ISSUE NO. 9

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.59.1409 pertaining to duration of loans - interest - extensions	) NOTICE OF PROPOSED) AMENDMENT)) NO PUBLIC HEARING) CONTEMPLATED

TO: All Concerned Persons

1. On June 5, 2006, the Division of Banking and Financial Institutions proposes to amend the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who 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 May 31, 2006, 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. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.59.1409 DURATION OF LOANS – INTEREST – EXTENSIONS

(1) remains the same.

(2) The loan agreement may provide for automatic 30-day renewal periods beyond the original term if principal and interest are not paid in full on the maturity date. Any automatic 30-day renewal period must be clearly stated on the face of the loan agreement in bold, capital letters. In addition to any other disclosures that may be required by law, licensees must provide the borrower, in the original title loan agreement or by addendum, a statement of the principal and interest due over a six-month period if the borrower fails to make any payments as set forth in Illustration A. Such statement must be initialed by the borrower at the time of the original loan and include the borrower's affirmation that the borrower has been shown and read the statement.

Illustration A

	Principal	Interest Per Month at 25%	Accrued Interest at 25%	Total Amount Due
Original Loan	$500.00	$125.00	$125.00	$625.00
Renewal 1	$500.00	$125.00	$250.00	$750.00
Renewal 2	$500.00	$125.00	$375.00	$875.00

Renewal 3	$500.00	$125.00	$500.00	$1,000.00
Renewal 4	$500.00	$125.00	$625.00	$1,125.00
Renewal 5	$500.00	$125.00	$750.00	$1,250.00
~~Renewal 6~~	~~$500.00~~	~~$125.00~~	~~$875.00~~	~~$1,375.00~~

(3) through (6) remain the same.

AUTH: 31-1-802, MCA
IMP: 31-1-816, MCA

4. REASONABLE NECESSITY: The Division of Banking and Financial Institutions has determined that it is necessary to amend Illustration A within ARM 2.59.1409. In particular, Renewal 6 within Illustration A is out of compliance with section 31-1-816(2)(d)(i), MCA. That statute states that a title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan. The principal indicated in Renewal 6 should be reduced by 10% to be in compliance with the statute. Illustration A demonstrates how interest accrues on a title loan when no payments are made on a title loan that is renewed for additional 30-day periods. The division is deleting Renewal 6 because the original loan through Renewal 5 provides an example of a six-month period when the borrower fails to make any payments when renewing a title loan.

5. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing 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 5:00 p.m., June 2, 2006.

6. If persons who are directly affected by the proposed amendment wish to present their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have 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 5:00 p.m., June 2, 2006.

7. If the division receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those who are directly affected by the proposed amendment, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has

been determined to be four based on the number of title loan licensees as of publication of this notice.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at http://banking.mt.gov under "Administrative Rule Notices." The department strives to make the electronic copy of this Notice of Proposed Amendment 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.

9. 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, Ste. 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.

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

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

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

Certified to the Secretary of State April 24, 2006.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.111.409 pertaining to cash advances made to borrowers or third parties	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 6, 2006, the Board of Housing proposes to amend ARM 8.111.409 concerning cash advances made to borrowers or third parties.

2. The Board of Housing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Housing no later than 5:00 p.m. on May 30, 2006, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, 301 South Park Ave., P.O. Box 200528, Helena, MT 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; e-mail dihall@mt.gov.

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

8.111.409 CASH ADVANCES (1) As part of the loan amount, the board may advance at closing either to the borrower or to third parties as directed by the borrower, an amount not to exceed ~~$10,000~~ $30,000 to allow the borrower to satisfy any liens on the property or make repairs to the property, and in addition, a maximum amount not to exceed the actual closing costs for items such as, but not limited to, appraisals, title policies, recording of documents and other closing costs. The board may also advance at closing either to the borrower or to third parties as directed by the borrower, an amount in excess of the above advance of ~~$10,000~~ $30,000 as approved by the board on a case-by-case basis. Such amounts so advanced shall be added to the initial loan balance. To receive a cash advance, the borrower must submit a request in writing on forms supplied by the board.

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

REASON: Amendment of the above rule is necessary because the number of requests that exceed $10,000 has increased substantially and the board has determined that staff does not need to come before the board on each request up to the $30,000. The board has administratively increased the maximum loan amount from $100,000 to $150,000 and decided the initial lump sum should be raised as well. Staff will continue to keep the board informed on a semi-annual basis about

the lump sums requested under $30,000 and present the board with any requests over the $30,000.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Board of Housing, 301 South Park Ave., P.O. Box 200528, Helena, MT 59620-0528, by facsimile to (406) 841-2841, or by e-mail to mrude@mt.gov to be received no later than 5:00 p.m., June 1, 2006.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Housing, 301 South Park Ave., P.O. Box 200528, Helena, MT 59620-0528, by facsimile to (406) 841-2841, or by e-mail to mrude@mt.gov to be received no later than 5:00 p.m., June 1, 2006.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,000 based on the 20,000 persons who could benefit from this program.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at http://commerce.mt.gov. The department strives to make the electronic copy of this Notice of Proposed Amendment 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 maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding single family housing programs, multifamily housing programs, affordable housing revolving loan account, or general procedural rules. The written request may be mailed or delivered to the Board of Housing, Montana Department of Commerce, P.O. Box 200528, Helena, MT 59620-0528, faxed to the board at (406) 841-2841, e-mailed to dihall@mt.gov or submitted at any rules hearing held by the board.

9. The Board of Housing will meet in Helena on June 6, 2006, at 1:00 p.m. to consider the comments made by the public, the proposed responses to those comments, and to take final action on the proposed amendment. The meeting will be held in conjunction with the board's regular meeting. Members of the public are welcome to attend the meeting and listen to the board's deliberations, but the board cannot accept any comments concerning the proposed amendment beyond the June 1, 2006, deadline.

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

DEPARTMENT OF COMMERCE
BOARD OF HOUSING

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 April 24, 2006

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

In the matter of the adoption of new rules I through IV; the amendment of ARM 12.9.802; the repeal of ARM 12.9.801 and 12.9.808; and the transfer of ARM 12.9.810 pertaining to game damage hunts, management seasons, and game damage response and assistance	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) will hold public hearings to consider the adoption of new rules I through IV; the amendment of ARM 12.9.802; the repeal of ARM 12.9.801 and 12.9.808; and the transfer of ARM 12.9.810 pertaining game damage hunts, management seasons, and game damage response and assistance. The hearing dates and places are as follows:

June 7, 2006, 7 p.m.
Fish, Wildlife and Parks
Region 5 Headquarters
2300 Lake Elmo Drive
Billings, MT

June 8, 2006, 7 p.m.
Red Lion Hotel Butte
2100 Cornell Avenue
Butte, MT

June 14, 2006, 7 p.m.
Fish, Wildlife and Parks
Region 4 Headquarters
4600 Giant Springs Road
Great Falls, MT

June 15, 2006, 7 p.m.
Fish, Wildlife and Parks
Region 2 Headquarters
3201 Spurgin Road
Missoula, MT

2. The commission 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 commission no later than 5:00 p.m. on May 16, 2006, to advise us of the nature of

the accommodation that you need. Please contact Shelly Juvan, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2062; fax (406) 444-3023; or e-mail sjuvan@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I PUBLIC HUNTING ELIGIBILITY REQUIREMENT (1) To qualify for game damage assistance in accordance with 87-1-225, MCA, a landowner must allow public hunting or not significantly reduce public hunting through imposed restrictions during established hunting seasons, including the general big game season. The department shall make determinations of eligibility based on the criteria set out in this rule. For eligibility, public hunting must be allowed at levels and in ways sufficient to effectively aid in management of area game populations. Restrictions that may significantly restrict public hunting include:

(a) species or sex of animals hunters are allowed to hunt;

(b) portion of land open to hunting;

(c) time period land is open to hunting;

(d) fees charged; or

(e) other restrictions that render harvestable animals inaccessible.

(2) The department may provide game damage assistance when unique or special circumstances render public hunting inappropriate.

AUTH: 87-1-225, MCA
IMP: 87-1-225, MCA

NEW RULE II GAME DAMAGE HUNTS (1) Damage hunts are carried out according to the following policies and procedures:

(a) during the season-setting process, the department requests that the commission tentatively approve a specified number of antlerless deer, antlerless elk, and doe/fawn antelope licenses for potential game damage occurring between August 15 and February 15; and

(b) if the regional supervisor determines that a damage hunt is necessary before, during, or after the general hunting season, the regional supervisor must obtain approval of the commissioner in whose district the game damage hunt is proposed prior to implementing the hunt. If the commissioner is not available, then the regional supervisor may request approval from the chairman of the commission or, in his absence, any other commissioner.

(2) The following conditions apply to game damage hunts:

(a) damage hunts may only occur between August 15 and February 15;

(b) damage hunts may be authorized when there are enough animals involved on the landowner's property to justify the use of public hunting, but numbers of animals and size of affected area does not qualify for implementation of a management season, as outlined in [NEW RULE IV];

(c) damage hunts may be authorized when hunting will occur only on property where public hunting during the general season qualifies the property for game damage assistance under 87-1-225, MCA, and [NEW RULE I] and on approved adjacent or nearby legally-accessible state or federal land;

(d) damage hunts may be authorized when the game damage is a recurring problem and animals causing the problem are normally unavailable during the general hunting season;

(e) a game damage hunt roster must be established in accordance with [NEW RULE III] for use in identifying hunters eligible to participate in game damage hunts. If sufficient eligible hunters cannot be identified through the game damage hunt roster, the department may identify eligible hunters through other established means of hunter selection, including first-come, first-serve advertised opportunities and unsuccessful special permit applicant lists;

(f) unless stated otherwise, participants in a damage hunt shall possess a valid unused license, permit, or damage hunt permit for the species being hunted;

(g) a person who is contacted by the department for the purpose of a damage hunt may waive the opportunity to participate, but may not be considered again until all other interested persons have been contacted; and

(h) any weapons restrictions or area closures that apply during general hunting seasons to areas included in game damage hunts will also apply to hunting conducted during game damage hunts in those same areas.

AUTH: 87-1-225, MCA
IMP: 87-1-225, MCA

NEW RULE III GAME DAMAGE HUNT ROSTER (1) A game damage hunt roster will be utilized to provide a list of hunters available to participate in game damage hunts and management seasons, according to the following procedures:

(a) hunters interested in participating in game damage hunts and management seasons will apply through the department website between June 15 and July 15 annually. A roster will be established through a computerized random selection of applicant names, with roster results being made available on-line by August 1 annually. Hunters without internet access may apply at any department regional or Helena office between June 15 and July 15 annually;

(b) hunters may apply only for one antelope hunting district, one deer hunting district, and one elk hunting district;

(c) resident and nonresident hunters must possess a valid unused antelope, deer, or elk license specific to the species being hunted to participate in a game damage hunt or management season; and

(d) nonresident hunters who possess a valid unused antelope, deer, or elk license may comprise up to 10% of the total game damage hunt roster pool of hunters for a specific game damage hunt or management season.

(2) If sufficient hunters to participate in a game damage hunt or management season for a hunting district cannot be identified from that district's game damage hunt roster, hunters on the roster from an adjacent hunting district may be selected.

AUTH: 87-1-225, MCA
IMP: 87-1-225, MCA

NEW RULE IV MANAGEMENT SEASONS (1) A management season may be implemented on lands eligible for assistance. A management season is a

proactive measure to prevent or reduce potential damage caused by large concentrations of game animals resulting from seasonal migrations, extreme weather conditions, restrictive public hunting access on adjacent or nearby properties, or other factors. The department shall make determinations of eligibility based on the criteria set out in this rule. To qualify for a management season, a landowner must allow public hunting or not significantly reduce public hunting through imposed restrictions during established hunting seasons, including the general big game season. For eligibility, public hunting must be allowed at levels and in ways sufficient to effectively aid in management of area game populations. Restrictions that may significantly restrict public hunting include:

(a) species or sex of animals hunters are allowed to hunt;

(b) portion of land open to hunting;

(c) time period land is open to hunting;

(d) fees charged; and

(e) other restrictions that render harvestable animals inaccessible.

(2) Upon receiving conditional approval from the director to proceed with a management season proposal, the regional supervisor must obtain the approval of the commissioner in whose district the management season is proposed prior to implementing the season. If the commissioner is not available, then approval will be requested from the chairman of the commission, or in his/her absence, any other commissioner.

(3) Management seasons may be implemented under the following conditions:

(a) hunting occurs during the time period August 15 through February 15;

(b) season will provide for dispersal and limited harvest of animals;

(c) hunting will include opportunities for specified numbers of hunters to harvest either-sex and antlerless game animals;

(d) size of affected area and number of animals exceeds that which can be more appropriately addressed through game damage measures outlined in ARM 12.9.802;

(e) hunting will occur only on lands eligible for assistance under (1) and approved legally-accessible state or federal land; and

(f) any weapons restrictions and area closures that apply during general hunting seasons to areas included in management seasons will also apply to hunting conducted during management seasons in those same areas.

(3) Hunters eligible to hunt during a management season will be selected from the game damage hunt roster under procedures outlined in [NEW RULE III]. If sufficient numbers of hunters cannot be identified through use of the game damage hunt roster, the department may utilize other established means of hunter selection, including first-come, first-serve advertised opportunities and unsuccessful special permit applicant lists.

AUTH: 87-1-225, MCA
IMP: 87-1-225, MCA

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

12.9.802 GAME DAMAGE (1) By law, the Department of Fish, Wildlife and Parks is required to respond to all big game damage complaints. General hunting seasons are the primary tool to deal with animals causing or having the potential to cause game damage. Landowners who allow public hunting and do not impose restrictions that significantly reduce public hunting qualify for game damage assistance.

(2) The department investigates damage complaints and arranges to study the situation as soon as possible, and within 48 hours of the filing of the complaint. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions may be made if complainant is agreeable to a longer waiting period.

(3) The department ~~of fish, wildlife and parks~~ investigates all damage complaints under this policy with the exception of (4). A phone call or on-site visit constitutes an immediate response under this provision.

(4) remains the same.

(5) In response to ~~legitimate~~ damage complaints qualifying for assistance under 87-1-225, MCA, and [NEW RULE I], a regional supervisor may address the problem in the following ways:

~~(a) special seasons may be used under the following conditions:~~

~~(i) during the time period of August through February;~~

~~(ii) when reasonable hunter access is available to allow for harvest of problem animals;~~

~~(iii) when there are enough animals involved to justify public hunting; and~~

~~(iv) when the game damage is a recurring problem, and animals are normally unavailable during the general hunting season;~~

~~(b)~~ (a) herding may be employed as a temporary measure;

~~(c)~~ (b) a variety of animal dispersal methods may be employed, such as airplanes, snowmobiles, cracker shells, and scareguns;

~~(d)~~ (c) repellents ~~such as bloodmeal~~ may be employed as temporary solutions;

~~(e)~~ (d) fencing options may be utilized if the problem is chronic and involves haystacks:

(i) through (iv) remain the same.

~~(f)~~ (e) a kill permit may be considered to be the best immediate solution and may be activated without first exhausting any of the previously mentioned methods. Authorization for kill permits is issued by regional supervisors;

~~(g)~~ (f) the department, through the regional supervisor or designated staff, has the discretion to issue supplemental game damage licenses for antlerless animals to hunters as an alternative to a kill permit being issued to a landowner. Supplemental game damage licenses administrative procedures are outlined in ARM 12.9.805;

(g) damage hunts may be used to address site-specific damage problems in accordance with [NEW RULE II];

(h) netting or mechanical devices may be used to reduce tree damage; and

(i) archery, shotgun, ~~and/or~~ muzzle loader weapons, or other weapons may be used as an alternative hunting method when rifle hunting poses a threat to the safety and welfare of persons or property.

(6) and (7) remain the same.

AUTH: 87-1-225, MCA
IMP: 87-1-225, MCA

5. ARM 12.9.801 (AUTH: 87-1-225, MCA; IMP: 87-1-225, MCA) which can be found on page 12-851 of the Administrative Rules of Montana, and ARM 12.9.808 (AUTH: 2-4-102, 87-1-301, MCA; IMP: 2-4-102, 87-1-301, MCA) which can be found on page 12-857 of the Administrative Rules of Montana, are proposed to be repealed because both rules will be redundant and outdated if the commission adopts this rulemaking proposal.

6. The rule proposed to be transferred will be numbered as follows:

OLD	NEW
12.9.810	12.9.1105

7. Rationale: In accordance with 87-1-301, MCA, the commission is granted rulemaking authority to establish hunting season dates and structures. In February 2006, the commission reaffirmed that the five-week general elk and deer season structure was the primary tool for managing deer and elk populations. Concurrent with this action, the commission eliminated many customized early and late season types that varied widely from hunting district to hunting district and added complexity to the regulations. Over time, these customized seasons had generally failed to achieve department elk population management objectives. Many of these customized seasons had been instituted initially as a means of trying to address localized game damage problems, but over time had failed to achieve game population management objectives. Based on the failure to meet population objectives and continued complaints from hunters about the increased complexity of big game regulations, the commission adopted a standardized five-week general hunting season structure with the ability to extend that season if necessary to meet population objectives. As part of that process, the commission is proposing a new rule for a new process to implement management seasons on a localized basis to provide for dispersal and limited harvest of animals outside of the general or extended hunting season. The commission is also proposing rules and rule changes creating a new streamlined process for implementing game damage hunts, consistent with game damage statutes. The commission believes a more streamlined game damage process will enable the department to respond more efficiently when game damage situations arise.

The commission proposes to replace ARM 12.9.801 with new rule II which outlines new procedures for conducting game damage hunts, and new rule III, which establishes a new process for developing a game damage hunt roster to identify hunters available to participate in game damage hunts and management seasons.

The purpose of the new process is to establish a roster system that is easier for hunters to use and understand. The new system should allow the department to organize a game damage hunt or management season more efficiently. Changes to ARM 12.9.802 are proposed to make the rule more current with established game damage program procedures. The commission thinks it is reasonably necessary to propose new rule I to further clarify the public hunting eligibility requirements established under 87-1-225, MCA, for landowners seeking game damage assistance. The department will use the criteria established in new rule I to determine landowner eligibility for game damage assistance. The commission proposes to repeal ARM 12.9.808 because the adoption of the five-week season structure renders the current rule invalid. New rule IV is proposed to establish a new process used to implement management seasons on a localized basis. This rule is necessary to provide for dispersal and limited harvest of animals outside the general or extended hunting season. Additionally, current ARM 12.9.810, with no changes, is proposed for transfer to new subchapter 11 since season extensions are not a part of the game damage program.

8. 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 Alan Charles, P.O. Box 200701, Helena, Montana 59620-0701; phone (406) 444-3798; fax (406) 444-3023; or e-mail acharles@mt.gov and must be received no later than June 2, 2006.

9. Rebecca Dockter or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

10. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. 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.

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

/s/ Steve Doherty
Steve Doherty
Chairman, Fish, Wildlife and Parks Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State April 24, 2006

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.740 and 17.8.767 pertaining to definitions and incorporation by reference, and the adoption of New Rules I and II pertaining to mercury emission standards and mercury emission credit allocations	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (AIR QUALITY)

TO: All Concerned Persons

1. On May 31, 2006, at 9:00 a.m., at the Great Falls Civic Center - Commission Chambers, 2 Park Drive South, Great Falls, Montana and on June 1, 2006, at 8:00 a.m. at MSU Billings - Student Union Building, 1st Floor - Ballroom, 1500 University Drive, Billings, 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., May 22, 2006, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.8.740 DEFINITIONS For the purposes of this subchapter:

(1) "Alternative mercury emission limit" means a mercury emission limit for a mercury-emitting generating unit, established by the department in a permit issued or modified pursuant to 75-2-211, MCA, in lieu of compliance with [NEW RULE I(1)(a)].

(1) remains the same, but is renumbered (2).

(3) "Commercial operation" means the time when the owner or operator supplies electricity for sale.

(2) through (7) remain the same, but are renumbered (4) through (9).

(10) "Mercury" means mercury or mercury compounds in either a gaseous or particulate form.

(11) "Mercury-emitting generating unit" means any emitting unit at a facility for which an air quality permit is required pursuant to 75-2-211 or 75-2-217, MCA, that generates electricity and combusts coal, coal refuse, or a synthetic gas derived from coal in an amount greater than 10% of its total heat input, calculated on a rolling 12-month time period, and that is subject to 40 CFR 60, subpart HHHH.

(8) through (15)(b) remain the same, but are renumbered (12) through (19)(b).

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

17.8.767 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) through (c) remain the same.

(d) 40 CFR Part 60, specifying standards of performance for new stationary sources, except for 40 CFR 60.4101-4176, subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units;

(e) 40 CFR 60.4101-4176, subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units, except for 40 CFR 60.4141-4142, until December 31, 2014. The adoption and incorporation by reference of 40 CFR Part 60, subpart HHHH, is not effective after December 31, 2014.

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

(2) through (4) remain the same.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, 75-2-215, MCA

4. The proposed new rules provide as follows:

RULE I MERCURY EMISSION STANDARDS FOR MERCURY-EMITTING GENERATING UNITS (1) Except as provided in (3) through (7), the owner or operator of a mercury-emitting generating unit shall:

(a) beginning January 1, 2010, or when commercial operation has begun, whichever is later, limit mercury emissions from the mercury-emitting generating unit to an emission rate equal to or less than 0.9 pounds of mercury per trillion Btu, calculated as a rolling 12-month average;

(b) for a facility for which the department has issued a Montana air quality permit, submit an application to the department for a modification of the Montana air quality permit for the facility pursuant to 75-2-211 or 75-2-217, MCA, to establish the mercury emission limit from (1)(a) as a condition of the permit and provide an analysis with respect to the facility's mercury control plan by January 1, 2009, or 12 months prior to beginning commercial operation, whichever is later;

(c) by January 1, 2010, or when commercial operation has begun, whichever is later, operate equipment that is projected, as determined by the department, to meet the standard in (1)(a).

(2) If the owner or operator of a mercury-emitting generating unit properly installs and operates control technology or boiler technology, or follows practices projected to meet the mercury standard in (1)(a), and the control technology, boiler technology, or practices fail to meet the emission rate required in (1)(a), the owner or operator:

(a) shall notify the department of the failure by April 1, 2011, or within 15

months after commercial operation has begun, whichever is later; and

(b) may file an application with the department for a permit or permit modification pursuant to 75-2-211, MCA, to establish an alternative mercury emission limit. The application must be filed by July 1, 2011, or within 18 months after commercial operation has begun, whichever is later, and must include all monitoring data, obtained pursuant to (9), for the mercury-emitting generating unit.

(3) The department may establish an alternative mercury emission limit only if the owner or operator applies for, or has applied for, a permit under 75-2-211, MCA, that requires boiler technology, mercury-specific control technology, or practices that the department determines constitute a continual program of mercury control progression able to achieve the mercury emission rate requirement of (1)(a). The department may not establish an alternative mercury emission limit that would cause an exceedance, after December 31, 2014, of the state of Montana's electrical generating unit mercury budget established by EPA.

(4) An alternative mercury emission limit established in a permit issued pursuant to 75-2-211, MCA, expires four years after the date of the department's decision establishing the alternative mercury emission limit.

(5) The owner or operator of a mercury-emitting generating unit, for which the department has established an alternative mercury emission limit, may file an application with the department for a modification of the air quality permit for the facility, pursuant to 75-2-211, MCA, to establish a new alternative mercury emission limit. The application must be filed with the department at least three months prior to expiration of the alternative mercury emission limit. If such an application is filed, the failure of the owner or operator of the mercury-emitting generating unit to have a new alternative mercury emission limit for the unit prior to expiration of the existing alternative mercury emission limit is not a violation of this rule until the department takes final action on the permit application, except as otherwise stated in this rule.

(6) For any application for a new alternative mercury emission limit under (5), the department shall review the mercury-emitting generating unit's existing alternative mercury emission limit and program of mercury control, associated data, and available mercury control technologies, and may establish the same, or a more stringent, alternative mercury emission limit, based upon data regarding the demonstrated control capabilities of the type of control technology or boiler technology installed and operated at the mercury-emitting generating unit, if the data supports the new alternative mercury emission limit. The department may not establish a less stringent alternative mercury emission limit pursuant to this section.

(7) If an owner or operator has timely notified the department of failure to comply with (1)(a), files a complete application for an alternative mercury emission limit, and operates and maintains the mercury-emitting generating unit, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing mercury emissions, the department may not initiate an enforcement action for violation of (1)(a) between the date when (1)(a) became applicable and the date of the department’s decision on the application for an alternative emission limit, if the department establishes an alternative emission limit.

(8) If more than one mercury-emitting generating unit is located at a facility, the owner or operator may demonstrate compliance with the requirements of (1)(a)

or an alternative emission limit on a facility-wide basis. An owner or operator choosing to demonstrate compliance with this rule on a facility-wide basis shall report the information required in (10) on a facility-wide basis.

(9) The owner or operator of a mercury-emitting generating unit shall monitor compliance, pursuant to 40 CFR 60.48(a) through 60.52(a) and 40 CFR 75 subpart I, with the mercury emission standard applicable under this rule or any alternative emission limit. Any continuous emissions monitors used must be operated in compliance with 40 CFR Part 60, Appendix B.

(10) The owner or operator of any mercury-emitting generating unit shall report to the department within 60 days after the end of each calendar quarter, on forms as may be prescribed by the department:

(a) the monthly average mercury emission rate, for each month of the quarter; and

(b) the percentage of time the mercury emission monitoring method was operating during the quarter.

AUTH: 75-2-203, 75-2-204, 75-2-211, MCA
IMP: 75-2-211, MCA

NEW RULE II MERCURY ALLOWANCE ALLOCATIONS UNDER CAP AND TRADE BUDGET (1) The department shall submit to EPA mercury allowance allocations as described below.

(a) For mercury-emitting generating units for which commercial operation commenced before January 1, 2001, the department shall submit allowance allocations by October 31, 2006, for the control period years of 2010, 2011, and 2012, and by October 31, 2009, and October 31 of each year thereafter for the fourth control period year after the year of the notification deadline in a format prescribed by EPA and in accordance with (2) and (3).

(b) For mercury-emitting generating units for which commercial operation commenced after January 1, 2001, the department shall submit allowance allocations by October 31 of the control period year for which the mercury allowances are allocated.

(c) If the department fails to submit to EPA the mercury allowance allocations in accordance with (1), the allocations of mercury allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period.

(2) The mercury allowance shall be calculated by multiplying the applicable numerical limitation below by the maximum (nameplate) heat input value (in MMBtu/hr) for a specific mercury emitting generating unit and multiplying that value by 8760 hours per year to determine an annual allocation value. The calculation result will be rounded to the next whole allowance as appropriate.

(a) Mercury allowances shall be allocated, pursuant to (1), to the owner or operator of a mercury-emitting generating unit on the following basis:

(i) For the owner or operator of a mercury-emitting generating unit for which commercial operation commenced before January 1, 2001, and that does not combust lignite, the mercury allocation shall be based on an emission rate equal to 2.4 pounds of mercury per trillion Btu. For the owner or operator of a mercury-

emitting generating unit for which commercial operation commenced before January 1, 2001 that combusts lignite, the mercury allocation shall be based on an emission rate equal to 4.7 pounds of mercury per trillion Btu;

(ii) For the owner or operator of a mercury-emitting generating unit for which commercial operation did not commence before January 1, 2001, the mercury allocation shall be based on an emission rate equal to 1.5 pounds of mercury per trillion Btu as allocations are available, on a first-come, first-served basis, not to exceed the Montana mercury budget.

(b) Allocations for a particular control period are limited to those mercury-emitting generating units that were, or are anticipated to be, in commercial operation in the year for which the allocations are being made. Allocations for a partial year, or anticipated partial year, shall be prorated. The owner or operator of a mercury-emitting generating unit that did not operate, or that operated less than projected, must surrender excess allowances.

(c) Allocations may not exceed the Montana mercury budget.

(3) This rule is not effective after December 31, 2014.

AUTH: 75-2-203, 75-2-204, 75-2-211, MCA
IMP: 75-2-211, MCA

REASON: Pursuant to 75-2-203(1), MCA, the board has authority to establish limits on emissions of air pollutants from any air pollutant source necessary to prevent, abate, or control air pollution. Mercury emissions from coal-fired electric utility steam generating units (EGUs), i.e., coal-fired power plants, pose a threat to human health and safety and the environment, and the board is proposing to regulate those emissions in the proposed amendments and new rule.

A substantial amount of information concerning mercury is available on the website of the U.S. Environmental Protection Agency (EPA), http://www.epa.gov/mercury, the source of much of the information included below.

Mercury is a naturally occurring element found in air, water, and soil. It exists in several forms: elemental mercury; inorganic mercury compounds; and organic mercury compounds. Mercury is found in many materials, including coal. When coal is burned, mercury is released into the environment. Elemental mercury is the most likely form to travel in the air globally and form part of the global cycle, whereas, particle-bound mercury and oxidized (or ionic) mercury can fall out of the air over a range of distances from the emission source.

EPA estimates that annual global mercury emissions from all sources, natural and human-caused, are in the range of 4,800 – 8,300 tons per year. Human-caused mercury emissions account for approximately three percent of the total global emissions, and the U.S. power sector contributes approximately one percent of the total global emissions.

Coal-burning power plants are the largest human-caused source of mercury emissions to the air in the U.S. Nationally, EGUs cause over 40 percent of all anthropogenic mercury emissions.

EPA estimates that about one-quarter of U.S. mercury emissions from coal-burning power plants is deposited within the contiguous U.S. and the rest enters the global cycle. Similarly, EPA estimates that more than one-half of the mercury

deposited in the U.S. comes from sources outside the U.S. However, deposition varies by geographical location. For example, U.S. sources represent a greater percentage of the total deposition in parts of the Northeast because of the direction of the prevailing winds. EPA has estimated that approximately eight percent of mercury emissions from a particular EGU are deposited locally.

EPA estimates of local deposition potentially are in dispute. An EPA-funded study conducted in 2003-2004 in Steubenville, Ohio, used rain samples and meteorological data to track mercury emissions from smokestacks to monitors. Nearly 70 percent of the mercury in rain collected at an Ohio River Valley monitoring site originated from nearby coal-burning industrial plants. These findings show that "hot spots" (concentrated local deposition of mercury) may be a much bigger concern than previously acknowledged.

Mercury in the air eventually settles into water or onto land where it can be washed into water. Once deposited, microorganisms can convert mercury into methyl mercury, a highly toxic form that accumulates in fish, shellfish, and birds and other animals that consume fish, with concentrations increasing further up the food chain. Many variables influence the levels of methyl mercury concentrations in fish, including water pH and temperature, the amount of dissolved solids and organic material in the water, the types of organisms that inhabit the water, and the presence of chemicals in the water. At high levels of exposure, the effects of methyl mercury on birds and mammals may include reduced reproduction, slower growth and development, abnormal behavior, and death.

Fish and shellfish are the main sources of methyl mercury exposure to humans, with large fish that eat other fish, generally, having the highest concentrations. Mercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. High levels of methyl mercury in the bloodstream of unborn babies and young children may harm the developing nervous system, impairing the ability of a child to think and learn.

EPA has established a blood mercury level reference dose (RfD) of 0.1 micrograms/kilogram of body weight per day as an exposure level without recognized adverse effects. In a 1999-2000 National Health and Nutrition Examination Survey of 16 to 49-year old women, approximately 8 percent of the women in the survey had blood mercury concentrations reflecting levels greater than EPA’s RfD. Based on this survey, EPA estimates that more than 300,000 babies born each year in this country may have increased risk of learning disabilities associated with in utero exposure to methyl mercury.

Montana has statewide fish advisories for northern pike, lake trout, and walleye greater than 15 inches, due to mercury contamination, recommending no consumption by sensitive populations, which includes children and pregnant women. The statewide advisory also recommends limited consumption by sensitive populations of bass, burbot, grayling, perch, salmon, sunfish, brook trout, brown trout, cutthroat trout, rainbow trout, walleye less than 15 inches, and whitefish, with the suggested consumption limit varying by fish species, from one meal per week to four meals per week. There also are numerous other advisories around the state warning against eating other types of fish from different water bodies, due to high levels of mercury. These warnings recommend various consumption limits for sensitive populations as well as the general population. These water bodies include

many of the state's popular fisheries, including, among others, Bighorn Lake, Bynum Reservoir, Canyon Ferry Reservoir, Clark Canyon Reservoir, Crystal Lake, Flathead Lake, Fresno Reservoir, Georgetown Lake, Hauser Reservoir, Hebgen Lake, Holter Reservoir, Island Lake, Lake Frances, Lake Koocanusa, Lake Mary Ronan, Martinsdale Reservoir, Nelson Reservoir, Tiber Reservoir, Tongue River Reservoir, and Whitefish Lake.

In the Clean Air Act Amendments of 1990, Congress included mercury in a list of 188 hazardous air pollutants for which EPA was required to develop a list of categories and subcategories of major sources and area sources of those pollutants and promulgate maximum achievable control technology (MACT) emission standards for each category and subcategory. Section 112(b) and (c)(1) and (2), of the federal Clean Air Act (FCAA), 42 U.S.C. § 7412(b) and (c)(1) and (2). Currently, EGUs are the only major industrial source of mercury emissions for which mercury is not regulated as a hazardous air pollutant under the FCAA or Clean Air Act of Montana. For EGUs, Congress required EPA to conduct a study of the hazards to public health reasonably anticipated to occur as a result of EGU emissions of the listed pollutants, after imposition of the requirements of the FCAA. Section 112(n)(1)(A), of the FCAA, 42 U.S.C. § 7412(n)(1)(A). Congress required EPA to regulate EGUs under Section 112 if EPA determined from the study that regulation under that section was appropriate and necessary. Id.

In February 1998, EPA submitted a report to Congress concerning mercury emissions from EGUs, titled Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Plants - Final Report to Congress ("Utility Study"). In 1999, in an Information Collection Request (ICR), EPA required coal-fired EGUs across the country to conduct emission tests to determine the levels of mercury being emitted from those facilities.

On December 20, 2000, based on the Utility Study, the ICR testing, and a National Academy of Sciences report concerning the health effects of methyl mercury, EPA concluded that it was appropriate and necessary to regulate coal and oil-fired electric utility steam generating units under Section 112, and EPA listed those facilities as source categories for which EPA would promulgate MACT standards. 65 Fed. Reg. 79826**.** This conclusion was based on EPA's findings that coal and oil-fired electric utility steam generating units are the largest domestic human-caused source of mercury emissions and that mercury in the environment presents significant hazards to public health and the environment and the fact that EPA had identified control options that it believed would effectively reduce hazardous air pollutant emissions from those units. Id., at 79830.

On January 30, 2004, EPA published a notice of rulemaking that included two mutually exclusive alternatives for regulating emissions of mercury from coal and oil-fired electric utility steam generating units. 69 Fed. Reg. 4652 (January 30, 2004). The first alternative, based on EPA's conclusion that it was appropriate and necessary to regulate those source categories under Section 112, was a proposed MACT standard. The second alternative, based on the opposite conclusion, that it was not appropriate or necessary to regulate those source categories under Section 112 after imposition of the requirements of the FCAA, was to regulate mercury emissions from those source categories under the New Source Performance Standard (NSPS) program in Section 111 of the FCAA, 42 U.S.C. § 7411, rather

than under the MACT program.

On March 29, 2005, EPA removed coal and oil-fired electric utility steam generating units from the Section 112(c) list. 70 Fed. Reg. 15994 (March 29, 2005). In doing so, EPA stated that it had determined that, in listing those source categories under Section 112, it had placed inappropriate weight on environmental effects unrelated to public health, whereas Section 112(n)(1)(A) required EPA to analyze only hazards to public health, and EPA stated it had not fully considered the reductions that would result from imposition of the other requirements of the FCAA. 70 Fed. Reg. 16,002-16,003.

On May 18, 2005, EPA adopted the Clean Air Mercury Rule (CAMR), instead of the MACT standard alternative. 70 Fed. Reg. 28,606 (May 18, 2005); 40 CFR 60.4101-4176. CAMR consists of: a cap and trade program, with an interim 2010 nationwide cap and a 2018 nationwide cap on total EGU mercury emissions; budgets under the caps for each state; authorization for owners or operators to trade unused emission credits; NSPS emission limits for new EGUs; and NSPS emission guidelines for existing EGUs. EPA stated that it promulgated CAMR because it found a cap and trade program to be the most cost-effective means to achieve mercury reductions from EGUs, given that the cap and trade program under EPA's Clean Air Interstate Rule (CAIR), promulgated on March 10, 2005, and the pollution controls designed to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x) to meet the requirements of that regulation, also will result in reductions of mercury emissions as a co-benefit of controlling SO_2 and NO_x.

The cap and trade provisions of CAMR apply to existing and new EGUs having a capacity greater than 25 megawatts, the new source emission limits apply to EGUs for which construction, modification, or reconstruction occurs after January 30, 2004, and the existing source emission guidelines apply to EGUs existing on January 30, 2004. CAMR imposes a first phase nationwide cap of 38 tons per year (tpy) of mercury emissions that will become effective in the year 2010 and a second phase cap of 15 tpy that will become effective in the year 2018.

Under CAMR, owners or operators of EGUs must demonstrate compliance by holding one allowance for each ounce of mercury emitted in a given year, and allowances are transferable among all regulated facilities within the country. The emission limits for new sources all are on a rolling 12-month average basis and are:

> Bituminous-fired EGUs - 21 x 10^{-6} pounds per Megawatt-hour (lb/MWh), which is roughly equivalent to 2.1 pounds per trillion British thermal units (lb/TBtu);
>
> Subbituminous-fired EGUs controlled with wet flue gas desulferization (wet FGD) - 42 x 10^{-6} lb/MWh, which is roughly equivalent to 4.2 lb/TBtu; Subbituminous-fired EGUs controlled with dry FGD, 78 x 10^{-6} lb/MWh, which is roughly equivalent to 7.8 lb/TBtu; Lignite fired EGUs - 145 x 10^{-6} lb/MWh, which is roughly equivalent to 14.5 lb/TBtu;
>
> Coal refuse-fired EGUs - 1.4 x 10^{-6} lb/MWh, which is roughly equivalent to 0.14 lb/TBtu; and

Integrated gasification combined cycle (IGGC) EGUs - 20 x 10^{-6} lb/MWh, which is roughly equivalent to 2.0 lb/TBtu.

Under CAMR, states may elect to participate in an EPA-managed cap and trade program by adopting model cap and trade rules developed by EPA or may elect not to participate in an EPA-managed cap and trade program, in which case the state's budget becomes a firm cap for the state, which would limit the state's mercury emissions to the budget listed in the EPA regulation. Also, under CAMR, each state that has a mercury budget (states like Idaho that do not have any existing EGUs do not have any allotted budget) is required to determine how it wishes to allocate mercury allowances to EGUs in the state, within the state's budget. States may follow an EPA-developed model or implement a different allocation methodology. Under CAMR, the owner or operator of any EGU that has excess emissions, after the caps become effective, will be required to surrender allowances sufficient to offset the excess emissions and will be required to surrender allowances from the next control period (next calendar year for which credits have been allocated) equal to three times the excess emissions.

Currently, litigation challenging CAMR is pending against EPA by 14 states – California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Vermont, and Wisconsin – and numerous public health groups, Indian tribes, and environmental organizations.

At the request of members of the Senate Environment and Public Works Committee, based on concerns with the process used to develop EPA's January 2004 proposed alternative mercury regulations, EPA's Office of Inspector General (OIG) reviewed that proposal. OIG found the process followed by EPA, and EPA's proposed regulations, to be flawed in several major respects. See, http://www.epa.gov/oig/reports/2005/20050203-2005-P-00003.pdf. OIG found that EPA senior management had instructed EPA staff to develop a MACT standard that would result in a level of mercury emissions (34 tons per year) coinciding with the level expected to be achieved under CAIR, without any additional controls for mercury, instead of basing the MACT standard on an unbiased determination of the level of mercury control achieved in practice by the top performing units, which is the minimum level for a MACT standard under the FCAA.

OIG also found that the cap and trade program could be strengthened to better protect public health and ensure that anticipated emission reductions would be achieved. Among other flaws, OIG concluded that the proposed cap and trade program would not require installation of mercury-specific controls to achieve the interim 2010 cap and that the cap and trade program would not adequately address the potential for hot spots. OIG stated in its report that: "Trading programs are generally thought to be most effective for pollutants that do not deposit locally." OIG also noted that national ambient air quality standards for SO_2 and a contingency for delayed implementation due to litigation provide a backup for the acid rain trading program, whereas there are no ambient air quality standards for hazardous air pollutants such as mercury and the mercury cap and trade program included no contingency for delayed implementation. OIG also criticized EPA's failure to consult with the National Tribal Environmental Council on the proposed rulemaking, despite

the fact that two coal-fired power plants are located in Indian country and that the average tribal member eats much more fish than the typical consumer.

In 2001, the total reported mercury emissions from EGUs in Montana was 982 pounds, which represents 92% of all human-caused mercury air emissions in the state, according to EPA's Toxic Release Inventory. Montana's mercury budget under CAMR, effective in 2010, will be 0.378 tpy, or 756 pounds per year, and the Montana budget effective in 2018 will be 0.149 tpy, or 298 pounds per year. Therefore, without considering mercury emissions from EGUs in the state for which the Department of Environmental Quality ("department") has issued a permit since 2001, and without considering potential market trading, mercury emissions from EGUs in Montana would need to be reduced by at least 23% in order to comply with the 2010 state budget under CAMR. However, according to a January 6, 2006, report of the U.S. Department of Energy, titled "Coal's Resurgence in Electric Power Generation," http://www.netl.doe.gov/coal/refshelf/ncp.pdf, currently, seven new EGUs are proposed for Montana. Three of those (the Roundup Power Project, the Rocky Mountain Power Hardin Generation Project, and the Thompson River Co-Generation Project) already have received Montana air quality permits.

Activated Carbon Injection (ACI) control technology can be purchased and used in an EGU for mercury removal for all coal types. ACI has been used commercially to reduce mercury emissions from municipal solid waste incinerators for over twenty years. Full-scale ACI systems have been installed on over 40 U.S. coal-fired boilers in temporary ACI trials. These temporary trials have lasted between one week and 12 months. The results have demonstrated success at capturing over 90% of the mercury from EGUs firing subbituminous coals.

Brominated sorbents have proven to be extremely successful at capturing mercury from subbituminous coals, such as are commonly found in Montana. Although brominated sorbents cost more per pound than nonbrominated sorbents used for bituminous coal, less of the brominated sorbent is necessary to capture more mercury. The net operating costs are substantially lower because of this increased capture.

The owners of at least four EGUs in the western U.S. have agreed to install ACI. The owner of one EGU in Montana that will burn subbituminous western coal, the Hardin Generation Project, has agreed to install ACI in the near future.

The capital costs of installing ACI are two orders of magnitude less than the capital costs of equipment used to control SO_2 or NO_x. Recent data from field-testing sponsored by the U.S. Department of Energy's National Energy Technology Laboratory indicate that the average cost of controlling mercury will range from 0.2 to 0.8 mills per Kilowatt-hour (KWh). Based on this estimate, mercury control would add 15 to 60 cents per month to a typical 750 KWh residential electric bill.

It is necessary for the board to engage in rulemaking to restrict mercury emissions from EGUs in order for Montana to comply with its EGU mercury budget established by EPA under CAMR. Also, EGUs are, by far, the largest source of human-caused mercury emissions in the state. Although mercury emissions from EGUs in Montana account for only a small percentage of global mercury emissions and, presently, may account for a small percentage of the mercury deposited in Montana, due to the high risk posed by mercury to human health and welfare and to the environment, it is necessary to take all reasonable measures to reduce human-

caused mercury emissions. Therefore, it is necessary for the board to reduce mercury emissions from EGUs in order to protect public health and welfare and the environment.

The board is proposing to amend ARM 17.8.740 to include definitions of new terms that would be used in New Rule I.

The board is proposing to amend ARM 17.8.767 to adopt and incorporate by reference the provisions of CAMR that relate to EPA's mercury emission state budgets, emission standards, and monitoring and recordkeeping requirements codified in 40 CFR 60, subpart Da. The board is proposing to adopt and incorporate by reference the provisions of CAMR that relate to EPA's interstate mercury emission credit trading program, codified in 40 CFR 60.4101-4176 (subpart HHHH), except for 40 CFR 60.4141-4142 relating to allocation of mercury emission credits and the timing of the allocations. The board is proposing to have the adoption and incorporation of 40 CFR Part 60, subpart HHHH, and, consequently, participation in the mercury emission credit trading program, expire December 31, 2014.

Under CAMR, states are not required to adopt a mercury emissions credit trading program, but EPA has informed the department that it will not approve a mercury emissions credit trading program that restricts interstate trading by allowing only intrastate trading. The board believes that allowing trading of credits only within Montana would not greatly hinder implementation of mercury control by EGUs within the state and would not significantly add to the possibility of mercury hot spots. However, the board is concerned that allowing interstate trading beyond the time necessary for the owners and operators of EGUs within the state to reduce mercury emissions to appropriate levels could provide a disincentive to maximize mercury control and could significantly add to the possibility of mercury hot spots in the state. Because EPA has indicated that it will not approve limits on interstate trading, the board is proposing to adopt EPA's model mercury emissions credit trading program, but is proposing to terminate that program on December 31, 2014. However, as discussed further below, the board will consider comments on full participation in EPA's mercury emissions credit trading program without any sunset date or on an intrastate mercury emission credit trading program, as well as on other mercury trading and control alternatives.

New Rule I(1)(a) would limit EGU mercury emissions to 0.9 lb/TBtu on a rolling 12-month average beginning January 1, 2010, or when commercial operation begins, whichever is later, and would require operation of equipment by January 1, 2010, that is projected to meet that limit. The 0.9 lb/TBtu limit represents the level of mercury reduction necessary for the existing, permitted EGUs and EGUs for which the department expects permit applications in the near future to achieve compliance with the EPA-mandated 2018 Montana mercury budget of 298 lbs. The board believes that establishing an emission standard that will achieve the long-term goal of meeting the 2018 budget, rather than establishing phased-in emission limits, would allow for better planning by the owners and operators respecting the control configurations necessary to meet the ultimate goal. The proposed standard also would require some level of mercury control on every EGU in the state, which would result in emission reductions by each EGU by 2010, rather than potentially delaying implementation of control technology to meet only the 2018 mercury budget.

Under New Rule I(2), (3), and (4), if the owner or operator properly installs

and operates technology projected by the department to achieve the mercury emission limit, but the EGU fails to meet the limit and the owner or operator notifies the department and submits an application to the department, in conformance with the requirements of the rule, the department may establish an alternative mercury emission limit that would be effective for four years. Under New Rule I(5) and (6), upon expiration of an alternative limit, the department may establish a new alternative emission limit that is as stringent as, or more stringent than, the initial alternative limit, based on data regarding the demonstrated control capabilities of the technology operated at the EGU.

Under New Rule I(7), the department would not have authority to initiate an enforcement action for a violation of the 0.9 lb/TBtu emission limit that occurs between the date the limit becomes effective for the EGU and the date of the department's decision on an application for an alternative limit, if the owner or operator timely files a complete application for an alternative limit and has operated the EGU and control equipment in a manner consistent with good air pollution control practices for minimizing mercury emissions.

Under New Rule I(8), compliance with the mercury emission standard or any alternative mercury emission limit could be demonstrated on a facility-wide basis for an EGU that has more than one mercury emitting generating unit.

Under New Rule I(9), the owner or operator of an EGU would be required to monitor compliance with the mercury emission standard, or any applicable alternative mercury emission limit, pursuant to the monitoring requirements of CAMR found in 40 CFR 60.48(a) through 60.52(a). Under those requirements, mercury emissions would be determined by continuously collecting mercury emission data from each affected EGU by installing and operating a continuous emissions monitoring system (CEMS) or by an appropriate long-term method (e.g., sorbent trap) that can collect an uninterrupted, continuous sample of the mercury in the flue gases emitted from the EGU.

New Rule I(10) would require the owner or operator of an EGU to submit to the department quarterly reports specifying the monthly average mercury emission rate for each month of the quarter and the percentage of time the monitoring method being used was operating during the quarter.

New Rule II would specify the state's mercury allocations to meet the state's EGU mercury emission budgets established under CAMR. New Rule II(1)(a) and (b) would specify the dates by which the department would submit to EPA allocations for specific EGUs, depending upon whether commercial operation commenced before January 1, 2001, or on or after that date.

Under New Rule II(2), annual EGU mercury allowances would be calculated by multiplying the applicable emission rate times the maximum (nameplate) heat input value in million BTUs per hours and by multiplying that amount by 8,760 (for the hours in a year). The mercury allocations would be:

> For the control period years beginning January 1, 2010, through the control period years ending December 31, 2014:
>
> EGUs for which commercial operation commenced before January 1, 2001, and that do not combust lignite coal – 2.4 lb/TBtu;

EGUs for which commercial operation commenced before January 1, 2001, and that combust lignite coal – 4.7 lb/TBtu; and

EGUs for which commercial operation did not commence before January 1, 2001 – 1.5 lb/TBtu, as allocations are available, on a first-come, first-served basis, not to exceed the Montana mercury budget of 756 lbs.

Under New Rule II(2)(b), allocations would be limited to those EGUs that will be, or are anticipated to be, in commercial operation in the year for which the allocations are being made, with allocations for a partial year of operation being prorated. The owner or operator of an EGU that did not operate during a year for which allocations were made, or that operated less than projected by the department, would have to surrender excess allowances to the department. Under New Rule II(2)(c), allocations may not exceed the Montana mercury budget.

Under New Rule II(3), New Rule II would sunset on December 31, 2014, and no trading would be allowed after that date.

The board is proposing these specific limits to reduce mercury emissions and their impact to Montana. The 0.9 lb/TBtu limit reflects the emission level required by the existing and permitted EGUs, and EGUs for which the department currently is processing a permit application, to achieve compliance with the EPA-mandated Montana mercury budget of 298 lbs in 2018. Having one long-term goal, as opposed to taking a phased approach, would allow for planning by the EGUs with respect to control configurations. The temporary allocation and trading scheme, however, allows for flexibility initially between alternative emission limits, allocations that exceed the emissions limitation for existing EGUs, and interstate trading. Allocation and trading would be eliminated after December 31, 2014, and the state would rely on mercury emission controls to maintain compliance with Montana's mercury budget cap. The elimination of trading would maintain mercury control (and the consequential capital expenditures) within Montana as well as address concerns for hot spots. The proposed rule also would require some kind of control on every EGU, instead of allowing the owners and operations of some EGUs to buy credits to maintain historical mercury emissions levels. The December 31, 2014, sunset date would compel progress on emission controls while ensuring Montana's compliance with the 2018 CAMR budget cap.

While the board is proposing the specific amendments and new rules described above, the board will consider comments not only on this specific proposal but also on rule amendments and new rules that vary from these proposals and that are more or less stringent than these proposals, but that would achieve mercury reductions at least as stringent as those necessary to meet the mercury budgets established by EPA for the state. The final amendments and new rules adopted by the board will be based on the record of the proceeding, including comments on the board's specific proposal as well as comments on any different proposals that would at least meet the state's mercury budgets.

Pursuant to 75-2-207(2)(a), MCA, the board may adopt a rule to implement the Clean Air Act of Montana that is more stringent than comparable federal regulations only if the board holds a public hearing, public comment is allowed, and

the board makes a written finding after the public hearing and comment period, based on evidence in the record, that the proposed standard or requirement protects public health or the environment, can mitigate harm to public health or the environment, and is achievable with current technology. The proposed rule amendments and new rules, or any other amendments and new rules adopted by the board based on the record of this proceeding, may be more stringent than federal regulations related to control of mercury emissions from EGUs. The public hearing and comment period for this proposed rulemaking are intended to provide the public with the opportunity to comment on the issues relevant to a finding under Section 75-2-207(2)(a), MCA, as well as other issues related to the proposed rulemaking.

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 e-mailed to ber@mt.gov, no later than 5:00 p.m., July 6, 2006. 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 hearing.

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

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

Certified to the Secretary of State April 24, 2006.

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

In the matter of the amendment of ARM 37.86.1001, 37.86.1006, 37.86.1807, 37.86.2105, 37.86.2217, 37.86.2402, 37.86.2405, 37.86.2602, and 37.86.2605 pertaining to Medicaid Dental Services, Durable Medical Equipment, Eyeglass Services, Ambulance Services, and Transportation	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 24, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 15, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.86.1001 DENTAL SERVICES, DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) remains the same.

~~(2)~~ (5) "Relative ~~v~~Values for ~~d~~Dentists (RVD) ~~s~~Scale" means the scale published biennially by Relative Value Studies Inc., 1675 Larimer, Suite 410, Denver, CO 80202, listing the relative value of dental services provided by dentists and denturists.

~~(3)~~ (6) "Relative value unit (RVU)" means a numerical value assigned in the resource based relative value scale to each procedure code for which a relative value is available. The RVD is a comprehensive relative value system that lists dental procedures used by dentists, ~~and~~ denturists, and hygienists as an expression of the relative effort and expense expended by a provider in providing one service as compared to another service.

(2) "Dental hygiene" means services performed by a licensed preventive oral

health practitioner known as a dental hygienist, that are therapeutic, prophylactic, or preventive procedures in nature.

(3) "Dental hygienist" means a licensed preventive oral health practitioner practicing in compliance with the provisions of Title 37, chapter 4, MCA.

(4) "Public health supervision" means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) For purposes of specifying coverage of dental services through the ~~m~~Medicaid program, the department incorporates by reference the ~~d~~Dental and ~~d~~Denturist ~~s~~Services ~~p~~Provider ~~m~~Manual effective July ~~2005~~ 2006. The ~~d~~Dental and ~~d~~Denturist ~~s~~Services ~~p~~Provider ~~m~~Manual, provided to providers of those services, informs the providers of the requirements applicable to the delivery of services. Copies of the manual are available on the ~~m~~Medicaid provider website at www.dphhs.mt.gov and from the Department of Public Health and Human Services, Health Resources Division, ~~Medicaid~~ Acute Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Dentists who are Medicaid provider participants under ARM 37.85.401 may bill medical ~~"~~CPT~~"~~ procedure codes as provided in ARM 37.85.212 and 37.86.101 for any ~~m~~Medicaid covered medical procedure ~~which~~ that they are allowed to provide under the Dental Practice Act that is not otherwise listed in the ~~d~~Dental and Denturist ~~s~~Services ~~p~~Provider ~~m~~Manual.

(3) remains the same.

(4) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services as defined by the Board of Dentistry.

(5) Covered services for adults age 21 and over include:

(a) diagnostic;

(b) preventative;

(c) basic restorative services including prefabricated crowns; and

(d) extractions.

(6) Full maxillary and full mandibular dentures are a Medicaid covered service. Coverage is limited to one set of dentures every ten years. Only one lifetime exception to the ten year time period is allowed per recipient if one of the following exceptions is authorized by the department:

(a) The dentures are no longer serviceable and cannot be relined or rebased.

(b) The dentures are lost, stolen, or damaged beyond repair.

(7) Maxillary partial dentures and mandibular partial dentures are a Medicaid covered service. Coverage is limited to one set of partial dentures every five years. Only one lifetime exception to the five year limit is allowed per recipient if one of the following exceptions is authorized by the department:

(a) The partial dentures are no longer serviceable and cannot be relined or rebased.

(b) The partial dentures are lost, stolen, or damaged beyond repair.

(8) The limits on coverage of denture replacement may be exceeded when the department determines that the existing dentures are causing the recipient serious physical health problems.

(a) The dentist or denturist must indicate "replacement dentures" on the request for prior authorization of replacement dentures and document the medical necessity for the replacement.

~~(4)~~ (9) Coverage of denture services are subject to the following requirements and limitations:

(a) ~~a~~ A denturist may provide initial immediate full prosthesis and initial immediate partial prosthesis only when prescribed by a dentist~~; and~~.

(b) ~~r~~Requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis.

~~(5) Replacement of lost dentures is a covered service subject to the following requirements and limitations:~~

~~(a) the dentist or denturist must indicate "lost dentures" on the request for prior authorization for replacement;~~

~~(b) full dentures which are over 10 years old may be replaced when the treating dentist documents the need for replacement;~~

~~(c) partial dentures which are over five years old may be replaced with full dentures;~~

~~(d) dentures which are between five and 10 years old may be replaced when the treating dentist documents the need for replacement, but reimbursement is at the rate for duplicating (or jumping) the dentures;~~

~~(e) the limits on coverage of denture replacement may be exceeded when the designated review organization determines that the existing dentures are causing the recipient serious physical health problems;~~

~~(f) replacement of a lost denture is limited to one replacement per recipient per lifetime.~~

(6) through (12) remain the same but are renumbered (10) through (16).

~~(13) Covered services for adults age 21 and over include:~~

~~(a) diagnostic;~~

~~(b) preventative;~~

~~(c) basic restorative services including stainless steel crowns; and~~

~~(d) extractions.~~

~~(14)~~ (17) ~~Tooth colored crowns and~~ Porcelain/ceramic crowns, noble metal crowns, and bridges are not covered benefits of the ~~m~~Medicaid program for individuals age 21 and over.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) ~~f~~Fee ~~s~~Schedule ~~dated January 2005~~, effective July 2006 which is adopted and incorporated by reference.

A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies ~~f~~Fee ~~s~~Schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) The department's DMEPOS ~~f~~Fee ~~s~~Schedule~~, referred to in ARM 37.86.1806(1),~~ for items other than wheelchairs and items billed under generic or miscellaneous codes as described in (1)~~,~~ shall include fees set and maintained according to the following methodology:

(a) through (b)(iii) remain the same.

(4) The department's DMEPOS ~~f~~Fee ~~s~~Schedule~~, referred to in ARM 37.86.1806(1),~~ for all wheelchairs and items billed under generic or miscellaneous codes as described in (1) shall be 75% of the provider's usual and customary charge as defined in (3)(b)(i).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2105 EYEGLASSES, REIMBURSEMENT (1) remains the same.

(2) Reimbursement for contact lenses or dispensing fees is as follows:

(a) The department pays the lower of the following:

(i) the provider's usual and customary charge for the service; or

(ii) the amount specified for the particular service or item in the department's Eyeglasses ~~f~~Fee ~~s~~Schedule.

(3) The department ~~hereby~~ adopts and incorporates by reference the department's Eyeglasses ~~f~~Fee ~~s~~Schedule ~~dated December 2004~~ effective July 2006 which sets forth the reimbursement rates for eyeglasses, dispensing services, and other related supplies for optometric services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2217 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), PRIVATE DUTY NURSING SERVICES

(1) Private duty nursing services ~~include~~ are limited to:

(a) and (b) remain the same.

(2) Private duty nursing services do not include:

(a) psychological or mental health counseling;

(b) nurse supervision services including chart review, case discussion, or scheduling by a registered nurse; ~~or~~

(c) travel time to and from the recipient's place of service~~.~~;

(d) services provided to allow the client's family or caregiver to work or to go to school; or

(e) services provided to allow respite for caregivers or the client's family.

(3) Private duty nursing services must be authorized prior to the initial

provision of services and any time the condition of the client changes resulting in a change to the amount of skilled nursing services being provided ~~plan of care is amended~~. Authorization must be renewed with the department, or the department's designated review agent, every 90 days during the first ~~6~~ six months of services, and every ~~6~~ six months thereafter.

(a) Authorization for private duty nursing services provided through school districts may be authorized for the duration of the regular school year. Services provided during the summer months are additional services that require separate prior authorization.

~~(a)~~ (4) Authorization is based on approval of a plan of care by the department or department's designated review agent.

~~(b)~~ (5) A provider of private duty nursing services must be an incorporated entity meeting the legal criteria for independent contractor status that either employs or contracts with nurses for the provision of nursing services. The department does not contract with or reimburse individual nurses as providers of private duty nursing services.

(6) Private duty nursing services provided to an eligible client by a person who is the client's legally responsible person as that term is used in this rule must be prior authorized by the department or its designee.

(a) For purposes of this rule, "legally responsible person" means a person who has a legal obligation under the provisions of Montana law to care for another person. Legally responsible person includes the parents (natural, adoptive, or foster) of minor children, legally assigned caretaker relatives of minor children, and spouses.

(b) For private duty nursing services provided to a Medicaid client by a person who is legally responsible for the Medicaid client, the department will approve no more than 40 hours of services under the EPSDT program in a seven day period. The legally responsible person must meet the department's criteria for providing PDN services. The individual must be a licensed RN or LPN and be employed by an agency enrolled to provide private duty nursing services.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2402 TRANSPORTATION AND PER DIEM, REQUIREMENTS

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

(4) ~~Coverage of transportation mileage fees does not include any other fees. Reimbursement is not available for other fees.~~ Private vehicle transportation is limited to mileage reimbursement. Reimbursement is not available for any other private vehicle costs or fees.

(5) Coverage of per diem ~~does not include a round trip that~~ is not available when a round trip can reasonably be made in one day.

(6) Coverage of nonemergent transportation and per diem must be prior authorized by the department or its designee.

(a) remains the same.

(7) Coverage of emergent transportation and per diem must be authorized by the department or its designee.

(a) Notification of emergent transportation must be received by the department or its designee within 30 days of the initial emergency treatment.

(7) through (12) remain the same but are renumbered (8) through (13).

~~(13) Mileage reimbursement is not available for local travel within the town or city where the client resides.~~

(14) through (15)(h) remain the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.2405 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

(1) The department pays the lower of the following reimbursement rates for transportation services:

(a) the provider's actual submitted charge; or

(b) the department's Personal Transportation and Per Diem ~~f~~Fee ~~s~~Schedule.

(2) The department ~~hereby~~ adopts and incorporates by reference the department's Personal Transportation ~~f~~Fee ~~s~~Schedule ~~dated July 2003~~ effective July 2006 which sets forth the reimbursement rates for transportation, per diem, and other ~~m~~Medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services~~ Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2602 AMBULANCE SERVICES, REQUIREMENTS (1) through (5)(f) remain the same.

(6) Air ambulance services are covered if:

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

(c) Air ambulance services may be covered for the transfer of a patient from one hospital to another if the transferring hospital does not have adequate facilities to provide the specialized medical services needed by the recipient and if the requirements of (6)(a) through (b)(ii) ~~of this rule~~ are met.

(i) and (ii) remain the same.

(7) and (8) remain the same.

(9) Emergency ambulance services must be reported to the department's designee within ~~60~~ 180 days of the emergency transport or within ~~90~~ 180 days of the retroactive eligibility determination date.

(10) through (12) remain the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) Except as provided in (4), the department pays the lowest of the following for ambulance

services:

(a) the provider's usual and customary charge for the service; or

(b) the amount listed in the department's Ambulance ~~f~~Fee ~~s~~Schedule.

(2) The department ~~hereby~~ adopts and incorporates by reference the department's Ambulance ~~f~~Fee ~~s~~Schedule ~~dated July 2003~~ effective July 2006 which sets forth the reimbursement rates for ambulance services and other ~~m~~Medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services~~ Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

3. The Department of Public Health and Human Services (department) is proposing to amend rules pertaining to the following services reimbursed by the Montana Medicaid program: dental, durable medical equipment (DME), eyeglasses, private duty nursing (PDN), personal transportation and per diem, and ambulance services. During State Fiscal Year 2005 approximately 53,000 Medicaid recipients accessed these services. These rule changes, which are described in more detail below, are necessary to implement provider fee updates for DME, eyeglasses, private transportation, and ambulance, to allow dental hygienists who are providing public health services under a limited access permit to become Medicaid providers, and to state the extent that Medicaid will reimburse for skilled nursing provided by an individual who has an obligation to provide some support to a Medicaid client (defined as a legally responsible individual in these rules).

ARM 37.86.1001

This amendment adds definitions for dental hygienists, dental hygiene, and public health supervision. These definitions are necessary to implement the amendments to ARM 37.86.1006.

ARM 37.86.1006

This amendment allows a dental hygienist who offers dental hygiene services under the public health supervision provision of 37-4-405(6), MCA to enroll as a Medicaid provider if the hygienist has a limited access permit from the Board of Dentistry. Currently, dental hygienist services are billed under the provider number of the hygienist' s supervising dentist. A 2003 change in law, 2003 Laws of Montana Chapter 172, allows hygienists to work independently for some services listed in 37-4-405, MCA. The department reviewed the alternative of continuing the existing practice of enrolling only dentists as Medicaid providers of dental hygiene, but chose to amend the rule because the addition of dental hygienists as providers will allow more Medicaid recipients to have access to preventative services. Hygienists are required to provide for the referral to a licensed dentist of any patient needing

treatment outside their scope of practice. This referral should also improve client access to other dental services and may limit the need of more intrusive and costly dental services. There are currently six dental hygienists in the state who have a limited access permit. No significant fiscal impact is projected.

This rule is also being amended to more clearly state the circumstances when Medicaid will pay for denture replacement. The current rule language is often misunderstood by dentists. Currently, Medicaid will pay a fee for dentures only once in a five or ten year period, depending on the type of denture. There is an exception that allows replacement dentures within this time period if: 1) the dentures are lost; or, 2) the department and the treating dentist agree that the current dentures are causing the recipient serious physical health problems. Dentists frequently ask for the once in a lifetime replacement of dentures, stating that the Medicaid patient is unable to wear his or her dentures. If the dentures are not lost or currently causing physical health problems, Medicaid does not cover replacement cost. The new language does not alter this policy. It requires dentists to document the medical necessity for the replacement or that the dentures are lost. It also states that there must be prior authorization from the department in order to replace dentures within the five or ten year limit. These changes will impact approximately 392 providers. No significant fiscal impact is projected.

ARM 37.86.1807

The department is proposing to change the fee schedule reference for Durable Medical Equipment (DME) to be effective July 2006. This rule change is necessary to correctly adopt the most current codes and fees to be paid to DME providers that will be effective as of July 2006 and to update the administrative rule which references a January 2005 fee schedule. Based on the utilization rates from State Fiscal Year 2005, the department estimates this change to be budget neutral. This rule change will impact approximately 608 providers and 12,000 recipients.

ARM 37.86.2105

The proposed rule change to ARM 37.86.2105 is to reflect the most current version of the fee schedule as posted on the department's website. The only change is to the date of the schedule itself. The fees and codes have not changed. The department does not anticipate any fiscal impact with this update since only the effective date of the fee schedule has changed. This rule change will impact three providers.

ARM 37.86.2217

There are four separate amendments to this rule, which applies only to Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) services. EPSDT services only apply to individuals up to and including 20 years of age. The department is proposing to amend the word "include:" to the phrase "are limited to:" in ARM 37.86.2217(1). This is not a change in interpretation or policy. The change

is to more accurately state that the term private duty nursing services has always meant skilled nursing services provided directly to a child, and patient-specific training provided by a registered nurse or licensed practical nurse. The word "include" instead of "are limited to" has caused confusion because some PDN providers have interpreted this rule to mean that PDN may be services other than skilled nursing, such as day care and respite services. This has never been Montana Medicaid's policy.

The rule amendment to ARM 37.86.2217(2) would reiterate that day care and respite are not skilled nursing and are not covered under private duty nursing. Parents and caregivers often ask for these services under private duty nursing. It has never been the department's policy to cover these as skilled nursing under PDN and the department has stated this in the provider handbook.

The amendment to ARM 37.86.2217(3) extends the period of authorization for school district providers of PDN services. This rule amendment formalizes policy the department has been following for the past four years. In state fiscal year 2002-2003, the department decreased the prior authorization requirement of school based PDN providers. An analysis completed of four years of data showed that school based PDN services did not deviate from the initial six months to the remaining three months of school. A prior authorization for the traditional school year period will be administratively efficient. The department reviewed the option of not amending the rule but opted to amend the rule because its prior authorization requirements for school districts differ from independent PDN prior authorization requirements. This change has no fiscal impact.

The department is also amending ARM 37.86.2217(6) to state that PDN services provided to a Medicaid client by a person legally responsible for that client must be prior authorized by the department or its designee. For the purpose of this rule, legally responsible person includes the parents (natural, adoptive, or foster) of minor children, legally assigned caretaker relative of minor children and spouses. The department is proposing this rule change to be able to limit the circumstances in which a legally responsible person, typically spouses or parents, are allowed to provide Medicaid reimbursed PDN services to another family member.

Requiring authorization from Montana Medicaid allows for control over the number of hours that will be reimbursed to a legally responsible person, thus ensuring that legally responsible persons are still the primary caregivers responsible for the care of the child. Legally responsible persons must meet the specific requirements of a skilled nurse in order to be authorized by the department to provide PDN services. Currently the department has no limits on PDN services provided by legally responsible persons. The department will authorize up to 40 hours in a seven day period of EPSDT private duty nursing services that can be provided by a legally responsible person. This authorization will not limit the total amount of hours approved for skilled nursing services for a client. The department needs to adopt requirements and/or guidelines for legally responsible persons. This change should eliminate inappropriate payments for service. These rule changes will impact

approximately 20 providers and 138 recipients.

ARM 37.86.2402

The department is amending ARM 37.86.2402 to clarify the current language in rule that coverage of transportation mileage fees does not include any other fees. This phrase is difficult to interpret. Clients often request reimbursement for repairs, flat tires, and other operational costs of their vehicle, which are not covered under this rule. The proposed language does not change the policy, it states it more clearly. An amendment is also proposed to simplify the section regarding per diem being available starting on the second day of travel. The original statement was difficult to read. This wording makes it clear that per diem is not available on a one day trip.

The department is also amending the rule by adding emergent transportation requirements and defining nonemergent requests that require authorization from the department before the service is received. Currently, there is no policy defining the instances when a client can or should be reimbursed for using a personal vehicle to obtain emergency medical care. By providing reimbursement for emergent travel, inappropriate use of ambulance services should decrease. The department is requiring notification be within 30 days of the initial emergency treatment. This period allows the client adequate time to notify the Transportation Center of the trip, yet maintain timely notification requirements necessary to verify the services were provided. Inappropriate use of ambulance services may decrease, however personal mileage and commercial provider reimbursement may increase. The department does not anticipate any budget impact.

The department is removing (13), which barred reimbursement for travel within a client' s community. This is no longer applicable. Commercial transportation (bus, taxi, wheelchair van) is allowed within a client's community. Personal vehicle reimbursement is allowed, however the department will not issue a check for reimbursements that total less than $5 in a calendar month according to ARM 37.86.2405(3). This change may result in a minimal budget increase. These changes will affect approximately 23 providers and 8,000 recipients.

ARM 37.86.2602

The proposed amendment changes the reporting requirement from within 60 days of the emergency transport to 180 days, and from within 90 days of the determination to retroactive eligibility to 180 days. Providers must submit documentation of the transport within the time limitation and receive authorization of medical necessity in order to be reimbursed. The 60/90 day rule was originally a 30-day rule, initiated in 1994 when medical review and authorization of ambulance transport began. In 1994 the department, and its contractor for payments, were concerned that ambulance companies would accumulate claims over long periods of time then flood the payment contractor with many claims at once. In 2003 the rule was changed to 60 days, or 90 days for retroactive eligibility, to allow ambulances more time to determine eligibility and address the retroactive cases.

In the intervening years, there has been progress in ambulance billing. Most providers bill promptly and the volunteer services have contracted with billing services. By increasing the reporting requirement to 180 days from date of transport, or date retroactive eligibility is determined, providers are allowed greater opportunity to locate billing sources, yet still allow the review organization time to determine medical necessity and authorize transports within the 365 day timely filing limit.

Providers frequently object to the 60/90 day notification requirement. The department considered removing the notification requirement entirely. This option was not utilized, as the review organization must have adequate time to determine the medical necessity of the trip and provide notice to the provider with enough time left for the provider to file a clean claim within the 365-day timely filing limit. By allowing more time for ambulance providers to obtain authorization, the number of claims denied may decrease, however, more claims will be paid appropriately. This rule change will impact approximately 173 providers.

ARM 37.86.2605

This change is being proposed to reflect that reimbursement for ambulance services will be made according to the department' s fee schedule effective July 2006 rather than the previous fee schedule dated July 2003. Reference to the new fee schedule is necessary to implement changes in fees and reflect additional codes for injectable drugs. Many of the fees are based on the Medicare allowed amount and must be updated in accordance with Medicare' s changes. This rule change affects approximately 173 providers and 6500 clients. The change in reimbursement rates and codes results in no significant budget increase.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 1, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Russ Cater
Rule Reviewer

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

Certified to the Secretary of State April 24, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.307 regarding dollar amounts to which consumer loan rates are to be applied	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 23, 2006, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-368 regarding the proposed amendment of the above-stated rule at page 373 of the 2006 Montana Administrative Register, issue number 4.

2. The Division of Banking and Financial Institutions has amended ARM 2.59.307 exactly as proposed.

3. No comments or testimony were received.

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 April 24, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.132, 17.24.133, 17.24.134, 17.24.136, 17.24.1206, 17.24.1211, 17.24.1218, 17.24.1219, 17.24.1220, 17.56.121 and the repeal of 17.24.1212 pertaining to revising enforcement procedures under the Montana Strip and Underground Mine Reclamation Act, the Metal Mine Reclamation Laws and the Opencut Mining Act, and the amendment of ARM 17.30.2001, and 17.30.2003, repeal of 17.24.1212, 17.30.2005, 17.30.2006 and 17.38.606 and the adoption of new rules I through VII pertaining to providing uniform factors for determining penalties	NOTICE OF AMENDMENT, REPEAL, AND ADOPTION (AIR QUALITY) (ASBESTOS) (HAZARDOUS WASTE) (JUNK VEHICLES) (MAJOR FACILITY SITING) (METAL MINE RECLAMATION) (OPENCUT MINING) (PUBLIC WATER SUPPLY) (SEPTIC PUMPERS) (SOLID WASTE) (STRIP AND UNDERGROUND MINE RECLAMATION) (SUBDIVISIONS) (UNDERGROUND STORAGE TANKS) (WATER QUALITY)

TO: All Concerned Persons

1. On December 22, 2005, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-239 regarding a notice of public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 2523, 2005 Montana Administrative Register, issue number 24.

2. The board and department are adopting new rule VIII (17.4.307), shown below, in response to comments received. The text of New Rule VIII was originally published as part of proposed New Rule VI, but was moved to New Rule VIII for clarity. The board has amended ARM 17.24.133, 17.24.134, 17.24.136, 17.24.1206, 17.24.1211, 17.24.1218, 17.24.1219, 17.24.1220, 17.30.2001, and 17.30.2003, and repealed ARM 17.24.1212, 17.30.2005, and 17.30.2006 exactly as proposed. The department has amended ARM 17.56.121 and repealed ARM 17.38.606 exactly as proposed. The board and department have adopted New Rule V (17.4.305) exactly as proposed.

3. The board has amended ARM 17.24.132 as proposed, but with the following changes, new matter underlined, deleted matter interlined:

<u>17.24.132 ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES</u> (1) Except as provided in (4), the department shall send a violation letter

for a violation of the Act, this subchapter, or the permit, license, or exclusion. The violation letter must be served and must state that the alleged violator may, by filing a written response within ~~15 days of receipt of~~ a time specified in the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty under (2).

(2) through (4) remain as proposed.

4. The board and department have adopted New Rules I (17.4.301), II (17.4.302), III (17.4.303), IV (17.4.304), VI (17.4.306), and VII (17.4.308) as proposed, but with the following changes, new matter underlined, stricken matter interlined:

NEW RULE I (17.4.301) PURPOSE (1) through (1)(d) remain as proposed.

(2) The purpose of the penalty calculation process is to calculate a penalty that is commensurate with the severity of the violation, that provides an adequate deterrent, and that captures the economic benefit of noncompliance. The department shall provide a copy of the penalty calculation to the alleged violator.

(3) The department may not assess a penalty that exceeds the maximum penalty amount authorized by the statutes listed in (1).

NEW RULE II (17.4.302) DEFINITIONS The following definitions apply throughout this subchapter:

(1) "Circumstances" means a violator's culpability associated with a violation.

(1) through (3) remain as proposed, but are renumbered (2) through (4).

~~(4) "Gross negligence" means a high degree of negligence or the absence of even slight care.~~

(5) "History of violation" means the violator's prior history of any violation, which:

(a) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(b) must be documented in an administrative order or a judicial order or judgment issued within three years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(c) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review.

(5) remains as proposed, but is renumbered (6).

~~(6) "Ordinary negligence" means the failure to use such care as a reasonably prudent and careful person would use under similar circumstances.~~

NEW RULE III (17.4.303) BASE PENALTY (1) As provided in this rule, the department shall calculate the base penalty by multiplying the maximum penalty amount authorized by statute by ~~an extent and gravity~~ a factor from the appropriate base penalty matrix in (2) or (3). In order to select a matrix from (2) or (3), the nature of the violation must first be established. For violations that harm or have the potential to harm human health or the environment, ~~T~~the department shall classify the extent and gravity of ~~a~~ the violation as major, moderate, or minor as provided in (4) and (5). For all other violations, the extent factor does not apply, and ~~T~~the

department shall classify the gravity of ~~a~~ the violation as major, moderate, or minor as provided in (5).

(2) The department shall use the following matrix for violations that harm or have the potential to harm human health or the environment:

	GRAVITY		
EXTENT	Major	Moderate	Minor
Major	~~0.70~~ 0.85	~~0.60~~ 0.70	~~0.50~~ 0.55
Moderate	~~0.60~~ 0.70	~~0.50~~ 0.55	0.40
Minor	~~0.50~~ 0.55	0.40	~~0.30~~ 0.25

(3) The department shall use the following matrix for violations that adversely impact the department's administration of the applicable statute or rules, but which do not harm or have the potential to harm human health or the environment~~.~~:

	GRAVITY		
~~EXTENT~~	Major	Moderate	Minor
~~Major~~	0.50	0.40	0.30
~~Moderate~~	~~0.40~~	~~0.30~~	~~0.20~~
~~Minor~~	~~0.30~~	~~0.20~~	~~0.10~~

(4) through (4)(c) remain as proposed.

(5) The department shall determine the gravity of a violation as follows:

(a) A violation has major gravity if it causes harm to human health or the environment, poses a ~~significant~~ serious potential ~~for~~ to harm ~~to~~ human health or the environment, ~~results in a release of a regulated substance,~~ or has a ~~significant~~ serious adverse impact on the department's administration of the statute or rules. Examples of violations that may have major gravity include a release of a regulated substance ~~without a permit or in excess of permitted limits~~ that causes harm or poses a serious potential to harm human health or the environment, construction or operation without a required permit or approval, ~~or~~ an exceedance of a maximum contaminant level or water quality standard, or a failure to provide an adequate performance bond.

(b) A violation has moderate gravity if it:

(i) is not major or minor as provided in (5)(a) or (c); and

(ii) poses a potential ~~of~~ to harm ~~to~~ human health or the environment, or has an adverse impact on the department's administration of the statute or rules. Examples of violations that may have moderate gravity include a release of a regulated substance that does not cause harm or pose a serious potential to harm human health or the environment, a failure to monitor, report, or make records, a failure to report a release, leak, or bypass, or a failure to construct or operate in accordance with a permit or approval~~, mining or disturbing land beyond a permitted boundary, or a failure to provide an adequate performance bond~~.

(c) A violation has minor gravity if it poses ~~a low~~ no risk of harm to human health or the environment, or has a low adverse impact on the department's administration of the statute or rules. Examples of violations that may have minor

gravity include a failure to submit a report in a timely manner, a failure to pay fees, inaccurate recordkeeping, ~~and~~ or a failure to comply with a minor operational requirement specified in a permit.

NEW RULE IV (17.4.304) ADJUSTED BASE PENALTY - CIRCUMSTANCES, GOOD FAITH AND COOPERATION, AMOUNTS VOLUNTARILY EXPENDED (1) through (2)(e) remain as proposed.

~~(3) The department may increase a base penalty by:~~

~~(a) 1% to 15% for ordinary negligence;~~

~~(b) 16% to 29% for gross negligence; and~~

~~(c) 30% for an intentional act.~~

~~(4)~~ (3) The department may decrease a base penalty by up to 10% based upon the violator's good faith and cooperation. ~~The department expects that a violator will act in good faith and cooperate with the department in any situation where a violation has occurred. The department may decrease the base penalty only if the violator exhibits exceptional good faith and cooperation.~~ In determining the amount of decrease for good faith and cooperation, the department's consideration must include, but not be limited to, the following factors:

(a) through (c) remain as proposed.

~~(5)~~ (4) The department may decrease a base penalty by up to 10% based upon the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or the impacts of the violation. The amount of a decrease is not required to match the amounts voluntarily expended. ~~The department expects that a violator will expend the resources necessary to mitigate a violation or the impacts of a violation.~~ In determining the amount of decrease for amounts voluntarily expended, beyond what is required by law or order, the department's consideration must include, but not be limited to, the following factors:

(a) expenditures for ~~extra~~ resources, including personnel and equipment, to promptly mitigate the violation or impacts of the violation;

(b) expenditures~~, not otherwise required,~~ of ~~extra~~ resources to prevent a recurrence of the violation or to eliminate the cause or source of the violation; and

(c) revenue lost by the violator due to a cessation or reduction in operations that is necessary to mitigate the violation or the impacts of the violation. ~~This does not include revenue lost due to a cessation or reduction in operations that is required to modify or replace equipment that caused the violation.~~

NEW RULE VI (17.4.306) TOTAL PENALTY - HISTORY OF VIOLATION~~, ECONOMIC BENEFIT~~ (1) As provided in this rule, the department may increase the total adjusted penalty based upon the violator's history of violation ~~as defined in 75-1-1001(1)(c) and 82-4-1001(1)(c), MCA, and based upon the economic benefit that the violator gained by delaying or avoiding the cost of compliance~~. Any penalty increases for history of violation ~~and economic benefit~~ must be added to the total adjusted penalty calculated under ARM 17.4.305 to obtain a total penalty.

(2) The department may calculate a separate increase for each historic violation. The amount of the increase must be calculated by multiplying the ~~adjusted~~ base penalty calculated under [NEW RULE ~~IV~~ III] (ARM 17.4.303) by the appropriate

percentage from (3). This amount must then be added to the total adjusted penalty calculated under ARM 17.4.305.

(3) The department shall determine the ~~gravity~~ nature of each historic violation in accordance with [NEW RULE ~~III(5)~~ II(6)] (ARM 17.4.302(6)). The department may increase the total adjusted penalty for history of violation using the following percentages:

(a) for each historic violation ~~with major gravity~~ that, under these rules, would be classified as harming or having the potential to harm human health or the environment, the penalty increase ~~may~~ must be ~~21% to 30~~ 10% of the ~~adjusted~~ base penalty calculated under [NEW RULE ~~IV~~ III] (ARM 17.4.303); and

(b) for each historic violation ~~with moderate gravity~~ that, under these rules, would be classified as adversely impacting the department's administration of the applicable statute or rules, but not harming or having the potential to harm human health or the environment, the penalty increase ~~may~~ must be ~~11% to 20~~ 5% of the ~~adjusted~~ base penalty calculated under [NEW RULE ~~IV~~ III] (ARM 17.4.303)~~; and~~

~~(c) for each historic violation with minor gravity, the penalty increase may be 1% to 10% of the adjusted base penalty calculated under [NEW RULE IV]~~.

(4) If a violator has multiple historic violations and one new violation, for which a penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together. This composite percentage may not exceed 30%. The composite percentage must then be multiplied by the ~~adjusted~~ base penalty for the new violation to determine the amount of the increase. The increase must be added to the total adjusted penalty for the new violation calculated under ARM 17.4.305.

(5) If a violator has one historic violation and multiple new violations, each with a separate penalty calculation under these rules, the ~~adjusted~~ base penalties for the new violations calculated under [NEW RULE ~~IV~~ III] (ARM 17.4.303) must be added together. This composite ~~adjusted~~ base penalty must then be multiplied by the percentage from (3) for the historic violation to determine the amount of the increase. The increase must then be added to the sum of the total adjusted penalties calculated for each new violation under ARM 17.4.305.

(6) If a violator has multiple historic violations and multiple new violations, for which a separate penalty is being calculated under these rules, the percentages from (3) for each historic violation must be added together, not to exceed 30%, and the ~~adjusted~~ base penalties for each new violation calculated under [NEW RULE ~~IV~~ III] (ARM 17.4.303) must be added together. The composite ~~adjusted~~ base penalties must be multiplied by the composite percentage to determine the amount of the increase. The increase must be added to the sum of the total adjusted penalties calculated for each violation under ARM 17.4.305.

~~(7) The department may increase the total adjusted penalty, as calculated under [NEW RULE V], by an amount based upon the violator's economic benefit. The department shall base any penalty increase for economic benefit on the department's best estimate of the costs of compliance, based upon information reasonably available at the time it calculates a penalty under these rules. The economic benefit must be added to the total adjusted penalty calculated under [NEW RULE V] to obtain the total penalty.~~

NEW RULE VII (17.4.308) OTHER MATTERS AS JUSTICE MAY REQUIRE

(1) The department may consider other matters as justice may require to increase or decrease the total penalty. ~~The department may not decrease the penalty to offset the costs of correcting a violation.~~

NEW RULE VIII (17.4.307) ECONOMIC BENEFIT (1) The department may increase the total adjusted penalty, as calculated under ARM 17.4.305, by an amount based upon the violator's economic benefit on the department's estimate of the costs of compliance, based upon the best information reasonably available at the time it calculates a penalty under these rules. The economic benefit must be added to the total adjusted penalty calculated under ARM 17.4.305 to obtain the total penalty.

AUTH: 75-2-111, 75-2-503, 75-5-201, 75-6-103, 75-10-204, 75-10-405, 75-10-503, 75-10-1202, 75-11-204, 75-11-505, 75-20-105, 76-4-104, 82-4-111, 82-4-204, 82-4-321, 82-4-422, MCA
IMP: 75-1-1001, 82-4-1001, MCA

5. The following comments were received and appear with the board's and department's responses:

COMMENT NO. 1: Additional language should be added to confirm that a party will have a chance to provide additional information to the department or to discuss a penalty before having to appeal to the BER.

RESPONSE: If the department issues a penalty order for the violation, the statutes provide 30 days to appeal the order. The alleged violator may informally discuss the violation and penalty with the department during the 30-day appeal period. The rules cannot change the statutory appeal period. Prior to initiating an enforcement action, the department sends a violation letter to notify the alleged violator that the department believes a violation occurred and to describe the actions that are necessary to return to compliance. A violation letter requests additional information and provides an opportunity for an informal conference to discuss the alleged violation and the recommended corrective action. Instead of issuing an order, the department may send a letter offering settlement with a consent order and a settlement penalty. These letters also request that the alleged violator discuss the violation and penalty calculation with the department. A change has been made to New Rule I to require that the department provide a copy of the penalty calculation to an alleged violator. This change, together with the existing procedures, will provide adequate opportunities for the alleged violator to discuss the violation and penalty calculation.

COMMENT NO. 2: The rules give too much power to the department. The department can impose violations without evidence and assess penalties without documentation. The agency makes the regulations, interprets them, hears all protests, and determines guilt and penalties. The agency should have to prove guilt; the party should not have to prove their innocence. Guilt should be established by a third party. False accusations by the agency should carry a penalty for the agency

as determined by a third party. Rewrites of the proposal with different wording but with the same intent should be considered a violation of the Montana Constitution.

RESPONSE: The rules and the statutes under which these rules are adopted provide opportunities for a person who receives a notice of violation to contest the alleged violation and to offer new information. The statutes also give the person a right to appeal a department penalty order to the board, and a right to appeal a board determination to state court. If a department penalty order is appealed to the board, and in any court action in which the department seeks a penalty, the department has the burden to prove that the violation occurred and that a penalty is appropriate. The process is designed to ensure that penalties will be assessed only when there is a preponderance of evidence to establish the violation. Modifications made to the proposed rules in response to comments are allowed under the Montana Administrative Procedure Act at 2-4-305, MCA.

COMMENT NO. 3: The new rules may lead to higher penalties than the former procedures. This was not the objective of the department or the regulated community in the legislative process and rule development process. Several parties have determined that the penalties calculated under the new rules could be 20% to 30% higher.

RESPONSE: HB 428 was passed to standardize and streamline enforcement procedures for the reclamation laws. HB 429 was passed to standardize penalty calculations to make them fair, consistent and predictable. These legislative changes were not generally intended to result in an increase or decrease in penalties. However, in the legislation, the "size of violator" factor, which could be used to increase a penalty, was excluded, and the definition of "history of violation" in the legislation results in consideration of fewer historical violations to increase a penalty. On the other hand, amendments to the Opencut Mining Act in HB 429 allow the department to assess penalties for additional days of violation, which will result in increased penalties.

Given the large variety of previous penalty calculation rules and policies used by the department, it was difficult to guarantee that the legislation and the new rules would not result in higher or lower penalties. On a case-by-case basis, a penalty calculated under the new rules may result in a higher or lower penalty than was calculated under the previous method. However, in general, the penalties calculated under these rules will not be significantly larger or smaller than those calculated under previous procedures. As under the previous procedures, the department has some discretion under the new rules to weigh the severity of violations. An untrained person could, under the new rules, calculate penalties that vary widely from the department's previous assessments. However, the department's familiarity with the previous procedures will enable it to maintain fairness to the extent possible.

COMMENT NO. 4: Some of the proposed rules may complicate rather than simplify enforcement and efficient resolution of violations.

RESPONSE: Some portions of the new rules are more complicated than previous penalty calculation rules. The new rules are more complex in that a base penalty is determined by separate matrix factors for nature, extent, and gravity, rather than, for example, the point system based on a combination of an extent and

gravity factor used under the former penalty rules under the Water Quality Act. The description of how historical violations are calculated is also more complex, but the additional detail is necessary to inform the public and to guide the department. As discussed in the Response to Comment No. 48, the department and the board have made a change to New Rule VI to simplify the procedure for weighing the severity of historic violations. A consistent method for calculating penalties will be more efficient and will not delay resolution of violations.

COMMENT NO. 5: The rules provide too much discretion to the department in terms of when to act on a potential violation and how to resolve it, and when to dismiss some violations and not others without clear reasons why. The commentor does not see how these rules meet the stated goals of predictability and consistency.

RESPONSE: The statutes provide the department with discretion whether to initiate an enforcement action. For example, the Water Quality Act provides that the department "may issue an order." Section 75-5-611(2), MCA. This discretion allows the department to address a violation with a penalty order or resolve it through other means such as compliance assistance. Typically, the department seeks penalties for significant violations, and minor violations are addressed through other means. Some of the reclamation statutes specifically authorize a waiver of a penalty, provided certain conditions are satisfied and documented in writing by the department. The rules will provide predictability and consistency in cases in which the department calculates a penalty.

COMMENT NO. 6: The proposed rules take a good first step toward the goals of decreasing subjectivity and increasing consistency and predictability. The commentor appreciates the department's good faith and would like to continue to be involved in implementation of these rules and the development of a Supplemental Environmental Projects Policy.

RESPONSE: Comment noted.

COMMENT NO. 7: The proposed rules do not account for impacts to specially-designated, sensitive areas of the environment such as Class I PSD areas and sole source aquifers.

RESPONSE: Definitions of gravity and extent allow for the consideration of harm and potential for harm to human health and the environment. If a violation occurs that harms or poses risk of harm to a specially-designated, sensitive area, the severity of that harm and its impacts to that area will be considered in the penalty calculation.

COMMENT NO. 8: Little consideration has been given to the unique nature of the coal regulatory program. Coal mines are inspected monthly and the majority of violations have been administrative in nature and not a threat to human health or the environment. The proposed rules will significantly raise the penalties assessed for violations under the coal program. We were assured that increased penalties were not the intended outcome of the stakeholder process. It is unfair and bad regulatory policy to arbitrarily increase penalties in some programs and to decrease

penalties in other programs where the violation may result in actual environmental damage or endanger human health and welfare.

RESPONSE: See Response to Comment No. 3 regarding increased or decreased penalties and Response to Comment No. 32 regarding changes to the matrix for violations that impact administration.

COMMENT NO. 9: The proposed rules will not be consistent with the federal coal program. The proposed rules should be modified to be consistent with the federal program or the board and department should adopt the federal rules verbatim.

RESPONSE: Both HB 428 and HB 429 contain a contingent voidness clause that nullifies the portions of the legislation related to the Strip and Underground Mine Reclamation Act in the event the federal Office of Surface Mining (OSM) does not approve the new law and amendments. A request to review the legislation has been submitted to OSM. Until a decision has been obtained from OSM, the new rule procedures for administrative enforcement and penalty calculation for violations at coal mines are appropriate.

COMMENT NO. 10: The proposed rules do not include a size of violator factor. Interested parties were assured that the size of violator factor would be taken into account in penalty calculations.

RESPONSE: HB 429 does not provide for use of the size of violator factor. The department assured interested parties that penalties will be commensurate with the severity of the violation and the rules will calculate a penalty that provides an adequate deterrent. The department did not state that the size of violator factor would be taken into account in penalty calculations.

ARM 17.24.132(1)

COMMENT NO. 11: In the explanation following the proposed rule, it is stated, "The amendment to (1) also deletes the requirement that a violation be documented by an inspection." Current CAFO rules state that a notice of noncompliance letter cannot be sent out before an inspection is completed. This should be noted in the rules.

RESPONSE: The proposed amended rule applies to sites regulated under the Metal Mine Reclamation Act and does not affect CAFOs, which are regulated under the Water Quality Act. The CAFO permitting rules do not require that violation letters be based upon an inspection. Some violations, such as failure to submit required reports, can be documented without an inspection.

COMMENT NO. 12: The rules seem to give the department a lot of "gray" area to work under. For example, the rules allow the department to issue a single order, with no follow-up statement of findings, thus putting more burden on the supposed violator to respond quicker to avoid law by non-response.

RESPONSE: One purpose of HB 428 was to streamline the enforcement process under the reclamation laws to change a two-step process for issuing penalty orders to a one-step process. The one-step order issued by the department will

contain all of the components and offer all of the rights provided in the old two-step process, such as a findings of fact, conclusions of law, assessed penalty, and order. The order will also provide a 30-day opportunity for appeal. The rules simplify the process and do not expand any "gray" areas. The period for appeal remains the same, so the new rules do not require a violator to respond more quickly.

COMMENT NO. 13: Several commentors suggested extending the 15-day period to file a written response to a violation letter to 30 days to correspond with the 30 days provided to request a contested case. The department and the responsible party would benefit if all available information about an alleged violation is developed and shared before either party spends time and resources on an enforcement action. This would also conserve board resources by reducing the number of appeals.

RESPONSE: The HB 428 amendments to 82-4-361, MCA, state that when the department has reason to believe that a violation has occurred, it shall send a violation letter. The statute does not require that the alleged violator respond to the department in a particular timeframe. The rule has been modified to eliminate the 15-day requirement to respond to the department in writing.

COMMENT NO. 14: The rule does not prescribe any follow-up action after a violation letter is sent and does not require penalties or other enforcement consequences.

RESPONSE: Section 82-4-361(1), MCA, of the Metal Mine Reclamation Act does not limit or require a particular follow-up enforcement response after a violation letter is sent. Normally, under the Metal Mine Reclamation Act, an enforcement action will be initiated if the violation is considered significant.

ARM 17.24.132(2)-(4)

COMMENT NO. 15: The portion of the rule that discusses penalties is completely discretionary because it says the department "may" issue a notice of violation, not "shall." This is unacceptable. When a violation occurs, specific actions must be taken. If someone violates the law or rules, they should be punished. All this rule does is mandate that the party receive a letter. There is no detail as to when the department will issue a "violation letter" as opposed to a "notice of violation." It grants the department too much latitude.

RESPONSE: The discretion is provided by statute. Section 82-4-361(6)(a), MCA, states: "In addition to the violation letter pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred." Section 82-4-361(2)(a), MCA, states: "By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty . . ."

COMMENT NO. 16: This rule indicates that an order becomes final if a hearing has not been requested within 30 days. The rules should allow for an extension of the 30-day appeal period.

RESPONSE: The 30-day time period for filing an appeal is set out in statute and cannot be modified or extended by rule. See 82-4-361(6)(b), MCA.

COMMENT NO. 17: This rule retains the opportunity to request an informal conference, but it is not clear if this request stays the need to file an appeal with the board. It is important that the party not be forced to request an appeal simply to protect their legal position. The goal should be to encourage resolution without an appeal. The rule should be modified to allow an opportunity for an informal conference before having to submit an appeal. If a party requests an informal conference, then the rule should provide that the department may defer the appeal period.

RESPONSE: The request for an informal conference does not stop the running of the statutory 30-day period for filing an appeal. See Responses to Comment Nos. 1 and 16.

COMMENT NO. 18: This rule indicates that the department would follow a one-step enforcement process instead of the previous two-step process. Past orders have been lacking in facts and the two-step process was necessary to obtain sufficient evidence. The rules should define the level of documentation the department is required to supply to support an alleged violation.

RESPONSE: Section 82-4-361(6)(a), MCA, states: "In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred." A two-step process is not necessary to obtain sufficient evidence. Under the new statutory procedure, the single order issued by the department will contain findings of fact and conclusions of law. Under the revised process, the alleged violator will have a 30-day opportunity to appeal, which is equivalent to the previous two-step process.

ARM 17.24.133

COMMENT NO. 19: This rule discusses abatement of violations and suspension of permits. It should contain a provision for revocation of the permit as well.

RESPONSE: Procedures for revocation of permits are set out in the statute at 82-4-362, MCA.

ARM 17.24.134

COMMENT NO. 20: In the stated reason for the rule there appears to be an error. It says that penalties are addressed in 82-4-361(1), MCA. It should be 82-4-361(2), MCA.

RESPONSE: The comment is correct.

ARM 17.24.136

COMMENT NO. 21: It would be better if the department served orders through physical or personal notification, rather than through certified mail. This would treat the violation more fairly and prevent a violator from claiming non-notification.

RESPONSE: The statute allows for either personal service or service by mail and the department uses personal service when necessary. The statute provides that the effective date for service of orders by mail is the date of mailing. See 82-4-361(6)(b), MCA.

ARM 17.24.1220

COMMENT NO. 22: If a violation is determined to be serious enough to warrant a penalty, waiving the penalty should only occur in special circumstances and those circumstances should be detailed.

RESPONSE: The Strip and Underground Mine Reclamation Act and regulatory program require that a notice of noncompliance be issued for each violation, and that a penalty be proposed for each violation. The statute identifies the criteria under which a penalty may be waived. Section 82-4-254(2), MCA, states in part that the department may waive the penalty for a minor violation if the violation does not harm human health or the environment or if it does not impair administration. ARM 17.24.1220(3) builds on the statutory waiver criteria by stating that, where a written abatement plan exists, the penalty may be waived only if abatement is satisfactory.

New Rule II Definitions

COMMENT NO. 23: The definition of "history of violation" from HB 429 should be included in this rule.

RESPONSE: The definition of "history of violation" has been added to New Rule II.

COMMENT NO. 24: The definition of "history of violation" does not distinguish between administrative orders that contain an admission or adjudication of a violation and administrative orders voluntarily entered into by the party with no corresponding admission or adjudication. Consequently, a party could have a penalty increased due to a history of violation predicated on an alleged violation that was neither admitted nor proved. This situation would result in a deprivation of property without due process in violation of the Montana Constitution. This also conflicts with HB 429 which refers to a history of prior violation, not history of alleged violations.

The use of a "no admission of liability" statement in consent orders is a very effective way to encourage amicable, swift, and cost-effective resolution of alleged violations. The department indicated in a December 21, 2005, memo that violations documented in a consent order would be counted toward history, even if the order disputes the violation or contains a "no admission of liability" clause. If responsible parties are penalized in this manner, they will be more likely to pursue appeals or other litigation in lieu of settlement. The commentor suggests that the department

clarify the rules to provide that consent orders containing a "no admission of liability" statement cannot be used as evidence of a history of violation.

RESPONSE: The statute states that the history of violation "must be documented in an administrative order or a judicial order or judgment." Section 75-1-1001(1)(c)(ii), MCA. If a violation is documented in an order or an order on consent, the department and the board consider it to be "documented" for the purposes of HB 429 and this subchapter. Unless the department specifically agrees otherwise in an order on consent, a "no admission of liability" clause in an order on consent does not prevent the department from considering the historic violation when it calculates a penalty for a future violation. There is no due process problem because, at the time the penalty for the future violation is assessed, the violator will have the opportunity to challenge every aspect of the penalty, including the use of the historic violation.

New Rule III Base Penalty

COMMENT NO. 25: The commentor agrees with the distinction between violations that pose harm to human health and the environment and violations that impact administration. The department has indicated that it is contemplating increasing the values in the matrix for violations that pose harm and decreasing the values in the matrix for violations that only impact administration as a way to emphasize the differences between the two categories of violations. We believe the better course of action would be to simply reduce the values in the matrix used for administrative violations.

RESPONSE: In Response to Comment No. 32, the department and the board have increased the matrix values for violations that harm human health or the environment. However, in response to other comments, the department and the board have also redefined gravity so that only the violations that cause harm or serious potential for harm are considered to have "major" gravity. The net effect is that penalties for violations with major extent and gravity may increase, but fewer violations would be considered major. The department and the board eliminated the extent factor for violations that only impact administration. See Comment No. 32 and Response.

COMMENT NO. 26: The commentor agrees with the distinction between major, moderate, and minor extent. However, the definitions are somewhat vague. The commentor suggests specific revisions.

RESPONSE: New Rule III(4) provides that the department may determine major, moderate, and minor extent based on the extent to which a violation deviates from the requirement. The determination is based on a consideration of listed factors including: volume, concentration, and toxicity of the regulated substance, the severity and percent of exceedance of a regulatory limit, and the duration of the violation. Although the terms "major," "moderate," and "minor" are not defined, they are reasonably clear when applied to the listed factors. Using terms such as "substantial" and "significant," as the commentor suggests, would not add clarity.

COMMENT NO. 27: Volume, concentration, and toxicity are more appropriately considered in determining gravity and should be eliminated from New Rule III(4).

RESPONSE: In their ordinary meaning, the terms "extent" and "gravity" are closely related, and factors such as volume, concentration, and toxicity could be considered under either term. In developing the rules, the decision was made to consider these factors under "extent." Changing the rules to consider these factors under "gravity" now would not make a substantive difference in the calculation of penalties. The important thing is that factors such as volume, concentration, and toxicity be considered at some point.

COMMENT NO. 28: Subsection (5)(a) states that a violation has major gravity if it "poses a significant potential to harm human health or the environment." Significant potential more accurately describes a violation of moderate gravity. The commentor suggests defining major gravity as "A violation has major gravity if it actually or is reasonably expected to result in pollution that represents a serious threat to human health or the environment."

RESPONSE: The department and the board agree that, for major gravity, the term "serious" is more appropriate than "significant." New Rule III(5)(a) has been modified to include, under major gravity, violations that cause harm or serious potential for harm.

COMMENT NO. 29: The rules are not stringent enough to penalize violators and do not provide an adequate deterrent to future violators.

RESPONSE: New Rule I(2) states that the purpose of the rules is to calculate a penalty that is commensurate with the severity of the violation, that provides an adequate deterrent, and that captures the economic benefit. The department and the board believe the proposed rules are stringent enough to penalize violators and to provide an adequate deterrent to future violators. As stated in the Response to Comment No. 30, the penalty matrix has been modified to allow higher penalties at the top end of the range.

COMMENT NO. 30: The matrix is too low because the largest possible penalty is only 70% of the statutory maximum. The largest penalty on the matrix should be the statutory maximum. The matrix for administrative penalties seems appropriate.

RESPONSE: In response to this Comment, the matrix has been changed. The top end of the matrix for major-major violations was increased to allow for the calculation of penalty up to the maximum allowed by statute. Including the potential 30% increase in the base penalty for circumstances, the total adjusted base penalty for a violation that has a major extent and gravity factor of 0.85 can equal or exceed 100% of the statutory maximum. To accommodate the increase to 0.85 and maintain a consistent spread across the table, the percentages are shifted upward for major and shifted downward for minor.

COMMENT NO. 31: Mining or disturbing land beyond the permitted boundary or failure to provide an adequate bond, are both identified as moderate violations. These two acts should be major violations.

RESPONSE: The department and the board agree that the failure to provide adequate bond should be a major violation. It has a serious impact to the department's ability to administer the reclamation requirements in the law. The failure to provide adequate bond has been added to the examples of violations with major gravity. Mining beyond the permitting boundary should remain as moderate for several reasons. First, the regulated entity has complied with the rules to some extent by obtaining a permit. Second, mining beyond a permitted boundary may not create a bonding problem. Finally, mining beyond the permitted boundary does not always constitute harm to human health or the environment. If mining beyond the permitted boundary does cause harm or a serious potential for harm, the department would likely pursue enforcement under another statute with higher penalty authority, such as the Water Quality Act, to address the violation. In the final rule, mining beyond the permit boundary has been deleted as an example of a moderate gravity violation, but only because it duplicated the previous example pertaining to failure to operate in accordance with a permit.

COMMENT NO. 32: An early draft of the rules contained a range of multipliers in the penalty matrices. Several commentors disagree with the decision to eliminate the earlier range of multipliers proposed in draft rules and believe a range of multipliers will provide the department with more negotiating tools. A range of multipliers gives the department flexibility and allows for penalties that are fair and equitable given the different circumstances associated with an alleged violation.

RESPONSE: The use of a range of multipliers in this matrix leaves the base penalty amount too indefinite. A number of commentors stated that the rules already provide too much discretion to the department. The board and department believe that the base penalty should be a fixed percentage of the statutory maximum for each of the specified violation categories.

COMMENT NO. 33: Several commentors support the distinction in the rules between violations that cause harm and administrative violations, and support the use of a lower penalty matrix for administrative violations.

RESPONSE: Comment noted.

COMMENT NO. 34: The definition of major gravity to include a violation that results "in a release of a regulated substance" needs to be deleted or narrowed. The language could lead to minor spills being defined as major gravity violations.

RESPONSE: The department and the board have modified the rule to limit releases in the major gravity category to those that cause harm or pose a serious potential to harm human health or the environment.

COMMENT NO. 35: The definitions of each level of gravity in New Rule III(5) are vague and should be clarified.

RESPONSE: See Response to Comment Nos. 26, 28, and 34.

COMMENT NO. 36: New Rule III(3) should be revised to delete "extent" for administrative violations. The commentor recommends that only the gravity factor be used, and that it should match the point assessment in federal coal regulations.

RESPONSE: Extent has been deleted from the matrix for violations that impact only administration.

New Rule IV Adjusted Base Penalty

COMMENT NO. 37: New Rule IV states: "The department expects that a violator will expend the resources necessary to mitigate a violation or the impacts of a violation." The "or" should be "and."

RESPONSE: The intention of the original rule was to use the conjunctive "and." The sentence has been deleted from the final rule because it did not have substantive effect.

New Rule IV(2) and (3) – Circumstances

COMMENT NO. 38: The terms "ordinary negligence" and "gross negligence" in New Rule IV(3) should be eliminated. It is not correct to assume that every violation results in some degree of negligence. In spite of best efforts to comply, process upsets happen. Ordinary negligence should not be presumed from the fact that a violation occurred.

RESPONSE: As proposed, the rules require the department to consider a violator's "culpability" based on various factors set out in New Rule IV(2). The term "negligence" was used to describe the ranges of culpability. However, the board and department agree that "negligence" is a legal term of art. It is arguable that some violations of requirements under these laws may not involve legal negligence. For that reason, the term has been deleted from the final rule. The definitions for "ordinary negligence" and "gross negligence" have also been eliminated from New Rule II. As modified, the rules will allow the department to adjust a penalty based on the culpability factors without regard to whether legal negligence is involved.

COMMENT NO. 39: Increases based on culpability should be smaller, to reflect the federal coal program.

RESPONSE: See Response to Comment No. 9.

COMMENT NO. 40: New Rule IV(2) allows the department to adjust penalties up by 30% based upon the circumstances of the violation. To achieve fair penalty results, several commentors requested that adjustment of a penalty due to circumstances be considered in both increasing and decreasing the base penalty. For example, an act of God may result in the release of a regulated substance, despite the existence of adequate secondary containment and controls implemented by the responsible party.

RESPONSE: In applying the "circumstances" factor, the department evaluates the culpability of the violator, using criteria such as what the violator knew, how the violator acted, and what control the violator had over the circumstances surrounding the violation. The base penalty, prior to consideration of circumstances,

assumes that the violator had no culpability. Given that initial assumption, "circumstances" should only be used to increase a penalty. If the violation was the result of an act of God and prevention of the violation was completely beyond the control of the responsible party, the violator would have no culpability and the department would not increase the penalty based on circumstances.

New Rule IV(4) - Good Faith and Cooperation

COMMENT NO. 41: The department should have the flexibility to reduce a penalty by up to 30% for good faith and cooperation as originally described in the August 2005 version of the draft rules. The rules propose a penalty decrease for "exceptional" good faith and cooperation. The statute does not qualify use of the word "exceptional" to qualify good faith and cooperation.

RESPONSE: Because the statute does not refer to "exceptional" good faith and cooperation, the word "exceptional" has been eliminated from New Rule IV(4). In the proposed rules, the possible combined penalty decrease for good faith and cooperation and amounts voluntarily expended totals 20%. A violator is expected to act in good faith and to cooperate with the department, and is expected to mitigate the violation and impacts of a violation. In contrast, a violator is not expected to have a high level of culpability in the circumstances surrounding a violation. The department and board believe that circumstances weigh heavier in a penalty calculation than do good faith and cooperation and amounts voluntarily expended. Given this position, the rules should not create a situation where a 30% penalty increase for circumstances can be offset by a 30% decrease for good faith and cooperation and amounts voluntarily expended.

New Rule IV(5) Amounts Voluntarily Expended

COMMENT NO. 42: New Rule IV(5)(a) would allow the department to consider revenue lost by the violator due to a cessation or reduction in operations necessary to mitigate the violation. Such a penalty reduction causes the department to subsidize or offset the cost of correcting the violation. This provision is in direct conflict with New Rule VII which states: "The department may not decrease a penalty to offset the cost of correcting the violation."

RESPONSE: The department and the board agree that the provision in New Rule VII appears to conflict with New Rule IV(5). The provision has been deleted from New Rule VII. The provision also appears to conflict with the statute, which allows the department to consider "amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation." Section 75-1-1001(1)(f), MCA. To ensure consistency with the statute, the language "beyond what is required by law or order" has been added to the criteria for consideration of amounts expended in New Rule IV(5).

New Rule V Total Adjusted Penalty - Days of Violation

COMMENT NO. 43: New Rule V should be modified to provide that the department "shall" consider each day of each violation as a separate violation

subject to penalties. The department should not be granted the latitude to count some days and not others. New Rule V(2) should be deleted entirely. Giving the department the latitude to count violations and sometimes not leads to inconsistent enforcement and subverts the goal of these rules.

RESPONSE: The statutes provide the department with the authority and discretion to determine when to issue a penalty order and how many days to consider an entity to be in violation. It is important that the department have that discretion. For example, a violation, such as a small gravel pit mined beyond the permitted boundary, may continue for several years. It would be unreasonable for the department to multiply the adjusted penalty by several hundred days of violation and calculate a penalty that is clearly too large given the severity of the violation.

COMMENT NO. 44: In New Rule V, days of violation should start from the time of the department's determination of an alleged violation or from the time the alleged violator is notified.

RESPONSE: Under the statutory penalty scheme, penalties are assessed based on the number of days a violation occurred. The department will assess days of violation based on the evidence available to it at the time regarding the number of days that the violation occurred. Whether the violator was notified of the violation, and the violator's response to that notification, may be considered under circumstances in New Rule IV.

COMMENT NO. 45: For violations that pose harm, the department should consider the gravity and extent of the violation and the economic gain in its determination whether to assess additional days of violation.

RESPONSE: Extent, gravity, and economic benefit have little bearing on the days of violation. A violation with minor gravity and no economic benefit could occur for many days. Conversely, a violation with major gravity and a large economic benefit could occur for only one day. Therefore, the determination whether to assess additional days of violation is not related to extent, gravity, or economic benefit.

COMMENT NO. 46: The rules should provide for consideration of a "commission" of a violation versus an "omission," when assessing days of violation, to distinguish between an operator who actually engaged in an action that is a violation over multiple days, as opposed to a violation that may have occurred on a single day, but which remained uncorrected for multiple days.

RESPONSE: Regardless of whether a violation is an "act" or "omission," it may have multiple days of violation. Applying this distinction to the days of violation determination would not be appropriate in all cases.

COMMENT NO. 47: Days of violation should not apply to violations that are administrative in nature since they do not involve an exceedance of a regulatory limit, a volume or a release of toxic substances.

RESPONSE: A violation that is only administrative in nature and that does not exceed a regulatory limit could occur for multiple days, such as construction or operation of a facility prior to obtaining approval.

New Rule VI Total Penalty - History of Violation, Economic Benefit

COMMENT NO. 48: The department has not previously categorized violations as major, moderate, or minor, and it would be dubious legally and practically to do so for historic violations unilaterally and after the fact.

RESPONSE: The department and the board agree that it may be difficult to recreate the facts surrounding a historical violation and to quantify gravity. To simplify New Rule VI, the rule has been modified to base the penalty increase for historical violations solely on the nature of the historical violation, i.e., whether the violation caused or posed a risk of harm to human health or the environment or only impacted administration. To further simplify, the percent of penalty increase has been modified to 5% of the base penalty for each historical violation that impacts administration and 10% for each historical violation that causes harm to human health or the environment. The proposed modifications retain the 30% cap on a penalty increase based on history contained in the proposed rules.

COMMENT NO. 49: It is unclear how the department will make the distinction between violations that pose harm to human health or the environment and violations that impact administration in making upward penalty adjustments for history of violation.

RESPONSE: Under the modified rules, penalty increases for history of violation are based solely on the nature of the violation. See Response to Comment No. 48. For historical violations, the department can refer to the definition of nature provided in these rules.

COMMENT NO. 50: The proposed approach to determine the increase for history of violation based on gravity would be inconsistent with Rule III's goal of distinguishing between violations that harm human health or the environment and violations that are administrative in nature.

RESPONSE: See Response to Comment No. 48.

COMMENT NO. 51: New Rule VI applies the multiplier for "economic benefit" and "historic violations" to the adjusted penalty rather than the base penalty. This is inappropriate because there is no logical connection between the adjustments for cooperation or negligence and those for history of violation.

RESPONSE: Economic benefit is an individual calculation and is not multiplied by the base penalty or adjusted base penalty, but is added to the total adjusted penalty. In response to the remainder of the comment, New Rule VI has been modified such that the percentage increase for history of violation is multiplied by the base penalty rather than the adjusted base penalty. To avoid confusion, economic benefit has been separated from New Rule VI into New Rule VIII. See Response to Comment No. 57.

COMMENT NO. 52: New Rule VI must be revised to state that the economic benefits adjustment factor cannot be used to recover more than the statutory maximum penalty authorized by law.

RESPONSE: A provision has been added to New Rule I(2) to clarify that the penalties assessed under this subchapter may not exceed the maximum penalty allowed by statute.

COMMENT NO. 53: A party's history of violation prior to the promulgation of these rules cannot be used to increase the base penalty.

RESPONSE: The statute requires the department to consider a violator's history, and defines history of violation as a violation documented in an administrative order or a judicial order or judgment issued within three years prior to the date of the occurrence of the violation for which the penalty is being assessed. The statute became effective on January 1, 2006, so a party's history of violation prior to the promulgation of the rules can be used to increase a penalty.

COMMENT NO. 54: An alleged violation that has not been admitted or proved should not be considered as history to increase a penalty.

RESPONSE: The statute allows a history of violation documented in an administrative order or a judicial order or judgment to be considered, whether or not the violation has been proved or admitted.

COMMENT NO. 55: The word "quantifiable" should be added in New Rule VI to assist the department in determining economic benefit. Some standards should be applied.

RESPONSE: The rules require that the department base the economic benefit calculation on the best information reasonably available at the time it calculates the penalty. During the 30-day appeal period following the issuance of a penalty order, the alleged violator has an opportunity to discuss the penalty calculation, including economic benefit, with the department and provide better information. If the additional information provided indicates the department's calculation of economic benefit is not correct, the department would modify its calculation.

COMMENT NO. 56: Errors committed by the department should be considered in the total penalty amount.

RESPONSE: If the department commits an error in its penalty calculation, it will correct the error and recalculate the penalty.

COMMENT NO. 57: History of violation and economic benefit should be separated into different rules, because economic benefit may include a consideration of days of violation.

RESPONSE: To avoid confusion, the rules for history of violation and economic benefit have been separated.

COMMENT NO. 58: Consideration of extent and gravity of the historic violation should be removed because of unnecessary complications and it penalizes a violator twice for extent and gravity, rather than just for multiple occurrences.

RESPONSE: New Rule VI has been modified to base the increase for history of violation solely on the nature of the historical violation. See Response to Comment No. 51.

COMMENT NO. 59: The proposed rules limit history to a violation of the same chapter and part. This is more limiting than the federal approach which a historical violation of any environmental statute can be considered as history.

RESPONSE: The statute limits historic violations to those of the same chapter and part of the Montana Code. Section 75-1-1001(1)(c)(i), MCA.

New Rule VII Other Matters as Justice May Require

COMMENT NO. 60: The phrases "demonstrably inadequate as a deterrent" or "inadequate to provide a deterrent" are arbitrary and not included in HB 429, and therefore should be stricken.

RESPONSE: The deterrence language was not included in the proposed rules.

COMMENT NO. 61: A partial list of "other matters" should be included. This is a very nebulous provision and it is hoped the department will be very careful in its application. The "justice" factor should include a downward penalty adjustment when the department makes a mistake. Hopefully it will not be necessary to use the rule very often, because all relevant factors have already been included in the penalty calculation.

RESPONSE: The department and the board expect that "other matters" that may justify a penalty increase or decrease will rarely occur. It is not feasible or appropriate to speculate and list in the rules what those other matters may constitute.

Reviewed by:

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

BOARD OF ENVIRONMENTAL REVIEW

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: */s/ Richard H. Opper*
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, April 24, 2006.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.8.1501, 18.8.1502, and 18.8.1505 to incorporate amendments to federal regulations pertaining to motor vehicle standards previously incorporated by reference in current rules and to make general revisions to clarify scope of rules	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 9, 2006, the department published MAR Notice No. 18-115 regarding the proposed amendment of the above-stated rules at page 617 of the 2006 Montana Administrative Register, Issue Number 5.

2. The agency has amended ARM 18.8.1501, 18.8.1502, and 18.8.1505 as proposed.

3. No comments or testimony were received.

By: /s/ James D. Currie
James D. Currie, Deputy Director
Department of Transportation

/s/ Lyle Manley
Lyle Manley, Rule Reviewer

Certified to the Secretary of State April 24, 2006.

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

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

TO: All Concerned Persons

1. On January 26, 2006, the Board of Athletics published MAR Notice No. 24-117-30 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 157 of the 2006 Montana Administrative Register, issue no. 2.

2. On February 17, 2006, a public hearing was held in Helena, Montana. A single individual appeared at the public hearing and that same individual provided written comments.

3. The Board of Athletics (board) has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: The commenter requested the board adopt additional rules for club boxing events to permit club boxing contestants to gain experience participating in matches using ten ounce gloves and no headgear.

RESPONSE 1: The board is unable to adopt new rules that were not previously included in the proposed rule notice as doing so would preclude public notice and

comment as required by the Montana Administrative Procedure Act. The board will place the request on the board's agenda for subsequent discussion.

COMMENT 2: The commenter requested that the definition of "recognized amateur association" at ARM 24.117.301(11) be amended to allow the licensure of club boxing contestants aged 16 and 17 years old as amateurs under club boxing and not under the rules of United States Amateur Boxing, Inc.

RESPONSE 2: Currently, state law exempts from board jurisdiction matches conducted by a recognized amateur association for contestants under age 16. The board is amending the rule to specify that only matches conducted by United States Amateur Boxing, Inc. will be exempt. Further, the board is seeking a statutory change in the 2007 legislature to remove from the board's jurisdiction all amateur events and contestants. The board is amending the rule exactly as proposed.

COMMENT 3: The commenter requested that ARM 24.117.404(4) be amended to not require payment of the contract guarantee when a club boxing opponent fails to appear at a bout. The commenter stated that while it is fairly common for club boxing no-shows, the promoter always attempts to have alternate bouts scheduled and the scratched fighters are scheduled for the following week.

RESPONSE 3: The board determined that the situation of a no-show opponent is much more likely in club boxing than with professional contestants. The board concluded that the public, including the contestants, would remain adequately protected by not requiring the payment of the contract guarantee for opponents of no-show club boxers. The board is amending the rule accordingly.

COMMENT 4: The commenter requested that club boxing contestants be exempt from the HIV testing requirements in ARM 24.117.406(6). The commenter stated that club boxing weigh-ins and matchmaking occur the night before the boxing event, making it impossible to have HIV tests processed in that time frame. Additionally, club boxing contestants are asked to disclose to the promoter if they have tested positive for HIV.

RESPONSE 4: The board concluded that the logistics and time frames of club boxing do not fit with the currently available HIV tests. The board noted that high speed HIV tests may become prevalent in the future and then may be required for club boxing contestants as well as professional boxers. The board will amend the rule to exempt club boxing contestants from the HIV testing, but will require club boxing contestants to acknowledge in writing at the prefight physical examination that they have not tested positive for HIV.

COMMENT 5: The commenter requested that the upper age limit for club boxing contestants in ARM 24.117.702(4) be amended to 40 instead of the proposed 35. The commenter stated that there are only a few club boxing contestants in competition between 35 and 40 and those boxers are in very good health. The

commenter agreed that any club boxing contestant over 40 should be required to obtain a physical exam and a physician's statement on fitness to participate.

RESPONSE 5: The board notes that the rules had allowed club boxing contestants to compete up to the age of 45 without a physical and a physician's release. The board will amend the rule to require the physical exam and physician's release for club boxing contestants over 40 years.

COMMENT 6: The commenter requested that ARM 24.117.709(1) be changed to require that contestants' physical exams are completed within one hour before entering the ring, as most ringside health care professionals and contestants cannot arrive at the venue until an hour or two before the event.

RESPONSE 6: The board concluded that as long as the prefight physical is completed prior to competing, the time frame is irrelevant. The board will amend the rule to require all prefight physical examinations be conducted between the time of weigh-in and prior to the contestant entering the ring.

COMMENT 7: The commenter requested that ARM 24.117.815(1) be amended to permit the use of club boxing rings that measure 15 feet inside the ropes.

RESPONSE 7: The board determined that requiring a ring measurement of 16 feet does not protect the contestants in any greater way than a ring of 15 feet. The board will amend the rule to allow ring measurements of no less than 15 feet or more than 20 feet square.

COMMENT 8: The commenter requested that NEW RULE I be amended at (1)(b) to not require the $5,000 surety bond. The commenter stated that this requirement was adopted to assure that all contestants and officials were paid by the promoter but that in nearly five years and 1,000 bouts, there have been no complaints concerning non-payment of club boxing contestants or officials.

RESPONSE 8: Pursuant to section 23-3-502, MCA, the board may not issue a promoter's license unless the promoter executes a bond of not less than $5,000. The board may not by rule eliminate a licensure requirement that is statutorily mandated and is therefore amending the rule as proposed.

COMMENT 9: The commenter requested that the $5,000 surety bond requirement be deleted from NEW RULE I(2)(b). The commenter stated that the bond requirement is unnecessary because of the board's complaint procedure and further stated his belief that the board did not intend to fine a promoter $5,000 for a violation of the board's rules.

RESPONSE 9: Pursuant to section 23-3-502, MCA, the board may not issue a promoter's license unless the promoter executes a bond of not less than $5,000. The statute requires that the bond be conditioned on the promoter's compliance with

the board laws and rules. The board may not by rule eliminate a licensure requirement that is statutorily mandated and is amending the rule as proposed.

COMMENT 10: The commenter requested that the medical insurance requirement of NEW RULE I(2)(c) be eliminated. The commenter stated that club boxing shows operate on a very marginal profit and because medical insurance would cost $1,000 per event, all shows would close. The commenter stated that he has operated for 4½ years under the medical insurance exemption for club boxing, but has required contestants to carry their own insurance and sign a waiver of liability.

RESPONSE 10: The board discussed the reasoning behind requiring promoters to carry this insurance and concluded that a contestant's ability to pay for future medical care does not relate to public safety. The board determined that having or not having insurance is better left to the individual and unlike the requirement for a $5,000 bond, insurance is not required by board statute. The board is amending ARM 24.117.1002(1) and NEW RULE I(2)(c) to delete the requirements for medical and death benefit insurance coverage.

COMMENT 11: The commenter asked that the requirement in NEW RULE I(2)(g) for the promoter to give the board the names and weights of contestants be eliminated or amended to a 3:00 p.m. deadline because club boxing fight cards are usually not finalized until noon or 1:00 p.m. the day of the event.

RESPONSE 11: The board concluded that receiving notice of contestants' names and weights prior to a club boxing event does not increase public protection. The board is therefore amending the rule to delete the prefight notification requirement for club boxing.

COMMENT 12: The commenter requested that the requirement for promoters to provide gauze and tape for handwraps in NEW RULE I(2)(i) be deleted as club boxing contestants provide their own training handwraps without gauze or tape.

RESPONSE 12: The board concluded that because the rule simply requires promoters to furnish whatever materials are necessary for an event, it would allow club boxing contestants to furnish their own handwraps. The board is amending NEW RULE I(2)(i) exactly as proposed.

COMMENT 13: The commenter asked that the qualifications for a club boxing promoter license (to be repealed in ARM 24.117.502) be retained. The commenter stated that he has struggled desperately to remain financially sound, and relaxing the qualifications will spur half-hearted attempts to promote club boxing. The commenter further argued that to open the promoter's license to anyone who can get three people to attest to their boxing experience is very risky. The commenter stated his belief that anyone challenging the old requirements would need to show the dedication and experience necessary to make their venture successful.

RESPONSE 13: The board is statutorily mandated to set minimum licensure qualifications for licensees to ensure adequate protection of the public. The board determined that requiring that a club boxing promoter's principal place of business be in Montana does nothing to ensure public protection and may raise restraint of trade issues. Further, the board concluded that requiring the applicant to have promoted at least two professional or semiprofessional boxing events to qualify for a club boxing promoter's license does not enhance public protection. The board is amending the rule exactly as proposed.

COMMENT 14: The commenter opposed the $500 licensure fee for all promoters in ARM 24.117.402 and requested the fee for club boxing promoters remain at $100.

RESPONSE 14: The board determined that the 500% fee increase for club boxing promoters is too great an increase and the board's budget constraints do not justify such an increase. The board is amending the rule to a $250 club boxing promoter license fee, while keeping in place the $500 license fee for all other promoters.

COMMENT 15: The commenter made several comments regarding the board's budget and expenditures. The commenter stated that since 2001, he has paid the board $159,367 in taxes and licensing fees and questioned where the money goes. The commenter asked why the board spent $3,380 to send a board member, a staff member, and the board's medical advisor to the Association of Boxing Commissions' National Convention in Las Vegas when professional boxing has absolutely nothing to do with club boxing. He further stated that in the past 4½ years, there have been over 600 club boxing events and only one professional boxing event. The commenter asserted that the board isn't one that governs professional boxing as most of the board's effort is spent on club boxing.

The commenter questioned whether it makes sense that a board inspector "that answered an ad in a newspaper" is paid five times what club boxing judges are paid? The commenter asserted that there are many times the board uses state employees "who are being paid overtime, expenses, travel, etc., to attend" club boxing matches. The commenter stated that it is no wonder the board has a cash flow problem since the board doesn't run their business like he does. The commenter further stated that "using his tax dollars, the board routinely sends representatives to conventions for absolutely no sane reason" as they learn nothing to help club boxing. The commenter argued that someone has to stop this "ridiculous amount of expenditures" and asserted that there are no spending guidelines – the board just keeps spending and spending, and when there's no more money, the board raises his fees. The commenter stated that it's time for the board to take control and stop letting state employees tell the board what to do. The commenter stated that he hopes his business doesn't close, as there will be no need for the board.

RESPONSE 15: The board acknowledges the comments and notes that the comments are not germane to the changes proposed in the rule notice. The board also notes that a response is not required in this notice, but because the comments were made at the public hearing, the board is including them at this time. The

board's budget is, in fact, set and approved legislatively. The board's budget information, as is the budget information for all governmental agencies, is available for public inspection. If concern exists that the board maintains too large a budget, such concerns should be addressed to the legislature through the budgetary process.

The board also notes that its members, when acting in their official capacity, serve as state employees, and are obligated to follow Montana law. The board notes that its discretion is constrained by state law, and that the board does not have the authority to abandon its statutory duties. The board expects that it will continue to rely upon its professional staff to provide it with appropriate advice as to what those duties are, and about the ways in which those obligations can be fulfilled.

4. After consideration of the comments, the board has amended ARM 24.117.301, 24.117.401, 24.117.403, 24.117.405, 24.117.601, 24.117.602, 24.117.703, 24.117.705, 24.117.706, 24.117.710, 24.117.801, 24.117.802, 24.117.803, 24.117.804, 24.117.805, 24.117.810, 24.117.811, 24.117.812, 24.117.901, 24.117.903, 24.117.904, 24.117.905, 24.117.906, 24.117.907, 24.117.1001, 24.117.1002, 24.117.1005, 24.117.1006, and 24.117.1007 exactly as proposed.

5. After consideration of the comments, the board has adopted NEW RULES II (24.117.409), III (24.117.909), IV (24.117.412), V (24.117.2303), VI (24.117.1501), VII (24.117.1504), VIII (24.117.1507), IX (24.117.1510), X (24.117.1513), XI (24.117.1516), XII (24.117.1519), XIII (24.117.1522), and XIV (24.117.1525) exactly as proposed.

6. After consideration of the comments, the board has repealed ARM 24.117.502, 24.117.902, 24.117.1003, and 24.117.1004 exactly as proposed.

7. After consideration of the comments, the board has amended ARM 24.117.402, 24.117.404, 24.117.406, 24.117.702, 24.117.709, and 24.117.815 with the following changes, stricken matter interlined, new matter underlined:

24.117.402 FEES

(1) through (8) remain as proposed.

(9) Club boxing promoter 250

(9) remains as proposed, but is renumbered (10).

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

24.117.404 CONTRACTS AND PENALTIES (1) through (3) remain as proposed.

(4) Except in club boxing, when ~~When~~ a contestant under contract appears at weigh-in time, is ready to fulfill the contract, and neither an opponent nor a substitute

appears, the promoter must pay the contestant the contract guarantee unless a forfeit is provided.

(5) through (7) remain as proposed.

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

24.117.406 GENERAL LICENSING REQUIREMENTS (1) through (5) remain as proposed.

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

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

24.117.702 BOXING CONTESTANTS (1) through (4)(a) remain as proposed.

(b) Club boxing contestants over the age of 40 wishing to compete must provide to the board a written statement by the contestant's personal physician (M.D.) that:

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

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

(5) through (14) remain as proposed.

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

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

(2) through (7) remain as proposed.

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

24.117.815 RING--EQUIPMENT (1) The ring shall be no less than ~~16~~ 15 or more than 20 feet square when measured inside the line of the ropes. The apron of the ring shall extend beyond the ropes not less than two feet. The ring shall be equipped with four ropes with two spacer ties on each side of the ring to secure the ropes.

(2) through (5) remain as proposed.

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

24.117.1002 CLUB BOXING CONTESTANTS ~~(1) Each participant must provide proof of medical insurance coverage or sign a waiver of liability for any medical bills incurred as a result of lack of coverage.~~

(2) remains as proposed but is renumbered (1).

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

8. After consideration of the comments, the board has adopted New Rule I (24.117.503) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.117.503) PROMOTER (1) through (2)(b) remain as proposed.

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

(d) through (f) remain as proposed, but are renumbered (c) through (e).

~~(g)~~(f) provide the names and weights of all contestants scheduled for an athletic event to the board at least 10 days before the event. For club boxing events, prefight notification of names and weights ~~shall be received~~ at the board office ~~by 10 o'clock a.m. on the day of the event~~ is not required;

(h) through (r) remain as proposed, but are renumbered (g) through (q).

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

BOARD OF ATHLETICS
KEVIN MCCARL, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 24, 2006

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.147.302 definitions, 24.147.401, 24.147.402, and 24.147.403 substantive rules, 24.147.501, 24.147.502, and 24.147.505 licensing, 24.147.901 mortuary requirements, 24.147.1101, 24.147.1114, and 24.147.1115 crematory rules, 24.147.1301, 24.147.1302, 24.147.1304, 24.147.1305, 24.147.1312, 24.147.1313, and 24.147.1314 cemetery regulation rules, 24.147.1501 and 24.147.1503 branch facilities and prearranged funeral agreements, 24.147.2108 continuing education, 24.147.2401 complaint filing, the adoption of NEW RULE I fee abatement, NEW RULE II renewal of cemetery licenses, and the repeal of 24.147.1311 cemetery authority rules	)	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On March 9, 2006, the Board of Funeral Service (board) published MAR Notice No. 24-147-32 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 642 of the 2006 Montana Administrative Register, issue no. 5.

2. On March 30, 2006, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. No testimony or comments were received at the hearing. One written comment was received by the April 6, 2006, deadline.

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

COMMENT 1: One comment was received regarding section 46-4-101, MCA, providing that the state medical examiner has jurisdiction if a coroner with jurisdiction of a death fails to act, and the apparent conflict with the proposed amendment to ARM 24.147.1101(10). The commenter is aware of a situation where the state medical examiner was required to act under this statute and asserted that this portion of the rule has a valid purpose as a part of the “checks and balances” concept of our form of government.

RESPONSE 1: The board concurs with the comment and will not amend section (10) of this rule.

4. The board has amended ARM 24.147.302, 24.147.401, 24.147.402, 24.147.403, 24.147.501, 24.147.502, 24.147.505, 24.147.901, 24.147.1114, 24.147.1115, 24.147.1301, 24.147.1302, 24.147.1304, 24.147.1305, 24.147.1312, 24.147.1313, 24.147.1314, 24.147.1501, 24.147.1503, 24.147.2108, and 24.147.2401 exactly as proposed.

5. The board has adopted NEW RULE I (24.147.404) and NEW RULE II (24.147.506) exactly as proposed.

6. The board has repealed ARM 24.147.1311 exactly as proposed.

7. The board has amended ARM 24.147.1101 with the following changes, stricken matter interlined, new matter underlined:

24.147.1101 CREMATORY FACILITY REGULATION (1) through (9) remain as proposed.

(10) Prior to beginning the cremation process, the crematory must have in its possession, written authorization(s) bearing the original, photocopied, or facsimile signatures of the authorizing agent and, if the death occurred in Montana, the coroner having jurisdiction or the state medical examiner. In addition, the following information must be included in the authorization and kept on record:

(a) through (11) remain as proposed.

AUTH: 37-1-131, 37-19-202, 37-19-703, MCA
IMP: 37-19-702, 37-19-703, 37-19-705, MCA

BOARD OF FUNERAL SERVICE
R.J. (DICK) BROWN, CHAIRPERSON

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

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

Certified to the Secretary of State April 24, 2006

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.210.667 and 24.210.661 related to continuing real estate education and new licensee mandatory continuing education - salespersons	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 22, 2005, the Board of Realty Regulation published MAR Notice No. 24-210-27 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2546 of the 2005 Montana Administrative Register, issue no. 24.

2. On January 13, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Testimony and comments were received at the hearing. Comments were also received by the closing of the comment period on January 20, 2006.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Some commenters stated they were in support of the elimination of continuing education ("CE") carry over hours. They believe the elimination of carry over would lead to more professionalism. One comment even suggested the board require more hours and adopting stricter criteria for initial licensing.

RESPONSE 1: The board agrees with the comment that eliminating the carry over hours will result in more professionalism among the licensees. In regard to the comments suggesting more hours and stricter licensing criteria, the board responds that at this time the board is only looking at an alternative reporting requirement for continuing education, not the hourly requirement itself or the requirements to initially obtain a license.

COMMENT 2: Some commenters opposed the elimination of CE carry over hours without stating why they were opposed.

RESPONSE 2: The elimination of carry-over will bring many benefits to the licensees and the board including allowance for on-line tracking (which is unavailable on the current database), providing one central place to track continuing education, and elimination of the annual CE audit. Additionally, the current carry over system discourages licensees from completing 12 hours of education every year because they could rely on older carry over credits to fulfill their CE

requirement. Therefore, elimination of carry over will also lead to increased professionalism of licensees by requiring licensees to complete 12 hours of education every year which necessarily means that the education will be more current than if credits are carried over from previous years.

COMMENT 3: Some commenters believe that elimination of carry over will result in unfairness to licensees who currently have carry over hours because those licensees would potentially lose the hours if the rule is adopted.

RESPONSE 3: The board agrees with the comment concerning the loss of accrued carry over hours. In order to avoid this loss, the board will delay the implementation date of elimination of carry over hours to 2007. This will provide licensees an opportunity to use their excess carry over hours for the 2006 requirement period. This will be a one-time extension. Beginning in January 1, 2007, no carry over will be recognized. Therefore, ARM 24.210.667(5) will not be deleted as originally proposed. Instead it has been amended to read as follows:

"(5) For the reporting period ending December 31, 2006, no more than six hours of elective topics may be carried over from a previous year. No mandatory hours may be carried over except as elective credit. For the reporting period beginning January 1, 2007, no carry over hours will be recognized or allowed."

The change also results in the renumbering of the subsequent sections of the rule.

COMMENT 4: Some commenters stated their belief that the rule requiring elimination of carry over hours was driven by educators who wanted all licensees to complete 12 hours of education every year. These commenters also believe that adoption of this rule would discourage licensees from taking extra classes.

RESPONSE 4: The elimination of carry over was not driven by educators. The intent is to increase professionalism by requiring 12 current continuing education credits every year, to allow for on-line tracking currently unavailable on the current database, to provide one central place to track continuing education and to eliminate the annual CE audit. The current carry over system discourages licensees from completing 12 hours of education every year.

COMMENT 5: Some commenters stated that the current carry over scheme provides scheduling flexibility which allows the licensee to better plan their CE. Also, the scheduling is more convenient and allows licensees to take classes that have information that is useful to them.

RESPONSE 5: The board agrees that the elimination of carry over will require additional planning on the licensee's part when scheduling CE. However, the board concludes that the advantages of eliminating carry over outweigh the drawbacks of the carry over elimination. The benefits of eliminating carry over include increased professionals, on-line tracking, and elimination of the annual CE audit. Elimination of the carry over will not prevent licensees from taking classes that are useful to

them. Licensees should always be pursuing approved courses that provide information useful to them.

COMMENT 6: Several commenters believe that the inability to electronically monitor carry over hours is an invalid reason for changing the rule because computer programs can be adapted to track carry over.

RESPONSE 6: The database used by all licensing programs in the Business Standards Division does not have a place to house the carry over information. Even if it were collected, there is no mechanism to track it in the database. Because this database is used by all licensing boards and programs in the Business Standards Division, it will not be modified to accommodate tracking carry over hours.

COMMENT 7: Several licensees stated that they pay good money to maintain their licenses and a record of carry over education credits is included in the existing fees.

RESPONSE 7: Recording and tracking of carry over hours is not currently done by the board. Nor do the licensing fees currently support this function. Therefore, enactment of this tracking system will actually provide more benefit/service to the licensees.

COMMENT 8: The board's goals should be to keep things simple and not enable licensees who cannot track their own continuing education hours.

RESPONSE 8: Implementation of this tracking system will actually simplify and streamline the process and will eliminate the annual CE audit. This will provide more efficiency in the reporting process.

COMMENT 9: A couple of commenters stated that elimination of carry over hours would keep licensees from attending courses that both interest and educate licensees because they could not use the excess hours for meeting CE requirements.

RESPONSE 9: The board does not agree with this comment. The elimination of carry over would actually require licensees to complete a minimum of 12 hours of education every year. This would result in more current education completed on an annual basis rather than carrying some hours over from a prior year. Licensees should always take courses that interest and educate them.

COMMENT 10: Several commenters stated that the elimination of carry over should not occur until 2007. This would give licensees adequate notice so they could use up their carry over or at least be notified it would be eliminated. It would also allow education providers adequate time to plan for new deadlines.

RESPONSE 10: The board agrees. The rule will be adopted with an implementation date of January 1, 2007. This will give the licensees adequate notice and the opportunity to use their carry over hours.

COMMENT 11: A couple of commenters stated that it is unfair to hold instructors responsible for accurately recording continuing education attendance information. The course provider/administrator should be the responsible party for reporting course attendance.

RESPONSE 11: The board does not license, certify, approve or track the course provider/administrator. However, the board has jurisdiction to enforce certain requirements on the instructor. The board does recognize that some instructors contract with or arrange for another person to perform some duties. The proposed rule provides some flexibility to the instructor by allowing the "instructor or their designee" to report licensee attendance. However, the instructor will ultimately be responsible for the provision of and the accuracy of the information.

COMMENT 12: Some commenters stated that ten days is not enough time to allow for reporting of course attendance.

RESPONSE 12: The board agrees with the comments. The reporting requirement has been amended to extend the time to 20 days.

COMMENT 13: A couple of commenters believe the instructor or assignee should be absolved from liability if the student's name is skipped by error. The commenters expressed their concern about liability for incorrect data entry.

RESPONSE 13: The board does not believe instructors have additional liability under the proposed reporting system. The board does not have the statutory authority to protect instructors against liability to a licensee for the instructor's negligence.

COMMENT 14: A couple of commenters stated that instructors should be able to provide a faxed roster to the board and not be expected to do the board staff's work to record hours.

RESPONSE 14: Currently this function (recording hours) is not performed by the board staff. The board does not have the staff capability to input all education hours for every licensee. Nor do the licensing fees currently support this function. The proposed format is web-based with access for all providers through the internet.

COMMENT 15: One commenter opposed changing the renewal date stating that licensees are used to the term being year-end.

RESPONSE 15: The pertinent sections of this rule only refer to new licensees. However, in response to the comment, the board has determined that the changes to new licensee renewal should not be effective until calendar year 2007. The board will amend the adopted rule to delay implementation until January 2007. This will allow adequate time to notify new licensees of the change.

The last section in the rule does refer to 'all licensees'. However, licensees other than new licensees are not scheduled to renew until 2007 anyway. Therefore, there is adequate time for those licensees to prepare for an October renewal date. Consequently, that section of the rule will be adopted as proposed.

COMMENT 16: One commenter is opposed to all the proposed changes to the administrative rules because they are cumbersome and do not improve the process. Additionally, the commenter feels the changes shift the board's responsibility and liability to others concerning the reporting of a licensee's education credits.

RESPONSE 16: The proposed changes are not unduly cumbersome especially given the benefits. The proposed changes will increase professionalism of all licensees, assist them in maintaining their current continuing education and will eliminate the annual continuing education audit. Moreover, the function of recording hours is not currently performed by the board staff. The board does not have the staff capability to input all education hours for every licensee. Nor do the licensing fees currently support this function. The proposed format is web-based with access for all providers through the internet. The board does not believe instructors have additional liability under the proposed reporting system.

COMMENT 17: A commenter asked what are the methods of reporting that are being considered.

RESPONSE 17: The format is web-based with access through the internet.

COMMENT 18: A commenter asked what sort of proof will the person have to prove they have attended a given class should the instructor fail to properly report all students in the class.

RESPONSE 18: Instructors will still be required to provide completion certificates to licensees attending their course.

COMMENT 19: A commenter asked if the date for CE credit reporting is changed to October 31 of each year – will that also effect the due date for dues each year – since they go hand in hand?

RESPONSE 19: Yes. The department has proposed changing the renewal date for licensees. The board is changing the CE reporting date to coincide with the renewal date being established by the department.

4. The board has amended ARM 24.210.661 and ARM 24.210.667 with the following changes, stricken matter interlined, new matter underlined:

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS (1) All new sales licensees issued in 2006 are required to complete the board mandated new licensee mandatory continuing education requirement by ~~October~~ December 31, 2006 ~~following their original license issue~~

~~date~~. Effective January 1, 2007, all new sales licensees are required to complete the board mandated new licensee mandatory continuing education requirement by the October 31 following their original license issue date.

(2) New sales licensees issued in 2006 will receive an interim license that will expire ~~October~~ December 31, 2006. Effective January 1, 2007, all new sales licensees will receive an interim license that will expire October 31 of the year of the initial license date.

(3) through (5) remain as proposed.

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (4) remain as proposed.

(5) For the reporting period ending December 31, 2006, no more than six hours of elective topics may be carried over from a previous year. No mandatory hours may be carried over except as elective credits. For the reporting period beginning January 1, 2007, no carry over hours will be recognized or allowed.

(6) ~~(5)~~ No course shall be repeated for credit in the same reporting year.

(6) through (10) remain as proposed but are renumbered (7) through (11).

~~(11)~~ (12) All continuing education instructors or their designee must report licensee attendance at approved continuing education offerings to the board within ~~10~~ 20 days of the course offering.

(12) through (14) remain as proposed, but are renumbered (13) through (15).

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, 37-51-204, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-203, 37-51-204, MCA

BOARD OF REALTY REGULATION
TERRY HILGENDORF, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 24, 2006

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.21.415, fee schedule for water well contractors	)))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On March 23, 2006, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-114 regarding the proposed amendment of ARM 36.21.415 at page 720 of the 2006 Montana Administrative Register, Issue No. 6.

2. The department has amended ARM 36.21.415 exactly as proposed.

3. No comments were received.

4. An electronic copy of this Notice of Amendment is available through the department's site on the World Wide Web at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Amendment 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.

/s/ Mary Sexton
MARY SEXTON
Director, Natural Resources and Conservation

/s/ Fred Robinson
FRED ROBINSON
Rule Reviewer

Certified to the Secretary of State April 24, 2006.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM topical index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2005. This table includes those rules adopted during the period January 1 through March 31, 2006 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR or Register).

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

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2005 and 2006 Montana Administrative Registers.

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