESPONSE 6: The Department notes that there were no rules pertaining to ANSI B30.5 in this notice.

COMMENT 7: A commenter stated that the Department should make sure that the tower crane regulations are implemented.

RESPONSE 7: The implementation of tower crane regulations was addressed in this notice with the amendment of ARM 24.135.516(5)(b).

COMMENT 8: A commenter stated that the State only has one person working for the crane program, yet fees are being increased.

RESPONSE 8: The Department points out that there are actually a total of 1.27 FTE billed to the crane program which includes a licensure compliance investigator as required by statute, and various office staff. Additionally, there is legal counsel assigned to the program.

COMMENT 9: A commenter asked in regards to fees, "How much would be enough?"

RESPONSE 9: The Department refers specifically to 50-76-104, MCA, and more generally to 37-1-134, MCA, which require licensure fees be commensurate with the cost of operating a program or a Board. The amount of the program's allowed operating costs is subject to the budget process and legislative approval. Additionally, programs or Boards are not allowed to have a surplus of revenue exceeding twice the amount of annual appropriation. Please refer to the response to Comment 1.

COMMENT 10: A commenter stated that he does not want anyone that doesn't know anything about a crane to ask for his license.

RESPONSE 10: The Department understands the commenter's concern, but points out that pursuant to 50-76-114(2), MCA, the Department already has the authority to direct an employee to verify licensure. Additionally, department staff may issue a citation and fine for not having a license.

COMMENT 11: A commenter asked how someone will complete a job if a plumbing inspector shuts down a crane for not having a license.

RESPONSE 11: Pursuant to 50-76-110(3), MCA, only the crane inspector as defined in the same statute may declare equipment "out of service."

COMMENT 12: A commenter asked if a crane inspector is doing electrical inspections.

RESPONSE 12: A crane inspector does not conduct electrical inspections; by law, those inspections are conducted by the Building Codes Bureau.

COMMENT 13: A commenter stated that applicants with NCCO should be required to take the Department's test to become licensed.

RESPONSE 13: Pursuant to 50-76-113(1), MCA, the Department is required to issue a license to any individual who holds the NCCO certification. This statute was adopted during the 2005 Legislative Session as part of Chapter 93 (HB 401).

COMMENT 14: A commenter stated that the fee increase would be a deterrent to more skilled employees coming in.

RESPONSE 14: The Department refers to 50-76-104, MCA, which requires all licensure fees be commensurate with the cost of operating the crane program. The Department concludes that the \$20 increase is not likely to be a significant barrier for a skilled worker who is contemplating an offer of work in Montana.

COMMENT 15: A commenter expressed difficulty for the 15-day "phase in period" for tower cranes.

RESPONSE 15: The Department states that there was no 15-day "phase in period". The effective date of the law passed during the 2005 Legislative Session as part of Chapter 93 (HB 401) was October 1, 2005.

COMMENT 16: A commenter stated that the Department should have notified the public that there was legislation regarding the crane industry.

RESPONSE 16: The Department did not propose the amendments to statute. The State of Montana provides an internet based legislative look-up system that allows interested persons to peruse, by topic, the general subject matter of every bill introduced during the legislative session. The entire text of those bills is available on-line through that same system.

The Department notes that many trades, professions and industries form private groups to monitor pending legislation and notify members of those groups of matters of interest and concern, or hire lobbyists or advisors to track such matters. The Department has not attempted to estimate the cost of tracking and providing timely

specific notice regarding proposed legislation regarding the crane industry, either to "the public" in general or to "the crane industry" in particular. Because of the speed of legislative developments, even notice by first class mail might not be particularly timely. The Department notes that if it had such duties, the costs of notification would be borne by licensees.

The Department may only propose and adopt administrative rules to implement enacted legislation. Pursuant to the rulemaking processes, the Department publishes all proposed rulemaking in the Montana Administrative Register and provides an opportunity for citizen input. Rulemaking notices are also posted on the Department's website, and mailed to licensees and other interested persons.

COMMENT 17: A commenter stated that the Department should change the renewal period to every two years to coincide with the physical requirements, charge the new fees, but only every two years.

RESPONSE 17: The Department is in the process of reviewing the option of a two-year renewal cycle. Biennial renewals would not lower fees but instead would simply require collection of double the fee every two years instead of annually. However, the renewal period is only a small portion of the expenditures of the program annually, and the program would remain active during non-renewal periods processing applications, administering examinations and providing compliance inspections. Pursuant to 50-76-104, MCA, the fees must be commensurate to the cost of operating the total program.

4. No other comments were received and the Department amends ARM 24.135.501, 24.135.516 and 24.135.530, and adopts NEW RULE I (24.135.402), NEW RULE II (24.135.2101), NEW RULE III (24.135.545), NEW RULE IV (24.135.412), NEW RULE V (24.135.409) and NEW RULE VI (24.135.404) exactly as proposed.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State January 13, 2006

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.144.411 fees, and)
ARM 24.144.2102 renewal)
of license or endorsement)

TO: All Concerned Persons

1. On November 23, 2005, the Department of Labor and Industry published MAR Notice No. 24-144-4 regarding the public hearing on the proposed amendment of the above-stated rules relating to fees and renewal of license or endorsement at page 2312 of the 2005 Montana Administrative Register, issue no. 22.

2. On December 15, 2005, a public hearing was held in Helena, Montana to consider the proposed amendments. No members of the public spoke at the public hearing. In addition, no written comments were received prior to the closing of the comment period.

3. The Department has amended ARM 24.144.411 and 24.144.2102 exactly as proposed.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 13, 2006

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.177.401 pertaining to fees)

TO: All Concerned Persons

1. On December 8, 2005, the Board of Physical Therapy Examiners (Board) published MAR Notice No. 24-177-26 regarding the public hearing on the proposed amendment of the above-stated rule relating to fees, at page 2376 of the 2005 Montana Administrative Register, issue no. 23.

2. A public hearing on the notice of proposed amendment of the above-stated rule was held on December 29, 2005.

3. The Board did not receive any comments on the proposed amendment of ARM 24.177.401. During its meeting to amend, the Board noticed a grammatical error in (1)(a).

4. After the Board review, the Board has amended ARM 24.177.401 as proposed with the following change, stricken matter interlined, new matter underlined:

24.177.401 FEES (1) remains as proposed.

(a) The fee for NPTE or NPTAE examinations ~~are~~ is set by the examination administrator and is paid by the applicant directly to the federation of state boards of physical therapy (FSBPT).

(b) through (2) remain as proposed.

AUTH: 37-1-134, 37-11-201, MCA

IMP: 37-1-134, 37-1-304, 37-1-305, 37-11-201, 37-11-304, 37-11-307, MCA

BOARD OF PHYSICAL THERAPY EXAMINERS
BRENDA MAHLUM, 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 January 13, 2006

BEFORE THE OFFICE OF THE LIEUTENANT GOVERNOR
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF REPEAL
30.2.201 through 30.2.209 and)	
30.3.101 through 30.3.109 pertaining)	
to Centennial Grants and Centennial)	
Sanctioning)	

TO: All Concerned Persons

1. On July 28, 2005, the Office of the Lieutenant Governor published MAR Notice No. 30-6 regarding the proposed repeal of the above-stated rules at page 1358 of the 2005 Montana Administrative Register, Issue Number 14.
2. No public hearing was held, and no written comments were received.
3. The rules are repealed exactly as proposed.

By: /s/ John Bohlinger
John Bohlinger,
Lieutenant Governor

By: /s/ Will Hammerquist
Will Hammerquist, Rule Reviewer

Certified to the Secretary of State January 13, 2006.

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

In the matter of the amendment of ARM)
37.86.1105 pertaining to Medicaid)
outpatient drugs, pharmacy)
reimbursement for Medicare Part D)
dual eligibles)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On November 23, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-359 pertaining to the public hearing on the proposed amendment of the above-stated rule relating to Medicaid Outpatient Drugs, pharmacy reimbursement for Medicare Part D dual eligibles, at page 2319 of the 2005 Montana Administrative Register, issue number 22.

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (5) remain as proposed.

(6) Full-benefit ~~D~~ual eligible recipients qualify for pharmaceutical drug coverage under ~~m~~Medicare Part D prescription drug plans (PDPs) on January 1, 2006 under 42 USC 1302, 1395w-101 through 1395w-152 (2005), the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). For purposes of the MMA and this rule, the term full-benefit dual eligible has the same meaning as stated in 42 CFR 423.772.

(7) The MMA allows PDPs to exclude from coverage the drug classes listed in 42 USC 1396r-8(d)(2) (2005). Montana ~~m~~Medicaid may also exclude these drugs and has chosen to do so except for limited the prescription and nonprescription drugs, ~~barbiturates, and benzodiazepines~~ identified on the department's drug formulary. On January 1, 2006, Montana Medicaid's reimbursement for outpatient drugs provided to full-benefit ~~dual~~ eligible recipients, for ~~which~~ whom third party payment is not available, will be limited to ~~barbiturates, benzodiazepines, and nonprescription~~ the excluded drugs identified on the department's drug formulary.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

3. The Department proposed some edits for clarity and to assist rule users. The edits do not change the intent of the rule as originally proposed.

The phrase "full-benefit" will be added before "dual eligibles" and the citation to the definition of "full-benefit dual eligibles" in the code of federal regulation will be

provided. For purposes of implementing the portions of the MMA that coordinate Medicare Part D and the Medicaid program, the Center for Medicare and Medicaid (CMS) uses the term “full benefit dual eligibles” to refer to the Medicaid recipients who qualify for automatic enrollment in a Medicare prescription drug plan on January 1, 2006. The Department will use the same term in this rule for consistency.

The reference to the specific drugs that will continue to be provided to full benefit dual eligibles is being removed. The drugs will be identified on the department’s formulary without specific reference in rule. This is consistent with the Department’s current practice of referencing the formulary in rules without naming the drugs on the formulary.

4. No comments or testimony were received.
5. These rule changes will be applied retroactively to January 1, 2006.

/s/ Russ Cater
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State January 13, 2006.

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

In the matter of the adoption of Rules I	)	CORRECTED NOTICE OF
through XI, the amendment of ARM	)	ADOPTION, AMENDMENT
37.104.101, 37.104.105, 37.104.106,	)	AND REPEAL
37.104.201, 37.104.203, 37.104.208,)	
37.104.212, 37.104.213, 37.104.218,)	
37.104.221, 37.104.306, 37.104.307,)	
37.104.311, 37.104.312, 37.104.316,)	
37.104.319, 37.104.329, 37.104.336,)	
37.104.401, 37.104.404, 37.104.616)	
and 37.104.805 and the repeal of ARM)	
37.104.219, 37.104.220, 37.104.317,)	
37.104.318, 37.104.327, 37.104.328,)	
37.104.402 and 37.104.403 pertaining)	
to emergency medical services)	

TO: All Interested Persons

1. On July 14, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-352 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 1238 of the 2005 Montana Administrative Register, issue number 13, and on December 22, 2005 published notice of the adoption, amendment, and repeal on page 2681 of the 2005 Montana Administrative Register, issue number 24.

2. This corrected notice is being filed to correct an error in ARM 37.104.101. The correction is shown in paragraph 3 below.

3. The rule is corrected as follows:

37.104.101 DEFINITIONS The following definitions apply in subchapters 1 through 4.

(1) through (20) remain as amended.

(22) through (32) remain as amended but are renumbered (21) through (31).

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

(34) through (36) remain as amended but are renumbered (33) through (35).

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

4. The Department is correcting a typographical error that resulted in incorrect numbering in the adoption notice. If the correction isn't made the rule will not have a section (21). Section (22) was struck out so that the rule read "(23) through (37) remain as proposed but are renumbered (22) through (36)" and should have read "(23) through (37) remain as proposed but are renumbered (21) through (35)". The Department is correcting ARM 37.104.101 to insert the words "and experience" that were inadvertently omitted from the notice of adoption, amendment, and repeal. In response to Comment #1, the Department agreed to change the text of the "Supplemental training" definition to include the additional text. Although the intended text was quoted in the Department's response, it did not appear in the published version of the notice of adoption.

5. Replacement pages for the corrected notice were submitted to the Secretary of State on December 31, 2005.

6. All other rule changes adopted, amended, and repealed remain as adopted, amended, and repealed.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State January 13, 2006.

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

In the matter of the proposed amendment of ARM 38.5.2202 and 38.5.2302, pertaining to Pipeline Safety) NOTICE OF AMENDMENT
)
)
)

TO: All Concerned Persons

1. On November 23, 2005, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice No. 38-2-191 regarding a public hearing on the proposed amendment of ARM 38.5.2202 and 38.5.2302 concerning pipeline safety, at page 2323 of the 2005 Montana Administrative Register, issue number 22.

2. The PSC has amended ARM 38.5.2202 and 38.5.2302 exactly as proposed.

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE
SAFETY REGULATIONS

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE
SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION
PROGRAMS

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

3. No comments or testimony were received.

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

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

Certified to the Secretary of State, January 13, 2006.

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

In the matter of the	)	NOTICE OF
amendment of ARM 38.5.4111,	)	AMENDMENT
pertaining to interLATA and)	
intraLATA PIC change charges)	

TO: All Concerned Persons

1. On December 8, 2005, the Public Service Commission published MAR Notice No. 38-2-192 regarding the proposed amendment of the above-stated rule at page 2440 of the 2005 Montana Administrative Register, issue number 23.

2. The PSC has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

38.5.4111 CHARGES

(1) remains as proposed.

(2) In cases in which customers change both their intraLATA PIC and their interLATA PIC at the same time to either the same carrier or to separate carriers, a single only one of the following PIC change charges shall apply. ~~That single PIC change charge shall be one of the following:~~

(a) and (b) remain as proposed.

(c) the total of one-half of the associated intraLATA PIC change charge plus one-half of the associated interLATA PIC change charge.

(i) Each one-half charge may be shown separately on the customer bill.

(3) remains as proposed.

3. The proposed amendment was noticed as "no public hearing contemplated." No public hearing was requested. The following comments were received, along with the PSC response:

Comments: A request to modify the proposed amendment was made by Citizens Communications of Montana, d/b/a Frontier Communications of Montana (Frontier). Frontier explains that it has recently modified its computer billing system such that interLATA change charges and intraLATA change charges are listed separately on customer bills. Frontier is concerned that if the proposed amendment is not modified, Frontier will have to alter its billing system in order to comply with the "single PIC change charge" requirement. The Montana Telecommunications Association filed comments in support of the proposed amendment and Frontier's suggested revision to the proposed amendment.

Response: The PSC agrees the proposed amendment should be revised to address Frontier's concern. Addressing Frontier's concern will not affect the total charge that can be imposed on customers as a result of the rule. Although the

language of the proposed amendment has been changed to address Frontier's concern, it has not been changed exactly as suggested by Frontier.

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

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

Certified to the Secretary of State January 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 September 30, 2005. This table includes those rules adopted during the period September 1, 2005 through December 31, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2005, this table, and the table of contents of this issue of the MAR.

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

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

GENERAL PROVISIONS, Title 1

- | | |
|---------|--|
| 1.2.102 | and other rules - Administrative Rules of Montana - Montana Administrative Register - Rule Formatting - Incorporation by Reference - Fees, p. 2211, 2699 |
| 1.2.419 | and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903, 2334 |

ADMINISTRATION, Department of, Title 2

- | | |
|----------|---|
| I-X | Definitions - Licensing and Application Requirements - Ownership Change - Examination of Title Lenders - Duration of Loans - Extensions - Reports - Schedule of Charges - Employees' Character and Fitness - Procedural Rules for Hearing and Discovery Proposed for Adoption under the Montana Title Loan Act, p. 1125, 1334, 1839 |
| 2.5.201 | and other rules - State Procurement of Supplies and Services - Disposition and Disposal of Surplus Property, p. 1316, 1709, 1906, 2446, 79 |
| 2.21.410 | and other rules - Military Leave, p. 767, 1506 |
| 2.21.501 | and other rules - Jury Duty - Witness Leave, p. 1633 |
| 2.59.801 | and other rules - Foreign Capital Depositories, p. 2130 |

(Public Employees' Retirement Board)

- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 1329, 1670
- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725, 1021
- I-VII When Salary Deferrals under a Cafeteria Plan Should be Treated as Compensation, p. 1626, 2241
- 2.43.1002 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1461, 1907
- 2.43.1801 and other rule - Plan Document and Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1458, 1908

(State Compensation Insurance Fund)

- 2.55.320 Classifications of Employments, p. 1944, 2649

(State Lottery Commission)

- 2.63.201 and other rules - State Lottery's Procedures - Retailers, Licensing, Scratch Tickets and Prizes, p. 1

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- I-III Cherry Research and Marketing Development Program, p. 771, 1279
- 4.13.1001A and other rule - State Grain Lab Fee Schedule, p. 775, 1280

(Montana Agriculture Development Council)

- 4.16.303 and other rules - Agricultural Marketing Development Program, p. 1532, 1909

STATE AUDITOR, Title 6

- I-XV Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1464, 1771
- 6.6.504 and other rules - Medicare Supplements, p. 1131, 1537, 1672, 1910
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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 December 2005 appear. Vacancies scheduled to appear from February 1, 2006, through April 30, 2006, 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 January 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 DECEMBER 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Occupational Therapy Practice (Labor and Industry)			
Ms. Sue Furey	Governor	Rasmussen	12/31/2005
Missoula			12/31/2008
Qualifications (if required): Public Representative			
Ms. Cindy Stergar	Governor	Gilbert	12/31/2005
Butte			12/31/2006
Qualifications (if required): Public Representative			
Mr. Tim Tracy	Governor	Richards	12/31/2005
Kalispell			12/31/2006
Qualifications (if required): Occupational Therapist			
Board of Veterans' Affairs (Military Affairs)			
Ms. Reno Charette	Governor	Ryan	12/29/2005
Helena			8/1/2009
Qualifications (if required): Coordinator of the Office of Indian Affairs			
Mr. Keith Heavyrunner	Governor	Van Gorden	12/29/2005
Browning			8/1/2009
Qualifications (if required): Veteran and Resident of Region 3			
Ms. Polly LaTray	Governor	not listed	12/29/2005
Helena			8/1/2009
Qualifications (if required): representative of the US Department of Labor			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Alfalfa Seed Committee (Agriculture)			
Mr. Marvin Frank Joliet	Governor	Leafdale	12/21/2005 12/21/2008
Qualifications (if required): alfalfa seed grower			
Mr. John Mehling Hardin	Governor	reappointed	12/21/2005 12/21/2008
Qualifications (if required): alfalfa seed grower			
Mr. James Whitmer Glendive	Governor	reappointed	12/21/2005 12/21/2008
Qualifications (if required): alfalfa seed grower			
Montana Licensed Addiction Counselors' Program Advisory Council (Labor and Industry)			
Ms. Linda Carpenter Whitefish	Director	not listed	12/27/2005 12/27/2007
Qualifications (if required): Public Member			
Ms. Kim McNamara Billings	Director	not listed	12/27/2005 12/27/2007
Qualifications (if required): Private Practitioner			
Ms. Marlene O'Connell Great Falls	Director	not listed	12/27/2005 12/27/2007
Qualifications (if required): University Member			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Licensed Addiction Counselors' Program Advisory Council (Labor and Industry) cont.			
Ms. Vanessa Sexson	Director	not listed	12/27/2005
Bozeman			12/27/2007
Qualifications (if required): Montana Association of Alcoholism and Drug Abuse Counselor			
Ms. Karen Workman	Director	not listed	12/27/2005
Great Falls			12/27/2007
Qualifications (if required): Licensed Addiction Counselor			
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture)			
Ms. Pachy Burns	Director	reappointed	12/16/2005
Big Timber			6/30/2007
Qualifications (if required): representative of Consumer Groups			
Ms. Josie Dahlberg	Director	reappointed	12/16/2005
Brockton			6/30/2007
Qualifications (if required): representative of Agriculture Crop Production			
Mr. Jack Eddie	Director	reappointed	12/16/2005
Dillon			6/30/2007
Qualifications (if required): representative of Western counties			
Mr. Paul Helland	Director	Williams	12/16/2005
Miles City			9/17/2008
Qualifications (if required): representative of weed districts			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont.			
Mr. Jerry Lunak Browning	Director	Sparks	12/16/2005 6/30/2007
Qualifications (if required): representative of Livestock Production			
Mr. Jerry Marks Missoula	Director	reappointed	12/16/2005 6/30/2007
Qualifications (if required): representative of Biological Research and Control			
Mr. Gary Olsen Harlowton	Director	Weber	12/16/2005 6/30/2007
Qualifications (if required): representative of Eastern Counties			
Mr. Dave Philipps Lewistown	Director	reappointed	12/16/2005 6/30/2007
Qualifications (if required): representative of Herbicide Dealers and Applicators			
Ms. Sharon Scognamiglio Anaconda	Director	reappointed	12/16/2005 9/17/2008
Qualifications (if required): representative of weed districts			
Mr. Terry Turner Havre	Director	Rice	12/16/2005 6/30/2007
Qualifications (if required): representative of the Montana Weed Control Association			
Mr. Don Walker Glendive	Director	Kirscher	12/16/2005 9/17/2008
Qualifications (if required): forage producer			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Noxious Weed Summit Advisory Council (Agriculture)			
Ms. Sandi Birch Dutton	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Crop Protection Product Industry representative			
Mr. Scott Bockness Billings	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Montana Weed Control Representative			
Mr. Darrel Briese Havre	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Irrigation District representative			
Mr. Dave Burch Helena	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Montana Department of Agriculture representative			
Mr. Kevin Chappell Helena	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): State agency representative			
Mr. Bert Corcoran Box Elder	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Tribal representative			
Mr. Jim Ghekiere Chester	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): County Weed District representative			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Noxious Weed Summit Advisory Council (Agriculture) cont.			
Mr. Jim Olivarez Missoula	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Federal agency representative			
Director Nancy K. Peterson Helena	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Governor representative			
Mr. Dave Schulz Virginia City	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): Montana Association of County Officials representative			
Mr. Jon Wraith Bozeman	Governor	not listed	12/21/2005 7/26/2007
Qualifications (if required): MSU Agricultural Experiment Station representative			

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks) Dr. Deborah Yarborough, Kalispell Qualifications (if required): veterinarian	Governor	1/1/2006
Ms. Rebecca Mesaros, Cascade Qualifications (if required): representative of the alternative livestock industry	Governor	1/1/2006
Mr. Stanley Rauch, Victor Qualifications (if required): sportsman	Governor	1/1/2006
Appellate Defender Commission (Administration) Judge Richard A. Simonton, Glendive Qualifications (if required): district judge	Governor	1/1/2006
Mr. Mike Sherwood, Missoula Qualifications (if required): attorney	Governor	1/1/2006
Board of Architects (Labor and Industry) Mr. Tobias Stapleton, Billings Qualifications (if required): licensed architect	Governor	3/27/2006
Board of Chiropractors (Labor and Industry) Dr. Pamela Blanchard, Great Falls Qualifications (if required): chiropractor	Governor	1/1/2006
Ms. Jo Ausk, Terry Qualifications (if required): public member	Governor	1/1/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Dentistry (Commerce) Ms. Jean Hagan, Big Fork Qualifications (if required): public member who is a senior citizen	Governor	3/29/2006
Dr. James Johnson, Billings Qualifications (if required): dentist	Governor	3/29/2006
Board of Horse Racing (Livestock) Mr. Tim Donnelly, Miles City Qualifications (if required): representative of District 1	Governor	1/20/2006
Ms. Barbara Cole, Shelby Qualifications (if required): representative of District 3	Governor	1/20/2006
Board of Pardons and Parole (Corrections) Ms. Roxanne Wilson, Busby Qualifications (if required): public member with knowledge of Indian culture	Governor	1/1/2006
Mr. Darryl Dupuis, Polson Qualifications (if required): auxiliary member with knowledge of American Indian culture and problems	Governor	1/1/2006
Ms. Margaret Hall, Pablo Qualifications (if required): Indian culture knowledge	Governor	1/2/2006
Board of Public Education (Education) Rep. Gay Ann Masolo, Townsend Qualifications (if required): Republican from District 1	Governor	2/1/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Public Education (Education) cont. Mr. Randal Morris, Butte Qualifications (if required): representative of District 2 and an Independent	Governor	2/1/2006
Board of Regents of Higher Education (Education) Ms. Lynn Morrison-Hamilton, Havre Qualifications (if required): representative of District 3 and a Democrat	Governor	2/1/2006
Capital Finance Advisory Council (Administration) Mr. Dick Anderson, Helena Qualifications (if required): representative of the Board of Investments	Governor	2/9/2006
Sen. Bea McCarthy, Anaconda Qualifications (if required): legislator	Governor	2/9/2006
Sen. Chuck Swysgood, Helena Qualifications (if required): representative of the Budget Office	Governor	2/9/2006
Sen. Royal C. Johnson, Billings Qualifications (if required): legislator	Governor	2/9/2006
Mr. Jim Currie, Helena Qualifications (if required): representative of the Department of Transportation	Governor	2/9/2006
Mr. Bob Thomas, Stevensville Qualifications (if required): representative of the Board of Housing	Governor	2/9/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont.		
Director Mark A. Simonich, Helena Qualifications (if required): representative of the Department of Commerce	Governor	2/9/2006
Director W. Ralph Peck, Helena Qualifications (if required): representative of the Department of Agriculture	Governor	2/9/2006
Director Bud Clinch, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	2/9/2006
Mr. Mark Semmens, Great Falls Qualifications (if required): representative of the Board of Regents	Governor	2/9/2006
Director Jan Sensibaugh, Helena Qualifications (if required): representative of the Department of Environmental Quality	Governor	2/9/2006
Ms. Michelle Barstad, Helena Qualifications (if required): representative of the Montana Facility Finance Authority	Governor	2/9/2006
Commission on Practice of the Supreme Court (Supreme Court)		
Mr. Gary Davis, Helena Qualifications (if required): none specified	elected	3/28/2006
Mr. Bruce A. Fredrickson, Kalispell Qualifications (if required): none specified	elected	3/28/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Commerce)		
Ms. Sylvia Danforth, Miles City Qualifications (if required): advocacy program representative	Governor	1/1/2006
Mr. Dan McCarthy, Helena Qualifications (if required): agency representative	Governor	1/1/2006
Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): advocacy program representative	Governor	1/1/2006
Ms. Bernadette Franks-Ongoy, Helena Qualifications (if required): advocacy program representative	Governor	1/1/2006
Ms. Kimm Evermann, Helena Qualifications (if required): agency representative	Governor	1/1/2006
Mr. Dennis Moore, Billings Qualifications (if required): advocacy program representative	Governor	1/1/2006
Ms. JoAnn Dotson, Helena Qualifications (if required): agency representative	Governor	1/1/2006
Mr. Jeff Sturm, Helena Qualifications (if required): agency representative	Governor	1/1/2006
Judicial Nomination Commission (Justice)		
Mr. James Mockler, Helena Qualifications (if required): public member	Governor	1/1/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Library Commission (Education) Mr. Ron Moody, Lewistown Qualifications (if required): resident of Montana	Governor	3/22/2006
Montana Abstinence Education Advisory Council (Public Health and Human Services) Dr. Tom Rasmussen, Helena Qualifications (if required): public member	Governor	3/10/2006
Ms. Jessie Stinger, Polson Qualifications (if required): public member	Governor	3/10/2006
Mr. Gary Swant, Deer Lodge Qualifications (if required): public member	Governor	3/10/2006
Mr. Bryce Skjervem, Helena Qualifications (if required): public member	Governor	3/10/2006
Mr. Jim Good, Bozeman Qualifications (if required): public member	Governor	3/10/2006
Ms. Joleen Spang, Lame Deer Qualifications (if required): public member	Governor	3/10/2006
Rep. Jeff Laszloffy, Laurel Qualifications (if required): public member	Governor	3/10/2006
Ms. Judy LaPan, Sidney Qualifications (if required): public member	Governor	3/10/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.		
Mr. Matt Antonich, Kremlin Qualifications (if required): public member	Governor	3/10/2006
Mr. Collins Lawlor, Helena Qualifications (if required): non-voting youth representative	Governor	3/10/2006
Sen. Sherm Anderson, Deer Lodge Qualifications (if required): public member	Governor	3/10/2006
Ms. DeAnn Visser, Billings Qualifications (if required): public member	Governor	3/10/2006
Dr. Ken Graham, Butte Qualifications (if required): public member	Governor	3/10/2006
Mr. Joe Moerkerke, Conrad Qualifications (if required): public member	Governor	3/10/2006
Mr. Brent Gyuricza, Missoula Qualifications (if required): public member	Governor	3/10/2006
Ms. Carrie Price, Great Falls Qualifications (if required): public member	Governor	3/10/2006
Mr. Chris Jones, Missoula Qualifications (if required): public member	Governor	3/10/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Mr. Lance Lanning, Billings Qualifications (if required): public member	Governor	3/10/2006
Ms. Terry Reeser, Helena Qualifications (if required): non-voting youth representative	Governor	3/10/2006
Mr. David Ames, Helena Qualifications (if required): non-voting youth representative	Governor	3/10/2006
Montana Children's Trust Fund Board (Public Health and Human Services) Ms. Jani McCall, Billings Qualifications (if required): public member	Governor	1/1/2006
Ms. Ann (Punky) Bullis, Crow Agency Qualifications (if required): public member	Governor	1/1/2006
Montana Correctional Enterprises Ranch Advisory Council (Corrections) Mr. Don Davis, Deer Lodge Qualifications (if required): public member	Governor	2/25/2006
Mr. Ray Lybeck, Kalispell Qualifications (if required): public member	Governor	2/25/2006
Rep. Robert Thoft, Stevensville Qualifications (if required): public member	Governor	2/25/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Correctional Enterprises Ranch Advisory Council (Corrections) cont.		
Sen. Chuck Swysgood, Helena Qualifications (if required): public member	Governor	2/25/2006
Sen. Thomas Beck, Helena Qualifications (if required): public member	Governor	2/25/2006
Rep. Edward (Ed) J. Grady, Canyon Creek Qualifications (if required): public member	Governor	2/25/2006
Sen. Bill Tash, Dillon Qualifications (if required): public member	Governor	2/25/2006
Sen. Gerald Pease, Lodge Grass Qualifications (if required): public member	Governor	2/25/2006
Rep. Allen Rome, Garrison Qualifications (if required): public member	Governor	2/25/2006
Sen. Sherm Anderson, Deer Lodge Qualifications (if required): public member	Governor	2/25/2006
Montana Council on Developmental Disabilities (Commerce)		
Rep. Don Roberts, Billings Qualifications (if required): legislator	Governor	1/1/2006
Sen. Carol Williams, Missoula Qualifications (if required): legislator	Governor	1/1/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Grass Conservation Commission (Natural Resources and Conservation)		
Mr. Gary Unruh, Chinook	Governor	1/1/2006
Qualifications (if required): grazing district director		
Mr. Larry Brence, Baker	Governor	1/1/2006
Qualifications (if required): public member		
Montana High School Association Board of Control (Governor)		
Mr. Gail Peterson, Sidney	Governor	1/1/2006
Qualifications (if required): public member		
Montana Statewide Independent Living Council (Public Health and Human Services)		
Ms. Cecilia C. Cowie, Helena	Director	1/5/2006
Qualifications (if required): none specified		
Mr. John Pipe, Wolf Point	Director	1/5/2006
Qualifications (if required): none specified		
Mr. Tom Tripp, Butte	Director	1/5/2006
Qualifications (if required): none specified		
Mr. Robert D. Liston, Missoula	Director	1/5/2006
Qualifications (if required): none specified		
Ms. Carol LaRocque, Great Falls	Director	1/5/2006
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Statewide Independent Living Council (Public Health and Human Services) cont. Ms. Donna M. Scott, Billings Qualifications (if required): none specified	Director	1/5/2006
Montana Vocational Rehabilitation Council (Public Health and Human Services) Rep. Carol Lambert, Broadus Qualifications (if required): Statewide Independent Living Council position	Director	1/1/2006
Mr. Dick Trerise, Helena Qualifications (if required): Office of Public Instruction position	Director	1/1/2006
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Director W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Director	2/11/2006
Mr. Dennis Cash, Bozeman Qualifications (if required): ex officio	Director	2/11/2006
Mr. Ray Ditterline, Bozeman Qualifications (if required): ex officio	Director	2/11/2006
Mr. Clay Williams, Livingston Qualifications (if required): weed districts	Director	2/11/2006
Mr. Tim Schaff, Fishtail Qualifications (if required): forage producer	Director	2/11/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont.		
Mr. Keith Kirscher, Townsend Qualifications (if required): forage producer	Director	2/11/2006
Mr. John Kelly, Great Falls Qualifications (if required): livestock/agriculture	Director	2/11/2006
Ms. Sharon Scognamiglio, Anaconda Qualifications (if required): weed districts	Director	2/11/2006
Peace Officers Standards and Training Advisory Council (Justice)		
Mr. Mike Batista, Helena Qualifications (if required): representative of the Montana Law Enforcement Academy	Governor	2/9/2006
Col Paul K. Grimstad, Helena Qualifications (if required): representative of the Montana Highway Patrol	Governor	2/9/2006
Mayor Jim Smith, Helena Qualifications (if required): representative of the League of Cities and Towns	Governor	2/9/2006
Ms. Elaine Allestad, Big Timber Qualifications (if required): representative of the Crime Control Board	Governor	2/9/2006
Mr. Christopher Miller, Deer Lodge Qualifications (if required): representative of the Montana Attorneys Association	Governor	2/9/2006
Mr. Dennis McCave, Billings Qualifications (if required): representative of the Montana Detention Officers Association	Governor	2/9/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Dr. Raymond Murray, Missoula Qualifications (if required): representative of the public	Governor	2/9/2006
Mr. John Ramsey, Helena Qualifications (if required): representative of the Department of Fish, Wildlife, and Parks	Governor	2/9/2006
Captain Bill Dove, Bozeman Qualifications (if required): representative of the Police Protective Association	Governor	2/9/2006
Ms. Winnie Ore, Helena Qualifications (if required): representative of the Department of Corrections	Governor	2/9/2006
Ms. Shanna Bulik-Chism, Great Falls Qualifications (if required): representative of juvenile detention administrators	Governor	2/9/2006
Ms. Anne Kindness, Billings Qualifications (if required): representative of 9-1-1 services	Governor	2/9/2006
Chief Mark Tymrak, Bozeman Qualifications (if required): representative of the Police Chiefs Association	Governor	2/9/2006
Captain Greg Hintz, Missoula Qualifications (if required): representative of the Deputy Sheriff's Association	Governor	2/9/2006
Mr. Jack Wiseman, Helena Qualifications (if required): representative of the Department of Livestock	Governor	2/9/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Sheriff Bill Troutwine, Winnett	Governor	2/9/2006
Qualifications (if required): representative of the Sheriff's Association		
Sheriff John Grainger, Wolf Point	Governor	2/9/2006
Qualifications (if required): representative of the Montana Sheriff and Peace Officers Association		
Commissioner Albert Brown, Red Lodge	Governor	2/9/2006
Qualifications (if required): representative of MACO		
Small Business Health Insurance Pool Board (Auditor)		
Ms. Connie Welsh, Helena	Governor	1/1/2006
Qualifications (if required): management-level individual with knowledge of state employee health benefit plans		
State 9-1-1 Advisory Council (Administration)		
Mr. Jim Anderson, Helena	Director	3/1/2006
Qualifications (if required): Department of Military Affairs Disaster and Emergency Services Division		
Mr. Geoff Feiss, Helena	Director	3/1/2006
Qualifications (if required): Montana Telephone Association		
Mr. Richard Brumley, Lewistown	Director	3/1/2006
Qualifications (if required): Montana Emergency Medical Services Association		
Mr. Chuck Winn, Bozeman	Director	3/1/2006
Qualifications (if required): Montana State Fire Chiefs Association		

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State 9-1-1 Advisory Council (Administration) cont.		
Mr. Joe Calnan, Montana City Qualifications (if required): Montana State Volunteer Fire Fighters Association	Director	3/1/2006
Ms. Wilma Puich, Butte Qualifications (if required): Association of Disaster and Emergency Services Coordinators	Director	3/1/2006
Mr. Larry Sheldon, Helena Qualifications (if required): Qwest Communications	Director	3/1/2006
Sheriff Cheryl Liedle, Helena Qualifications (if required): Montana Sheriff's and Peace Officers Association	Director	3/1/2006
Mr. Doug Kaercher, Havre Qualifications (if required): Montana Association of Counties	Director	3/1/2006
Mr. Fred Leistiko, Kalispell Qualifications (if required): Montana League of Cities and Towns	Director	3/1/2006
Mr. Kevin Myhre, Lewistown Qualifications (if required): Montana Association of Chiefs of Police	Director	3/1/2006
Mr. Bill Rusche, Wolf Point Qualifications (if required): Association of Public Safety Communications Officials	Director	3/1/2006
Mr. Thom Danenhower, Helena Qualifications (if required): Department of Public Health and Human Services	Director	3/1/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State 9-1-1 Advisory Council (Administration) cont.		
Mr. Dave Rosencrans, Helena Qualifications (if required): Public Safety Answering Point Representative	Director	3/1/2006
Ms. Lisa Kelly, Kalispell Qualifications (if required): Century Tel	Director	3/1/2006
Ms. Bonnie Lorang, Helena Qualifications (if required): Montana Independent Telecommunications Systems	Director	3/1/2006
Ms. Margaret Morgan, Helena Qualifications (if required): Western Wireless	Director	3/1/2006
Ms. Aimee Grmolijez, Helena Qualifications (if required): Verizon Wireless	Director	3/1/2006
Mr. Craig Bender, Great Falls Qualifications (if required): 3 Rivers Wireless	Director	3/1/2006
State Employees' Charitable Giving Campaign Steering Committee (Administration)		
Ms. Joy McGrath, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Alicia Pichette, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Mary Dalton, Helena Qualifications (if required): none specified	Director	1/31/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employees' Charitable Giving Campaign Steering Committee (Administration) cont.		
Mr. Ed Caplis, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Mary Wright, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Adeline Miller, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Marcia Armstrong, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Karen Shipley, Butte Qualifications (if required): none specified	Director	1/31/2006
Mr. Tim McCauley, Helena Qualifications (if required): none specified	Director	1/31/2006
Mr. Jack Lynch, Helena Qualifications (if required): none specified	Director	1/31/2006
Mr. Rick Bush, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Jeanine McCarthy, Helena Qualifications (if required): none specified	Director	1/31/2006

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2006 through APRIL 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employees' Charitable Giving Campaign Steering Committee (Administration) cont. Mr. Wilbur Rehmann, Helena Qualifications (if required): none specified	Director	1/31/2006
Ms. Beki Glyde Brandborg, Helena Qualifications (if required): none specified	Director	1/31/2006
State Lottery Commission (Commerce) Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney	Governor	1/1/2006
Ms. Betty L. Wilkins, Missoula Qualifications (if required): public member	Governor	1/1/2006
Traumatic Brain Injury Advisory Council (Public Health and Human Services) Ms. Marilyn Patrick, Butte Qualifications (if required): family member of a survivor	Governor	1/1/2006