

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of new	)	NOTICE OF EXTENSION
Rules I through X regarding	)	OF COMMENT PERIOD
definitions, licensing and	)	
application requirements, ownership	)	
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TO: All Concerned Persons

1. On July 14, 2005, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-357 at page 1125 of the 2005 Montana Administrative Register, issue number 13, regarding the public hearing on the proposed adoption of the above-stated rules. The Division of Banking and Financial Institutions also published MAR Notice No. 2-2-358 at page 1334 of the 2005 Montana Administrative Register, issue number 14, as an amended notice for the above-stated rules. The Division of Banking and Financial Institutions is extending the comment period for these rules until November 7, 2005.

The Division of Banking and Financial Institutions is providing this extension to the comment period specifically to receive additional comments on New Rule V titled Duration of Loans - Interest - Extensions. In particular, the Division of Banking and Financial Institutions seeks comment regarding interest charged beyond any 30-day loan period, New Rule V (1), and automatic extensions under New Rule V(2) and (3). The Division of Banking and Financial Institutions received comments relative to New Rule V in writing and at a public hearing to consider these proposed new rules that was held on August 17, 2005, in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana. Comments on any of the other proposed rules will also be accepted.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on October 28, 2005, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana

59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. Concerned persons may present their data, views or arguments in writing. Written data, views or arguments may be submitted to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than November 7, 2005.

4. An electronic copy of this Notice is available through the Department's website on the World Wide Web at <http://www.discoveringmontana.com/doa>, under "public meetings/notices;" and "administrative rule notices." The department strives to make the electronic copy of this Notice conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission or comments.

5. The Division of Banking and Financial Institutions 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 mailing 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 division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Suite 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov, or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

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

Certified to the Secretary of State September 26, 2005.

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

In the matter of the amendment ) NOTICE OF PUBLIC HEARING  
of ARM 12.5.201 pertaining to ) ON PROPOSED AMENDMENT  
removing the peregrine falcon )  
from the state endangered )  
species list )

TO: All Concerned Persons

1. On October 27, 2005, at 7:00 p.m. a public hearing will be held at the Department of Fish, Wildlife and Parks Region 3 Headquarters, 1400 South 19th Avenue, Bozeman, Montana, to consider the amendment of ARM 12.5.201 pertaining to removing the peregrine falcon from the state endangered species list.

2. The Department of Fish, Wildlife and Parks (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 20, 2005, to advise us of the nature of the accommodation that you need. Please contact Shirley Swecker, Fish, Wildlife and Parks, 1400 South 19th Avenue, Bozeman, MT; telephone (406) 994-4042; fax (406) 994-4090; e-mail sswecker@mt.gov.

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

12.5.201 ENDANGERED SPECIES LIST (1) The following endangered species list is established in accordance with Title 87, chapter 5, MCA. Except as otherwise provided, it is unlawful for any person to take, possess, transport, export, sell or offer for sale, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the following list:

- ~~(a)~~ American peregrine falcon (~~falco peregrinus anatum~~);
- ~~(b)~~ (a) whooping crane (*grus americana*);
- ~~(c)~~ (b) Northern Rocky Mountain wolf (*canis lupus irremotus*); and
- ~~(d)~~ (c) black-footed ferret (*mustela nigripes*).

AUTH: 87-5-107, MCA  
IMP: 87-5-107, MCA

4. The purpose of this amendment is to remove peregrine falcons from the state endangered species list since the species has exceeded recovery goals in Montana. Historically, peregrine falcons were found throughout the state, including xeric prairie habitat in eastern Montana. As a result of widespread use of DDT (the pesticide causes peregrines to lay

eggs with thin shells), peregrine populations declined until the species was no longer known to nest in Montana by the late 1970s.

Following the ban on this pesticide in 1972 and improving habitat conditions, Montana Fish, Wildlife and Parks, with cooperation from the Peregrine Fund and many agencies and individuals, responded to the catastrophic decline in American Peregrine Falcon (Falco peregrinus anatum) populations in Montana with a reintroduction program. Initial releases occurred at the Red Rocks National Wildlife Refuge in southwestern Montana in 1981.

By 1998, the department had released a total of 617 young birds at 28 different hack sites in Montana. The first occupancy of a Montana eyrie (nest) by released falcons occurred in 1984, and the number of sites known active in a single season rose slowly to 13 in 1994, remaining essentially static at that level until 1999. The goal for recovery of Montana's peregrine population was set at 20 or more active eyries. The effort to recover populations of this falcon involved the coordinated activities of public and private citizens and centered on the nationwide release of more than six thousand captive peregrines over a 30-year period.

These introductions and the increase in both number and productivity of wild eyries have helped reestablish a viable peregrine falcon population in Montana. Prior to 1999, the peregrine falcon working group felt that the recovery goal of 20 nesting pairs had been achieved, but the past surveys were not adequate to detect this population change. Hence, the survey effort has been increased since 1999. The number of known eyries remained stable at about 17 until the beginning of more intensive survey efforts in 1999 when 27 eyries were found.

On August 26, 1999, the American Peregrine Falcon became the first bird ever removed (range-wide) from the United States Department of Interior List of Endangered Species. Table 1 shows the known number of Montana active peregrine falcon eyries from 1994-2005 and the known number of young fledged. In 2005, we have detected 59 active eyries, nearly tripling the recovery goal of 20 nesting pairs. Therefore, the species has exceeded recovery goals and listing on the state endangered species list is no longer necessary.

Table 1. Active Montana peregrine falcon eyries 1994-2005.

Year	Total Active Eyries	Young Fledged
1994	12	23
1995	15	15
1996	15	26
1997	15	25
1998	18	30



1999	24	43
2000	28	59
2001	37	66
2002	35	77
2003	40	80
2004	52	101
2005	59	94

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 Arnold Dood, Fish, Wildlife and Parks, 1400 South 19th Avenue, Bozeman, MT; telephone (406) 994-6433; fax (406) 994-4090; or email at adood@mt.gov and must be received no later than November 3, 2005.

6. Arnold Dood, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

7. The department 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 written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ M. Jeff Hagener  
M. Jeff Hagener, Director  
Department of Fish, Wildlife  
and Parks

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

Certified to the Secretary of State September 26, 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 17.30.670 and )	PROPOSED AMENDMENT AND
17.30.1202 pertaining to )	ADOPTION
nondegradation requirements )	
for electrical conductivity )	(WATER QUALITY)
(EC) and sodium adsorption )	
ratio (SAR) and definitions )	
for technology-based effluent )	
limitations, and the adoption )	
of new rules I through X )	
pertaining to minimum )	
technology-based controls and )	
treatment requirements for the )	
coal bed methane industry )	

TO: All Concerned Persons

1. On November 9, 2005, at 10:30 a.m., at the Lame Deer Charging Horse Casino, 1/2 Mile East Lame Deer Hwy. 212, Lame Deer, Montana; November 10, 2005, at 8:00 a.m., at Miles City Community College, Room 106, 2715 Dickinson, Miles City, Montana; and December 1, 2005, at 1:30 p.m., at the Metcalf Building, Room 111, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold public hearings 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 these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 1, 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 rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.30.670 NUMERIC STANDARDS FOR ELECTRICAL CONDUCTIVITY (EC) AND SODIUM ADSORPTION RATIO (SAR) (1) through (5) remain the same.

~~(6) Changes in existing surface or ground water quality with respect to EC and SAR are nonsignificant according to the criteria in 75-5-301(5)(c), MCA, provided that the change will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity.~~ EC and SAR are harmful parameters for the purposes of the Montana Water Quality Act, Title 75, chapter 5, MCA.

(7) For purposes of determining compliance with the water quality standards and nonsignificance criteria for all

~~parameters of concern in any new or increased discharges of unaltered ground water from coal bed methane development of methane wastewater, the department shall determine effluent or compliance limits (e.g., evaluate the design of disposal systems) by using a flow based analysis that considers a range of flows or monthly flow probability. With respect to EC and SAR, the department shall also use the median chemistry for the specified flow range or monthly flow by using 7Q10 flows.~~

~~(8) If any of the provisions of (6) or (7), or both of them, are declared to be invalid, then the numeric water quality standards and requirements specified in (1) through (7) shall be void.~~

AUTH: 75-5-301, 75-5-303, MCA

IMP: 75-5-301, 75-5-303, MCA

17.30.1202 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

~~(1) "Board" means the Montana board of environmental review established by 2-15-3502, MCA. "Average" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.~~

~~(2) "Department" means the Montana department of environmental quality established by 2-15-3501, MCA. "Coal bed methane extraction" means the extraction of methane gas from any coals or associated geologic formations.~~

~~(3) "Daily discharge" means the discharge of pollutants measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. The daily discharge is calculated as the average measurement of the pollutant over the day.~~

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

~~(6) "Geologic formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is able to be mapped on the earth's surface or traceable in the subsurface.~~

~~(7) "Instantaneous maximum" means the maximum concentration measured in any single sample of the discharge effluent.~~

~~(8) "Methane wastewater" means water produced from coal bed methane extraction during exploration or development activities.~~

~~(5) remains the same, but is renumbered (9).~~

~~(10) "Project area" includes the entire geographic area leased by the operator or any person legally related to the operator for coal bed methane extraction.~~

~~(11) "Reinjection" means putting methane wastewater back into a suitable geologic formation.~~

~~(12) "Suitable geologic formation" means a geologic formation with water quality similar enough to that of the methane wastewater in the project area to ensure that, after~~

reinjection of methane wastewater, the water of the receiving formation will remain suitable for the same beneficial uses as the methane wastewater.

(13) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

REASON: ARM 17.30.670 and 17.30.1202 are being amended for the following reasons:

ARM 17.30.670

The Board is proposing the amendment of ARM 17.30.670 in response to a petition filed by Northern Plains Resource Council, Tongue and Yellowstone Irrigation District, Surface Owners of the Wolf Mountains Area, Bear Creek Council, Stillwater Protective Association, Bull Mountain Land Alliance, Rosebud Protective Association, Dawson Resource Council, Carbon County Resource Council, Bones Brothers Ranch, Muggli Brothers, Huggo Muggli Inc., Golder Ranch, Greenleaf Cattle Company, Rocker 6 Cattle Company, FL Ranch, and Fix Ranch (collectively referred to as "petitioners").

The petitioners are requesting that the Board amend ARM 17.30.670(6) to modify the nondegradation criteria applicable to electrical conductivity (EC) and sodium adsorption ratio (SAR); to amend ARM 17.30.670(7) to clarify that determining compliance with water quality standards and nondegradation thresholds for discharges of coal bed methane wastewater shall be done using 7Q10 flows; and to delete the non-severability clause in ARM 17.30.670(8).

The existing nondegradation criteria for EC and SAR are based upon a narrative criteria that provides: "changes in existing surface or ground water quality with respect to EC and SAR are nonsignificant . . . provided that the change will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity." The petitioners argue that the narrative criteria effectively exempt methane discharges, including discharges from methane development in Wyoming, from the state of Montana's nondegradation policy. Montana's nondegradation policy is necessary to protect the existing water quality of the Tongue River from degradation from methane discharges in Montana and Wyoming. Montana's nondegradation policy will be critical to protect the existing water quality of rivers such as the Clark Fork of the Yellowstone, Rock Creek, Stillwater River, Flathead River, and the pristine streams of Park County if methane development occurs in these watersheds.

The proposed amendments also restore a conservative approach to determining compliance with numeric water quality standards and nondegradation thresholds by requiring the Department to require compliance at low flow events. The

Department uses this conservative approach for all other dischargers. The methane industry should not be granted special treatment.

Since salinity, as measured by EC and SAR, is harmful to soils, vegetation, and aquatic life, the appropriate nondegradation criteria for EC and SAR are the criteria for harmful parameters. For harmful parameters, changes in existing water quality are considered nonsignificant, if the change is less than 10% of the applicable standard and the existing water quality in the receiving stream is less than 40% of the applicable standard. See ARM 17.30.715(1)(f). If a proposed discharge of EC and SAR will exceed the criteria for harmful parameters, then the permittee must request the Department to issue an authorization to degrade pursuant to 75-5-303, MCA.

ARM 17.30.1202

The definitions in ARM 17.30.1202 are being amended to add definitions that will be necessary to clarify the technology-based controls and treatment requirements the Board is proposing to adopt in New Rules I through X. The new definitions are being added to ARM 17.30.1202, because that rule contains the Board's existing definitions applicable to effluent limitations for point source discharges to surface waters.

4. The proposed new rules provide as follows:

NEW RULE I APPLICABILITY (1) The requirements of [New Rules II through IX] are applicable to those facilities engaged in exploration, drilling, production, and development in the coal bed methane industry.

AUTH: 75-5-305, MCA  
IMP: 75-5-305, MCA

NEW RULE II ZERO DISCHARGE REQUIREMENT (1) Except as provided in [New Rules III through IX], point sources of methane wastewater shall achieve zero discharge of pollutants, which represents the minimum technology-based requirement. Zero discharge shall be accomplished by reinjection of methane wastewater into suitable geologic formations in the project area in compliance with all other applicable federal and state laws and regulations.

AUTH: 75-5-305, MCA  
IMP: 75-5-305, MCA

NEW RULE III WAIVER FROM ZERO DISCHARGE REQUIREMENT

(1) The department may grant a waiver from the zero discharge requirement if the owner or operator of a point source discharge of coal bed methane wastewater demonstrates by clear and convincing evidence to the department through site specific studies that the requirement is not technically feasible because estimated wastewater production rates exceed the estimated

cumulative reinjection rates of all suitable geologic formations in the project area.

(2) The department shall limit the waiver to the volume of methane wastewater for which the owner or operator shows that zero discharge is not technically feasible. The volume of methane wastewater for which the department grants a waiver from the zero discharge requirement shall be limited to the difference between estimated wastewater production rates and the estimated cumulative reinjection rates for all suitable geologic formation in the project area.

(3) The department may limit the waiver to the initial phases of development when the volume of methane wastewater produced by wells is highest, which may make reinjection of all such water technically unfeasible.

(4) The department may also grant a waiver from the zero discharge requirement if the EPA will not authorize the reinjection pursuant to a permit under the Safe Drinking Water Act (SDWA), 42 USC 300f to 300j-26(5). The operator shall attain zero discharge for the volume of methane wastewater for which the department does not grant a waiver.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

NEW RULE IV INFORMATIONAL REQUIREMENTS FOR WAIVER DETERMINATION

(1) An owner or operator requesting a waiver from the zero discharge requirement for coal bed methane wastewater shall submit an application to the department for the department to make a determination on whether to grant the waiver.

(2) The application shall include, but is not limited to, the following:

(a) a description and map of the coal bed methane project and project area showing the location of wells, pipelines, roads, compressors, and related infrastructure;

(b) a description of the surface owners in the project area;

(c) an estimate of pumping rates for coal bed methane wells in the target coal seams and an estimate of the volume of wastewater likely to be produced per well per year;

(d) for each targeted coal seam, data showing areas characterized by high concentrations of vertical fractures where wastewater production wells may be higher;

(e) an inventory and map of geologic formations, aquifers, and confining layers including significant fractures, fissures, and faults within the project area. The following information is required for each geologic formation and aquifer in the project area:

(i) lateral extent, thickness, and depth. Maps and cross sections indicating the vertical and lateral limits of each formation;

(ii) hydraulic properties including, but not limited to, transmissivity, storage coefficient, effective porosity, and hydraulic conductivity. The results of pump tests, analysis of

core samples, and other geophysical studies;

(iii) water quality characterization including the geochemical compatibility of the receiving aquifer minerals with methane wastewater;

(f) an inventory and map of the locations of natural recharge in the project area and near the reinjection location;

(g) an inventory of the wells, springs, and seeps in the project area including pumping rates for wells. A tabulation of data on all wells within the project area including a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information known about the well;

(h) the results of ground water modeling showing the relationship and hydrologic connectivity of the identified geologic formations and aquifers, the effects of fractures, fissures, faults, and other significant geologic features on ground water movement in the project area;

(i) the results of pump tests of confining layers quantifying potential leakage through such layers;

(j) a description of all potentially suitable geologic formations for reinjection within the project area. For each such suitable geologic formation, the operator shall submit the following information:

(i) the results of reinjection well testing;

(ii) based upon the results of testing and other studies, an estimate of the short-term and long-term reinjection rates that each suitable geologic formation is capable of receiving;

(iii) the results of ground water modeling showing the effects of reinjection into suitable geologic formations on other aquifers, surface waters, and regional flow systems; and

(k) all other information required by the EPA as part of the Class V UIC Program.

(3) The department shall notify the applicant in writing, within 60 days after receipt of an application for a waiver, that the application does or does not contain all the information necessary for the department to make a determination. If the information from the supplemental submittal or any subsequent supplemental submittal is inadequate, the department shall notify the applicant in writing, within 30 days of receipt of the supplemental submittal, what additional information must be submitted. The department shall notify the applicant in writing when the application is deemed complete.

(4) The application for a waiver submitted pursuant to this subchapter shall comply with the signature and certification requirements of ARM 17.30.1323. The board adopts and incorporates by reference ARM 17.30.1323, which sets forth signature and certification requirements for MPDES permit applications. Copies of ARM 17.30.1323 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

NEW RULE V DEPARTMENT PROCEDURES FOR MAKING WAIVER DETERMINATIONS

(1) Upon a determination by the department that an application submitted under [New Rule IV] is complete, the department shall prepare a preliminary decision approving or denying the waiver pursuant to the procedures in [New Rule VI].

(2) The department shall deny an application for a waiver unless the applicant has affirmatively demonstrated and the department finds, based on clear and convincing evidence, that reinjection is not technically feasible, using the standards set forth in [New Rule III]. The department shall consider an analysis by the applicant and any substantive relevant information either submitted by the public or otherwise available.

(3) The department shall make its preliminary decision either authorizing or denying the waiver within 180 days after receipt of a complete application from the applicant. This time period may be extended upon agreement of the applicant or whenever an environmental impact statement must be prepared pursuant to Title 75, chapter 1, parts 1 and 2, MCA.

(4) To the maximum extent possible, the department shall coordinate any application for a waiver with the permitting and approval requirements of other laws or programs administered by the department or by any other local, state, or federal agency.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

NEW RULE VI DEPARTMENT PROCEDURES FOR MAKING PRELIMINARY AND FINAL WAIVER DECISIONS

(1) The department shall issue a preliminary decision either denying or authorizing a waiver from the zero discharge requirement and shall provide a 60-day public comment period prior to issuing a final decision. The department's preliminary and final decisions shall include the following:

(a) a description of the proposed coal bed methane project and project area;

(b) a determination of the estimated methane wastewater production rate for the project and the scientific basis supporting such determination;

(c) a determination of the reinjection rate for each suitable geologic formation, determination of the cumulative reinjection rate for all suitable geologic formations in the project area, and the scientific basis supporting such determinations;

(d) a determination that the waiver from the zero discharge requirement is necessary because estimated methane wastewater production rates exceed estimated cumulative reinjection rates for all suitable geologic formations in the project area or because the EPA will not authorize the reinjection pursuant to the SDWA;

(e) a determination of the volume of methane wastewater for which reinjection is not technically feasible (and thus a waiver is necessary) and the scientific basis supporting such



determination;

(f) a detailed description of all the conditions applied to any waiver from the zero discharge requirement including, but not limited to, the conditions required in [New Rule III(2) through (4)], monitoring requirements, reporting requirements, limitations on the waiver granted, and methods for determining compliance with the waiver;

(g) a description of the procedures for reaching a final decision on the waiver including:

(i) the beginning and ending dates of the comment period and the address where comments will be received;

(ii) procedures for requesting a hearing and any other procedures by which the public may participate in the final decision; and

(iii) name and telephone number of a person to contact for additional information.

(2) The preliminary decision, accompanying a statement of basis, must be publicly noticed and made available for public comment for at least 30 days, but not more than 60 days, prior to a final decision. In providing public notice, the department shall comply with the following:

(a) procedures for public notice set forth in ARM 17.30.1372; and

(b) procedures for the distribution of information set forth in ARM 17.30.1041.

(3) During the public comment period, any interested person may submit written comments on the preliminary decision and may request a public hearing. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing. The department shall hold a hearing if one is requested. Any public hearing conducted under this section is not a contested case hearing under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

(4) Within 60 days after the close of the public comment period, the department shall issue a final decision accompanied by a statement of basis for the decision and, if applicable, a statement of conditions. The final decision and statement of basis will be prepared according to the requirements of this section. In addition, the statement of basis for a final decision must include the following:

(a) which provisions, if any, of the preliminary decision have been changed in the final decision and the reasons for the change; and

(b) a description and response to all substantive comments on the preliminary decision raised during the public comment period or during any hearing.

(5) Upon issuing a final decision, the department shall notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice must include reference to the procedures for appealing the decision.

(6) The final decision is effective 30 days after the service of notice of the decision unless:

(a) a hearing is requested pursuant to [New Rule VII], in

which case the decision is effective 30 days after the final decision of the board; or

(b) no comments are received on the preliminary decision, in which case the decision is effective upon issuance.

(7) The board adopts and incorporates by reference ARM 17.30.1041, which sets forth requirements for distribution and copying of public notices and permit applications, and ARM 17.30.1372, which sets forth procedures for issuing public notices of MPDES permit applications and hearings. Copies of ARM 17.30.1041 and 17.30.1372 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

NEW RULE VII REVIEW (1) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision on a waiver. The contested case procedures of Title 2, chapter 4, part 6, MCA, apply to a hearing under this rule.

AUTH: 75-5-201, MCA

IMP: 75-5-201, 75-5-305, MCA

NEW RULE VIII TREATMENT-BASED EFFLUENT LIMITATIONS

(1) If the department grants a waiver from the zero discharge requirement for all or a portion of the wastewater pursuant to [New Rules II and III], the amount of wastewater that obtains the waiver shall achieve the following minimum technology-based effluent limitations at the end of the pipe prior to discharge:

(a) calcium average concentration between 0.1 mg/L and 0.2 mg/L;

(b) magnesium average concentration between 0.1 mg/L and 0.6 mg/L;

(c) sodium average concentration of 10 mg/L;

(d) bicarbonate average concentration of 30 mg/L and instantaneous maximum concentration of 115 mg/L;

(e) sodium adsorption ratio instantaneous maximum of 0.5;

(f) electrical conductivity average concentration of 233 µmhos/cm;

(g) total dissolved solids average concentration of 170 mg/L;

(h) ammonia average concentration of 0.1 mg/L and instantaneous maximum concentration of 0.3 mg/L; and

(i) arsenic concentration of <0.0001 mg/L.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

NEW RULE IX STOCK WATERING EXEMPTION (1) The requirements of [New Rules I through VIII] shall not apply to any quantity of wastewater used for stock watering purposes if

all the following conditions are satisfied:

(a) the surface owner and operator sign a written agreement to use the wastewater for stock watering purposes;

(b) the wastewater is stored in a stock tank; and

(c) the surface owner has obtained a beneficial use permit from the department of natural resources and conservation pursuant to Title 85, chapter 2, MCA.

(2) The stock watering exemption shall be limited to the quantity of water for which the department of natural resources and conservation issues a beneficial use permit.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

NEW RULE X SEVERABILITY (1) If any provision of [New Rules II through IX] is determined to be invalid or unenforceable, such provision shall be fully severable and the other provisions thereof shall remain in full force and effect. The remaining provisions shall be liberally construed to carry out the provisions of this subchapter.

AUTH: 75-5-305, MCA

IMP: 75-5-305, MCA

REASON: Why Minimum Technology-Based Controls and Treatment Requirements are Necessary

The Board is proposing the adoption of New Rules I through X to establish minimum technology-based controls and treatment requirements for the coal bed methane industry in response to a petition filed by Northern Plains Resource Council, Tongue and Yellowstone Irrigation District, Surface Owners of the Wolf Mountains Area, Bear Creek Council, Stillwater Protective Association, Bull Mountain Land Alliance, Rosebud Protective Association, Dawson Resource Council, Carbon County Resource Council, Bones Brothers Ranch, Muggli Brothers, Huggo Muggli Inc., Golder Ranch, Greenleaf Cattle Company, Rocker 6 Cattle Company, FL Ranch, and Fix Ranch (collectively referred to as "petitioners").

The minimum technology-based controls and treatment requirements proposed by the petitioners are a combination of "zero discharge" and treatment-based effluent limitations. The effluent limitations proposed by the petitioners will prohibit the discharge of wastewater by requiring reinjection into suitable geologic formations unless the operator can demonstrate that site-specific geologic conditions make zero discharge technically unfeasible. To the extent zero discharge is not technically feasible because of site-specific geologic limitations, the rules impose effluent limitations at the end of the pipe prior to discharge based upon existing treatment technologies such as ion exchange or reverse osmosis.

The reasons for adopting minimum technology-based controls and treatment requirements for the coal bed methane industry are stated in the petition and are summarized as follows:

1. Currently, there are no technology-based treatment requirements for the coal bed methane industry adopted by the U.S. Environmental Protection Agency (EPA) under the federal Clean Water Act (CWA). Since the Board has the authority to adopt treatment requirements for a particular industry when EPA has failed to do so, the petitioners have requested the Board to initiate rulemaking to establish technology-based controls and treatment requirements for discharges from the coal bed methane industry. See 75-5-305(1), MCA.

2. The purpose of the treatment requirements is to require coal bed methane operators to use the best available technology that will minimize the discharge of wastes and make substantial progress toward the ultimate national goal of eliminating the discharge of all pollutants.

3. The reason for requiring reinjection of all coal bed methane wastewater into suitable geologic formations (unless reinjection is technically unfeasible) is to maximize the volume of water that will be put back into aquifers from which it was taken. This requirement will alleviate the draining of aquifers and the drying up of wells and springs that are used by petitioners.

4. The reason that water must be reinjected into "suitable geologic formations" (i.e., aquifers with water of similar quality to coal bed methane wastewater) is to ensure that the water resource is available for beneficial use in the future. For this reason, reinjection into deep geologic formations that are considered Class II wells under the Safe Drinking Water Act's Underground Injection Control (UIC) program is not allowed under the rules because the water quality in those formations typically will not qualify as being "suitable geologic formations."

5. The reason for adopting technology-based effluent limits for discharges of coal bed methane wastewater to surface water is to ensure that treatment to a minimum level is used on the volume of methane wastewater that cannot be reinjected due to technical infeasibility.

#### The Board's Authority to Adopt Minimum Treatment Requirements

Under 75-5-305(1), MCA, the Board may adopt minimum treatment requirements for an industry when there are no federally promulgated treatment requirements for the industry. Prior to adopting such requirements, the Board must ensure that: (1) the technology-based standards address parameters that "are likely to affect beneficial uses;" and (2) the technology-based requirements are "cost-effective and economically, environmentally, and technologically feasible." The petitioners' scientific, economic, and technical basis for the Board's adoption of minimum treatment requirements are described in the Petition and are summarized as follows:

##### 1. Parameters that are likely to affect beneficial uses

The proposed new rules will establish effluent limitations for the following parameters found in methane wastewater: Sodium adsorption ratio (SAR) and its individual constituents (sodium, magnesium, and calcium); salinity as measured by electrical conductivity (EC); ammonia; bicarbonate; total dissolved solids (TDS); and arsenic. All of these parameters are likely to affect beneficial uses of surface waters.

Specifically, high levels of salinity, as measured by EC and SAR, may adversely impact native soils, native vegetation, and irrigated crops. Water with high salinity levels causes changes in soil structure that make water less available to plants and, at very high levels, can directly harm or kill plants. The EC levels of methane wastewater have a high salinity hazard with a mean value of between 2000-2300. The SAR value affects plant production by reducing the permeability of soils and slowing water infiltration. This lower availability of water reduces plant productivity. The SAR level of methane wastewater is high with a mean value of 34 to 51. Soils with high clay content or with poor drainage are most vulnerable to these impacts.

Salinity levels (EC) can also adversely impact aquatic life. During the 2003 rulemaking process, the Montana Department of Fish, Wildlife, and Parks raised these concerns.

Bicarbonate can also be harmful to aquatic life. Methane discharges from Fidelity's CX Field are characterized by bicarbonate concentrations of between 1400-1600 mg/L.

Ammonia is listed as a toxic pollutant in Montana's Water Quality Standards. Ammonia can pose acute and chronic toxicity to aquatic life at extremely low levels. Methane discharges are characterized by ammonia concentrations averaging 2.0 mg/L.

## 2. Technological feasibility of the treatment requirements

### (a) Reinjection

Reinjection of methane wastewater is a widespread control technique in many geologic basins, including the Wyoming portion of the Powder River Basin. The methane industry employs two types of reinjection. Where the water quality of the methane wastewater has extremely high salinity levels and is not suitable for any beneficial uses, the wastewater is reinjected into deep geologic formations through Class II injection wells under the Safe Drinking Water Act (SDWA), 42 USC 300f to 300j-26, Underground Injection Control (UIC) program. Where the water quality of the methane wastewater has lower salinity levels and is marginally suitable for some beneficial uses, the wastewater is reinjected into shallower geologic formations through Class V injection wells under the UIC program. The purpose of the UIC program is to protect aquifers from the adverse impacts of reinjection and to protect aquifers that serve as sources of drinking water.

In the San Juan Basin of Colorado almost 100% of methane wastewater is reinjected to deep geologic formations through Class II injection wells. In the West Uinta Basin of Utah,

approximately 97% of the methane wastewater is reinjected to deep geologic formations through Class II injection wells. In the Raton Basin of Colorado, approximately 30% of methane wastewater is reinjected to deep geologic formations through Class II injection wells. In the Raton Basin of New Mexico, 100% of methane wastewater is reinjected to deep geologic formations through Class II injection wells including methane development on Ted Turner's Vermejo Ranch.

In the Wyoming portion of the Basin, there are approximately 160 active reinjection wells of the approximately 324 permitted by WDEQ, most of which are shallow Type V injection wells. The WDEQ has drafted three general permits authorizing reinjection. According to John Passehl (Personal Communication April 15, 2005), the Program Principal of UIC program at WDEQ, about 25 companies have done reinjection including Anadarko, JM Huber, Bill Barrett, Continental Industries, Devon, Double Eagle, Marathon, McCartney, Merritt, Northwestern, Petrox, Prima, and Wolverine. Nance Petroleum is reinjecting wastewater from its methane operations into shallow sandstone formations just south of the Montana board in Hanging Woman Basin, a tributary of the Tongue River.

Achieved reinjection rates are highly dependent on site-specific conditions and vary widely within a range of 12 to 117 gpm per reinjection well. Currently approximately 150,000 gallons/day/well is being reinjected. The WDEQ limits reinjection to aquifers with the same classification as methane wastewater to ensure the water remains suitable for beneficial use.

(b) Reverse Osmosis

Reverse osmosis is used to treat methane wastewater in the San Juan and Raton Basins of Colorado. The WDEQ has approved one NPDES permit requiring treatment using reverse osmosis prior to discharge. The EPA issued a permit requiring reverse osmosis treatment of methane wastewater on the Southern Ute Indian Reservation (NPDES Permit COG-075000). Encana Oil and Gas, Inc. is also using reverse osmosis to treat methane wastewater in Colorado, Permit No. COG-600633, Colorado Water Quality Control Division, Department of Public Health and Environment.

Devon Energy has submitted an application with Region 8 of the EPA for a NPDES permit for 5-15 pilot projects on the Wind River Indian Reservation and is proposing to use reverse osmosis. The EPA is currently drafting the NPDES permit.

Hydrometrics, Inc., has demonstrated a system by which 95% of treated water may be discharged to the surface as usable quality water. The company uses a Weak Acid Cation Resin treatment as part of their "High Efficiency Reverse Osmosis" (HERO) process to treat methane wastewater to remove major cations, anions, and trace constituents.

(c) Ion Exchange Technology

Several companies in the Wyoming portion of the Basin are

using Higgins Loop and Emit ion exchange technology to treat methane wastewater prior to discharge.

The Montana Department of Environmental Quality recently approved a MPDES permit for Powder River Gas, LLC, which intends to implement ion exchange treatment technology prior to discharging to the Tongue River. Fidelity has proposed using a similar ion exchange technology to treat wastewater prior to discharge into the Tongue River. Ion exchange technology is capable of reducing sodium levels to less than 0.5 mg/L and SAR levels to below 0.1. The treatment technology is capable of reducing EC levels to about 233  $\mu$ mhos/cm and total dissolved solids to about 170 mg/L.

In summary, reinjection into suitable geologic formations to the maximum extent feasible based on site-specific conditions and treatment of the remaining wastewater prior to discharge is technologically feasible. As demonstrated above, reinjection and treatment are being employed by methane operators in the Basin of Montana and Wyoming and other geologic basins in the West.

### 3. Economic feasibility

Reinjection and treatment is not only economically feasible, but also profitable for the methane industry. Assuming a gas price of \$3.61 Mcf, methane companies will still earn a 23%-36% return on investment in Montana when reinjecting wastewater into suitable shallow geologic formations to meet the zero discharge requirement. If an operator obtains a limited waiver from the zero discharge permit requirement because reinjection of 100% of the wastewater is not technically feasible, and uses a combination of shallow reinjection wells to meet the zero discharge requirement and reverse osmosis technology to treat the volume of wastewater, the operator will still earn a 27%-31% return on investment in Montana. While cost data on ion exchange treatment technology are not available from the industry, use of such technology is clearly profitable for the industry given the fact that Powder River Gas, LLC, is currently using the technology in Montana and Fidelity has proposed using it.

The petitioners rely upon the EPA Region VIII draft economic analysis for several control and treatment options being considered for the coal bed methane industry, including zero discharge through reinjection and reverse osmosis treatment technology. See Petition, Exhibit C, "Guidance for Developing Technology-Based Limits for Coal bed Methane Operations: Economic Analysis of the Powder River Basin". The EPA document was prepared using economic and engineering data provided by the methane industry. The EPA report assesses economic impacts on the methane industry caused by implementing technology-based requirements in terms of impacts to economically recoverable methane reserves, number of projects developed in the basin, and royalties and taxes generated. Where applicable primary source information was available in the draft document, it was used.

The EPA Report found that wellhead gas price had a

significant effect on the economic impact of technology-based effluent limitations. The EPA assessed the economic impacts of the methane industry assuming a conservative wellhead price of \$1.75 Mcf. The average wellhead price between 1986-1999 was \$2.05 per Mcf. The EPA estimated an equilibrium wellhead price of \$2.72 per Mcf. The average realized well head price in 2001 was \$4.12 per Mcf. The Department of Energy conservatively predicts a wellhead price of \$2.88 per Mcf in 2005 and \$3.29 in 2010 Mcf. In recent years, realized wellhead prices in the Basin have exceeded \$5.00 Mcf.

At a conservative well head price of \$1.75 Mcf, the Petitioner's estimate that methane production in the basin will generate almost \$30 billion in profits to the industry. If the wellhead price of gas remains above \$1.75, the predicted economic impacts on methane industry will be significantly less than those predicted by EPA.

#### 4. Environmental Feasibility

The proposed rules establish minimum treatment requirements that minimize the degradation to the environment compared to other disposal methods typically used for coal bed methane wastewater. See next section.

#### 5. Other Alternatives to the Proposed Control and Treatment Requirements Considered by the Petitioners

Alternatives to the requirements to reinject CBM wastewater into Class V wells as a means to achieve zero discharge have been rejected for the following reasons:

a. Reinjection into Class II wells would make it impossible for farmers and ranchers to use the reinjected water due to the expense of drilling and operating deep wells. In addition, the CBM water would likely become contaminated by the much worse water quality found in most deep geologic formations.

b. Evaporation pits were eliminated as a means to achieve zero discharge due to the loss of the water resource to future generations and the fact that such impoundments disturb large areas that would need to be reclaimed.

c. In-channel impoundments using infiltration and evaporation as a means of disposal were rejected because such impoundments could result in unauthorized discharges to surface waters resulting from impoundment failure or overflow and would also cause saline seep.

d. Off-channel impoundments using infiltration and evaporation as a means of disposal were rejected because such impoundments would capture natural surface runoff, interfere with the hydrological cycle, and cause impacts to vested water rights.

e. Land application of CBM wastewater was rejected because such disposal methods could adversely impact soil structure, kill native vegetation, contaminate shallow aquifers, and increase salt loading to nearby streams through return flows.



5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearings. 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., December 2, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. The Board of Environmental Review will preside over and conduct the hearings.

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, do not apply.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

John F. North BY: Joseph W. Russell  
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.,  
Rule Reviewer Chairman

Certified to the Secretary of State September 26, 2005.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
 amendment of ARM 23.16.102, ) ON PROPOSED AMENDMENT  
 23.16.1716, 23.16.1914, )  
 23.16.1915, 23.16.1916, )  
 and 23.16.2001, concerning the )  
 effective date for forms )  
 relating to gambling operator )  
 licenses, sports tab game )  
 seller licenses, distributor's )  
 licenses, route operator's )  
 licenses, manufacturer's )  
 licenses, and manufacturer of )  
 illegal gambling devices )  
 licenses )

TO: All Concerned Persons

1. On November 2, 2005, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 26, 2005, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or email rask@mt.gov.

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

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) through (3) (e) remain the same.

(4) Forms 1 through 3, 10 and FD-258, as the forms read on ~~September 12, 2003,~~ December 1, 2005, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

(5) remains the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-177, MCA

23.16.1716 SPORTS TAB GAME SELLER LICENSE (1) remains the same.

(a) a sports tab game seller license application. Forms 2

and FD-258, as the forms read on ~~September 12, 2003~~, December 1, 2005, are incorporated by reference and available upon request from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) through (4) remain the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-502, 23-5-503, MCA

23.16.1914 DISTRIBUTOR'S LICENSE (1) remains the same.

(a) a distributor's license application, Forms 17 and FD-258, as the forms read on ~~September 12, 2003~~, December 1, 2005, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) through (3) remain the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-128, MCA

23.16.1915 ROUTE OPERATOR'S LICENSE (1) remains the same.

(a) a route operator license application, Forms 17 and FD-258, as the forms read on ~~September 12, 2003~~, December 1, 2005, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) through (3) remain the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-129, MCA

23.16.1916 MANUFACTURER'S LICENSE (1) remains the same.

(a) a manufacturer's license application, Forms 17 and FD-258, as the forms read on ~~September 12, 2003~~, December 1, 2005, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) through (3) remain the same.

AUTH: 23-5-115, ~~23-5-605~~, MCA  
IMP: 16-4-414, 23-5-115, ~~23-5-605~~, 23-5-625, MCA

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) remains the same.

(a) a manufacturer license application, Form 17, as the form read on ~~September 12, 2003~~, December 1, 2005, is incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) through (9) remain the same.

AUTH: 23-5-115, 23-5-152, MCA

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

4. RATIONALE AND JUSTIFICATION The Gambling Control Division has adopted various application forms in rule by reference to the date of the form. Changes in the form require the new form to be referenced in the rule. The changes in the forms clarify language and instructions for the forms. One change in the form will be that combined liquor and gambling applications will request the applicant to indicate if the new business will be a smoking or smoke free facility. This change is a result of changes in law made by the 2005 Legislature. The changes in the forms will affect approximately 3,000 applicants each year and will have no fiscal impact.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or email rask@mt.gov, and must be received no later than November 4, 2005.

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

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or email rask@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, do not apply.

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

/s/ Jon Ellingson  
JON ELLINGSON, Rule Reviewer

Certified to the Secretary of State September 26, 2005.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.54.410, ) ON PROPOSED AMENDMENT,  
8.54.415, 8.54.802, 8.54.803 ) ADOPTION AND REPEAL  
and 8.54.804, the proposed )  
adoption of NEW RULES I through )  
IV, and the proposed repeal of )  
ARM 8.54.808, related to fees, )  
amount of required experience, )  
continuing education matters, )  
and special practice permits )  
for nonresident certified )  
public accountants )

TO: All Concerned Persons

1. On October 28, 2005, at 10:00 a.m., a public hearing will be held in room 471 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Accountants no later than 5:00 p.m., on October 24, 2005, to advise us of the nature of the accommodation that you need. Please contact Susanne Criswell, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2389; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpac@mt.gov.

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

8.54.410 FEE SCHEDULE (1) The following fees have been established by the board for services or privileges rendered by the board, or for services rendered by contractors of the board:

- (a) through (c) remain the same.
- (d) Annual fee for permit to practice 90  
(regular permit or special practice permit)
- (e) through (k) remain the same.
- (l) Late fee for failure to timely file  
profession monitoring program reports 500
- (2) remains the same.

AUTH: 37-50-203, 37-50-204, 37-50-323, MCA  
IMP: 37-1-134, 37-50-204, 37-50-308, 37-50-314, 37-50-317, 37-50-323, MCA

REASON: There is reasonable necessity to amend ARM 8.54.410 to clarify that the same annual fee applies to the holders of a regular or a special practice permit, as part of the implementation of the provisions of Chapter 541, Laws of 2005 (Senate Bill 278). The Board notes that qualified nonresident CPAs who choose to obtain a special practice permit instead of a regular practice permit will save the \$100 application fee. The Board does not have a basis upon which to estimate the number of individuals who will take advantage of the new special practice permit, and therefore cannot estimate the fiscal impact (the potential savings) to the public. The Board notes that any decrease in revenue should be balanced by a decrease in workload for staff.

There is also reasonable necessity to amend the rule to provide for a late fee for individuals or firms that fail to timely submit the profession monitoring program reports required by ARM 8.54.903 and ARM 8.54.904. During fiscal year 2005, approximately 20 firms or individuals did not timely submit reports. The late fee is intended to cover additional costs incurred by staff in obtaining those reports from the firm or individual, and to provide a financial incentive for timely submission of reports. The failure to timely submit profession monitoring program reports may also subject violators to disciplinary proceedings. The Board estimates that, based on the experience of the past several years and the anticipated response to the new late fee, approximately 10 individuals or firms will be subject annually to the late fee, for an annual increase of \$5,000.

8.54.415 LICENSURE OF OUT-OF-STATE APPLICANTS

(1) remains the same.

(2) The board may issue a certificate or license or permit to practice to a holder of a certificate, license or permit issued by another state upon a showing that:

(a) ~~The~~ the applicant passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in this state; ~~and~~

(b) ~~The~~ the applicant has had five year's experience ~~outside of this state~~ in the practice of public accountancy after passing the examination upon which the applicant's certificate was based, within the 10 years immediately preceding the application; and

(c) ~~The~~ the applicant's certificate, license or permit was issued more than four years prior to the application for issuance of an initial certificate in this state, that the applicant has fulfilled the requirements of continuing professional education meeting the requirements established under 37-50-314, MCA, and the regulations established thereunder.

(3) remains the same.

AUTH: 37-50-203, 37-50-309, 37-50-311, 37-50-312, 37-50-313,

MAR Notice No. 8-54-41

19-10/6/05

37-50-317, MCA

IMP: 37-50-311, 37-50-312, 37-50-313, 37-50-317, MCA

REASON: There is reasonable necessity to amend ARM 8.54.415 in response to recent requests for waiver of the "out-of-state" limitation on public accounting experience. The Board has concluded that there is no qualitative difference between public accounting experience accumulated outside of Montana and that experience accumulated inside Montana. In addition, there is reasonable necessity to make minor typographical and stylistic corrections to the rule to bring it into compliance with the current style guidelines of the Secretary of State.

8.54.802 BASIC REQUIREMENT (1) During the three-year period, ending the June 30th immediately preceding the permit year of January 1 through December 31, applicants for a permit to practice must complete 120 hours of acceptable continuing education credit, except as otherwise provided under 37-50-314, MCA, and as explained in ARM 8.54.806 and 8.54.807.

~~(2) At least 24 hours of the 120 hours of acceptable continuing education credit must consist of subjects related to the reporting on financial statements as defined in ARM 8.54.204.~~

~~(3) Beginning July 1, 1998, at At least two hours of the 120 hours of acceptable continuing education credit must consist of knowledge and the application of ethics or the codes of professional conduct of certified public accountants and licensed public accountants. These hours may be considered subjects related to the reporting on financial statements required in (2).~~

(4) and (5) remain the same.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.802 to remove the audit and attest ("A & A") component of the continuing education requirements. The Board, after extended discussion, has recently concluded that it is inequitable to require those practitioners who do not perform A & A functions to continue to obtain continuing education credits in areas clearly outside of the individual's practice. Each person subject to the rule has a continuing professional and ethical responsibility to take continuing education classes that add to the practitioner's competence and expertise, and not to accept engagements for which the practitioner lacks competence. The Board notes that it intends to apply the amended version of the rule to the three-year period ending June 30, 2006.

8.54.803 WHO MUST COMPLY - GENERAL (1) All persons who are issued a permit to practice must comply with the continuing education requirements unless they have been excepted as provided by ARM ~~8.54.805, 8.54.806, and 8.54.807~~ or [NEW RULE II].

19-10/6/05

MAR Notice No. 8-54-41



AUTH: 37-50-201, 37-50-203, 37-50-323, MCA  
IMP: 37-50-203, 37-50-314, 37-50-323, MCA

REASON: There is reasonable necessity to amend ARM 8.54.803 to eliminate the cross-reference to a rule that is proposed for repeal, and to add a cross-reference to a proposed new rule, to implement provisions of Chapter 541, Laws of 2005 (Senate Bill 278).

8.54.804 NON-RESIDENT HOLDERS OF A PERMIT TO PRACTICE -- COMPLIANCE (1) Holders of regular permits to practice (as opposed to a special practice permit) who are out-of-state residents are required to comply with the continuing education requirements if they wish to maintain their permits to practice public accounting in Montana.

(2) A holder of a special practice permit is subject to the provisions of [NEW RULE II].

AUTH: 37-50-201, 37-50-203, 37-50-323, MCA  
IMP: 37-50-203, 37-50-314, 37-50-323, MCA

REASON: There is reasonable necessity to amend ARM 8.54.804 to coordinate with the proposed adoption of NEW RULE II, to implement provisions of Chapter 541, Laws of 2005 (Senate Bill 278).

4. The Board proposes to adopt new rules as follows:

NEW RULE I SPECIAL PRACTICE PERMIT (1) Persons wishing to practice public accounting in Montana pursuant to a special practice permit, as authorized by 37-50-323, MCA, must apply to the board and pay the appropriate fee.

(2) For the purposes of determining whether a certified public accountant is licensed in a jurisdiction that has licensing standards that are substantially equivalent to Montana's standards, the board has determined that the following jurisdictions are "substantially equivalent":

- (a) the District of Columbia;
- (b) Guam; and
- (c) all of the states in the United States of America, except:
  - (i) Colorado;
  - (ii) Delaware;
  - (iii) Florida;
  - (iv) New Hampshire; and
  - (v) Vermont.

AUTH: 37-50-203, 37-50-323, MCA  
IMP: 37-1-306, 37-50-203, 37-50-317, 37-50-323, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to implement provisions of Chapter 541, Laws of 2005 (Senate Bill 278). There is reasonable necessity to specify the

jurisdictions that the Board has concluded are "substantially equivalent" for purposes of obtaining the special permit to practice, and those jurisdictions which are not.

NEW RULE II COMPLIANCE WITH CONTINUING EDUCATION FOR NONRESIDENTS

(1) If a nonresident with a special practice permit is in compliance with the continuing education requirements of a jurisdiction where the nonresident is licensed or certified, that person is deemed to have complied with Montana continuing education requirements for the purposes of maintaining the special permit to practice in Montana.

(2) If the nonresident is licensed in a jurisdiction without mandatory continuing education requirements, the special permit holder must meet Montana continuing education requirements as provided in ARM Title 8, chapter 54, subchapter 8.

AUTH: 37-50-203, 37-50-323, MCA

IMP: 37-1-306, 37-50-203, 37-50-317, 37-50-323, MCA

REASON: There is reasonable necessity to adopt NEW RULE II in order to implement, in part, the renewal provisions of Chapter 541, Laws of 2005 (Senate Bill 278). NEW RULE II uses the statutory terminology of a "special practice permit" to identify the persons to whom the rule applies, and eases the ability of nonresident CPAs to engage in cross-border practice. The rule ensures that CPAs practicing within Montana are required to take continuing education courses to maintain and enhance the professional competency of those CPAs, thus protecting the public welfare of Montana individuals and businesses that use the services of those CPAs.

NEW RULE III PROFESSION MONITORING OF HOLDERS OF A SPECIAL PRACTICE PERMIT

(1) The board will apply its profession monitoring program rules to each individual or business entity that is registered pursuant to 37-50-324, MCA. For individuals engaging in the practice of public accounting with a registered business entity (a "firm"), the monitoring program will apply to the firm, not just the individual with a special practice permit.

(2) Rules for the profession monitoring program are found in ARM Title 8, chapter 54, subchapter 9.

AUTH: 37-50-203, 37-50-323, MCA

IMP: 37-1-306, 37-50-203, 37-50-317, 37-50-323, 37-50-324, MCA

REASON: There is reasonable necessity to adopt NEW RULE III in order to implement, in part, the nonresident registration provisions of Chapter 541, Laws of 2005 (Senate Bill 278). NEW RULE III identifies the nonresident entity that is subject to the Board's professional monitoring rules. The rule ensures that CPAs practicing within Montana are subject to monitoring of the professional competency of those CPAs and their firms, thus protecting the public welfare of Montana individuals and

businesses that use the services of those CPAs.

NEW RULE IV FEE ABATEMENT (1) The board of public accountants adopts and incorporates by reference the fee abatement rule of the department of labor and industry found at ARM 24.101.301.

AUTH: 37-1-131, 37-17-202, MCA  
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: There is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

5. The Board proposes to repeal the following rule:

8.54.808 GENERAL EFFECTIVE DATE is found at ARM page 8-1511.

AUTH: 37-50-201, 37-50-203, MCA  
IMP: 37-50-203, 37-50-314, MCA

REASON: There is reasonable necessity to repeal ARM 8.54.808 in order to eliminate an archaic and obsolete rule as part of the periodic clean up of the Board's rules.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov) and must be received no later than 5:00 p.m., November 4, 2005.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at [www.publicaccountant.mt.gov](http://www.publicaccountant.mt.gov) under the Board of Public Accountants rule notice section. The Department strives to make

the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

9. The Board of Public Accountants will meet on November 14 and 15, 2005, at its regularly scheduled meeting, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments, adoptions and repeal. Members of the public are welcome to listen to the Board's deliberations.

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

11. Mark Cadwallader, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS  
GARY KASPER, LPA, CHAIRPERSON

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Rule Reviewer

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

Certified to the Secretary of State September 26, 2005

BEFORE THE CRANE AND HOISTING  
OPERATING ENGINEERS PROGRAM  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.135.501	)	ON PROPOSED AMENDMENT
pertaining to hoisting operators	)	AND ADOPTION
license requirements, ARM	)	
24.135.516 pertaining to crane	)	
hoisting operators license	)	
requirements, ARM 24.135.530	)	
pertaining to mine hoisting	)	
operators license requirements,	)	
and NEW RULES I-VI pertaining to	)	
fee schedule, renewals, national	)	
commission certification, failed	)	
examinations, applications, and	)	
citations and fines	)	

TO: All Concerned Persons

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

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. Dan Bernhardt no later than 5:00 p.m., October 25, 2005, to advise us of the nature of the accommodation you need. Please contact Mr. Dan Bernhardt, Crane And Hoisting Operating Engineers Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2350; Montana Relay 1-800-253-4091; TDD (406) 444-2978; Facsimile (406) 841-2309; e-mail dlibsdcra@mt.gov.

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

24.135.501 HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (3)(a) remain the same.

(b) have passed a physical examination within 180 days prior to a new application and present this report to the department, or present proof of passing an applicable physical examination; ~~and A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical exam shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~

(c) pass a written ~~or oral~~ examination as prescribed by the bureau.

(4) An applicant for a first-class hoisting operator's license shall have no less than ~~three years~~ one year of experience in the operation of hoisting equipment covered by this ~~section, rule,~~ at a minimum of 1000 hours per year. ~~or if between one and three years of experience, the applicant must pass an actual performance test on the applicable hoisting equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ Applicants with less than one year of experience do not qualify for a first-class hoisting operator's license as ~~described above.~~ Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

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

(iii) single drum hoists with engines delivering unlimited brake horsepower; and

(iv) remains the same.

(5) An applicant for a second-class hoisting operator's license shall have no less than ~~two years~~<sup>1</sup> one year of experience in the operation of hoisting equipment covered by this ~~section, rule,~~ at a minimum of 1000 hours per year. ~~or if between one and two years of experience, the applicant must pass an actual performance test on the applicable hoisting equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ Applicants with less than one year of experience do not qualify for a second-class hoisting operator's license as ~~described above.~~ Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) remains the same.

(i) elevators in buildings under construction with engines delivering up to 100 brake horsepower; and

(ii) through (7)(a) remain the same.

(b) A report of physical examination filled out and signed by the physician having given the examination. The form is provided by the bureau. An alternate form may be used if approved by the bureau. ~~This physical examination form must also be filled out and submitted for license renewals. The physical may not be dated more than 180 days from the date the application is received by the bureau.~~

(c) remains the same.

(d) The license fee provided by [NEW RULE I]. ~~One half of the license fee. The balance shall be paid upon issuance of the license. In the event the license is not issued, the one half fee will be forfeited. The fees for licensing are as follows:~~

(i) ~~first class hoisting~~ \$80;

- ~~(ii) second class hoisting 70;~~
- ~~(iii) renewals 40;~~
- ~~(A) The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedure as for a new license.~~
- ~~(iv) lost license replacement 10-~~
- (8) remains the same.

AUTH: 50-76-112, MCA  
 IMP: 50-76-102, 50-76-103, 50-76-104, MCA

REASON: For clarification purposes it is reasonable and necessary to amend ARM 24.135.501 because the enactment of Chapter 93, Laws of 2005 (HB 401) during the 2005 Legislative Session changed the experience requirements for a hoisting license to a one-year requirement. In addition, all renewal information is being located within one area of the rules for clarity and simplicity. Finally, there is reasonable necessity to amend the rule to organize all related fees in NEW RULE I (see below), to update the IMP citations, and to make several small formatting corrections while the rule is otherwise being amended.

24.135.516 CRANE HOISTING OPERATORS LICENSE REQUIREMENTS

- (1) through (1)(g) remain the same.
- ~~(h) second-class tower crane; and~~
- ~~(i) air tugger.~~
- (3) and (3)(a) remain the same.
- (b) have passed a physical examination within 180 days prior to a new application and present this report to the department, or present proof of passing an applicable physical examination; ~~and A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~
- (c) pass a written ~~or oral~~ examination as prescribed by the bureau.
- (4) An applicant for a first-class crane hoisting license, first-class crane hydraulic license, first-class tower crane license or a first-class gantry and trolley license shall have no less than ~~three years~~ one year of experience in the operation of crane hoist equipment covered by this rule, at a minimum of 1000 hours per year. ~~or if between one and three years of experience, the applicant must pass an actual performance test on the applicable equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ Applicants with less than one year of experience

do not qualify for a first-class crane hoisting license ~~as described above~~. Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) through (d) remain the same.

(e) The holder of an air tugger winch license can operate all types of air tugger winches, other than air tugger winches on equipment used to drill oil, natural gas, or water wells.

(5) An applicant for a second-class crane hoisting license, second-class tower crane license or second-class hydraulic and boom truck license shall have no less than ~~two years~~ one year of experience in the operation of crane hoisting equipment covered by this rule, ~~at a minimum of 1000 hours per year.~~ or if between one or two years of experience, the applicant must pass an actual performance test on the applicable crane hoisting equipment. This test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one year of experience do not qualify for second-class crane hoisting licenses ~~as described above~~. Applicants with work experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(a) The holder of a second-class crane hoist license can operate cranes with a manufacturer's load chart rating up to 15 17.5 tons, ~~and 60 feet of boom,~~ and hoists with engines delivering up to 100 brake horsepower, except mine hoists, or a tower crane of any capacity.

(b) The holder of a second-class hydraulic license can operate hydraulic cranes or boom trucks with a manufacturer's load chart rating up to 15 17.5 tons ~~and 60 feet of boom.~~

(c) The holder of a second-class tower crane license can operate tower cranes up to ~~16~~ 17.5 tons ~~and 60 feet of boom only.~~

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

(d) The license fee provided by [NEW RULE I]. ~~One half of the license fee. The balance shall be paid upon issuance of the license. In the event the license is not issued, the one half fee will be forfeited. The fees for licensing are as follows:~~

- ~~(i) first class crane hoisting \$80,~~
- ~~(ii) second class crane hoisting 70,~~
- ~~(iii) third class crane hoisting 60,~~
- ~~(iv) renewals 40,~~

~~(A) The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedures as for a new license.~~

- ~~(v) lost license replacement 10.~~



(9) Crane hoisting operator's licenses need not be obtained to operate the following types of equipment:

(a) crane hoisting equipment that has a manufacturer's rating of six tons or less ~~or a boom length of 25 feet or less;~~

(b) remains the same.

(c) equipment with excavation attachments or log loading equipment; or

(d) remains the same.

AUTH: 50-76-112, MCA

IMP: 50-76-103, 50-76-104, MCA

REASON: For clarification purposes it is reasonable and necessary to amend ARM 24.135.516 due to statutory changes enacted in Chapter 93, Laws of 2005 (HB 401) during the 2005 Legislative Session. Statutory changes included the licensure of air tuggers, reducing experience to a one-year requirement, and increasing the tonnage for second class licensure to 17.5 tons. In addition, all renewal information is being located within one area of the program rules for clarity and simplicity. Finally, there is reasonable necessity to amend the rule to organize all related fees in NEW RULE I (see below), and to make several small formatting corrections while the rule is otherwise being amended.

24.135.530 MINE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) through (3)(a) remain the same.

(b) have passed a physical examination within 180 days prior to a new application and present this report to the department, or present proof of passing an applicable physical examination; ~~and A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.~~

(c) pass a written ~~or oral~~ examination as prescribed by the bureau.

(4) An applicant for a first-class mine hoisting operator's license shall have no less than ~~three years~~ one year of experience in the operation of mine hoisting equipment, at a minimum of 1000 hours per year. ~~or if between one and three years of experience, the applicant must pass an actual performance test operating the applicable mine hoisting equipment. The test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination.~~ An applicant with less than one year of experience in the operation of mine hoisting equipment does not qualify for a mine hoisting operator's license ~~as described above.~~ Applicants with work experience acquired in states that have no licensing requirements will qualify if

their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(5) remains the same.

(6) An applicant for a second-class mine hoisting operator's license shall have no less than ~~two years~~ one year of experience in the operation of mine hoisting equipment covered by this ~~section, rule, at a minimum of 1000 hours per year.~~ or if between one and two years of experience, the applicant must pass an actual performance test operating the applicable mine hoisting equipment. The test is conducted by the bureau to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one year of experience do not qualify for a second-class mine hoisting operator's license. Applicants with experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(7) through (10)(a) remain the same.

(b) A report of physical examination filled out and signed by the physician having given the examination. The form is provided by the bureau upon request. An alternate form may be used if approved by the bureau. The physical may not be dated more than 180 days from the date the application is received by the bureau. This physical examination form must also be filled out and submitted for license renewals.

(c) remains the same.

(d) The license fee provided by [NEW RULE I]. ~~One half of the license fee. The balance shall be paid upon issuance of the license. In the event the license is not issued, the one half fee will be forfeited. The fees for licensing are as follows:~~

- ~~(i) first class mine hoisting license \$80,~~
- ~~(ii) second class mine hoisting license 70,~~
- ~~(iii) renewals 40,~~

~~(A) The license must be renewed within 13 months of obtaining the previous license. If not renewed within this period, the fee will be the same as for the original license. Failure to renew a license within 12 months of the date of expiration will require application procedures as for a new license.~~

- ~~(iv) lost license replacement 10-~~

AUTH: 50-76-112, MCA

IMP: 50-73-302, 50-76-102, 50-76-104, MCA

REASON: For clarification it is reasonable and necessary to amend ARM 24.135.530 because the statutory enactments in Chapter 93, Laws of 2005 (HB 401) during the 2005 Legislative Session that changed the experience requirements for mine hoisting license to a one-year requirement. In addition, all renewal information is being located within one area of the program rules for clarity and simplicity. Finally, there is reasonable necessity to amend the rule to organize all related

fees in NEW RULE I (see below), to update an IMP citation, and to make several small formatting corrections while the rule is otherwise being amended.

4. The proposed new rules provide as follows:

<u>NEW RULE I</u>	<u>FEE SCHEDULE</u>	(1)	Initial application,
including examination:			
(a)	First Class		\$100
(b)	Second Class		100
(c)	Third Class		60
(d)	NCCO reciprocity		80
(2)	Annual renewal of license (1st & 2nd Class)		80
(3)	Annual renewal of license (3rd Class)		50
(4)	Late renewal fee for each missed		
renewal cycle:			
(a)	First Class		80
(b)	Second Class		80
(c)	Third Class		50
(5)	Duplicate/Lost License		15
(6)	An applicant who fails the examination shall pay 50% of the licensure fee in order to retake the examination.		
(7)	All fees are nonrefundable.		

AUTH: 50-76-112, MCA  
IMP: 50-76-104, MCA

REASON: For clarification purposes it is reasonable and necessary to create NEW RULE I to have all the program fees located in one area. Currently, fees are spread throughout the administrative rules pertaining to the crane program. It is also reasonable and necessary to amend the current fees because section 50-76-104, MCA, requires that license fees be set commensurate with program area costs.

The Department notes that the crane and hoist operator license program is currently operating at a deficit, and started the fiscal year with an interagency loan. Projected revenue for fiscal year 2006, using the existing fee structure is estimated at \$66,640, but expenditures of approximately \$105,640 are projected (including repayment of the loan). The proposed fee increases are designed to place the program back on a self-supporting financial foundation.

The department has reviewed the amount of work needed to process a new license application and administer an examination and concludes that the workload for processing each class of license application is not the same. The license application fee consists of three components: the application fee, the cost of administering the examination, and the license fee for the first year. The Department's cost for original licensing varies, depending on the type of grading. The Department therefore proposes to increase the license application and examination fee to \$100 for first and

second class crane and hoist operating licenses, and \$60 for third class oiler license. Annual renewal fees are proposed to be increased to \$80 for first and second class crane and hoist operating licenses, and \$50 for third class oiler.

Based on the number of persons licensed as crane and hoist operators in fiscal year 2005, the Department estimates that this rule will affect approximately 1,320 individuals who currently hold some class of crane and hoist operator licensure (including oiler licenses.) The Department estimates that the proposed fee increase for license renewal will generate approximately \$104,800 per year in revenue. Only a portion of that increase will be realized in fiscal year 2006, due to timing issues related to a staggered renewal system.

The Department estimates that approximately 178 individuals per year apply for a crane and hoist operator license. The Department estimates annual revenue from the proposed application fee increases for each license class as follows:

First Class license (102 applicants)	\$10,200
Second Class license (39 applicants)	3,900
Third Class license (37 applicants)	<u>2,220</u>
total application fees	\$16,320

The Department estimates that the total annual increase in application and renewal fees will be approximately \$54,480, and will affect approximately 1,498 individuals a year.

NEW RULE II RENEWALS (1) The license must be renewed within 12 months of obtaining the previous license.

(a) A license not renewed within 12 months will be lapsed for a period of 45 days. A licensee may legally work on a lapsed license for a period of 45 days. A lapsed license may be renewed within the 45 days by submitting the renewal form and applicable late fees.

(b) A lapsed license not renewed within 45 days will expire. A licensee is not considered to be working legally if the licensee's license has expired. An expired license may be renewed within two years by submitting the renewal form and applicable late fee.

(c) A license automatically terminates if it has not been renewed within two years. The terminated license may not be reinstated, and a new original license must be obtained by:

- (i) submitting a new application;
- (ii) meeting the current requirements;
- (iii) passing the examination; and
- (iv) paying the appropriate fees.

(2) A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination, shall be presented to the department every second renewal date after the original licensure date, and may not be

dated more than 180 days prior to the renewal date of the license.

AUTH: 50-76-112, MCA  
IMP: 37-1-141, 50-76-103, MCA

REASON: For clarification purposes, it is reasonable and necessary to adopt NEW RULE II to have all renewal information located in one area, and to incorporate new renewal provisions pursuant to changes in statute by Chapter 467, Laws of 2005 (HB 182).

NEW RULE III NATIONAL COMMISSION CERTIFICATION

(1) Applicants for a first-class or second-class crane and hoist engineer's license may provide proof of certification by the national commission for the certification of crane operators.

(2) The bureau will issue a license by national commission certification to an applicant provided that the applicant:

(a) files a completed application with the required fees; and

(b) holds a current and valid certificate issued by the national commission for the certification of crane operators.

AUTH: 50-76-112, MCA  
IMP: 50-76-113, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE III. Chapter 93, Laws of 2005 (HB 401) gave the department authority to allow licensure by credential recognition of applicants that have already obtained the National Commission for the Certification of Crane Operators.

NEW RULE IV FAILED EXAMINATIONS (1) Any applicant who sits for and fails the examination will not be allowed to retake the examination for a period of 45 days, commencing with the date of the last examination that the applicant failed.

AUTH: 50-76-112, MCA  
IMP: 50-76-103, 50-76-108, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE IV. This new rule provides guidance for applicants who have failed the examination. Currently, the administrative rules only mention the need to pass written examination and do not explain the process if the applicant fails. NEW RULE IV implements section 50-76-108, MCA, by identifying the 45 day waiting period provided by section 50-74-312, MCA, relating to boiler operators.

NEW RULE V APPLICATIONS (1) Applications for crane licensure may be made by anyone professing the qualifications set forth in 50-76-103, MCA. The application for examination is made to the department, and must be accompanied with the proper fee.

(2) No application for examination will be considered unless it is accompanied by the proper duly documented supporting evidence.

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

(4) An application will be on file one year from the date of receipt. If no action is taken by the applicant within one year, the application fee will be forfeited and reapplication will be required.

AUTH: 50-76-112, MCA

IMP: 50-76-103, 50-76-104, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE V. Current application processes are spread throughout the administrative rules pertaining to the crane program, which has historically caused confusion for license applicants. NEW RULE V creates a central location for ease of accessibility.

NEW RULE VI CITATIONS AND FINES (1) Any person that has been issued a citation shall have the fine waived by the department if the following have been met:

(a) the person shall provide proof of licensure to the department within 30 days of the citation being issued; and

(b) such proof of licensure indicates that the person held a valid license issued by the department at the time of the violation.

AUTH: 50-76-112, MCA

IMP: 50-76-102, 50-76-103, 50-76-114, MCA

REASON: For clarification purposes, it is reasonable and necessary to create NEW RULE VI to implement certain provisions of Chapter 93, Laws of 2005 (HB 401), which gave the department the authority to issue citations and fines for unlicensed practice. Additionally, HB 401 gave the department the authority to waive the fine. This new rule provides guidance to the process of requesting that the department waive the fine.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to: Mr. Dan Bernhardt, Crane and Hoisting Operating Engineers Program, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdcr@mt.gov](mailto:dlibsdcr@mt.gov) and must be received no later than 5:00 p.m., November 9, 2005.

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

7. The Crane and Hoisting Operating Engineers Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Crane Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Crane Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to [dlibsdcra@mt.gov](mailto:dlibsdcra@mt.gov) or may be made by completing a request form at any rules hearing held by the agency.

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

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

DEPARTMENT OF LABOR AND INDUSTRY  
CRANE AND HOISTING OPERATING  
ENGINEERS PROGRAM

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

Certified to the Secretary of State September 26, 2005

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of NEW RULE I ) PROPOSED ADOPTION  
pertaining to medical assistants )  
and NEW RULE II pertaining to )  
fee abatement )

TO: All Concerned Persons

1. On November 17, 2005, at 1:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on November 10, 2005, to advise us of the nature of the accommodation that you need. Please contact Evie Martin, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2364, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I MEDICAL ASSISTANT (1) For the purpose of this rule, the following definitions apply:

(a) "Direct supervision" means the supervisor is within audible and visible reach of the person being supervised.

(b) "Office" means a location that a physician or podiatrist designates as the physician's or podiatrist's office, but excludes acute care or long term care facilities unless the physician or podiatrist utilizes the building which houses an acute care or long term care facility for scheduled services.

(c) "Onsite supervision" means the supervisor is in the facility and quickly available to the person being supervised.

(d) "Supervision" means accepting responsibility for, and overseeing the medical services of, a medical assistant by telephone, radio or in person as frequently as necessary considering the location, nature of practice and experience of the medical assistant.

(2) Medical assistants shall work under the supervision of a Montana-licensed physician or podiatrist who is responsible for assigning administrative and clinical tasks to the medical assistant relating to the physician or podiatrist's practice of medicine.

(3) Physician or podiatrist supervision shall be active and continuous but does not require the physical presence of the



supervising physician or podiatrist at the time and place that services are rendered so long as the physician or podiatrist is available for consultation, except that physician or podiatrist supervision shall be onsite when a medical assistant performs:

- (a) invasive procedures;
- (b) administers medicine; or
- (c) performs allergy testing.

(4) The supervising physician or podiatrist is responsible for determining the competency of a medical assistant to perform the administrative and clinical tasks assigned to the medical assistant. Assigned tasks must be consistent with the supervising physician or podiatrist's education, training, experience and active practice. Assigned tasks must be the type that a reasonable and prudent physician (or podiatrist) would find within the scope of sound medical judgment to assign. Assigned tasks, other than those tasks enumerated in 37-3-104(1)(b), MCA, should be routine, technical tasks for which the medical assistant has been appropriately trained. A physician (or podiatrist) may only delegate tasks that the physician (or podiatrist) is qualified to perform and tasks that the physician (or podiatrist) has not been legally restricted from performing. Any tasks performed by the medical assistant will be held to the same standard that is applied to the supervising physician or podiatrist.

(a) Assigned tasks cannot be subsequently assigned to another party by the medical assistant.

(5) The supervising physician or podiatrist's office shall inform patients when a medical assistant is seeing them and shall ensure that assigned tasks are provided in the context of an appropriate physician/patient relationship.

(6) A medical assistant must be a graduate of an accredited medical assisting program or possess experience, training or education sufficient, in the supervising physician or podiatrist's opinion, to perform assigned duties responsibly, safely and conscientiously. It is the responsibility of the physician (or podiatrist) to ensure that the medical assistant has the necessary education, training or experience to perform the assigned task.

(7) The following tasks may not be assigned to a medical assistant:

(a) any invasive procedures, including injections other than immunizations, in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation, unless under the onsite supervision of a physician or podiatrist;

(b) care of an in-patient admitted to an acute care hospital facility licensed by DPHHS;

(c) conscious sedation monitoring, unless under the direct supervision of a physician or podiatrist; and

(d) administering fluids, blood products, or medications through an IV, unless under the direct supervision of a physician or podiatrist.

(8) Health care providers licensed in this state or any other jurisdiction whose licenses have been restricted,

suspended, revoked or voluntarily relinquished in lieu of discipline are prohibited from working in a physician or podiatrist's office as an unlicensed medical assistant.

AUTH: 37-3-104, 37-3-203, MCA  
IMP: 37-3-104, MCA

REASON: The Board finds that there is reasonable necessity to adopt NEW RULE I to comply with and implement the provisions of section 37-3-104, MCA, enacted in Chapter 85, Laws of 2003, which require the Board to adopt guidelines by administrative rule for administering the use of unlicensed medical assistants by physicians and podiatrists. The Board previously noticed NEW RULE I in October 2004, but withdrew it because of the volume of public comment in opposition to the original draft. The Board has redrafted NEW RULE I to address the concerns that were raised by the public. Specifically, the Board has expanded safeguards relating to physician or podiatrist supervision of medical assistants and created a more comprehensive list of tasks that may be delegated to medical assistants.

NEW RULE II FEE ABATEMENT (1) The board of Medical Examiners adopts and incorporates by reference the fee abatement rule of the department of labor and industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA  
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or

by e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., November 25, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at [www.medicalboard.mt.gov](http://www.medicalboard.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 Medical Examiners 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 Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

8. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS  
VAN KIRKE NELSON, M.D., Chairman

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

Certified to the Secretary of State September 26, 2005

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT  
RESIDENTIAL OR OUTDOOR PROGRAMS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC  
adoption of NEW RULES I-VI ) HEARING ON PROPOSED  
pertaining to private alternative ) ADOPTION  
adolescent residential or outdoor )  
programs )

1. On, October 26, 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 adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Private Alternative Adolescent Residential or Outdoor Programs no later than 5:00 p.m. on October 19, 2005, to advise us of the nature of the accommodation that you need. Please contact Cynthia Reichenbach, Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpaaarp@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt rules to fulfill the purpose of Title 37, chapter 48, MCA, enacted by Chapter 294, Laws of 2005 (HB 628), which requires the Board to examine the benefit of licensing private alternative adolescent residential or outdoor programs by gathering data via the registration process, and to report to the economic affairs interim committee detailing the Board's findings, recommendations, and proposed legislation, if any, by September 15, 2006. Section 37-48-103(4), MCA, mandates that the Board adopt rules to determine any additional information necessary for registration.

The Board of Private Alternative Adolescent Residential or Outdoor Programs has determined that there is reasonable necessity 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 34 programs will be affected by establishing the registration fees. The Board believes that the fees are commensurate with the size of each program pursuant to 37-48-103, MCA. The Board estimates that the projected biennial revenue is approximately \$45,500.

Rules outlining the registration process, the establishment of fees, designation of Board officers to conduct business, and the creation of a registration application form to gather necessary information are reasonable and necessary to implement the provisions of Title 37, chapter 48, MCA.

4. The proposed new rules provide as follows:

NEW RULE I BOARD MEETINGS (1) The board shall annually elect a board chairperson and a vice chairperson at its fall meeting. The chairperson shall preside over all proceedings before the board. In the chairperson's absence, the vice-chairperson shall preside. In the absence of both, the board shall appoint an acting chairperson to preside.

AUTH: 37-1-131, 37-48-103, MCA  
IMP: 37-1-131, 37-48-101, 37-48-103, MCA

NEW RULE II DEFINITIONS For the purpose of this chapter the following definitions apply:

(1) "Average daily census" means the arithmetical average of the number of participants served daily by the program, calculated over a calendar year. This number is calculated by adding the total number of service days, as defined in (2), provided by the program during the last calendar year, and divided by 365 days.

(2) "Number of service days" means any portion of a 24 hour period in which service is provided to one participant, multiplied by the number of actual participants on that day.

(3) "Participant" means any youth or adolescent to whom services are being provided by the program.

AUTH: 37-1-131, 37-48-103, MCA  
IMP: 37-1-131, 37-48-103, MCA

NEW RULE III FEE SCHEDULE (1) The registration fee covers a two year period.

(2) Registration fees are calculated according to the program's average daily census:

(a) 0-10 participants	\$ 750
(b) 11-50 participants	1,750
(c) 51-100 participants	2,000
(d) 101 and more participants	3,000

(3) All existing programs must be registered within 30 days of the adoption of these rules.

(4) All fees provided for in this rule are nonrefundable and are not prorated for portions of the registration period.

AUTH: 37-48-103, MCA  
IMP: 37-1-134, 37-48-103, MCA

NEW RULE IV APPLICATION FOR REGISTRATION (1) A program applicant shall submit an application on a form prescribed by the department. The application must be complete and

accompanied by the appropriate fees and the following documentation:

(a) a detailed description of the program, including but not limited to:

- (i) program mission statement;
- (ii) program history, including any prior names, locations and ownership;
- (iii) all insurance coverages, including workers' compensation;
- (iv) professional affiliations;
- (v) current educational, athletic, psychological and other services provided;
- (vi) all locations and facilities where program services to participants are or will be provided; and
- (vii) how and where participants are housed;

(b) a detailed description of the population served by the program;

(c) the contact information for each program, including the person responsible for the conduct of the program;

(d) a list of professional and supervisory employees and relevant credentials and other qualifications;

(e) a list of all individuals and/or entities, not included in (1)(d), who provide services directly to program participants;

(f) the average daily census. If the program did not operate during the prior calendar year, the applicant shall estimate the expected average daily census during the first calendar year of operations; and

(g) a copy of all program policies and procedures, including but not limited to:

- (i) admission;
- (ii) communication with family members;
- (iii) the availability of routine and emergency medical and psychological care;
- (iv) medication management;
- (v) complaints or grievances; and
- (vi) behavior management, including but not limited to:
  - (A) discipline;
  - (B) punishment;
  - (C) consequences;
  - (D) incentives; and
  - (E) use of seclusion and/or restraint.

(2) Incomplete applications will be returned. The applicant may correct any deficiencies, complete any requirements necessary for registration and resubmit the application to the board office. Failure to resubmit the deficient application within 60 days from the date the notice of deficiency is sent from the board office will be treated as a voluntary withdrawal of the application and all fees will be forfeited.

(3) After withdrawal of an application, the applicant will be required to submit a new application, including supporting documentation and appropriate fees.

(4) Registration applications submitted to the board will be reviewed by department staff, which may request such additional information as it deems reasonably necessary.

(5) Registration applications that are deemed complete will be issued a registration certificate by the department.

(6) A program's registration is nontransferable.

(7) Programs that are registered will be listed as being registered on the Montana state website.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-131, 37-48-103, MCA

NEW RULE V SITE VISITS (1) For the purpose of gathering data and information for the study, programs may be visited by the board or its designee.

(2) Department staff will contact the person responsible for the conduct of the program, as identified in the registration application, to request permission to visit the facility at least seven business days prior to the intended visit.

AUTH: 37-48-103, MCA

IMP: 37-48-103, MCA

NEW RULE VI IMPLEMENTATION (1) Programs existing on [the date this rule becomes effective] have until [30 days after the effective date of the rule] in which to submit the program's registration application.

(2) Programs not in existence when this rule becomes effective must submit the program's registration application before the program begins serving participants.

AUTH: 37-48-103, MCA

IMP: 37-48-103, 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 the Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdparp@mt.gov](mailto:dlibsdparp@mt.gov), and must be received no later than 5:00 p.m., November 3, 2005.

6. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at [www.parp.mt.gov](http://www.parp.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.

7. The Board of Private Alternative Adolescent Residential or Outdoor Programs 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 Private Alternative Adolescent Residential or Outdoor Programs administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdparp@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF PRIVATE ALTERNATIVE  
ADOLESCENT RESIDENTIAL OR OUTDOOR  
PROGRAMS  
PAUL CLARK, 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 September 26, 2005



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 42.18.109, ) ON PROPOSED AMENDMENT  
42.18.110, 42.18.113, 42.18.121,) )  
42.18.122, and 42.18.124 ) )  
relating to the Montana ) )  
reappraisal plans for 2003 ) )  
and 2009 ) )

TO: All Concerned Persons

1. On October 28, 2005, at 10:30 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules relating to the Montana reappraisal plans for 2003 and 2009.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m., October 17, 2005, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.18.109 2003 RESIDENTIAL REAPPRAISAL PLAN (1) through (6)(e) remain the same.

(7) Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~2007~~ 2002, land market values.

(8) through (12) remain the same.

(13) This rule applies to tax years January 1, ~~2009~~ 2003, through December 31, ~~2014~~ 2008.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.109, which is the 2003 residential reappraisal plan rule, to correct the date of the CALP models, which are used by the department to reflect the land market values. Additionally, this rule applies to tax years between January

1, 2003 and January 1, 2008, rather than 2009 and 2014.

42.18.110 2009 RESIDENTIAL REAPPRAISAL PLAN (1) through (6) (e) remain the same.

(7) Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect January 1, ~~2007~~ 2008, land market values.

(8) through (13) remain the same.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.110 to correct the date of the CALP models used by the department from January 1, 2007 to January 1, 2008.

42.18.113 2009 COMMERCIAL REAPPRAISAL PLAN (1) through (6) (e) remain the same.

(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect January 1, ~~2007~~ 2008, land market values.

(8) through (13) remain the same.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.113 to correct the date of the CALP models used by the department from January 1, 2007 to January 1, 2008.

42.18.121 VALUATION MANUALS (1) remains the same.

(2) For the reappraisal cycle ~~ending December 31, 1996~~ beginning January 1, 1997, the 1996 Montana Appraisal Manual is used for valuing residential and agricultural/forest lands real property. The cost base schedules reflect January 1, 1996, cost information. Reappraisal values were used for property tax purposes for the 1997 tax year.

(3) remains the same.

(4) For the reappraisal cycle ~~ending December 31, 1996~~ beginning January 1, 1997, the 1996 Montana Appraisal Manual is used for valuing commercial and industrial real property. If the property is not listed in the 1996 Montana Appraisal Manual, other construction cost manuals such as Boeckh; Marshall Valuation Service; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" is used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules reflect January 1, 1996, cost information. Reappraisal values were used for property tax purposes for the 1997 tax year.

(5) For the reappraisal cycle ~~ending December 31, 2002~~

beginning January 1, 2003, the 2002 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. If the property is not listed in the 2002 Montana Appraisal Manual, other construction cost manuals such as Marshall Valuation Service~~;~~ Boeckh~~;~~ Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close to the 2002 Montana Appraisal Manual as possible. The cost base schedules reflect January 1, 2002, cost information.

(6) and (7) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.121 to correct the dates, which will better reflect the reappraisal period covered by this rule.

42.18.122 REVALUATION MANUALS (1) remains the same.

(2) For the reappraisal cycle ~~ending December 31, 2008~~ beginning January 1, 2009, the ~~2009~~ 2008 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing residential and agricultural/forest lands real property. The cost base schedules reflect January 1, ~~2007~~ 2008, cost information.

(3) For commercial and industrial new construction, the 2002 Montana Appraisal Manual will be used through tax year 2008. If the property is not listed in the 2002 Montana Appraisal Manual, other construction cost manuals, such as Marshall Valuation Service~~;~~ Boeckh~~;~~ or Means, will be used with a publication date as close to the 2002 Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ~~ending December 31, 2008~~ beginning January 1, 2009, the ~~2009~~ 2008 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. If the property is not listed in the ~~2009~~ 2008 Montana Appraisal Manual, other construction cost manuals such as Marshall Valuation Service~~;~~ Boeckh~~;~~ Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close to the ~~2009~~ 2008 Montana Appraisal Manual as possible. The cost base schedules reflect January 1, ~~2007~~ 2008, cost information.

(5) and (6) remain the same.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.122 to correct dates and delete a publication that

is no longer published.

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) and (1) (a) remain the same.

(b) For the taxable years from January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, ~~2007~~ 2008.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-6-134, 15-7-103, and 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.124 to correct the market value date for property appraised during January 1, 2009 and January 1, 2014.

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:

Cleo Anderson  
Department of Revenue  
Director's Office  
P.O. Box 7701  
Helena, Montana 59604-7701

and must be received no later than November 4, 2005.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this 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.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or

matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State September 26, 2005

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING
adoption of NEW RULE I, )	ON PROPOSED ADOPTION,
amendment of ARM 42.25.1801, )	AMENDMENT, AND REPEAL
42.25.1807, 42.25.1808, )	
42.25.1809, and repeal of ARM )	
42.25.1810, 42.25.1811, and )	
42.25.1812 relating to oil, )	
gas, and coal natural )	
resources )	

TO: All Concerned Persons

1. On October 27, 2005, at 2:00 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, and repeal of the above-stated rules relating to oil, gas, and coal natural resources.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m., October 20, 2005, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I DISTRIBUTION BY POPULATION (1) The department shall distribute funds from the oil, gas, and coal natural resource account to qualifying counties with more than one incorporated city or town using census information provided by the department of commerce.

(2) The population information will be updated with the third quarter distribution, which is distributed in January, and continue to be used until the next yearly update.

(3) A qualifying county that has an incorporated city or town that is not included in the census must inform the department of revenue of that fact, and provide proof of incorporation along with the population information for that city or town.

AUTH: 15-36-322, MCA

IMP: 15-1-501, 15-36-331 and 15-36-332, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because HB 758, which was enacted by the 59th legislature does not provide direction to the department regarding where to obtain the information, or how often to update the population data needed to distribute funds specified in 15-36-332(8), MCA, when a qualifying county has more than one incorporated city or town.

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

42.25.1801 DEFINITIONS ~~(1)~~ In addition to the definitions found in 15-36-303, MCA, the following definitions used throughout apply to terms used in this chapter are further defined.:

~~(2)~~(1) "Lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. A lease may contain one or more wells. One operator shall be named as the lease operator and shall be responsible for filing the ~~net~~ oil and natural gas production tax return.

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

(6) "Stripper well bonus" applies to wells producing an average of three barrels a day or less, and the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to, or greater than, \$38 a barrel. This is calculated by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year, by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365. The average price for a barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) "Stripper well exemption" applies to wells producing an average of ~~3~~ three barrels a day or less, and the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$38 a barrel. This is calculated by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. ~~Once qualified, all production for the lease for the entire year is reported at the stripper well exemption tax rates of .8% for working interests and 15.1% for non working~~

~~interests, even if it exceeds the 3 barrel average. The average price for a barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.~~

(8) remains the same.

AUTH: 15-36-322, MCA

IMP: 15-1-101, 15-36-301, 15-36-302, 15-36-303, 15-36-304, 15-36-305, 15-36-309, 15-36-310, 15-36-311, 15-36-312, 15-36-313, 15-36-314, 15-36-315, 15-36-319, ~~15-36-320~~, 15-36-321, ~~15-36-322~~, ~~15-36-324~~, ~~15-36-325~~, 15-36-326, and 82-1-111, MCA

REASONABLE NECESSITY: The department is proposing to amend the lead-in paragraph of ARM 42.25.1801 to make general grammatical changes. The amendment to (2) is necessary to delete the word "net" as this word is not correct in this sentence and should be removed. The oil and gas production tax is not a net tax and thus should not be referred to as such. The amendment to ARM 42.25.1801(6) defines "stripper well bonus" production, which was created by HB 535 of the 59th legislature. The amendment to (7) is necessary to clarify what the department will use to determine the tax on a barrel of oil. The statutes that are being deleted have either been repealed or are not applicable to this rule.

42.25.1807 AVERAGE DAILY WELL PRODUCTION CALCULATION

(1) remains the same.

(2) In determining whether a lease or unit has an average daily production of less than 15 barrels of crude oil per well for stripper qualification, or ~~3~~ three barrels of crude oil or less per well for the stripper well exemption or stripper well bonus, only those wells that produced crude oil during the prior calendar year shall be used in the calculation.

(3) and (4) remain the same.

AUTH: 15-36-322, MCA

IMP: 15-36-303 and 15-36-304, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1807(2) to add the reference to "stripper well bonus" production, which should be included with the other types of production identified in this rule.

42.25.1808 DUALY QUALIFIED STRIPPER WELLS AND ENHANCED RECOVERY PROJECTS

(1) For the purpose of this rule a lease or unit will be considered to be dually qualified if the lease or unit qualifies as an oil stripper and the wells are within an approved enhanced recovery project. If the wells are dually qualified, the tax rates for stripper, incremental and non-incremental may all apply.



(a) If the production for a quarter from a dually qualified lease or unit is less than 270 barrels (~~3~~ three barrels/day times 90 days in a calendar quarter) for each producing well in the lease or unit the tax rates in ARM 42.25.1809(1)(b)(ii)(C) or (1)(b)(ii)(D) apply.

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

AUTH: 15-36-322, MCA

IMP: 15-36-303 and 15-36-304, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1808(1)(a) to add a reference to the new table the department is proposing to add to ARM 42.25.1809, which refers to stripper well bonus production.

42.25.1809 TAX RATES (1) Table I reflects the tax rates effective on July 1, 2005, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (board of oil and gas). The rate is subject to change by the board of oil and gas.

Table I - Effective 7/1/2005

<u>Type of Production</u>	<u>Working Interest</u>	<u>Nonworking Interest</u>
<u>(a) Natural gas</u>		
<u>(i) Primary recovery production</u>		
<u>(A) First 12 months of production</u>	<u>.76%</u>	<u>15.06%</u>
<u>(B) Pre-1999 wells after first 12 months of production</u>	<u>15.06%</u>	<u>15.06%</u>
<u>(C) Post-1999 wells after first 12 months of production</u>	<u>9.26%</u>	<u>15.06%</u>
<u>(ii) Stripper wells (averaging &lt; 60 MCF/day)</u>		
<u>(A) Pre-1999 wells</u>	<u>11.26%</u>	<u>15.06%</u>
<u>(iii) Horizontally completed well production</u>		
<u>(A) First 18 months of qualifying production</u>	<u>.76%</u>	<u>15.06%</u>
<u>(B) After 18 months</u>	<u>9.26%</u>	<u>15.06%</u>
<u>(b) Oil</u>		
<u>(i) Primary recovery production</u>		
<u>(A) First 12 months of production</u>	<u>.76%</u>	<u>15.06%</u>
<u>(B) Pre-1999 wells after first 12 months of production</u>	<u>12.76%</u>	<u>15.06%</u>
<u>(C) Post-1999 wells after first 12 months of production</u>	<u>9.26%</u>	<u>15.06%</u>
<u>(ii) Stripper wells (averaging &lt; 15 bbls/day)</u>		
<u>(A) Pre-1999 and post-1999 wells first 1-10 bbls</u>	<u>5.76%</u>	<u>15.06%</u>
<u>(B) Pre-1999 and post-1999 over 10 bbls</u>	<u>9.26%</u>	<u>15.06%</u>
<u>(C) Pre-1999 and post-1999</u>		

<u>stripper well exemption</u>	<u>.76%</u>	<u>15.06%</u>
(D) <u>Pre-1999 and post-1999</u>		
<u>stripper well bonus production</u>	<u>6.26%</u>	<u>15.06%</u>
(iii) <u>Horizontally drilled</u>		
(A) <u>Pre-1999 and post-1999 wells</u>		
<u>first 18 months</u>	<u>.76%</u>	<u>15.06%</u>
(B) <u>Pre-1999 wells after 18 months</u>	<u>12.76%</u>	<u>15.06%</u>
(C) <u>Post-1999 wells after 18</u>		
<u>months</u>	<u>9.26%</u>	<u>15.06%</u>
(iv) <u>Incremental production</u>		
(A) <u>New or expanded secondary</u>		
<u>recovery production</u>	<u>8.76%</u>	<u>15.06%</u>
(B) <u>New or expanded tertiary</u>		
<u>production</u>	<u>6.06%</u>	<u>15.06%</u>
(v) <u>Horizontally recompleted wells</u>		
(A) <u>Pre-1999 and post-1999 wells</u>		
<u>first 18 months</u>	<u>5.76%</u>	<u>15.06%</u>
(B) <u>Pre-1999 wells after 18 months</u>	<u>12.76%</u>	<u>15.06%</u>
(C) <u>Post-1999 wells after 18 months</u>	<u>9.26%</u>	<u>15.06%</u>

~~(1)~~(2) Table ~~I~~ II below reflects the tax rates effective on July 1, 2001, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (board of oil and gas). The rate is subject to change by the board of oil and gas.

Table I remains the same but is renumbered Table II.

~~(2)~~(3) Table ~~II~~ III below reflects the tax rates effective on January 1, 2000, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (board of oil and gas). The rate set under 82-11-131, MCA, is at the maximum allowable rate of .3% of value. The rate is subject to change by the board of oil and gas.

Table II remains the same but is renumbered Table III.

~~(3)~~(4) Table ~~III~~ IV below reflects the tax rates effective on July 1, 1999 through December 31, 1999, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (board of oil and gas). The rate of tax set under 82-11-131, MCA, is at the maximum allowable rate of .3% of value. The rate is subject to change by the board of oil and gas.

Table III remains the same but is renumbered Table IV.

AUTH: 15-36-322, MCA

IMP: 15-36-304 and 82-11-131, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1808 to add a new table, (Table I), that reflects the tax rate beginning July 1, 2005.

5. The department proposes to repeal the following rules:

42.25.1810 DISTRIBUTION which can be found on page 42-

2597.4 of the Administrative Rules of Montana.

AUTH: 15-36-322, MCA

IMP: 15-36-324, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.25.1810 because the distribution of the oil and gas production tax is no longer performed in this manner and is currently distributed according to 15-36-331 and 15-36-332, MCA.

42.25.1811 PARTIAL OR SUPPLEMENTAL PAYMENTS OF TAX which can be found on page 42-2599 of the Administrative Rules of Montana.

AUTH: 15-36-322, MCA

IMP: 15-36-324, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.25.1811 because the distribution of the oil and gas production tax is no longer performed in this manner and is currently distributed according to 15-36-331 and 15-36-332, MCA.

42.25.1812 BLACKFEET RESERVATION PRODUCTION which can be found on page 42-2599 of the Administrative Rules of Montana.

AUTH: 15-36-322, MCA

IMP: 15-36-311, 18-11-103, and 18-11-309, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.25.1812 because the revenue sharing agreement between the department and the Blackfeet Reservation no longer exists.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson  
Department of Revenue  
Director's Office  
P.O. Box 7701  
Helena, Montana 59604-7701

and must be received no later than November 4, 2005.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to

make the electronic copy of this 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.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State September 26, 2005.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 1.2.419 ) ON PROPOSED AMENDMENT  
regarding the scheduled dates )  
for the 2006 Montana )  
Administrative Register and )  
1.2.420 regarding submission )  
dates for replacement pages )

TO: All Concerned Persons

1. On October 28, 2005, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on October 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5596; FAX (406) 444-5833; e-mail jabranscum@mt.gov.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, ~~compiling dates, printer pickup dates~~ and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2005 Schedule~~

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
<del>January 3</del>	<del>January 4</del>	<del>January 5</del>	<del>January 13</del>
<del>January 14</del>	<del>January 18</del>	<del>January 19</del>	<del>January 27</del>
<del>January 31</del>	<del>February 1</del>	<del>February 2</del>	<del>February 10</del>
<del>February 14</del>	<del>February 15</del>	<del>February 16</del>	<del>February 24</del>
<del>March 7</del>	<del>March 8</del>	<del>March 9</del>	<del>March 17</del>
<del>March 21</del>	<del>March 22</del>	<del>March 23</del>	<del>March 31</del>
<del>April 4</del>	<del>April 5</del>	<del>April 6</del>	<del>April 14</del>
<del>April 18</del>	<del>April 19</del>	<del>April 20</del>	<del>April 28</del>
<del>May 2</del>	<del>May 3</del>	<del>May 4</del>	<del>May 12</del>
<del>May 16</del>	<del>May 17</del>	<del>May 18</del>	<del>May 26</del>
<del>June 6</del>	<del>June 7</del>	<del>June 8</del>	<del>June 16</del>
<del>June 20</del>	<del>June 21</del>	<del>June 22</del>	<del>June 30</del>

<del>July 1</del>	<del>July 5</del>	<del>July 6</del>	<del>July 14</del>
<del>July 18</del>	<del>July 19</del>	<del>July 20</del>	<del>July 28</del>
<del>August 1</del>	<del>August 2</del>	<del>August 3</del>	<del>August 11</del>
<del>August 15</del>	<del>August 16</del>	<del>August 17</del>	<del>August 25</del>
<del>August 29</del>	<del>August 30</del>	<del>August 31</del>	<del>September 8</del>
<del>September 12</del>	<del>September 13</del>	<del>September 14</del>	<del>September 22</del>
<del>September 26</del>	<del>September 27</del>	<del>September 28</del>	<del>October 6</del>
<del>October 17</del>	<del>October 18</del>	<del>October 19</del>	<del>October 27</del>
<del>October 31</del>	<del>November 1</del>	<del>November 2</del>	<del>November 10</del>
<del>November 14</del>	<del>November 15</del>	<del>November 16</del>	<del>November 23</del>
<del>November 28</del>	<del>November 29</del>	<del>November 30</del>	<del>December 8</del>
<del>December 12</del>	<del>December 13</del>	<del>December 14</del>	<del>December 22</del>

2006 Schedule

<u>Filing</u>	<u>Publication</u>
<u>January 3</u>	<u>January 12</u>
<u>January 13</u>	<u>January 26</u>
<u>January 30</u>	<u>February 9</u>
<u>February 13</u>	<u>February 23</u>
<u>February 27</u>	<u>March 9</u>
<u>March 13</u>	<u>March 23</u>
<u>March 27</u>	<u>April 6</u>
<u>April 10</u>	<u>April 20</u>
<u>April 24</u>	<u>May 4</u>
<u>May 8</u>	<u>May 18</u>
<u>May 22</u>	<u>June 1</u>
<u>June 12</u>	<u>June 22</u>
<u>June 26</u>	<u>July 6</u>
<u>July 17</u>	<u>July 27</u>
<u>July 31</u>	<u>August 10</u>
<u>August 14</u>	<u>August 24</u>
<u>August 28</u>	<u>September 7</u>
<u>September 11</u>	<u>September 21</u>
<u>September 25</u>	<u>October 5</u>
<u>October 16</u>	<u>October 26</u>
<u>October 30</u>	<u>November 9</u>
<u>November 13</u>	<u>November 22</u>
<u>November 27</u>	<u>December 7</u>
<u>December 11</u>	<u>December 21</u>

(2) remains the same.

AUTH: 2-4-312, MCA  
IMP: 2-4-312, MCA

1.2.420 SCHEDULED SUBMISSION DATES FOR REPLACEMENT PAGES TO UPDATE THE ADMINISTRATIVE RULES OF MONTANA (1) The replacement pages are due by 5:00 p.m. on the last business day of each calendar quarter. schedule for updating the ARM is as follows:

~~5:00 p.m. ————— March 31~~

~~5:00 p.m. June 30~~  
~~5:00 p.m. September 30~~  
~~5:00 p.m. December 31~~

(2) remains the same.

AUTH: 2-4-306, MCA  
IMP: 2-4-311, MCA

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2006. The schedule is proposed during the month of October in order that it may be adopted during November or December to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year. ARM 1.2.420 is proposed to be amended to clarify that replacement pages are due on the last business day of each quarter, rather than the last day, since the last day of the quarter sometimes falls on a weekend.

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 Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jabranscum@mt.gov, and must be received no later than November 3, 2005.

6. Elwood English, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Brad Johnson  
BRAD JOHNSON  
Secretary of State

/s/ Mark Simonich  
MARK SIMONICH  
Rule Reviewer

Dated this 26th day of September 2005.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	
adoption of New Rule I	)	NOTICE OF ADOPTION AND
and amendment of ARM 2.5.201,	)	AMENDMENT
2.5.301, 2.5.302, 2.5.404,	)	
2.5.406, 2.5.407, 2.5.408,	)	
2.5.503, 2.5.505, 2.5.601,	)	
2.5.602, 2.5.603, and	)	
2.5.702 concerning state	)	
procurement of supplies and	)	
services and disposition and	)	
disposal of surplus property	)	

TO: All Concerned Persons

1. On July 28, 2005, the Montana Department of Administration published MAR Notice No. 2-2-342 regarding the proposed adoption and amendment of the above-stated rules at page 1316 of the 2005 Montana Administrative Register, Issue No. 14. On September 22, 2005, the Department published MAR Notice No. 2-2-365 regarding the amended notice of proposed adoption and amendment of the above-stated rules at page 1709 of the 2005 Montana Administrative Register, Issue No. 18.

2. The Department of Administration has adopted new rule I (ARM 2.5.510) exactly as proposed.

3. The Department of Administration has amended ARM 2.5.201, 2.5.301, 2.5.302, 2.5.404, 2.5.406, 2.5.407, 2.5.408, 2.5.503, 2.2.505, 2.5.601, 2.5.602, 2.5.603, and 2.5.702 exactly as proposed.

4. No comments or testimony were received.

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

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

Certified to the Secretary of State, September 21, 2005.



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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 2.43.1002 )  
pertaining to the investment )  
policy statement for the defined )  
contribution retirement plan )

TO: All Concerned Persons

1. On August 11, 2005, the Montana Public Employees' Retirement Board published MAR Notice No. 2-2-360 regarding the proposed amendment of ARM 2.43.1002 concerning the investment policy statement for the defined contribution retirement plan at page 1461 of the 2005 Montana Administrative Register, Issue Number 15.

2. The Public Employees' Retirement Board has amended ARM 2.43.1002 exactly as proposed.

3. No comments or testimony were received.

/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 September 26, 2005.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 2.43.1801 and )  
2.43.1802 pertaining to the plan )  
document and investment policy )  
statement for the 457 deferred )  
compensation plan )

TO: All Concerned Persons

1. On August 11, 2005, the Montana Public Employees' Retirement Board published MAR Notice No. 2-2-359 regarding the proposed amendment of ARM 2.43.1801 and 2.43.1802 concerning the plan document and investment policy statement for the 457 deferred compensation plan at page 1458 of the 2005 Montana Administrative Register, Issue Number 15.

2. The Public Employees' Retirement Board has amended ARM 2.43.1801 and ARM 2.43.1802 exactly as proposed.

3. No comments or testimony were received.

/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 September 26, 2005.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT  
of ARM 4.16.303 and 4.16.701 ) AND ADOPTION  
and adoption of New Rule I )  
relating to the agricultural )  
marketing development program )

TO: All Concerned Persons

1. On August 25, 2005, the Department of Agriculture published MAR Notice No. 4-14-161 regarding the proposed amendment and adoption of the above-stated rules relating to the agricultural marketing development program at page 1532 of the 2005 Montana Administrative Register, Issue Number 16.

2. The agency has amended ARM 4.16.303 and 4.16.701 exactly as proposed.

3. The agency has adopted New Rule I, ARM 4.16.702 exactly as proposed.

4. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

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

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

Certified to the Secretary of State, September 26, 2005.

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

In the matter of the amendment )	CORRECTED NOTICE
of ARM 6.6.504, 6.6.505, )	OF AMENDMENT
6.6.506, 6.6.507, 6.6.507A, )	
6.6.507B, 6.6.507C, 6.6.508, )	
6.508A, 6.6.509, 6.6.510, )	
6.6.511, 6.6.519, 6.6.520, )	
6.6.521, 6.6.608, 6.6.612, )	
6.6.613, and the adoption of )	
New Rules I through III )	
pertaining to medicare )	
supplements )	

TO: All Concerned Persons

1. On September 8, 2005, the department notice of the amendment and adoption of the above-stated rules at page 1672 of the 2005 Montana Administrative Register, Issue Number 17.

2. The corrected notice is being filed to correct words in ARM 6.6.507C that were inadvertently interlined; to correct numbering changes in ARM 6.6.508A that were not changed in accordance with the adoption notice; to correct words inadvertently left out of an application in ARM 6.6.510; and to correct an error in one of the tables in ARM 6.6.511.

3. The rules are corrected as follows with new text underlined, deleted text interlined:

6.6.507C GUARANTEED ISSUE FOR ELIGIBLE PERSONS

(1) through (2)(a) remain as adopted.

(b) The individual is enrolled with a medicare advantage organization under a medicare advantage plan under part C of medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a program of all-inclusive care for the elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a medicare advantage plan:

(c) through (6)(b) remain as adopted.

AUTH: 33-1-313, 33-22-904 and 33-22-905, MCA  
IMP: 33-22-902, 33-22-904 and 33-22-905, MCA

6.6.508A FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES

(1) through (4)(b) remain as adopted.

(5) Except as provided in (5)(a), an issuer shall continue to make available for purchase and policy form or certificate form issued after the effective date of this rule

that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) through (5)(c) remain as adopted.

(d) Any change in the rating structure or methodology shall be considered a discontinuance under ~~(4)~~(5) unless the issuer complies with the following requirements:

(5)(d)(i) through (5)(d)(iii) remain as adopted.

(6) Except as provided in (6)(a) below, the experience of all policy forms or certificate forms of the same type in a standard medicare supplement benefit plan must be combined for purposes of the refund or credit calculation prescribed in ARM 6.6.508.

(a) through (7) remain as adopted.

AUTH: 33-1-313, 33-22-904, 33-22-905 and 33-22-906, MCA  
IMP: 33-22-904 and 33-22-906, MCA

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE (1) through (1)(a) remain as proposed.

(b) (QUESTIONS)

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a medicare supplement policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark yes or no below with an "X"]

To the best of your knowledge:

(1)(a) Did you turn age 65 in the last 6 months?

YES \_\_\_\_\_ NO \_\_\_\_\_

(b) Did you enroll in medicare part B in the last 6 months? YES \_\_\_\_\_ NO \_\_\_\_\_

(c) If yes, what is the effective date? \_\_\_\_\_

(d) Did you enroll in medicare part C in the last 6 months? YES \_\_\_\_\_ NO \_\_\_\_\_

(e) If yes, what is the effective date? \_\_\_\_\_

(f) Did you enroll in medicare part D in the last 6 months? YES \_\_\_\_\_ NO \_\_\_\_\_

(g) If yes, what is the effective date? \_\_\_\_\_

(2) Are you covered for medical assistance through the state medicaid program?

[NOTE TO APPLICANT: If you are participating in a "spend-down" program and have not met your "share of cost," please answer NO to this question.] YES \_\_\_\_\_ NO \_\_\_\_\_ If yes,

(a) Will medicaid pay your premiums for this medicare supplement policy? YES \_\_\_\_\_ NO \_\_\_\_\_

(b) Do you receive any benefits from medicaid other than payments toward your medicare part B premium?

YES \_\_\_\_\_ NO \_\_\_\_\_

(3)(a) If you had coverage from any medicare plan other than original medicare within the past 63 days (for example, a medicare advantage plan, or a medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

Start \_\_\_\_/\_\_\_\_/\_\_\_\_ End \_\_\_\_/\_\_\_\_/\_\_\_\_

(b) If you are still covered under the medicare plan, do you intend to replace your current coverage with this new medicare supplement policy? YES \_\_\_\_\_ NO \_\_\_\_\_

(c) Was this your first time in this type of medicare plan? YES \_\_\_\_\_ NO \_\_\_\_\_

(d) Did you drop a medicare supplement policy to enroll in the medicare plan? YES \_\_\_\_\_ NO \_\_\_\_\_

(4)(a) Do you have another medicare supplement policy in force? YES \_\_\_\_\_ NO \_\_\_\_\_

(b) If so, with what company, and what plan do you have [optional for direct mailers]?

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(c) If so, do you intend to replace your current medicare supplement policy with this policy?

YES \_\_\_\_\_ NO \_\_\_\_\_

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan.) YES \_\_\_\_\_ NO \_\_\_\_\_

(a) If so, with what company and what kind of policy?

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(b) What are your dates of coverage under the other policy? Start \_\_\_\_/\_\_\_\_/\_\_\_\_ End \_\_\_\_/\_\_\_\_/\_\_\_\_

(If you are still covered under the other policy, leave "end" blank.)

(6) Producers shall list any other health insurance policies they have sold to the applicant, including:

(a) Policies sold which are still in force.

(b) Policies sold in the past five years which are no longer in force.

(7) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(8) Upon determining that a sale will involve replacement of medicare supplement coverage, and prior to the issuance or delivery of the medicare supplement policy or certificate, an issuer, other than a direct response insurer, or its producer must furnish the applicant a notice regarding replacement of medicare supplement coverage. One copy of the notice signed by the applicant and the producer, except where coverage is sold without a producer, must be provided to the applicant and an additional signed copy must be retained by the issuer for three years. A direct response issuer shall

deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of medicare supplement coverage.

(9) The notice required by (4) for an issuer must be in substantially the same form as below and be in no less than 12 point type.

(c) remains as proposed.

AUTH: 33-1-313, 33-22-904 and 33-22-907, MCA  
 IMP: 33-15-303, 33-22-904, 33-22-907, 33-22-921, 33-22-922, 33-22-923 and 33-22-924, MCA

6.6.511 SAMPLE FORMS OUTLINING COVERAGE (1) through (2) (h) PLAN G MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR remain as adopted.

PLAN G

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES ---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment First \$[100] of Medicare approved amounts*	\$0	\$0	\$[100] Part B deductible
Remainder of Medicare approved amounts	80%	20%	\$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
---Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
---Number of visits covered (Must be received within 89 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare-approved visits, not to exceed 7 each week	
---Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE through (2) (m) remain as adopted.

AUTH: 33-1-313 and 33-22-904, MCA  
 IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923 and 33-22-924, MCA

4. All other rule changes adopted and amended remain the same.

5. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on September 30, 2005.

JOHN MORRISON, State Auditor  
and Commissioner of Insurance

By: /s/ Alicia Pichette  
Alicia Pichette  
Deputy Insurance Commissioner

By: /s/ Christina L. Goe  
Christina L. Goe  
Rule Reviewer

Certified to the Secretary of State on September 26,  
2005.



BEFORE THE GRANT REVIEW COMMITTEE  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT AND  
and transfer of ARM 14.4.101, ) TRANSFER, TRANSFER, AND  
14.4.102, 14.4.103, 14.4.104, ) REPEAL  
transfer of 14.4.105, 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 August 11, 2005, the Department of Commerce published MAR Notice No. 8-99-47 regarding the public hearing on the proposed amendment and transfer of ARM 14.4.101, 14.4.102, 14.4.103, 14.4.104, transfer of 14.4.105, and the repeal of 14.4.106 pertaining to the award of training grants by the Grant Review Committee at page 1471 of the 2005 Montana Administrative Register, Issue No. 15.

2. The department has amended and transferred, transferred, and repealed the rules as proposed.

3. The rules are being transferred as follows:

<u>OLD</u>	<u>NEW</u>
14.4.101	8.99.801
14.4.102	8.99.802
14.4.103	8.99.803
14.4.104	8.99.804
14.4.105	8.99.805

4. No comments or testimony were received.

GRANT REVIEW COMMITTEE  
DEPARTMENT OF COMMERCE

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

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

Certified to the Secretary of State September 26, 2005

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

In the matter of the repeal ) NOTICE OF REPEAL OF A  
of a temporary emergency ) TEMPORARY EMERGENCY RULE  
rule closing the Clark Fork )  
River from Petty Creek to )  
the Tarkio Fishing Access )  
Site )

TO: All Concerned Persons

1. On August 5, 2005, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing the Clark Fork River from Petty Creek to the Tarkio Fishing Access site. Aircraft used the river to scoop water for dropping on the I-90 complex of forest fires. This situation constituted an imminent peril to the public health, safety, and welfare of anyone using the river. Within the rule the commission delegated its authority to the Department of Fish, Wildlife and Parks to determine, in consultation with the commissioner in the region, when the river was again safe for public use. Notice of this rule action was published on August 25, 2005, at page 1586 of the 2005 Montana Administrative Register, Issue Number 16.

2. The restriction on the river was partially lifted August 12, 2005, when the United States Forest Service changed dip locations and used fire personnel to direct floaters and anglers in order to minimize the hazard. The decision to partially reopen the river was made by the department in consultation with the region commissioner. During the week of August 16, the department in consultation with the region commissioner determined that aircraft were no longer dipping water from the river, so the public safety threat no longer existed. The department then ceased to enforce emergency measures. The formal emergency rule is now repealed.

3. The repeal of the temporary emergency rule is effective at noon September 19, 2005.

BY: /s/ Larry G. Peterman  
Larry G. Peterman, Chief  
of Field Operations for  
the Department of Fish,  
Wildlife and Parks and Acting  
Secretary of the Fish,  
Wildlife and Parks Commission

BY: /s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State September 19, 2005

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of new rules I through VIII )  
pertaining to the establishment )  
of a residential )  
methamphetamine treatment )  
center )

TO: All Concerned Persons

1. On July 28, 2005, the Department of Corrections published MAR Notice No. 20-7-34 pertaining to the proposed adoption of the above-stated rules relating to the establishment of a residential methamphetamine treatment center, at page 1337 of the 2005 Montana Administrative Register, issue number 14.

2. The Department of Corrections has adopted new rules I (20.7.901), II (20.7.904), IV (20.7.907), V (20.7.910), VI (20.7.913), VII (20.7.916), and VIII (20.7.919) as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined. The Department has thoroughly considered all comments received. Two persons commented at the hearing and 11 persons submitted written comments.

3. Legislative Services Division (herein, "LSD") noted an incorrect citation to the enabling legislation set forth in the statement of reasonable necessity. The correct citation is to HB 326 (Ch. 277), L. 2005.

4. LSD commented that the "rules are confusing in that they consistently refer to the establishment of a meth treatment center but apparently are intended to establish standards for the future establishment by a private contractor of a residential treatment center and program or centers and programs." In proposed Rule III, LSD notes that the rule states that the Department will establish the center, but that the remainder of the rules apply to a contracted center. The rules are amended to eliminate this confusion. New Rule III will not be adopted.

5. LSD also commented that "[t]he rules, as drafted, apply to convictions for second (only) offense of possession of methamphetamine while the provisions of HB 326 apply to second and subsequent offenses." Again, the comment is accepted and the definition of "eligible offender" in new Rule I below amended accordingly.

6. Additional comments received that pertained to individual rules and the Department's response to each follow.

NEW RULE I (20.7.901) DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "ACA standards" means American correctional association standards for adult community residential services.

(2) ~~"Center" means the methamphetamine treatment center established pursuant to house bill 326 of the 2005 legislative session.~~ "Aftercare" means the community-based portion of the methamphetamine treatment program to which an offender is committed after successful completion of the residential component of the program.

(3) "Contractor" means ~~the~~ a private, nonprofit Montana corporation organized and incorporated in this state under the Montana Nonprofit Corporation Act, Title 35, chapter 2, MCA, with which the department enters a contract to operate a program ~~the center.~~

(4) remains as proposed.

(5) "Eligible offender" means an offender who has been convicted ~~of~~ and sentenced under 45-9-102(5)(a)(ii), MCA, for a second or subsequent offense of possession of methamphetamine and has been sentenced under 45-9-102, MCA, or an offender deemed appropriate by the department.

(6) "Facility" means a building or a part of a building that houses a residential portion of a methamphetamine treatment program.

~~(6)-(7)~~ "Participant" or "program participant" means an offender approved by the department and local screening committee to participate whom the department of corrections places in the methamphetamine treatment center program.

~~(7)-(8)~~ "Private nonprofit Montana corporation" means a corporation organized and incorporated in this state under the Montana Nonprofit Corporation Act, Title 35, chapter 2, section 113, et seq., MCA, as a nonprofit corporation.

"Program" means only the residential portion of a methamphetamine treatment program established pursuant to HB 326 (Ch. 277), L. 2005 and does not include, for the purposes of this subchapter, the community-based prerelease center portion of the treatment.

~~(8)-(9)~~ "Residential" has the common meaning and refers to the means a minimum of six months housed in a facility providing an intensive therapeutic community model of treatment fact the program participants must live at the treatment facility during treatment, not including after care.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

Comment #1: One person commented that the capitalization convention in the rule notice should be modified to read "American Correctional Association" and "Department of Corrections" instead of "American correctional association" and "Department of corrections" as it appeared in the notice of public hearing on proposed adoption.

Response #1: The rules of the Secretary of State require this capitalization convention.

Comment #2: LSD commented that 45-9-102, MCA, establishes the crime of criminal possession of dangerous drugs, in general, and provides the penalties for the crime, including possession of dangerous drugs other than methamphetamine. LSD suggested that 45-9-102 in the definition of "eligible offender" should refer to 45-9-102(5)(a)(ii) as that is the particular section which provides for the sentence reduction for a second or subsequent possession of methamphetamine conviction. Two comments were received questioning use of the term "center" in the proposed rules when the statute refers to a "program."

Response #2: The comments are accepted and the rules amended accordingly. The reference to "section 113" is deleted as an incorrect reference. Additional changes not affecting substance clarify intent and make the rules easier to read.

Comment #3: LSD commented regarding the ambiguity in the draft rules of the applicability of the sentence reduction to offenders both with respect to (1) the type of conviction and (2) the date of offense and sentencing for second and subsequent convictions of methamphetamine possession.

Response #3: The comment is accepted and the definitions of "eligible offender" and "program participant" are amended accordingly. Additionally, New Rule VI will contain substantive amendments to address this comment.

NEW RULE II (20.7.904) SITING ESTABLISHMENT OF A METHAMPHETAMINE TREATMENT CENTER PROGRAM (1) The department may operate or select a contractor to operate a program in an existing correctional facility. The department may site a residential methamphetamine treatment center in a community if the governing body of the community passes a resolution authorizing the center.

(2) The department may select a contractor to site a facility and operate a program if, after a public hearing conducted by the contractor, the applicable governing body of the community passes a resolution in support of the proposal.

~~(a) If the center will be located inside the city limits, the governing city body must pass the resolution.~~

~~(b) If the center will be located outside any city limits, the governing county body must pass the resolution.~~

~~(2)(3) The center facility must be sited near a civilian population center within at least the following services:~~

~~(a) within 30 minutes emergency response time of a hospital; and~~

~~(b) within 30 minutes emergency response time of a fulltime or volunteer fire department.~~

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

Comment #4: One person commented that the initial siting of a meth treatment center should involve a public hearing as well as the expansion of a meth treatment center as provided later in the rules.

Response #4: The comment is accepted. Any resolution by a local governing body is presumed taken in accordance with the laws requiring public participation in governmental action, nonetheless, the rules are amended accordingly. Subsections (1)(a) and (b) are deleted to avoid redundancy and the reference to the "applicable" governing body inserted in section (1). Additional changes are made in response to comments to clarify the difference between the department itself operating a program and the department entering a contract to provide the facility and programming.

### NEW RULE III

Comment #5: Two persons commented that the rules should be clarified so they are not interpreted to restrict the after-care component to a single prerelease center.

One person commented against specifying the therapeutic community model due to questions of what the most effective treatment is for methamphetamine users. Seven persons commented in support of the therapeutic community model.

Numerous comments requested expansion of the six-month minimum residential treatment to nine or twelve months followed by a period of supervision in a community pre-release setting.

LSD commented that proposed rule III recites 45-9-102 and 53-1-203, MCA in violation of 2-4-305(2), MCA, which provides that rules may not unnecessarily repeat statutory language.

Response #5: The comment from LSD is well-taken and the rule withdrawn. Proposed subsections (2)(a) and (b) are incorporated into Rule I definitions. In response to the other comments, the enabling legislation requires the Department to include in the treatment program time in a residential treatment facility and time in "a community-based prerelease center." This distinction is reflected in the definition of "program" in proposed Rule I. Likewise the intent to operate a therapeutic community model is retained in the definitions, as is the proposed minimum six-month period. By use of the term "minimum," the department retains the ability to operate a residential treatment portion of the program for a longer duration. Finally, the department reserves the right to select one or more prerelease centers to provide the community-based treatment.

NEW RULE IV (20.7.907) PHYSICAL FACILITY REQUIREMENTS OF METHAMPHETAMINE TREATMENT CENTER (1) The methamphetamine

~~treatment center will house offenders in the custody of the department.~~

~~(2)(1) The Any facility housing a program center shall must have controlled access to and egress from the facility and other appropriate security measures so as to prevent unauthorized access to or exit from the facility.~~

~~(3)(2) The center facility and its operation must comply with all applicable federal, state and/or local building codes and fire safety codes.~~

~~(4)(3) The physical plant shall constitute a pleasant, safe, and healthful environment. Participant housing areas must conform to applicable ACA standards, provide access for handicapped inmates participants with qualifying disabilities, and must provide for participant safety and security.~~

~~(5)(4) If the facility center houses both male and female participants, the facility design, construction, and operation center must assure adequate separation of the sexes to provide for the safety of both.~~

~~(6) The center must comply with the Federal Prison Rape Elimination Act.~~

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

Amendments to the rule are made to address comments regarding the confusion presented by use of the term "center" throughout the rules. The phrase "handicapped inmates" is substituted with the legally correct term "qualifying disability" as it refers to "participants," which is the term used elsewhere in the rules. Section (6) is moved to proposed Rule V below.

NEW RULE V (20.7.910) POLICIES AND PROCEDURES (1) ~~The A contractor methamphetamine treatment center must maintain appropriate submit written policies and procedures for initial review and approval by the department prior to opening a facility or program, and update and submit them for annual review by the department thereafter.~~

~~(2) The department must initially approve the center's policies and procedures for operating the center. The center must update its policies yearly and submit them annually for approval by the department thereafter.~~

~~(2)(3) The policyies and procedures must address the following areas and meet the following guidelines:~~

~~(a) for participant funds, the center must accounting for participant trust funds it holds for participants in accordance with accepted accounting procedures;~~

~~(b) for health and safety, the center shall provide participants with reasonable protection against the danger of fire and smoke, injury attributable to the environment, electrical hazards, and the spread of disease and infection. The center contractor must maintain records of inspections by local, state and federal authorities having jurisdiction;~~

~~(c) for confidentiality of participant records and~~

~~information, the center must maintain maintenance of participant records in a manner to assure confidentiality of criminal justice information and treatment information will remain confidential. The center contractor will release confidential information only to the department and appropriate persons;~~

~~(d) for a disciplinary process, the center will maintain an appropriate disciplinary process procedures for alleged rule infractions by participants consistent with the department's disciplinary hearings policies and approved by the department;~~

~~(e) for incarceration of participants, the center will maintain appropriate policies for the incarceration of participants who violate program rules or who await transportation to a higher level of custody;~~

~~(f) for disaster and emergency preparedness, the center will maintain written plans to provide for the continued operation of the facility and program in the event of an employee work stoppage, disaster, or emergency. and written plans that identify the procedures for meeting disasters. The disaster and emergency plans and procedures shall be posted at highly visible locations and explained to each new participant at orientation. The contractor Drills shall be held hold drills at least quarterly to evaluate the effectiveness of disaster the plans and procedures;~~

~~(g) for procedures in the event of an participant escapes, the center shall follow consistent with the department's escape policy policies. concerning escapes and The contractor must notify the proper authorities in a timely fashion so the department can secure an escape warrant;~~

~~(h) for center employees, the contractor must check the preemployment background checks of each center employee staff. and tThe center contractor cannot may not employ anyone with a felony conviction without express written authorization of the department. The contractor must staff the center to conform to applicable ACA standards to protect staff and participants from harm;~~

~~(i) compliance with the Federal Prison Rape Elimination Act;~~

~~(i)(j) for inmate workers, upon approval of the department, the center may employ inmate workers and will have policies and procedures for selection, pay, and supervision of inmate workers assigned to the facility as approved by the department; and~~

~~(j)(k) for food service, the center must meet applicable ACA standards for participant food services and that provide participants with at least the minimum daily adult level of caloric intake and nutritional levels as recommended by the U.S. department of agriculture, subject to annual review and approval by a qualified. A nutritionist, dietician, or physician must annually approve the nutritional value of the food the center serves.~~

AUTH: 53-1-203, MCA



IMP: 45-9-102 and 53-1-203, MCA

Comment #6: One comment suggested that in (3)(h) and (j) the "ACA" qualifier be deleted from description of applicable standards regarding staffing and food service.

Response #6: Because there are also federal, state, and local laws and regulations setting forth standards which may be applicable, the comment is accepted and the language amended accordingly.

NEW RULE VI (20.7.913) ADMISSION TO THE PROGRAM AND AFTERCARE CENTER (1) The department shall recommend for admission to the program eligible offenders and other offenders committed to the custody of the department who the department deems will benefit from the treatment program and who are not otherwise disqualified by their institutional conduct or incapacity to complete treatment. A local screening committee shall determine which eligible offenders it will admit to the center.

(2) A local screening committee, consisting of tThe following individuals, shall review the department's recommendation comprise the screening committee:

- (a) one department employee appointed by the department;
- (b) one person appointed by the center contractor; and
- (c) and (d) remain as proposed.

~~(3) The department shall make applications available to eligible offenders. Generally, all eligible offenders will be accepted into the program, but the screening committee may reject offenders based on the criteria in (6).~~

~~(3)-(4)~~ The screening committee shall have the final determination regarding the admission of any offender candidate to the facility center.

~~(4)-(5)~~ Each committee member shall have one vote. In the case of a tie vote, the center facility administrator will cast a vote to break the tie.

~~(5)-(6)~~ If the committee rejects an offender, the committee must in writing state its reasons for the rejection. The committee may reject offenders ~~only~~ for any of the following reasons:

- (a) the offender presents an unacceptable level of risk to the safety of other offenders or center staff;
- (b) the offender presents an unacceptable level of risk to himself or herself;
- (c) the offender presents an unacceptable escape risk; and or
- (d) the offender has needs beyond services the center can provide.

~~(6)-(7)~~ The committee may rescreen an offender if additional relevant information is presented or after the offender has had a period of stabilization.

(7) Upon successful completion of the residential program as determined in the discretion of the department, the department must place eligible offenders in one or more

prerelease centers to complete the community-based aftercare portion of the treatment program. The department will exercise its discretion to place other offenders who have completed the residential program.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

Comment #7: One comment suggested that the term "contractor" replace "center" in (2)(b). LSD commented that section (4) states generally that all eligible offenders will be accepted into the program and suggests insertion of a reference to space limitations and availability.

Response #7: The comment is well-taken and the rule amended accordingly.

Comment #8: LSD suggested, as a matter of style in section (6), deleting the word "only" and substituting "for any of the following reasons" and substituting "or" for "and" between subsections (c) and (d).

Response #8: The comment is well-taken and the rule amended accordingly.

NEW RULE VII (20.7.916) SENTENCE SUSPENSION (1) The department shall issue a certificate to eligible offenders deemed by the department to have successfully completed both the residential and aftercare portions of treatment within the first three years of the eligible offender's term of commitment. The eligible offender may then petition the sentencing court for suspension of the remainder of the term of sentence. Only offenders not convicted under 45-9-102(5)(a)(ii), MCA, are deemed to be eligible offenders for the purpose of sentence suspension. If a program participant sentenced under 45-9-102, MCA, satisfactorily completes the residential methamphetamine treatment program including the prerelease component during the first three years of the participant's sentence, the remainder of the offender's sentence under 45-9-102, MCA, is suspended.

~~(2) A center established pursuant to these rules is approved by the department for purposes of 45-9-102, MCA.~~

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

Comment #9: LSD commented that section (2) provides blanket approval for purposes of 45-9-102(5)(a)(ii), MCA, to any center established pursuant to the rules, which seems to preclude any site-specific application to the department for approval, any site-specific review, or denial of approval.

Response #9: The comment is well-taken. Additionally, the language in section (1) unnecessarily repeats 45-9-

102(5)(a)(ii), MCA. The new rule is withdrawn, except for the requirement to complete the treatment within three years in order to petition the court for suspension of the remainder of the sentence.

NEW RULE VIII (20.7.919) EXPANSION (1) If the ~~center contractor~~ and the department desire to increase the number of program participants over the number for which the department initially contracts, the department shall conduct a public hearing in the city or county in which the center is situated. The department shall conduct the hearing in conformity with Title 2, chapter 3, MCA.

(2) A resolution in support of the expansion by the applicable governing body of the ~~city or county~~ community in which the ~~center facility~~ is located must also approve of accompany any proposed expansion contemplated in (1) by passing a resolution to that effect.

AUTH: 53-1-203, MCA

IMP: 45-9-102 and 53-1-203, MCA

The changes to proposed Rule VIII are in response to comments involving use of the term "center," and to clarify in section (2) that local government support is a prerequisite to expansion.

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

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

Certified to the Secretary of State September 27, 2005.

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

In the matter of the amendment )  
and transfer of ARM 8.50.423, )  
8.50.424, 8.50.427 through )  
8.50.433, and 8.50.438 and )  
the repeal of ARM 8.50.425, )  
8.50.437, and 8.50.501 through )  
8.50.506, pertaining to private )  
security patrol officers and )  
investigators, the adoption of )  
New Rule I, fee schedule and )  
New Rule II, firearms training )  
course curriculum and standards, )  
and the transfer of ARM 8.50.101, )  
8.50.201, 8.50.202, 8.50.426 and )  
8.50.801 )

TO: All Concerned Persons

1. On April 28, 2005, the Board of Private Security Patrol Officers and Investigators published MAR Notice No. 8-50-29 regarding the public hearing on the proposed amendment and transfer, adoption and repeal of the above-stated rules, at page 605 of the 2005 Montana Administrative Register, issue no. 8.

2. On May 19, 2005, at 9:00 a.m., a public hearing was conducted in Helena, Montana to consider the proposed amendment and transfer, adoption and repeal of the above-stated rules.

3. The Board thoroughly considered all of the comments received. A summary of the comments received and the Board's responses are as follows:

Comment 1: Two commenters suggested that the rules should be organized into sections pertaining specifically to each type of profession regulated by the Board, as this separation would better serve all licensees.

Response 1: The Board notes that the current organization of the Board rules complies with the acceptable format utilized in the Administrative Rules of Montana. The Board declines to alter the organization of the rules at this time.

Comment 2: One commenter opposed the restriction on temporary permit holders in ARM 8.50.424/24.182.507 from having access to firearms in (3)(b) as too broad, unconstitutional and vague in the meaning of "access."

Response 2: Following consideration of the comment, the Board notes that the intent behind the restriction of temporary permit holders' use of firearms is solely to protect the public. The Board is amending the rule to remove the overbroad restriction of "access" to firearms.

Comment 3: A commenter opposed the proposed change in ARM 8.50.429/24.182.505 to allow the Board to waive the written examination requirement, stating that uniform testing is a fundamental base for professional licensing. The commenter asserted that all private investigator applicants should have to take the examination to fully protect the public.

Response 3: The Board considered the comment and notes that the amendment does not remove the written examination requirement for any licensure type. The amendment merely allows the Board to waive the examination requirement upon applicant request and in the specific instances where the Board determines that sufficient experience is present to ensure the adequate protection of the public. The Board is amending the rule to clarify that the waiver may be of a full examination required or any portion of an examination.

Comment 4: One commenter opposed the proposed increase in the minimum level of insurance coverage for private investigators, stating that insurance protects the person paying the insurance premium, not a person filing a claim. The commenter further stated that private investigators do not perform functions akin to law enforcement and private investigators should not be lumped together with security companies in the insurance requirements.

Response 4: The Board is statutorily mandated to adopt and enforce rules requiring licensees to file insurance policies with the Board, pursuant to 37-60-202, MCA. The Board increased the minimum insurance limits following lengthy discussion and suggestions from private investigators and private security companies and receipt of information from the insurance industry. The Board decided on the uniform minimum levels of insurance in an attempt to lessen confusion among licensees and to move toward consistency within the rules.

Comment 5: One commenter supported the insurance requirement specifically for contract security and armored car services and suggested the minimum insurance limit be increased from what the Board has proposed.

Response 5: The Board acknowledges the comment and notes that the limits are a minimum guideline and any policy with greater limits would be in compliance with the rule. The Board has determined to amend the rule as proposed.

Comment 6: One commenter opposed the \$25 fee for armed status licensure proposed in New Rule I. The commenter stated that charging the armed status fee at the time of initial licensure is acceptable, but that at renewal it is neither warranted nor justified and that most of the licensing fees at renewal should be paid by the companies, not their employees.

Response 6: The Board proposed the additional fee for armed status to cover the additional licensure steps for armed licensees both at time of initial licensure and at renewal. The Board also notes that between companies and employees, the individual employee holds and maintains the armed status.

Comment 7: One commenter suggested changing the term "weapon" to "firearm," as used throughout section (2) of New Rule II to accomplish consistent use of the term in the title and the rule. The commenter also pointed out that "weapon" has a much broader meaning than "firearm."

Response 7: The Board acknowledges the comment and agrees that the term should be "firearm" as used throughout section (2). The Board is amending the rule accordingly.

Comment 8: One commenter suggested changing the phrase "finger on trigger" in subsection (2)(b)(iv) of New Rule II to "finger off trigger," to coincide with the purpose to train firearms handlers to keep their finger off the trigger until a decision to shoot is made.

Response 8: The Board acknowledges the comment and notes that the purpose of the required curriculum for firearms training courses is to teach firearm safety. The Board determined there is no need to change the rule in order to comply with current industry courses or instructors. The Board is adopting the rule as proposed.

Comment 9: One commenter suggested that New Rule II should require firearm safety training in both administrative firearm handling and tactical handling. The commenter also suggested a need for sections on shoot/no-shoot decision-making and tactical shooting.

Response 9: It is not the Board's intention to dictate the specific portions of the required firearms courses, but to provide basic guidelines as to minimum course requirements. The Board reserves the choice of specific components of the courses to the qualified and certified firearms instructors. The Board is adopting the rule as proposed.

4. After consideration of the comments, the Board has amended and transferred ARM 8.50.423 (24.182.301), 8.50.427 (24.182.501), 8.50.428 (24.182.503), 8.50.430 (24.182.403), 8.50.431 (24.182.405), 8.50.432 (24.182.407), 8.50.433 (24.182.513), and 8.50.438 (24.182.511) exactly as proposed.

Additionally, after consideration of the comments, the Board has adopted NEW RULE I (24.182.401) and repealed ARM 8.50.425, 8.50.437, 8.50.501, 8.50.502, 8.50.503, 8.50.504, 8.50.505, and 8.50.506 exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 8.50.424 (24.182.507), 8.50.429 (24.182.505), and adopted NEW RULE II (24.182.801) with the following changes, stricken matter interlined, new matter underlined:

8.50.424 (24.182.507) TEMPORARY PERMIT (1) and (2) remain as proposed.

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

- (a) wear, carry, or possess firearms; or
- (b) ~~have access to firearms; or~~
- ~~(c)~~ have unsupervised access to valuables.

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

8.50.429 (24.182.505) WRITTEN EXAMINATION (1) through (7) remain as proposed.

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

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

NEW RULE II (24.182.801) CURRICULUM AND STANDARDS FOR FIREARMS TRAINING COURSES (1) remains as proposed.

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

- (a) ~~weapon~~ firearm familiarization, including:
    - (i) safety levers;
    - (ii) decocking levers;
    - (iii) magazine release;
    - (iv) slide-lock release; and
    - (v) reloading;
  - (b) safe handling of the ~~weapon~~ firearm, emphasizing:
    - (i) negligent discharge;
    - (ii) muzzle direction;
    - (iii) dropping a ~~weapon~~ firearm;
    - (iv) finger on trigger;
    - (v) proper grip;
    - (vi) sight picture;
    - (vii) proper holstering;
    - (viii) ~~weapon~~ firearm retention;
- (2)(b)(ix) through (3) remain as proposed.

AUTH: 37-60-202, MCA

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

6. The Board has transferred ARM 8.50.101, 8.50.201, 8.50.202, 8.50.426 and 8.50.801 as follows:

<u>OLD</u>	<u>NEW</u>
8.50.101	24.182.101
8.50.201	24.182.201
8.50.202	24.182.202
8.50.426	24.182.413
8.50.801	24.182.2301

7. In the proposal Notice the new chapter number was inadvertently listed as Chapter 186. The Department has determined that in order to keep the boards and programs in alphabetical order the chapter for Private Security Patrol Officers and Investigators should be numbered 182.

BOARD OF PRIVATE SECURITY PATROL  
OFFICERS AND INVESTIGATORS  
RAY MURRAY, PhD, 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 September 26, 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<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2005. This table includes those rules adopted during the period July 1, 2005 through September 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 June 30, 2005, this table, and the table of contents of this issue of the MAR.

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

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

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