

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 2.43.1801 and	)	AMENDMENT
2.43.1802 pertaining to the plan)	
document and investment policy	)	NO PUBLIC HEARING
statement for the 457 deferred	)	CONTEMPLATED
compensation plan)	

TO: All Concerned Persons

1. On September 23, 2005, the Montana Public Employees' Retirement Board proposes to amend ARM 2.43.1801 and ARM 2.43.1802 pertaining to the plan document and investment policy statement for the 457 deferred compensation plan.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on August 26, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@mt.gov.

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

2.43.1801 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board hereby adopts and incorporates by reference the state of Montana public employee deferred compensation plan document (August 1, 2005 edition), that was approved by the board on July 28, 2005, and trust agreement (January 1, 2002 edition), that was approved by the board on February 22, 2001 and September 28, 2001.

(2) Copies of the deferred compensation plan document, trust agreement and related materials may be obtained from the MPERA, 100 North Park Avenue, Suite ~~220~~ 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail ~~mpera@state.mt.us~~ mpera@mt.gov.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Public Employees' Retirement Board (PER Board) as administrator of the Deferred Compensation Plan (457 Plan), adopted the 457 Plan's Plan Document by reference in 2002 in order to better notify 457 Plan participants of its existence, and how a copy can be obtained. The 457 Plan's Plan Document was amended by the PER Board on

July 28, 2005, in order to take advantage of changes adopted by the Internal Revenue Service with respect to governmental 457(b) plans and Internal Revenue Code section 415 regulations. Section 2-4-307(3), MCA requires that the amended plan document also be adopted by reference.

2.43.1802 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the state of Montana 457 plan (deferred compensation) investment policy statement approved by the board on ~~February 26, 2004~~ January 27, 2005.

(2) The board adopts and incorporates by reference the state of Montana 457 plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the 457 plan investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail ~~mpera@state.mt.us~~ mpera@mt.gov.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Public Employees' Retirement Board (PER Board), as the administrator of the Deferred Compensation Plan (457 Plan), adopted the 457 Plan's Investment Policy Statement by reference in 2002. The PER Board amended the Deferred Compensation Plan's Investment Policy Statement on January 27, 2005, in order to permit the "use of an appropriate industry accepted database containing a sufficient number of funds in the same asset class and investment strategy" when reviewing the 457 Plan's investment options. The previous Investment Policy Statement required the use of Callan Associate's database/universe of funds. Section 2-4-307(3), MCA requires that the amended Investment Policy Statement also be adopted by reference.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., September 8, 2005.

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 written request for a hearing and submit this request along with any written comments they have to the Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m.,

September 8, 2005.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; 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 700 persons based on approximately 7,000 457 Plan participants.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmiller@mt.gov, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Carole Carey
Carole Carey, President
Public Employees' Retirement Board

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

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

Certified to the Secretary of State on August 1, 2005.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 2.43.1002	)	AMENDMENT
pertaining to the investment)	
policy statement for the defined	)	NO PUBLIC HEARING
contribution retirement plan	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 23, 2005, the Montana Public Employees' Retirement Board proposes to amend ARM 2.43.1002 to adopt the revised version of the Investment Policy Statement for the defined contribution retirement plan.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on August 26, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@mt.gov.

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

2.43.1002 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the state of Montana 401(a) defined contribution plan investment policy statement approved by the board on ~~February 26, 2004~~ January 27, 2005.

(2) The board adopts and incorporates by reference the state of Montana 401(a) plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail ~~mpera@state.mt.us~~ mpera@mt.gov.

AUTH: 19-3-2104, MCA

IMP: 19-3-2104, 19-3-2122, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Public Employees' Retirement Board (PER Board), as the administrator of the Defined Contribution Retirement Plan of the Public Employees' Retirement System (DCRP), adopted the DCRP's Investment Policy Statement by reference in 2002 and again in 2004. The PER Board amended the DCRP's Investment Policy Statement on January 27,

2005, in order to permit the "use of an appropriate industry accepted database containing a sufficient number of funds in the same asset class and investment strategy" when reviewing the DCRP's investment options. The previous Investment Policy Statement required the use of Callan Associate's database/universe of funds. Section 2-4-307(3), MCA requires that the amended Investment Policy Statement also be adopted by reference.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., September 8, 2005.

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 written request for a hearing and submit this request along with any written comments they have to the Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., September 8, 2005.

6. If the board receives requests for a public hearing on the proposed amendment 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 128 persons based on approximately 1,279 DCRP members.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmiller@mt.gov, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Carole Carey
Carole Carey, President
Public Employees' Retirement Board

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

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

Certified to the Secretary of State on August 1, 2005.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rules I through) ON PROPOSED ADOPTION
XV, relating to small business)
health insurance purchasing)
pool, premium assistance and)
premium incentive payments,)
and tax credits)

TO: All Concerned Persons

1. On August 31, 2005, at 10:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules pertaining to the small business health insurance purchasing pool, premium assistance and premium incentive payments, and tax credits.

2. The State Auditor's Office 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 office no later than 5:00 p.m., August 24, 2005, to advise us as to the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; facsimile (406) 444-3497; or e-mail to dsautter@mt.gov.

3. The proposed New Rules provide as follows:

NEW RULE I SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL--PREMIUM ASSISTANCE AND INCENTIVE PAYMENTS--SMALL BUSINESS HEALTH INSURANCE TAX CREDITS (1) The rules in this subchapter implement the small business health insurance purchasing pool, premium assistance and premium incentive payments, and small business health insurance tax credits, which are provided for in 33-22-2001, MCA, et seq., and other relevant statutes. The purpose of the small business health insurance pool and the various credits is to make employer group health insurance more affordable for employees and employers who work in very small businesses.

AUTH: 33-22-2005, MCA
IMP: 33-22-2001, 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, 33-22-2008, and 33-22-2009, MCA

NEW RULE II DEFINITIONS For purposes of this subchapter, the terms defined in 33-22-2002, MCA, will have the same meaning in this subchapter unless clearly designated

otherwise. The following definitions are in addition to those in 33-22-2002, MCA.

(1) "Certificate of registration" means a notice indicating that based on information provided, an employer has preliminarily qualified under these rules and the applicable statutes to receive payments. A certificate of registration does not guarantee that payments will be issued.

(2) "Payments" means refundable tax credits, premium assistance payments, and premium incentive payments, all of which are defined in 33-22-2001, MCA.

AUTH: 33-22-2005, MCA

IMP: 33-22-2001, 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, and 33-22-2008, MCA

NEW RULE III REGISTRATION REQUIRED--ELIGIBILITY

(1) All employers who wish to apply for any type of payment, including purchasing pool payments, must first register with the state auditor's office in a form approved by the commissioner.

(2) Only employers with two to five eligible employees will be issued a certificate of registration or put on the waiting list.

(3) Only employers whose application shows they meet all of the eligibility requirements specified in 33-22-2006, MCA, and other relevant statutes will be issued a certificate of registration or put on the waiting list.

(4) Employers who wish to apply for payments through the purchasing pool or qualified association plan coverage will be required to complete additional forms approved by the commissioner and the board to determine eligibility for the pool or association coverage and to determine the amount of payments that will be allocated to them.

(5) Only employers who have been issued a certificate of registration are eligible to receive payments. Payments will be limited to funds available. Not all employers deemed eligible through registration will receive payment.

AUTH: 33-22-2005, MCA

IMP: 33-22-2001, 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, and 33-22-2008, MCA

NEW RULE IV FISCAL YEAR (1) The fiscal year for the purchasing pool is July 1 through June 30.

AUTH: 33-22-2005, MCA

IMP: 33-22-2005, MCA

NEW RULE V MEETINGS OF THE PURCHASING POOL BOARD

(1) The annual meeting must be held in the first quarter of the fiscal year.

(2) Meeting dates for the next calendar year must be approved by the board at its annual meeting, and there must be at least one meeting scheduled for each quarter.

(3) Special meetings may be called by the chairperson or at the written request of two directors, or at the written request of either the governor or the commissioner. The reason for the special meeting shall be stated in the call.

(4) The agenda for board meetings must be mailed, faxed or e-mailed to directors and other interested parties at least five days prior to each meeting.

AUTH: 33-22-2005, MCA

IMP: 33-22-2003, 33-22-2004, and 33-22-2005, MCA

NEW RULE VI OFFICERS (1) The officers of the board shall be a chairperson, a vice-chairperson, a secretary and a treasurer. The same person may hold the offices of secretary and treasurer.

(2) At the annual meeting of the board, the directors shall elect officers.

(3) Officers shall hold office for one year or until their successors are elected unless removed sooner.

(4) If the office of any officer becomes vacant by reason of death, resignation, removal, or otherwise, the board of directors shall elect a successor who shall hold office for the unexpired term.

AUTH: 33-22-2005, MCA

IMP: 33-22-2003, 33-22-2004, and 33-22-2005, MCA

NEW RULE VII DUTIES OF THE OFFICERS (1) The chairperson of the board shall:

(a) preside at all meetings of the directors;

(b) designate committees;

(c) appoint directors to serve on committees that are created and may serve as an ex officio member of all committees;

(d) serve as the official representative of the board in its contacts with governmental, civic, business and other organizations;

(e) retain the right to vote on all matters before the board; and

(f) perform such other functions as pertain to the office of chairperson.

(2) The vice-chairperson of the board shall, in the absence or disability of the chairperson, perform all the duties of the chair and when so acting shall have all the power of the chair.

(3) The secretary of the board shall:

(a) keep or cause to be kept a book of minutes at the principal office of the board of all meetings of directors, with the time and place of the meeting, whether annual or special, and if special, how authorized, the names of those present at the directors' meetings, and a summary of the proceedings;

(b) give notice, or cause to give notice, required by these rules of all meetings, including public open meeting notices, as required by Montana law; and

(c) in the absence of the secretary, the chairperson shall appoint another director to fulfill the duties of secretary.

(4) The principal office of the board shall be the state auditor's office.

(5) The treasurer of the board shall:

(a) keep and maintain or cause to be kept and maintained, adequate and correct accounts of the business transactions of the purchasing pool, including accounts of its assets, liabilities, receipts, disbursements, reserves, gains, and losses in accordance with generally accepted accounting principles; and

(b) render to the chairperson and directors, or the governor, the commissioner, or the legislative auditor, whenever they request it, an account of all business transactions of the purchasing pool.

AUTH: 33-22-2005, MCA

IMP: 33-22-2003, 33-22-2004, and 33-22-2005, MCA

NEW RULE VIII PARLIAMENTARY AUTHORITY (1) The rules contained in Robert's Rules of Order Newly Revised (1977) shall govern the meetings of the board in all cases where such rules are applicable and in which they are not inconsistent with these rules.

AUTH: 33-22-2005, MCA

IMP: 33-22-2003, 33-22-2004, and 33-22-2005, MCA

NEW RULE IX PROGRAM MANAGER--ADMINISTRATOR FOR THE PURCHASING POOL (1) The program manager is an employee of the state auditor's office and shall provide administrative services to the purchasing pool and its board and assist the board as needed in creating and administering the small business health insurance pool and establishing the premium incentive and assistance payments, in accordance with these rules, applicable statutes and the operating plan.

AUTH: 33-22-2005, MCA

IMP: 33-22-2001, 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, and 33-22-2008, MCA

NEW RULE X TIMELINE FOR THE PLAN OF OPERATION (1) The board shall submit a plan of operation, which must include a method or formula for determining premium assistance and premium incentive payment amounts, to the commissioner for his review and approval by November 15, 2005.

(2) The commissioner may extend the deadline for submission of the plan of operation.

AUTH: 33-22-2005, MCA

IMP: 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, and 33-22-2008, MCA

NEW RULE XI TIMELINE FOR AUDITS OF THE BOARD (1) The commissioner shall conduct an audit of the financial transactions of the board no later than May 31, 2006, and at least annually thereafter, on or before May 31, 2006.

(2) The commissioner may conduct audits more frequently.

AUTH: 33-22-2005, MCA

IMP: 33-22-2005, MCA

NEW RULE XII PAYMENT OF PREMIUM ASSISTANCE AND PREMIUM INCENTIVE PAYMENTS TO EMPLOYERS (1) As needed, the state auditor's office shall issue monthly checks to the insurers, or to each eligible employer, representing the amount to be paid by the state on behalf of eligible employers and employees as premium incentive and premium assistance payments due and owing for health insurance obtained through the pool or qualified association plans.

AUTH: 33-22-2005, MCA

IMP: 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, and 33-22-2008, MCA

NEW RULE XIII QUALIFIED ASSOCIATIONS (1) In order to be designated as "qualified," small employer associations shall apply to the state auditor's office in a form approved by the commissioner.

(2) Only previously uninsured employers who become members of qualified associations, and their employees, will be eligible to receive premium assistance and incentive payments as a result of purchasing association group coverage.

(3) The state auditor's office will begin processing association applications on October 1, 2005.

AUTH: 33-22-2005, MCA

IMP: 33-22-2004 and 33-22-2005, MCA

NEW RULE XIV WAITING LIST (1) Eligible small employers assigned to the waiting list must reapply on an annual basis, during the month of October, in order to remain on the waiting list.

(2) Eligible small employers who reapply in a timely manner will maintain their place on the waiting list.

AUTH: 33-22-2005, MCA

IMP: 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, and 33-22-2008, MCA

NEW RULE XV INSURERS REQUIRED TO REPORT CANCELLATIONS

(1) An insurer that is providing coverage to the purchasing pool or a qualified association plan must report to the state auditor's office any cancellation of purchasing pool

health plan coverage or qualified association health plan coverage that was issued to an employer who receives premium incentive and assistance payments.

(2) Notice to the state auditor's office must be mailed at the same time that a final notice of cancellation is sent to the employer and employees.

AUTH: 33-22-2005, MCA
IMP: 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007,
and 33-22-2008, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to adopt New Rules I through XV in order to implement the small employer health insurance purchasing pool and the tax credits and premium assistance and incentive payments to small employers provided for in 33-22-2001 through 33-22-2009, MCA, and to fulfill the commissioner's duty to write rules for this newly created program as provided for in 33-22-2005, MCA.

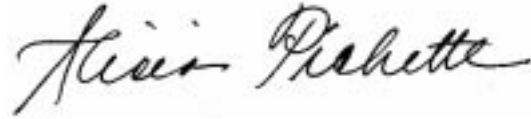
5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Christina L. Goe, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by e-mail, addressed to cgoe@mt.gov, and must be received no later than September 8, 2005.

6. Christina Goe has been designated to preside over and conduct the hearing.

7. The State Auditor's Office 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 whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile to (406) 444-3497, or e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Insurance



By: _____
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rules Reviewer

Certified to the Secretary of State on August 1, 2005.

BEFORE THE GRANT REVIEW COMMITTEE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment and transfer of ARM) PROPOSED AMENDMENT AND
14.4.101, 14.4.102, 14.4.103,) TRANSFER, TRANSFER, AND
14.4.104, transfer of 14.4.105,) REPEAL
and the repeal of 14.4.106)
pertaining to the award of)
training grants by the Grant)
Review Committee)

TO: All Concerned Persons

1. On September 7, 2005, at 1:30 p.m., a public hearing will be held in Room 228, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and transfer, transfer, and repeal of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on August 24, 2005, to advise us of the nature of the accommodation that you need. Please contact Gary Morehouse, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2732; facsimile (406) 841-2731; TDD (406) 841-2702; e-mail to gmorehouse@mt.gov.

3. STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of administrative rules, and in conjunction with Chapter 169, Laws 2005 (HB 270 [Lindeen]) transferring the Grant Review Committee from the Governor's Office to the Department of Commerce, the Committee is proposing a number of revisions to Committee rules. The Committee determined that it is reasonably necessary to amend the rules to, among other things, eliminate the necessity of a pre-application for worker training grants, and the statement that a training grant could be disbursed in its entirety to the company as soon as funds were available. Accordingly, the Committee determined that there is reasonable necessity to generally amend certain existing rules, and to repeal a certain existing rule related to employer workforce training credits, because those credits are no longer a source of funding. Some of the proposed amendments are technical in nature, such as the proposed renumbering of the rules to designate where the rules are to be placed when transferred from ARM Title 14 (Governor's Office) to ARM Title 8 (Department of Commerce). This statement of reasonable necessity applies to all the proposed rule actions.

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

14.4.101 DEFINITIONS As used in this chapter, the following definitions apply:

(1) remains the same.

(2) "Committee" means the loan grant review committee, ~~also sometimes referred to as the grant review committee,~~ established in 39-11-201, MCA.

(3) "Department" means the department of commerce established in 2-15-1801, MCA.

~~(3) (4)~~ "Grant" means the workforce training grant made by the committee to a qualifying company.

~~(4) "Office of economic development" means the office of economic development established in 2-15-218, MCA.~~

(5) "Previously existing job" means a full-time job, or a substantially similar full-time job, which was part of a company's payroll in Montana ~~during the three years~~ immediately preceding the date of the commencement of the project. ~~A job created after commencement of a project but prior to a grant award is not considered to be "previously existing" for the purposes of grant eligibility.~~

(6) "Project" means a company's hiring and training plan to provide workforce training for workers to obtain the skills needed for new jobs to be created in Montana by the company that is set forth in an application for a grant.

(7) remains the same.

AUTH: Sec. 39-11-201, MCA

IMP: Sec. 39-11-201, MCA

14.4.102 GRANT APPLICATION PROCEDURE (1) A project commences on the date a preliminary Montana new jobs cooperative training agreement contract for the project is signed by the company and the ~~office of economic development department.~~

~~(2) Within 90 days from the effective date of a preliminary Montana new jobs cooperative training agreement, an application for a grant must be submitted by the company to the office of economic development.~~

~~(a) The office of economic development shall create a primary sector business new jobs training application designed for that purpose.~~

~~(b) The committee has the right to extend the 90 day application deadline, at its sole discretion.~~

~~(3) (2)~~ When an application for a grant is received by the ~~office of economic development,~~ it department, the application will be reviewed by ~~office of economic development department~~ staff to determine whether the application has been completed by the company in accordance with the guidelines provided in ARM 14.4.103.

(a) and (b) remain the same.

AUTH: Sec. 39-11-201, MCA

IMP: Sec. 39-11-201, MCA

14.4.103 INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS FOR GRANTS SUBMITTED TO COMMITTEE

(1) The committee adopts and incorporates by reference the ~~Montana Primary Sector Business New Jobs Workforce Training Grant (WTG) Program Application Guidelines~~ dated ~~2003~~ 2005 published by it as rules governing the submission and review of applications under the program. A copy of the guidelines may be obtained from the ~~Office of Economic Development, Governor's Office~~ Department of Commerce, P.O. Box ~~200801~~ 200505, Helena, MT 59620-~~0801~~ 0505 and on the department's website at <http://commerce.mt.gov/indexBRD.asp> or at mtfinanceonline.com.

(2) The rules incorporated by reference in (1) relate to the following:

(a) remains the same.

~~(b) executing a preliminary agreement;~~

~~(c) (b) requirements for marking submitted materials as confidential and for protecting such information;~~

~~(d) (c) submission of a formal grant application and required business plan and hiring and training information;~~

~~(e) (d) contract required prior to grant award;~~

~~(f) (e) timing of grant award relative to employee hiring; and~~

~~(g) (f) periodic audit and review requirements.~~

(3) Prior to a grant being awarded, the company receiving the grant will be required to enter into a contract with the ~~office of economic development~~ department. The contract will, at a minimum, specify the following:

(a) ~~projected increase in number of employees and the company's annual payroll—current and projected—~~ at the expansion site and for any other operations within the state of Montana. Employee information provided in the grant application must include projections for:

(i) through (d) remain the same.

~~(e) a provision requiring the full amount of the grant to be reimbursed to the state of Montana in the event the company ceases operation within 12 months of the time of the grant award~~ certification that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period;

~~(f) a requirement for the company to repay any shortfall in personal income tax revenues to the state that are a result of the company failing to meet the number of jobs or wage levels to which the company committed in the contract; and~~

~~(g) (f) a requirement for annual reporting to the office of economic development~~ department, with each request for funds and bi-annually, the current number of jobs and wage levels for the company's Montana operations.

AUTH: Sec. 39-11-201, MCA

IMP: Sec. 39-11-201, 39-11-202, MCA

14.4.104 GRANT AWARD CRITERIA (1) through (4) remain the same.

~~(5) A grant for worker training may be given in its entirety to the company as soon as funds are available following the committee's approval of the grant. The committee may, at its discretion, disperse the granted monies to the company in portions over time, depending on the length of the anticipated worker training period. The employer may receive grant funds during the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, and the incurring of eligible training expenses.~~

(6) In calculating the wages for purposes of meeting the minimum wage criterion to qualify for a grant, the committee will compare the projected hourly wages and benefits for each employee to be trained to the average hourly wage for the county or state, whichever is lower. The department will divide the current average weekly wage for the county or state by 40 hours to obtain the average hourly wage and benefits for this purpose:

~~(a) estimate the sum of total gross wages (including bonuses and commissions) and total value of benefits paid, during the succeeding 52 week period, commencing at the time of the actual grant dispersal; and~~

~~(b) divide the sum amount determined in (6)(a) by 52.~~

AUTH: Sec. 39-11-201, MCA

IMP: Sec. 39-11-201, 39-11-202, MCA

5. The Committee proposes to transfer the following rule:

14.4.105 AUDIT CRITERIA found at ARM page 14-56.

AUTH: Sec. 39-11-201, MCA

IMP: Sec. 39-11-201, 39-11-202, MCA

6. The Committee proposes to repeal the following rule:

14.4.106 INCORPORATION BY REFERENCE OF RULES GOVERNING EMPLOYER WORKFORCE TRAINING CREDIT AS ADOPTED BY THE DEPARTMENT OF REVENUE found at ARM page 14-56.

AUTH: Sec. 39-11-201, MCA

IMP: Sec. 39-11-201, MCA

7. Interested persons may submit their data, views or arguments concerning the proposed amendment, transfer and repeal orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gary Morehouse, Business Resources Division, Department of Commerce, 301 S. Park Avenue, PO Box 200505, Helena, Montana 59620-0505, by

facsimile to (406) 841-2731, or by e-mail to gmorehouse@mt.gov to be received no later than 5:00 p.m., September 14, 2005.

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

9. The department of commerce maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Business Resources Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Business Resources Division, 301 S. Park Avenue, PO Box 200505, Helena, Montana 59620-0505 or by phone at (406) 841-2732, or may be made by completing a request form at any rules hearing held by the agency.

10. Marty Tuttle, chief legal counsel, has been designated to preside over and conduct this hearing.

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

DEPARTMENT OF COMMERCE
GRANT REVIEW COMMITTEE

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

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

Certified to the Secretary of State August 1, 2005

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 17.8.759 pertaining to) PROPOSED AMENDMENT
review of permit applications)
) (AIR QUALITY)

TO: All Concerned Persons

1. On October 3, 2005, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 23, 2005, 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.

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

17.8.759 REVIEW OF PERMIT APPLICATIONS (1) through (3) remain the same.

(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by ARM 17.8.748 and the applicant of the department's preliminary determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:

(a) remains the same.

(b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within:

(i) remains the same.

(ii) 15 days after the notice is mailed for all other applications, except as provided in (5); and

(c) remains the same.

(5) The department may extend by 15 days the period within which public comments may be submitted as described in (4)(b)(ii) and the date for issuing a final decision on a permit application as described in 75-2-211(9)(b), MCA, under the following conditions:

(a) if the department finds that an extension would serve the public interest;

(b) upon request of the applicant or a member of the public and if the request for an extension is submitted to the

department by the date that written comments on the preliminary determination originally were due; or

(c) if the preliminary determination contains one or more requirements of 40 CFR part 63, as incorporated by reference in this chapter, that require a 30-day comment period.

(6) The department shall notify the applicant of any extension requests that are granted.

(5) remains the same, but is renumbered (7).

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

REASON: HB 581, enacted by the 2005 Montana Legislature, requires the Board to adopt rules providing a period of 15 days in which the public may submit comments on certain draft air quality permits. The legislation also requires the Board to adopt rules providing the basis upon which the Department may extend, by 15 days, this comment period and the period for notifying an applicant of the Department's final decision on approval or denial of an application.

Air quality permits can be complex documents that require considerable review to develop an understanding of the basis for and appropriateness of the conditions contained within them. In some instances, 15 days is insufficient to conduct the necessary review and provide useful comment. Because each source of air pollution, its impact and the circumstances of the affected individuals are unique, circumstances justifying an extension of time may vary widely from one situation to another. Accordingly, the Board believes that allowing an extension of time when it would serve the public interest would allow the Department to consider the unique circumstances of each situation when determining whether an extension of time is warranted. Granting an extension where an applicant or member of the public requests it in writing no later than the end of the original 15-day period would allow for comments from interested persons when the Department has not taken independent action to extend the time period. Also, the Board believes it is reasonably necessary to allow 30 days rather than 15 where federal regulations require it.

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 the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., October 10, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. 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 Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

David M. Rusoff
DAVID M. RUSOFF
Rule Reviewer

BY: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State August 1, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.743 pertaining to)	PROPOSED AMENDMENT AND
Montana air quality permits -)	ADOPTION
when required, and adoption of)	
new rules I through VI)	(AIR QUALITY)
pertaining to oil and gas well)	
facilities)	

TO: All Concerned Persons

1. On October 4, 2005, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 23, 2005, 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.

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

17.8.743 MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in ARM 17.8.744, ~~and~~ 17.8.745 and [NEW RULE II], a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) through (5) remain the same.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, MCA

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Emissions minimizing technology" means a technology that reduces the amount of volatile organic compound (VOC) emissions from oil and gas well facilities through the use of resource recovery as fuel for process units or technology that results in significantly lower emissions of VOCs through the use of vapor capture and introduction into a pipeline.

(2) "Initial well completion date" has the meaning provided in 75-2-211(2)(b), MCA.

(3) "Oil and gas well facility" has the meaning provided

in 75-2-103(13), MCA.

AUTH: 75-2-111, 75-2-211, MCA
IMP: 75-2-211, MCA

NEW RULE II APPLICABILITY AND COORDINATION WITH MONTANA
AIR QUALITY PERMIT RULES

(1) The requirements of this subchapter apply to oil and gas well facilities that were completed after March 16, 1979, or that were modified after March 16, 1979, and that have the potential to emit (PTE) more than 25 tons per year (TPY) of any airborne pollutant that is regulated under this chapter, 10 TPY or more of any individual hazardous air pollutant (HAP), or 25 TPY or more of any combination of HAPs. For the purposes of this rule, PTE is calculated without regard to any air pollution control equipment used at the facility.

(2) Notwithstanding (1), the requirements of [NEW RULE III] do not apply until July 1, 2006, to oil and gas well facilities completed prior to January 3, 2006.

(3) The owner or operator of an oil and gas well facility shall submit to the department an application for a Montana air quality permit, pursuant to ARM 17.8.748, no later than January 3, 2006, or within 60 days after the initial well completion date for the facility, whichever is later.

(4) An owner or operator who complies with the requirements of this subchapter may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final.

AUTH: 75-2-111, 75-2-211, MCA
IMP: 75-2-211, MCA

NEW RULE III EMISSION CONTROL REQUIREMENTS (1) The owner or operator of an oil and gas well facility shall install and operate the following air pollution control equipment and comply with the following air pollution control practices:

(a) volatile organic compound (VOC) vapors greater than 500 British thermal units per standard cubic foot (BTU/scf) from oil and gas wellhead equipment must be routed to a gas pipeline, or, if a gas pipeline is not located within a 1/2 mile of the oil and gas well facility, VOC vapors greater than 500 BTU/scf must be captured and routed to emissions minimizing technology or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system;

(b) VOC vapors greater than 500 BTU/scf from oil and condensate storage tanks with the PTE of 15 TPY or greater must be captured and routed to a gas pipeline, or if a gas pipeline is not located within a 1/2 mile of the oil and gas well facility, VOC vapors greater than 500 BTU/scf from storage tanks with the PTE of 15 TPY must be captured and routed to emissions minimizing technology, or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system;

(c) hydrocarbon liquids must be loaded into transport vehicles using submerged fill technology;

(d) VOC vapors greater than 500 BTU/scf from loading transport vehicles with the PTE greater than 15 TPY must be captured and routed to a gas pipeline, or, if a gas pipeline is not located within a 1/2 mile of the oil and gas well facility, VOC vapors greater than 500 BTU/scf from loading transport vehicles with a PTE greater than 15 TPY must be routed to emissions minimizing technology, or to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system;

(e) stationary internal combustion engines of rich burn design greater than 85 brake horsepower (BHP) must be equipped with nonselective catalytic reduction or its equivalent to control air emissions;

(f) stationary internal combustion engines of lean burn design greater than 85 BHP must be equipped with oxidation catalytic reduction or its equivalent to control air emissions; and

(g) oil and gas well facility operations must comply with the ambient air quality standards for hydrogen sulfide and other criteria pollutants.

(2) The owner or operator of an oil and gas well facility shall operate the air pollution control equipment and comply with the air pollution control practices required in (1) from the initial well completion date for the facility until the department decision on the permit application is final.

AUTH: 75-2-111, 75-2-211, MCA
IMP: 75-2-211, MCA

NEW RULE IV INSPECTION AND REPAIR REQUIREMENTS (1) The owner or operator of an oil and gas well facility shall inspect all VOC piping components for leaks each calendar month. Leak detection methods may incorporate the use of sight, sound, or smell.

(2) The owner or operator shall make the first attempt to repair any leaking VOC equipment within five days after the leak is detected.

(3) Any leaking VOC equipment must be repaired as soon as practicable, but no later than 15 days after the leak is initially detected, unless the repair is technically infeasible without a facility shutdown. Such equipment shall be repaired before the end of the first facility shutdown after the leak is initially detected.

AUTH: 75-2-111, 75-2-211, MCA
IMP: 75-2-211, MCA

NEW RULE V RECORDKEEPING REQUIREMENTS (1) The owner or operator of an oil and gas well facility shall record, and maintain onsite or at a central field office, a record of each monthly inspection.

(2) Inspection records must include, at a minimum, the

following information:

- (a) the date of the inspection;
- (b) the findings of the inspection;
- (c) the leak determination method used;
- (d) any corrective action taken; and
- (e) the inspector's name and signature.

(3) All records of inspection and repair must be kept as a permanent business record for at least five years, be available for inspections, and be submitted to the department upon request.

AUTH: 75-2-111, 75-2-211, MCA
IMP: 75-2-211, MCA

NEW RULE VI DELAYED EFFECTIVE DATE (1) The requirements of [NEW RULES I through V] are not effective until January 1, 2006.

AUTH: 75-2-111, 75-2-211, MCA
IMP: 75-2-211, MCA

REASON: Senate Bill 95, passed by the 2005 Montana Legislature and codified as 75-2-103 and 75-2-211, MCA, of the Clean Air Act of Montana, allows the owners or operators of oil and gas well facilities to drill and operate up to 60 days prior to submitting an application for an air quality permit. Section 75-2-211(2)(d), MCA, also states that the Board shall establish air emission control requirements at oil and gas well facilities until the Department issues a decision on a permit application for the facility. If the oil and gas well facility complies with these requirements, SB 95 allows the facility to continue to operate until the Department's decision on the permit application is final.

The Board is proposing to adopt and amend air quality rules to allow the owner or operator of an oil and gas well facility, that otherwise requires an air quality permit, to operate the facility up to 60 days prior to submitting an application for an air quality permit. The proposed rules would require the owner or operator to install and operate certain specified air pollution control equipment and comply with certain air pollution control practices from the well completion date of the oil and gas well facility until the Department's decision on the air quality permit application is final.

Currently, the owners or operators of oil and gas well facilities with the potential to emit more than 25 TPY of any criteria pollutant or 10 TPY or more of any single hazardous air pollutant (HAP) are required to obtain an air quality permit before constructing the well. The proposed new and amended rules would allow the owner or operator of an oil and gas well facility completed after January 3, 2006, to construct and operate equipment essential to complete the well up to 60 days prior to submitting an application for an air quality permit. This would allow for a more accurate evaluation of the well's potential emissions before a permit is issued, and would avoid

lengthy and costly permit processes for wells that may not actually operate beyond the completion date.

Accordingly, ARM 17.8.743 would be amended to exclude oil and gas well facilities from the requirement of submitting an application for a Montana air quality permit 180 days prior to construction.

New Rule I would define the phrases used in the new rules, based on definitions of the same phrases in 75-2-103(13) and 75-2-211(2)(b), MCA.

New Rule II would specify the potential to emit permitting threshold for oil and gas well facilities and would require the owner or operator of oil and gas well facilities completed or modified after March 16, 1979, to submit an application for a permit within 60 days after the completion date of the well or by January 3, 2006, whichever is later.

New Rule II also would allow oil and gas well facilities completed prior to January 3, 2006, to delay compliance with New Rule III until July 1, 2006. This would allow owners and operators of existing oil and gas wells sufficient time to retrofit those existing wells with appropriate emissions control technology if necessary.

New Rule III would contain the requirements for controlling emissions of VOCs and HAPs from oil and gas well facilities until the Department's decision on the air quality permit application is final. While it is reasonably necessary to allow oil and gas well facilities to complete the well drilling prior to requiring submittal of an air quality permit application, it is equally necessary to require the well facility to operate appropriate air pollution control equipment until its air quality permit becomes final. Under current air quality permitting requirements, sources of air pollution are required to install and operate "best available control technology" (BACT) in order to protect public health and the environment. The specific air pollution control requirements contained in New Rule III mirror the requirements contained in recently issued permits for oil and gas well facilities and therefore constitute presumptive BACT with which the well facilities will have to comply until facility specific requirements are established through the permit.

New Rule IV would contain requirements to conduct monthly leak detection inspections and repair any detected leaks.

New Rule V would contain recordkeeping requirements concerning leak detection and repair.

New Rule VI provides that the effective date of the new rules would be January 1, 2006.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., October 11, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. 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 Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David M. Rusoff BY: Joseph W. Russell
DAVID M. RUSOFF JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State August 1, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rules I through) ON PROPOSED ADOPTION AND
V pertaining to credit) AMENDMENT
counseling services)

TO: All Concerned Persons

1. On September 9, 2005, at 1:00 p.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption of New Rules I through V pertaining to credit counseling services.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on September 2, 2005, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, (406) 444-2026, Montana Relay Service 711, fax (406) 444-3549, or email cojensen@mt.gov.

3. The proposed New Rules provide as follows:

NEW RULE I LICENSE FEE (1) The required license fee will be \$500. It must be paid every year on or before July 1.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE II BOND REQUIREMENT (1) The surety bond for a credit counseling service that maintains an office in this state with a credit counselor on the premises will be the same as one that does not maintain an office in this state with a credit counselor.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE III LIST OF ACCREDITATION AND CERTIFICATION PROVIDERS (1) The parties listed below are the only acceptable accreditation and certification providers for 30-14-2004(2)(b), MCA:

- (a) the counsel on accreditation for children and families;
- (b) association for financial counseling and planning education national foundation for credit counseling;
- (c) BVQI; and
- (d) BSI.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE IV OTHER REQUIREMENTS FOR A LICENSE (1) The department may refuse to issue or renew a licensee if the applicant has been fined or enjoined by any state, part of the federal government, or a United States territory.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE V CONSULTATION AND MAINTENANCE FEES (1) The initial consultation fee or donation shall not be more than \$50.

(2) The maintenance fee shall be the lower of \$25 or 3% of the payment.

AUTH: 30-14-2010, MCA
IMP: 30-14-2010, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to adopt New Rules I, II, III and V to comply with and clarify new enacted laws 30-14-2004, MCA, and 30-14-2010, MCA, and to protect consumers from abuses in the consumer credit service industry. The Department was required to set fees and licensing requirements in order to pay for the program of enforcement and to curb abuses in the industry. The Department anticipates New Rule I will generate approximately \$10,000 in fees. This number is based upon the 20 consumer credit counseling services that have informed the state they intend to register. The generated fees will be used to implement the Department's new responsibilities under 30-14-2004 and 30-14-2010, MCA. New Rules I, II, III, and V reflect the Department's efforts to balance the safety of the consumers with the reasonable needs of the industry. New Rule IV is necessary to prevent companies with known problems and violations from opening a Montana business. This has been a frequent problem in this particular industry. Not adopting New Rule IV would require the Department to wait until a company harmed a Montanan before taking action, even if thousands of consumers were harmed by this company in another state.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cort Jensen, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, and must be received no later than September 19, 2005.

6. Cort Jensen, Assistant Attorney General, has been designated to preside over and conduct the hearing.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their

name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Ali Bovingdon, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Ali Bovingdon, e-mailed to abovingdon@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

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

/s/ Ali Bovingdon
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State August 1, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed	)	AMENDED NOTICE OF PUBLIC
adoption of New Rules I	)	HEARING ON PROPOSED
through VII pertaining to the	)	ADOPTION
regulation of retail)	
establishment selling)	
ephedrine or pseudoephedrine)	

TO: All Concerned Persons

1. On July 28, 2005, the department published MAR Notice No. 23-10-166 regarding the public hearing on the proposed adoption of the above-stated rules at page 1343 of the 2005 Montana Administrative Register, issue No. 14. The notice of proposed agency action is amended as follows because the statement of reasonable necessity was considered incomplete by the rule reviewer for the Law and Justice Interim committee. The statement of reasonable necessity at paragraph 4 is amended to read as follows, new matter underlined, stricken matter interlined:

The new rules are necessary to implement the provisions of 50-32-502, MCA, requiring the department to adopt rules governing the certification of retail establishments that sell products containing ephedrine or pseudoephedrine. Ephedrine and pseudoephedrine are precursors to methamphetamine. Recognizing the serious threat that methamphetamine poses to Montana, the 2005 Legislature enacted new laws regulating the sale of ephedrine or pseudoephedrine. The new law limits the sale of ephedrine or pseudoephedrine to licensed pharmacies or qualified retail establishments. The rules are necessary to establish the certification process for retail establishments and to ensure that access to, and sale of, ephedrine or pseudoephedrine in retail establishments is carefully regulated in accordance with 50-32-501 and 50-32-502, MCA. The rules define the term "retail establishment" and set forth certification, record keeping and training requirements. These provisions are necessary to establish the eligibility and certification requirements that must be met in order for a retail establishment to be allowed to sell ephedrine or pseudoephedrine.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on August 18, 2005, to advise us of the nature of the accommodation that you need. Please contact Ali Bovingdon, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Fax (406) 444-3549; e-mail abovingdon@mt.gov.

3. Concerned persons may submit their data, views, or arguments concerning the proposed adoption either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ali Bovington, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; Fax (406) 444-3549; e-mail abovington@mt.gov to be received no later than August 26, 2005.

4. Ali Bovington, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, has been designated to preside over and conduct the hearing.

5. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, emailed to abovington@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

By: /s/ Mike McGrath
MIKE MCGRATH
Attorney General

/s/ Ali Bovington
ALI BOVINGTON, Rule Reviewer

Certified to the Secretary of State August 1, 2005.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 24.162.420, fee) HEARING ON
schedule) PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 6, 2005, at 9:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing Home Administrators no later than 5:00 p.m. on August 30, 2005, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnha@mt.gov.

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

<u>24.162.420</u>	<u>FEE SCHEDULE</u>	(1)	Applicant and licensee fees are as follows:
(a)	application fee		\$100 <u>\$160</u>
(b)	and (c)		remain the same.
(d)	active renewal fee		125 <u>185</u>
(e)	temporary permit		100 <u>160</u>
(f)	reciprocity		200 <u>260</u>
(g)	through (j)		remain the same.
(k)	educational approval fee		40
(2)	and (3)		remain the same.

AUTH: 37-1-131, 37-1-134, 37-9-304, MCA
IMP: 37-1-131, 37-1-134, 37-9-304, MCA

REASON: Based on the restructuring within the Department of Labor, the Board of Nursing Home Administrators has determined that there is reasonable necessity to amend ARM 24.162.420 in order to set the Board's fees at a level commensurate with program costs, as required by 37-1-134, MCA. The Board estimates that approximately 167 persons will be affected by the proposed increased active renewal fee and 37 new applicants will be affected by the increased application fee.

The Board is proposing to eliminate the continuing education approval fee that has historically been charged to licensees. The Board estimates that approximately an average of 25 licensees a year will be affected by the change. The estimated annual net increase in revenue is approximately \$12,240. The Board has committed to exploring ways to reduce costs. With the proposed fee increase, the Board's projected annual revenue is \$45,225. The Board's appropriation for fiscal year 2005 is \$35,996 including a recharge of \$18,635 and for fiscal year 2006 is \$43,847 including a recharge of \$21,882. The recharge amount is the cost assessed to the Board to cover the costs incurred by the Department to administer the Board, as required by 37-1-131(4), MCA. There are three units that provide these services to the Board: the Business Standards Division, the Health Care Licensing Bureau and the Legal Unit. The costs are allocated to each board based on time distribution of each employee who works for the Board, as well as, normal overhead costs such as rent, telephone, computer costs, etc. The Board believes that the proposed fee structure will address the Board's need to maintain fees at a level commensurate with costs.

The Board advises licensees and the public that it has researched the comparable fees of surrounding states. With the proposed fee increases, Montana fees are comparable to those charged by Colorado, Idaho, North Dakota, South Dakota, Oregon, Washington and Wyoming.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnha@mt.gov, and must be received no later than 5:00 p.m., September 14, 2005.

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

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

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

8. Jack Atkins, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING HOME ADMINISTRATORS
DEBORAH WILSON, CHAIRPERSON

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

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State August 1, 2005

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 32.2.403) AMENDMENT
pertaining to diagnostic lab)
fees) NO PUBLIC HEARING
) CONTEMPLATED

To: All Concerned Persons

1. On September 10, 2005, the department of livestock proposes to amend ARM 32.2.403 pertaining to diagnostic lab fees.

2. The department of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department of livestock no later than 5:00 p.m. on September 1, 2005, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001; phone: (406) 444-7323; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: mbridges@mt.gov.

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

32.2.403 DIAGNOSTIC LABORATORY FEES (1) remains the same.

- ~~(a) abortion studies (kits):~~
- ~~(i) includes histopathology and bacteriology (use SV43 form) \$25.00~~
- ~~(b) bacteriology (use SV43 form):~~
- ~~(i) aerobic culture (first isolate) 10.00~~
- ~~(ii) aerobic culture (additional isolates each) 4.00~~
- ~~(iii) anaerobic culture (facultative) 14.00~~
- ~~(iv) antibiotic sensitivity per isolate 7.00~~
- ~~(v) Trichomonas culture 5.00~~
- ~~(vi) direct microscopy 6.00~~
- ~~(vii) Clostridium FA 9.00~~
- ~~(viii) dermatophyte culture and PAS stain \$22.00~~
- ~~(ix) non dermatophyte fungal culture 17.50~~
- ~~(x) Chlamydia ELISA 16.00~~
- ~~(xi) Campylobacter (livestock reproductive disease) 10.00~~
- ~~(xii) Campylobacter (intestinal contents) 10.00~~
- ~~(xiii) Clostridium genotyping~~
- ~~referral cost of referral fee~~
- ~~(xiv) E. coli K99 latex agglutination 10.00~~
- ~~(xv) Mycoplasma culture 10.00~~
- ~~(xvi) special requests: contact laboratory~~
- ~~(c) histology (use SV43 form):~~

(i) 1 3 slides (one biopsy)	22.00
(ii) 4 6 slides	28.00
(iii) 7 10 slides	34.00
(iv) 11 or greater slides	38.00
(v) duplicate H&E slide	7.00
(vi) special stains	7.00
(vii) immunohistochemistry	20.00
(d) milk laboratory (use SV43 form):	
(i) added water	3.00
(ii) antibiotic (depending on class of suspected antibiotic)	12.00 to 23.00
(iii) Brucella ring test	2.00
(iv) coliform (milk and water)	5.00
(v) component testing	1.00
(vi) Gerber	3.00
(vii) Listeria culture	32.00
(viii) Majonnier	12.50
(ix) pesticide (organophosphate and carbamate (minimum))	24.00
(x) pesticide (chlorinated hydrocarbon)	210.00
(xi) phosphatase	6.00
(xii) somatic cell count (direct microscopy)	5.00
(xiii) somatic cell count (electronic)	1.00
(xiv) standard plate count	5.50
(xv) yeast or mold	5.00
(xvi) laboratory certification	
review: contact laboratory	
(c) miscellaneous tests (use SV43):	
(i) bovine IgG	12.00
(ii) equine IgG	12.50
(iii) ocular nitrate	12.00
(iv) special testing/referral: contact laboratory	
(v) duplicate test reporting	2.00
(vi) after hour fee (pathologist) up to 50.00	
(vii) stat results (clinical pathology only):	
contact laboratory \$15.00	
(viii) minimum laboratory fee 6.00	
(ix) referral testing: fee of referral laboratory testing costs, mailing costs and \$5.00 handling fee	
(x) out of state fee: fee of 50% surcharge of total laboratory costs	
(f) necropsy includes gross examination, histopathology and routine bacterial isolation, as deemed necessary by the pathologist. Contact the laboratory for procedural instructions. Euthanasia must be performed at departure point unless recommended otherwise by pathologist.	
(i) cattle and horses	
(A) fetus 35.00	
(B) < 150 lbs. 50.00	
(C) 150 500 lbs. 65.00	
(D) > 500 lbs. 80.00	
(ii) sheep and goats	
(A) fetus 35.00	
(B) < 20 lbs. 35.00	

(C) > 20 lbs.	50.00
(iii) pigs	
(A) fetus	35.00
(B) < 25 lbs.	35.00
(C) 25-250 lbs.	50.00
(D) 250-500 lbs	65.00
(iv) dogs and cats	60.00
(v) other species	(minimum) 35.00
(vi) spinal cord removal (in addition to necropsy fees)	45.00 to 80.00
(vii) carcass disposal rates	
(A) small animals	25.00 to 85.00
(B) large animals	25.00 to 200.00
(viii) insurance and legal cases:	contact laboratory
(ix) research cases:	contact laboratory
(x) transmissible encephalopathies	
(A) necropsy	(minimum) 125.00
(B) brain removal	(minimum) 30.00
(C) IHC and ELISA testing:	referral fee plus shipping and handling
(g) neonatal diarrhea studies (kits):	
(i) includes histopathology and routine bacteriology with additional tests for K 99 E. coli LA, viral agents (EM), Cryptosporidium, endoparasitism, and serum immunoglobulin as history and age of calf dictates, (use SV43 form)	60.00
(h) parasitology:	
(i) adult parasite or arthropod identification (referral):	\$23.50
(ii) cryptosporidia exam	6.00
(iii) fecal flotation	8.00
(iv) Giardia ELISA	16.00
(v) Dirofilaria immitis ELISA screening	7.00
(vi) Dirofilaria immitis ELISA confirmation	9.00
(vii) special parasite ID procedures	contact laboratory
(i) rabies: submit entire brain or head in a refrigerated, fresh state. Do not submit live animals. Coincide specimen arrival with laboratory working schedule:	
(i) FA examination (small animal)	25.00
(ii) FA examination (large animal)	50.00
(iii) carcass disposal (does not apply to bats)	25.00 to 200.00
(j) serology (large animal):	
(i) anaplasmosis ELISA	5.00
(ii) Avian Influenza AGID	5.00
(iii) Bluetongue AGID	4.00
(iv) Bluetongue ELISA	7.50
(v) Bovine Leukemia Virus, ELISA	5.00
(vi) Bovine Respiratory Syncytial Virus SN	referral
(vii) Bovine Virus Diarrhea Type I and II SN	12.00
(viii) Bovine Virus Diarrhea ELISA	5.00
(ix) > 100 BVD samples (each sample)	4.00
(x) Brucella abortus, card, BAPA or FP (each)	1.00
(xi) Brucella abortus CF, Rivanol, SPT, or STT (each)	2.00

(xii) Brucella ovis ELISA, CF	5.00
(xiii) Equine Infectious Anemia AGID (Coggins)	7.00
(xiv) Equine Infectious Anemia ELISA	12.50
(xv) Epizootic Hemorrhagic Disease AGID	10.00
(xvi) Infectious Bovine Rhinotracheitis SN	6.00
(xvii) Johne's (Paratuberculosis) CF,	
ELISA	5.50 ELISA/CF referral
(xviii) Johne's (Paratuberculosis) AGID	10.00
(xix) Leptospirosis (8 routine serovars) MAT	6.50
(xx) Ovine Progressive Pneumonia/Caprine	
Arthritis Encephalitis AGID	4.00
(xxi) Parainfluenza 3 HA	referral
(xxii) Pseudorabies SN, LA	5.00
(xxiii) Salmonella pullorum MAT	4.00
(xxiv) Vesicular stomatitis CF	contact laboratory
(xxv) Vesicular stomatitis SN (New Jersey or	
Indiana)	12.00
(xxvi) West Nile IgM ELISA	\$7.00
(k) serology (small animals) (use SV43 form):	
(i) Brucella canis Tube	15.00
(ii) Feline Infectious Peritonitis ELISA	20.00
(iii) Feline Leukemia ELISA	10.00
(iv) Feline Leukemia/Feline Immunodeficiency	
Virus ELISA	20.00
(l) toxicology:	
(i) referral to outside contracted laboratory	
(m) virology (use SV43 form):	
(i) BVD, IBR, Leptospira, EHV 1, and BRSV FA	6.00
(ii) Bovine Viral Diarrhea ELSIA	5.00
(iii) > 100 samples (per sample)	4.00
(iv) Canine Parvovirus (fecal only) ELISA	17.00
(v) electron microscopy (where applicable)	24.00
(vi) virus isolation (livestock only) per virus	16.00
(vii) Bovine coronavirus	17.50
(viii) fluorescent antibody testing	
(livestock only)	6.00
(n) clinical pathology clinical profiles:	
(i) small animal health screen (SA Chem Panel,	
CBC/Differential, UA)	33.00
(ii) small animal clinical profile (SA Chem	
Panel, CBC/Differential)	24.00
(iii) SA Pre Anesthetic Profile (BUN, CRE, ALT,	
ALP, Glu, TP, CBC/Differential)	17.00
(iv) Feline ADR Profile (SA Chem Panel, T4,	
CBC/Differential, FeLV, FIV, FIA)	45.00
(v) large animal health screen (LA Chem Panel,	
CBC/Differential, Fibrinogen, UA)	33.00
(vi) large animal clinical profile (LA Chem	
Panel, CBC/Differential, Fibrinogen)	24.00
(vii) LA Pre Anesthetic Profile (BUN, GGT, AST,	
CK, CBC/Differential, Fibrinogen)	17.00
(viii) Equine Fitness Profile (AST, GGT, Tbili,	
CK, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2,	
CBC/Differential, Fibrinogen)	22.00

(o) mini profiles:	
(i) small animal Hepatic profile (ALT, AST, ALP, GGT, Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLU)	11.00
(ii) small animal Renal Profile (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2)	11.00
(iii) Exocrine Pancreatic Profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase)	11.00
(iv) canine Endocrine Profile (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, Cl, Glu)	15.00
(v) large animal Hepatic Profile (GGT, AST, Tbili, TP, ALB)	\$8.00
(vi) large animal Renal Profile (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)	9.00
(vii) SA/LA Gastrointestinal Profile (TP, ALB, Na, K, Cl)	7.00
(viii) feline Thyroid Profile (ALP, ALT, AST, PO4, T4)	9.00
(ix) Electrolytes (Na, K, Cl, TCO2)	6.00
(x) T4	10.00
(xi) T3	10.00
(xii) TSH	10.00
(xiii) free T4	10.00
(xiv) cortisol	12.00
(p) Biochemical Panels:	
(i) small animal Chem Panel	17.00
(ii) large animal Chem Panel	17.00
(iii) T4 add on	7.00
(q) urine evaluation:	
(i) urinalysis (chemical, specific gravity, sediment evaluation)	10.00
(ii) urinalysis with culture/sensitivity	25.00
(r) Individual Biochemical Tests:	call ahead
for prices:	
(s) Cytology:	
(i) solid tissue (FNA, imprint, or smear)	22.00
(ii) bone marrow analysis	24.00
(iii) fluid analysis (total cell count, TP, SG, Cytology)	25.00
(iv) fluid smear (cytology only)	22.00
(v) CSF analysis (SG, Microprotein, Cytospin cytology)	18.00 plus Microprotein referral
(t) miscellaneous tests:	
(i) cross match	10.00
(ii) Coagulation per test (PT, APTT, RBR, FDP)	17.00
(iii) others	call ahead for prices
(iv) Buffy coat count	15.00
(u) Hematology:	
(i) small animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticuloocytes, WBC/Differential, TP, RWD, MPV, Fibrinogen):	10.00
(ii) small animal CBC without Differential	5.00
(iii) Reticulocyte count	5.00
(iv) Feline Anemia Panel (SA, CBC, FeLV, FIV, FIA)	23.00

(v) Large animal CBC (RBC, HCT, MCV, MCHC, Reticulocyte count, RDW, MPV, WBC/Differential, TP, Fibrinogen):	\$10.00
(vi) large animal CBC without Differential	5.00
(vii) Hemotropic Parasite Screen	2.00
(viii) Fibrinogen	2.00
(v) other tests requested	call ahead for prices.

<u>ABORTION STUDIES (kits):</u>	
<u>Includes histopathology and bacteriology (use SV43 form)</u>	<u>\$30.00</u>
<u>BACTERIOLOGY (use SV43 form):</u>	
<u>aerobic culture (first isolate)</u>	<u>\$11.50</u>
<u>aerobic culture (additional isolates)</u>	<u>4.00 each</u>
<u>anaerobic culture (facultative)</u>	<u>14.00</u>
<u>antibiotic sensitivity per isolate</u>	<u>7.00</u>
<u>Campylobacter (livestock reproductive disease)</u>	<u>10.00</u>
<u>Campylobacter (intestinal contents)</u>	<u>10.00</u>
<u>Chlamydia ELISA</u>	<u>16.00</u>
<u>Clostridium FA</u>	<u>10.00</u>
<u>Clostridium genotyping referral</u>	<u>cost of referral</u>
<u>dermatophyte culture and PAS stain</u>	<u>22.00</u>
<u>direct darkfield microscopy</u>	<u>7.00</u>
<u>E. coli K99 latex agglutination</u>	<u>10.00</u>
<u>Mycoplasma culture</u>	<u>12.00</u>
<u>non-dermatophyte fungal culture</u>	<u>18.50</u>
<u>special requests</u>	<u>contact lab</u>
<u>Trichomonas culture</u>	<u>5.00</u>
<u>CLINICAL PATHOLOGY (clinical profiles):</u>	
<u>small animal health screen (SA Chem Panel, CBC/Differential, UA)</u>	<u>\$35.00</u>
<u>small animal clinical profile (SA Chem Panel, CBC/Differential)</u>	<u>26.00</u>
<u>SA Pre-Anesthetic Profile (BUN, CRE, ALT, ALP, Glu, TP, CBC/Differential)</u>	<u>19.00</u>
<u>Feline ADR Profile (SA Chem Panel, T4, CBC/Differential, FeLV, FIV, FIA)</u>	<u>50.00</u>
<u>large animal health screen (LA Chem Panel, CBC/Differential, Fibrinogen, UA)</u>	<u>35.00</u>
<u>large animal clinical profile (LA Chem Panel, CBC/Differential, Fibrinogen)</u>	<u>26.00</u>
<u>LA Pre-Anesthetic Profile (BUN, GGT, AST, CK, CBC/Differential, Fibrinogen)</u>	<u>19.00</u>
<u>Equine Fitness Profile (AST, GGT,</u>	

<u>Tbili, CK, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2, CBC/Differential, Fibrinogen)</u>	<u>\$22.00</u>
<u>CLINICAL PATHOLOGY (mini profiles):</u>	
<u>small animal Hepatic profile (ALT, AST, ALP, GGT, Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLu)</u>	<u>\$12.50</u>
<u>small animal Renal Profile (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2)</u>	<u>12.50</u>
<u>Exocrine Pancreatic Profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase)</u>	<u>11.00</u>
<u>canine Endocrine Profile (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, Cl, Glu)</u>	<u>17.00</u>
<u>large animal Hepatic Profile (GGT, AST, Tbili, TP, ALB)</u>	<u>9.00</u>
<u>large animal Renal Profile (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)</u>	<u>10.00</u>
<u>SA/LA Gastrointestinal Profile (TP, ALB, Na, K, Cl)</u>	<u>8.00</u>
<u>feline Thyroid Profile (ALP, ALT, AST, PO4, T4)</u>	<u>10.00</u>
<u>Electrolytes (Na, K, Cl, TCO2)</u>	<u>7.00</u>
<u>cT4</u>	<u>7.00</u>
<u>T3</u>	<u>7.00</u>
<u>TSH</u>	<u>7.00</u>
<u>free T4</u>	<u>7.00</u>
<u>TT4</u>	<u>7.00</u>
<u>cTSH</u>	<u>7.00</u>
<u>cortisol</u>	<u>12.00 each test</u>
<u>CLINICAL PATHOLOGY (biochemical panels):</u>	
<u>small animal Chem Panel</u>	<u>\$20.00</u>
<u>large animal Chem Panel</u>	<u>20.00</u>
<u>T4 add-on</u>	<u>7.00</u>
<u>individual biochemical tests</u>	<u>contact laboratory</u>
<u>CLINICAL PATHOLOGY (Cytology):</u>	
<u>solid tissue (FNA, imprint, or smear)</u>	<u>\$24.00</u>
<u>bone marrow analysis</u>	<u>26.00</u>
<u>fluid analysis (total cell count, TP, SG, Cytology)</u>	<u>26.00</u>
<u>fluid smear (cytology only)</u>	<u>22.00</u>
<u>CSF analysis (SG, Microprotein, Cytospin cytology)</u>	<u>18.00 plus microprotien referral</u>

<u>CLINICAL PATHOLOGY (Hematology):</u>	
<u>small animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticulocytes, WBC/Differential, TP, RWD, MPV, Fibrinogen)</u>	<u>\$10.00</u>
<u>small animal CBC without Differential</u>	<u>5.00</u>
<u>Reticulocyte count</u>	<u>5.00</u>
<u>Feline Anemia Panel (SA, CBC, FeLV, FIV, FIA)</u>	<u>30.00</u>
<u>Large animal CBC (RBC, HCT, MCV, MCHC, Reticulocyte count, RDW, MPV, WBC/Differential, TP, Fbrinogen)</u>	<u>10.00</u>
<u>large animal CBC without Differential</u>	<u>5.00</u>
<u>Hemotropic Parasite Screen</u>	<u>3.00</u>
<u>Fibrinogen</u>	<u>3.00</u>
<u>CLINICAL PATHOLOGY (miscellaneous tests):</u>	
<u>blood cross match</u>	<u>\$12.00</u>
<u>Buffy coat count</u>	<u>20.00</u>
<u>Coagulation per test (PT, APTT, RBR, FDP)</u>	<u>17.00</u>
<u>others</u>	<u>call ahead for prices</u>
<u>CLINICAL PATHOLOGY (urine evaluation):</u>	
<u>urinalysis (chemical, specific gravity, sediment evaluation)</u>	<u>\$10.00</u>
<u>urinalysis with culture/sensitivity</u>	<u>26.50</u>
<u>HISTOLOGY (use SV43 form):</u>	
<u>1 - 3 slides (one biopsy)</u>	<u>\$24.00</u>
<u>4 - 6 slides</u>	<u>30.00</u>
<u>7 - 10 slides</u>	<u>36.00</u>
<u>11 or greater slides</u>	<u>40.00</u>
<u>duplicate H&E slide</u>	<u>8.00</u>
<u>immunohistochemistry</u>	<u>22.00</u>
<u>special stains</u>	<u>8.00</u>
<u>MILK LABORATORY (use SV43 form):</u>	
<u>added water</u>	<u>\$3.00</u>
<u>antibiotic (depending on class of suspected antibiotic)</u>	<u>12.00 to 23.00</u>
<u>Brucella ring test</u>	<u>2.00</u>
<u>coliform (milk and water)</u>	<u>5.00</u>
<u>component testing</u>	<u>1.00</u>
<u>Gerber</u>	<u>3.00</u>
<u>Listeria culture</u>	<u>32.00</u>

<u>25-250 lbs.</u> <u>250-500 lbs.</u> <u>dogs and cats</u> <u>other species</u> <u>carcass disposal rates</u> <u>small animals</u> <u>large animals</u> <u>wildlife</u> <u>insurance and legal cases</u> <u>research cases</u> <u>spinal cord removal (in addition to</u> <u>necropsy fees)</u> <u>transmissible encephalopathies</u> <u>necropsy</u> <u>brain removal</u> <u>IHC and ELISA testing</u>	<u>65.00</u> <u>80.00</u> <u>80.00</u> <u>35.00 minimum</u> <u>25.00 to 85.00</u> <u>25.00 to 200.00</u> <u>contract per FWP</u> <u>contact laboratory</u> <u>contact laboratory</u> <u>45.00 to 80.00</u> <u>(minimum) 125.00</u> <u>(minimum) 30.00</u> <u>referral costs plus</u> <u>shipping and handling</u>
<u>NEONATAL DIARRHEA STUDIES (kits):</u> <u>Includes histopathology and routine</u> <u>bacteriology with additional tests for</u> <u>K-99 E. coli LA, viral agents (EM),</u> <u>Cryptosporidium, endoparasitism, and</u> <u>serum immunoglobulin as history and</u> <u>age of calf dictates (use SV43 form)</u>	<u>\$65.00</u>
<u>PARASITOLOGY:</u> <u>adult parasite or arthropod</u> <u>identification (referral)</u> <u>cryptosporidia exam</u> <u>Dirofilaria immitis ELISA screening</u> <u>Dirofilaria immitis ELISA confirmation</u> <u>fecal flotation</u> <u>Giardia ELISA</u> <u>special parasite ID procedures</u>	<u>\$25.00</u> <u>6.00</u> <u>7.00</u> <u>12.00</u> <u>9.00</u> <u>20.00</u> <u>contact laboratory</u>
<u>RABIES:</u> <u>Submit entire brain or head in a</u> <u>refrigerated, fresh state. Do not</u> <u>submit live animals. Coincide specimen</u> <u>arrival with laboratory working</u> <u>schedule.</u> <u>FA examination (small animal)</u> <u>FA examination (large animal)</u> <u>carcass disposal (does not apply to</u> <u>bats)</u>	<u>\$25.00</u> <u>50.00</u> <u>25.00 to 200.00</u>
<u>SEROLOGY (large animal):</u>	

<u>anaplasmosis cELISA</u>	<u>\$6.00</u>
<u>Avian Influenza AGID</u>	<u>5.00</u>
<u>Bluetongue AGID</u>	<u>5.00</u>
<u>Bluetongue cELISA</u>	<u>7.50</u>
<u>Bovine Leukemia Virus, ELISA</u>	<u>6.00</u>
<u>Bovine Respiratory Syncytial Virus SN</u>	<u>referral</u>
<u>Bovine Virus Diarrhea Type I and II SN</u>	<u>12.00</u>
<u>Bovine Virus Diarrhea ELISA</u>	<u>5.00</u>
<u>> 100 BVD samples (each sample)</u>	<u>4.00</u>
<u>Brucella abortus, card, BAPA or FP</u>	<u>1.00 each</u>
<u>Brucella abortus CF, Rivanol, SPT, or STT</u>	<u>2.00 each</u>
<u>Brucella ovis ELISA, CF</u>	<u>5.00</u>
<u>Equine Infectious Anemia AGID (Coggins) 1-15</u>	<u>7.00 each</u>
<u>16 > 50</u>	<u>5.50 each</u>
<u>> 50</u>	<u>4.50 each</u>
<u>Equine Infectious Anemia ELISA</u>	<u>12.50</u>
<u>Epizootic Hemorrhagic Disease AGID</u>	<u>10.00</u>
<u>Infectious Bovine Rhinotracheitis SN</u>	<u>6.00</u>
<u>Johne's (Paratuberculosis) AGID</u>	<u>10.00</u>
<u>Johne's (Paratuberculosis) ELISA</u>	<u>6.50 each</u>
<u>Johne's ELISA CF</u>	<u>referral</u>
<u>Leptospirosis (8 routine serovars) MAT</u>	<u>6.50</u>
<u>Ovine Progressive Pneumonia/Caprine Arthritis Encephalitis AGID</u>	<u>5.00</u>
<u>Parainfluenza-3 HA</u>	<u>referral</u>
<u>Pseudorabies SN, LA</u>	<u>5.00</u>
<u>Salmonella pullorum MAT</u>	<u>4.00</u>
<u>Vesicular stomatitis CF</u>	<u>contact laboratory</u>
<u>Vesicular stomatitis SN (New Jersey or Indiana)</u>	<u>12.00</u>
<u>West Nile IgM ELISA</u>	<u>7.00</u>
<u>SEROLOGY (small animals) (use SV43 form):</u>	
<u>Brucella canis Tube</u>	<u>\$17.00</u>
<u>Feline Infectious Peritonitis ELISA</u>	<u>23.00</u>
<u>Feline Leukemia ELISA</u>	<u>13.00</u>
<u>Feline Leukemia/Feline Immunodeficiency Virus ELISA</u>	<u>22.00</u>
<u>TOXICOLOGY:</u>	<u>referral to outside contracted lab</u>
<u>VIROLOGY (use SV43 form):</u>	
<u>Bovine coronavirus</u>	<u>\$17.50</u>
<u>BVD, IBR, Leptospira, EHV-1, and BRSV FA</u>	<u>6.00</u>
<u>Bovine Viral Diarrhea ELISA</u>	<u>5.00</u>
<u>> 100 samples (per sample)</u>	<u>4.00</u>
<u>Canine Parvovirus (fecal only) ELISA</u>	<u>20.00</u>

<u>electron microscopy (where applicable)</u>	<u>25.00</u>
<u>fluorescent antibody testing</u>	
<u>(livestock only)</u>	<u>6.00</u>
<u>virus isolation (livestock only)</u>	<u>18.00 per virus</u>
<u>OTHER TESTS REQUESTED:</u>	<u>call ahead for prices</u>
<u>MISCELLANEOUS CHARGES/SUPPLIES:</u>	
<u>culturette</u>	<u>\$3.45</u>
<u>duplicate test reporting</u>	<u>2.00</u>
<u>handling fee</u>	<u>6.00 plus shipping</u>
<u>large shipper</u>	<u>11.50</u>
<u>minimum fee</u>	<u>6.00</u>
<u>out-of-state</u>	<u>cost of test plus 50%</u>

(2) remains the same.

AUTH: Sec. 81-1-102, 81-2-102, MCA
IMP: Sec. ~~81-1-301, 81-1-302~~, 81-2-102, MCA

REASON: ARM 32.2.403 is being amended to reformat the rule into a chart form that will be easier to read and to change fees that are currently charged by the department of livestock for diagnostic laboratory services. The fees are being increased to reflect increased costs associated with providing those services. The fees must, by statute, be set at levels commensurate with the costs of performing the tests or services listed.

Fees for each procedure and test were evaluated determining the cost of the test materials and labor for performance of the test. The fees were compared to regional government funded diagnostic laboratories and a private veterinary laboratory. The fees were adjusted to be competitive with these laboratories and to offset inflationary costs. The laboratory must continue to provide a utilized service to the Montana livestock industry in order to assure that a vital function and mission of the laboratory regarding disease surveillance is not compromised.

The increased fees charged by the department's diagnostic laboratory will potentially affect approximately 25,000 people who may use services at the laboratory. The cumulative amount of the fee increase will be \$60,000.00 based on this number of lab users.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to mbridges@mt.gov to be received no later than 5:00 p.m., September 8, 2005.

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 written request for hearing must be received no later than 5:00 p.m., September 8, 2005.

6. If the department 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

7. An electronic copy of this Proposal Notice is available through the department's site at www.liv.mt.gov.

8. The Montana department of livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. 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 the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Marc Bridges"; or e-mailed to mbridges@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

/s/ Marc Bridges
Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State August 1, 2005.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF REPEAL
of ARM 2.21.410 through)
2.21.419 and 2.21.422)
pertaining to Military Leave)

TO: All Concerned Persons

1. On May 26, 2005, the Department of Administration published MAR Notice No. 2-2-355 regarding the proposed repeal of ARM 2.21.410 through 2.21.419 and 2.21.422 pertaining to Military Leave at page 767 of the 2005 Montana Administrative Register, issue number 10.

2. The department has repealed the rules as proposed.

3. No comments or testimony were received.

BY: Dal Smilie
Dal Smilie
Rule Reviewer

Janet R. Kelly
Janet R. Kelly
Director

Certified to the Secretary of State August 1, 2005.

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

In the matter of the) CORRECTED NOTICE
adoption of new rules I) OF AMENDMENT
through IV, and the)
amendment of ARM 12.11.202,)
12.11.205, 12.11.210,)
12.11.215, and 12.11.220,)
pertaining to the Beaverhead)
and Big Hole rivers)

TO: All Concerned Persons

1. On June 16, 2005, the Fish, Wildlife and Parks Commission (commission) published a notice of the adoption and amendment of the above-stated rules pertaining to the Beaverhead and Big Hole rivers at page 917 of the 2005 Montana Administrative Register, issue number 11.

2. The reason for the correction is that in the notice of adoption and amendment the time period for measuring outfitter client days on the Big Hole River in ARM 12.11.220(5) was printed incorrectly as being from July 1 through August 31 instead of June 1 through July 31. The corrected rule amendment reads as follows, stricken matter interlined, new matter underlined:

12.11.220 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER (1) through (4) remain as amended.

(5) Each outfitter from ~~July 1 through August 31~~ June 1 through July 31, inclusive, on the Big Hole River shall not exceed the number of client days served by the outfitter on the Big Hole River during those same months for the outfitter's highest client use year from among the years 1995, 1996, 1997, 1998, 1999, or 2000. The records submitted by the outfitter to and maintained by the board of outfitters will determine the number of client days in each year.

(6) through (11) remain as amended.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-303, MCA

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on September 30, 2005.

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

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

Certified to the Secretary of State August 1, 2005

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On May 26, 2005, the Montana Department of Justice published MAR Notice No. 23-16-164 regarding a notice of public hearing on the proposed adoption, amendment and repeal of the above-stated rules at page 784 of the 2005 Montana Administrative Register, issue Number 10. On July 14, 2005, the Montana Department of Justice published notice of adoption, amendment and repeal of the above-stated rules at page 1281 of the 2005 Montana Administrative Register, issue Number 13.

2. The reason for the correction is that on page 1284 of the Notice a typographical error was made improperly identifying the rule as ARM 23.14.2406. The rule as corrected appears as follows, new material underlined, stricken interlined:

23.1416.2406 PRIZE AWARDS FOR LIVE KENO AND BINGO GAMES
(1) through (2)(b)(iii) remain as amended.

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

/s/ Ali Bovington
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State August 1, 2005.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT,
amendment of ARM 24.35.111,	)	ADOPTION AND REPEAL
24.35.131, 24.35.141,)	
24.35.202, 24.35.205,)	
24.35.206, 24.35.207,)	
24.35.302, and 24.35.303,)	
the adoption of NEW RULE I,)	
and the repeal of)	
ARM 24.35.116 and 24.35.301,)	
all related to independent)	
contractor exemption)	
certificates)	

TO: All Concerned Persons

1. On June 16, 2005, the Department of Labor and Industry published MAR Notice No. 24-35-194 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules relating to independent contractors at page 874 of the 2005 Montana Administrative Register, Issue No. 11.

2. On July 8, 2005, the Department held a public hearing in Helena regarding the above-stated rules at which oral and written comments were received. Additional written comments were received prior to the closing date of July 15, 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: A representative of the Montana Contractors' Association commented that members of his organization were confused by the sentence in ARM 24.35.111(2) which states: "A maximum of two items may be submitted to receive the total points in each category." He commented that he did not understand whether that meant only two documents within, for example, the six point category, or whether that meant two documents in each of the document types listed in the six point category. He requested clarification and also questioned whether there should be any limitation on the amount of documentation submitted in any category.

The representative also stated that the points for printed hats and shirts should be eliminated because he does not believe hats or shirts are necessarily a valid indicator that someone is in business. He commented that many marketing companies send a preprinted shirt or hat in order to get an individual to place orders.

Response 1: The Department agrees the above sentence in ARM 24.35.111(2) needs to be clarified to explain the limits on documentation. The Department has made changes to the rule as proposed in order to clarify the limits. The clarifications use the phrase "point groups" to distinguish from the "categories" of documentation. Each "point group" is comprised of all the categories of items that are worth the same number of points. Categories refer to the individual item that may be provided to earn the points allotted within the point group.

The Department continues to believe it is necessary to have a limitation on the amount of documentation that may be submitted for each category because a greater variety of documentation is more likely to demonstrate an applicant is engaged in an independently established business. Further, the Department believes a limit on documentation per category is necessary in order to keep documentation submitted to a manageable level. For example, the Department does not need to review ten contracts in order to award the six points available in this category. One or two well-written contracts will suffice.

The Department disagrees that points for printed hats and shirts should be entirely eliminated. However, the Department agrees the point value for printed hats and shirts should be clarified to require proof of an order of hats or shirts with a business name on them as proof someone is promoting their business. The Department may award up to the full one and a half points for this category when there is documentation that an order of multiple shirts or hats has been purchased. However, the Department will not award any points for an individual hat or shirt.

In addition, as a result of this commenter's remarks, the Department reviewed all of the categories of documentation and made a few changes to clarify the documentation required and the point values. Specifically, the Department moved the category of two or more miscellaneous income IRS Form 1099s and/or business tax receipts from the three point group to the six point group. The Department believes that if an applicant produces only one Form 1099, this fails to prove the existence of an independent business and the applicant should not be entitled to any points. However, if two or more are produced, the Department intends to award up to three points for each separate one for a possible total of six points. Therefore, the Department clarified this issue by requiring more than one piece of documentation for that particular category and by moving the category to the six point group. Similarly, the Department moved the category of two or more bids or estimates from the one and a half point group to the three point group. An applicant submitting only one bid or estimate will not be entitled to any points for lack of proving the existence of an independent business. However, an applicant that produces two or more bids or estimates could receive up to three points.

Comment 2: A written comment suggested that ARM 24.35.202 should be revised to clarify that the Department of Labor and Industry can examine the books and records of a hiring agent only in relation to the independent contractor in question.

Response 2: Section 39-71-304(1), MCA, states "The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department" While the Department does have the authority to review the books and records of hiring agents for compliance with Title 39, chapter 71, MCA, generally the Department will normally limit its investigation to the information necessary to verify the working relationship of an independent contractor and hiring agent. Therefore, the Department concludes that the language of the rule will remain the same.

Comment 3: A comment suggested the Department adopt a rule to clarify that requirements imposed on motor carrier independent contractors by governmental or third party customers are not to be interpreted as direction and control of the motor carrier. This commenter also suggested the Department adopt a rule to clarify it has no absolute right to interview "co-workers" or "employees" on motor carriers' property without the motor carriers' permission. This commenter also suggested the Department adopt a rule to clarify it may not examine the books and records of a motor carrier without the motor carrier's permission or some reasonable safeguard such as a judicial subpoena.

Response 3: All statutes and rules administered by the Department are subject to coordination with other existing federal and state statutory requirements and judicial case law. Therefore, the Department does not believe there is need for a specific rule to address coordination of the specific statutory requirements placed on motor carriers. Further, the Department's regulatory powers to conduct an administrative investigation on business premises are subject to the same general guidelines as any other administrative regulatory agency. Therefore, the Department concludes it is not presently necessary to propose a more specific rule regarding its investigatory powers to interview employees or to view the books and records of a hiring agent. The Department will use good discretion to not interfere with the rights and operations of business owners. It is the intention of the Department to get permission from the business owner or management whenever possible before discussions take place with workers on the business property. The Department does not intend to adopt any industry-specific rules until experience demonstrates the need for such rules.

Comment 4: The same commenter questioned why Chapter 448, L. 2005, speaks of a "conclusive" presumption and makes the securing of an exemption certificate compulsory. The commenter

suggests that if one were to engage a person as an independent contractor, the control and direction and the independent business tests should be sufficient, subject to challenge.

Response 4: Chapter 448, L. of 2005, makes an independent contractor exemption certificate mandatory. The legislation was drafted specifically so that the certificate addresses areas of concern noted by the Montana Supreme Court in recent court decisions. The Legislature has determined it is the public policy of this state to increase the regulation of the working relationships between independent contractors and hiring agents in order to bring stability and predictability to the workers' compensation insurance system by decreasing the challenges to the independent contractor certificates. The Department's rules must put the statutes in effect as written.

Comment 5: At the public hearing, representatives of the Montana Self Insurers Association, the Montana Municipal Insurance Authority, the Montana Contractors Association, and individual union members, all testified in favor of the proposed rule changes for the independent contractor exemption certificate because each supports the new program to establish a conclusive presumption of independent contractor status. These commenters stressed the need to have the rules put into place as soon as possible in order to give stability to the business community.

Response 5: The Department acknowledges the comments of the various organizations and has adopted the rules as quickly as feasible.

4. After consideration of the comments, the Department has amended ARM 24.35.131, 24.35.141, 24.35.202, 24.35.205, 24.35.206, 24.35.207, 24.35.302, and 24.35.303 exactly as proposed.

5. After consideration of the comments, the Department has adopted NEW RULE I (24.35.133) exactly as proposed.

6. After consideration of the comments, the Department has repealed ARM 24.35.116 and 24.35.301 exactly as proposed.

7. After consideration of the comments, the Department has amended ARM 24.35.111 exactly as proposed, but with the following changes, stricken matter interlined, new matter underlined:

24.35.111 APPLICATION AND RENEWAL FOR INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE (1) remains as proposed.

(2) Documentation supporting the applicant as independently established in a trade, occupation, profession or business is divided into ~~categories~~ point groups as designated below. Each point group is made up of separate categories of documentation. A maximum of two items may be submitted to

receive the total points ~~in~~ for each category. The department has the discretion to assess the reliability of the documentation and to award points for the items submitted up to the total points for each category. Each item of documentation submitted may only count toward points in one category.

(a) The 10 point ~~category~~ group includes workers' compensation, unemployment insurance, and department of revenue accounts for employees. This documentation is worth up to 10 points for all three types of proof submitted together, up to six points for two types of proof, and up to three points for one type of proof.

(b) The six point ~~category~~ group includes:

(i) a contract or memo of understanding. Elements of the contract that may show proof of independent contractor status include but are not limited to:

(A) payment based on a completed project basis;

(B) an ending date of the contract;

(C) liability for failure to complete the project;

(D) identification of who provides the materials and supplies;

(E) signatures by both parties; and

(F) a defined body of work, complete project, or end result;

(ii) a list of equipment and tools owned or controlled by the applicant with approximate value. This may be demonstrated by a rental or lease agreement, county documents verifying the business equipment tax paid, or other means;

(iii) proof of business location ownership, rent or lease. This may be demonstrated by an IRS form filed for claiming use of the home as a business, otherwise known as Form 8829;

(iv) a commercial general liability insurance policy or bonding;

(v) filed business tax forms; ~~or~~

(vi) two business tax receipts and/or IRS Form 1099s (miscellaneous income); or

~~(vi)~~ (vii) a trucking company lease agreement.

(c) The three point ~~category~~ group includes:

~~(i) miscellaneous income IRS Form 1099 and/or business tax receipts~~ two or more bids or estimates;

(ii) a partnership agreement. An applicant that is a working partner in a partnership or limited liability partnership must submit a written partnership agreement signed by all partners. Elements of the agreement that show proof of independent contractor status by virtue of a valid partnership include at least:

(A) intent to form the partnership;

(B) contribution by all partners;

(C) a proprietary interest and right of control by the working partner applying for an exemption certificate; and

(D) the sharing of profit/loss;

(iii) application for, or an issued business license or building permit;

- (iv) a professional license. Applicants who are in a licensed profession must submit proof of compliance with the licensing requirements of that profession;
 - (v) a certificate demonstrating the business structure is registered with the Montana secretary of state;
 - (vi) a certificate demonstrating the business has a registered name with the Montana secretary of state;
 - (vii) educational certification;
 - (viii) membership in a professional association or affiliation; or
 - (ix) copies of advertising in a newspaper, phone book or on the internet.
- (d) The one and a half point ~~category~~ group includes:
- (i) ~~two or more bids or estimates;~~
 - ~~(ii)~~ a federal employer identification number (FEIN);
 - ~~(iii)~~(ii) a business bank account;
 - ~~(iv)~~(iii) a telephone bill in the business name;
 - ~~(v)~~(iv) a credit card or charge account in the business name;
 - ~~(vi)~~(v) printed invoices, cards, or brochures, ~~hats,~~ ~~shirts;~~
 - (vi) proof of orders for printed hats or shirts;
 - (vii) proof of advertising using a sign on vehicle, in yard, bulletin boards, corner lamp post, flyers; or
 - (viii) ~~standard~~ printed billing invoices.
- (e) through (4) remain as proposed.

AUTH: 39-51-301, 39-51-302, 39-71-203 and 39-71-417, MCA
IMP: 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417,
and 39-71-418, MCA

8. As indicated in the proposal notice, the Department will apply the amendments, adoption and repeals retroactively to the effective date of Chap. 448, L. of 2005. Therefore, although the rule changes will be effective as of August 12, 2005, the rule changes will be applied to independent contractor exemption applications made on or after April 28, 2005.

/s/ MARK CADWALLADER
Mark Cadwallader,
Rule Reviewer

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

Certified to the Secretary of State August 1, 2005

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 32.18.202 and 32.18.205) NOTICE OF AMENDMENT
pertaining to sheep permits)

To: All Concerned Persons

1. On June 30, 2005, the department of livestock published MAR Notice No. 32-5-171 regarding the proposed amendment of ARM 32.18.202 and 32.18.205 pertaining to sheep permits at page 1007 of the 2005 Montana Administrative Register, Issue Number 12.

2. The department of livestock has amended ARM 32.18.202 and 32.18.205 exactly as proposed.

3. The department has thoroughly considered all comments received. Those comments, and the Department's responses are as follows:

COMMENT NO. 1 - One comment was received from the Montana Wool Growers Association in support of the proposed changes.

RESPONSE - The department acknowledges receipt of the comment in support.

DEPARTMENT OF LIVESTOCK

/s/ Marc Bridges
Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State August 1, 2005.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

and

- ▶ Office of Economic Development.

Education and Local Government Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

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

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

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

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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

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

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

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