

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print 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 Services, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF PUBLIC HEARING
NEW RULE I concerning associated)	ON PROPOSED ADOPTION
gambling business license, NEW RULE II)	AND AMENDMENT
concerning approval of variations of)	
standard bingo cards, and the)	
amendment of ARM 23.16.202, 23.16.401,)	
23.16.1245, 23.16.1716, 23.16.1914,)	
23.16.1915, 23.16.1916, 23.16.1916A,)	
23.16.2001, and 23.16.2602, concerning)	
credit play, card dealer licenses, card)	
room contractors license requirements,)	
sports tab game seller license, distributor)	
licenses, route operator licenses,)	
manufacturer licenses, accounting system)	
vendor licenses, manufacturer of illegal)	
gambling devices license, and raffle)	
record keeping requirements)	

TO: All Concerned Persons

1. On July 2, 2009, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 29, 2009, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I ASSOCIATED GAMBLING BUSINESS LICENSE (1) Except where licensure is required by Title 23, chapter 5, MCA, or under these rules, an associated gambling business license is a license the department may issue to a person or entity whose business provides products or services to a licensed gambling business and:

- (a) possesses or maintains control over gambling equipment or devices;
- (b) has access to gambling related trade secrets, or proprietary, confidential, or tax information; or

(c) is a party to a gambling transaction.

(2) An applicant for an associated gambling business license must submit to the department:

(a) an application using Form 17, with special instructions, and Form FD-258, which are available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) Form 10 for all applicants as described in ARM 23.16.102;

(c) a complete set of fingerprints, on Form FD-258 provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department, for each person required to complete a personal history statement;

(d) financial statements for the applicant's business as described in ARM 23.16.502; and

(e) a check or money order for \$1,100 made payable to the State Treasurer, which includes payment for the:

(i) \$100 annual license fee; and

(ii) \$1,000 processing fee to cover the actual cost of processing the license.

(3) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department will refund any overpayment of the processing fee or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the application, the department will refund any amount not expended as of the date of withdrawal.

(4) The department may waive the application and processing fee if the applicant is licensed as an operator, distributor, manufacturer of legal or illegal devices, or a route operator, and if the applicant is substantially the same and has not added strangers to the license.

(5) The provisions of this rule do not apply to attorneys or accountants who are retained by licensees in their professional capacity and may have access to gambling related trade secrets, or proprietary, confidential, or tax information.

AUTH: 23-5-178, 23-5-115, MCA

IMP: 23-5-178, MCA

RATIONALE AND JUSTIFICATION: The 2009 Legislature enacted SB 86, which in part amends 23-5-112, MCA to define "associated gambling business," and enacts new Section 8 (23-5-178, MCA) which grants the department the authority to adopt rules for licensing associated gambling businesses. This proposed new rule sets out the criteria for the issuance of an associated business license, and it establishes the application and licensing procedures required by the department for a person to obtain an associated business license. These procedures are borrowed in large part from the procedures and language previously adopted in ARM 23.16.1916A for the licensing of video gambling machine accounting and reporting system vendors.

This rule is necessary to provide a means for associated gaming businesses to obtain a license from the department. The rule makes clear that not all associated gambling business licenses are compulsory licenses. Unless the associated

business license is mandated by statute or rule, the license may be granted when it is requested from an applicant. An example of a compulsory associated business license is the accounting system vendor license provided for in ARM 23.16.1916A, which specifies that licensure is required before the person or entity may conduct business in the state. In other cases, the department may be asked to issue a license to a business that provides goods or services to gambling businesses where no license is required by the department. A business may request the associated business license because it demonstrates to its customers or clients that it has undergone the department's background check and its product is not illegal. As an example, a business that salvages video gambling machine parts sought licensure from the department because such licensure was required by the regulatory authority in the state where the machines were to be dismantled.

Section 5 of this rule is needed to make clear that the department will not require licensure of accountants or attorneys who perform professional services for gambling businesses.

NEW RULE II PROCEDURE FOR APPROVING VARIATIONS OF STANDARD BINGO CARDS (1) A game of bingo using a variation of a standard card with 5 columns and 25 squares may not be conducted unless and until it has been approved by the department.

(2) A person requesting approval from the department for conducting a variation of an authorized bingo card shall submit the following information to the department:

(a) an illustration or facsimile of the proposed bingo card variation submitted for approval; and

(b) a detailed description of the operation of the game of bingo utilizing the proposed bingo card variation, which must verify that the game complies with all requirements for games of bingo as set out in 23-5-412, MCA.

(3) The department may request additional information, including a demonstration of the game of bingo utilizing the bingo card variation submitted for approval.

(4) After reviewing the proposed bingo card variation, the department shall notify in writing the person submitting the variation of its intended action. If the person desires a hearing he shall submit a written request to the department within 20 days. Upon receipt of the request, all proceedings must be conducted according to the Montana Administrative Procedure Act and the Attorney General's Model Rules of Procedure.

AUTH: 23-5-115, MCA
IMP: 23-5-412, MCA

RATIONALE AND JUSTIFICATION: The 2009 Legislature's amendment to 23-5-412, MCA gives the department authority to approve proposed variations from the standard bingo card. This new rule employs language and procedures similar to those established in ARM 23.16.1202 for department approval of proposed variations of card games. This rule is necessary to describe the department's procedure for approving standard bingo card variations.

Pursuant to this rule, a person may submit bingo cards to the department which vary from the standard bingo card. The submission must include a visual depiction of the proposed bingo card, along with a description of how the bingo card will be played in compliance with the law. If the department is not able to approve the proposed bingo card variation based upon the information provided, it may request additional information, including a demonstration of how the game will be played. In the event the department denies approval for the bingo card variation, the person who submitted the variation may request an administrative hearing to contest the determination.

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

23.16.202 CREDIT PLAY PROHIBITED (1) remains the same.

(2) No operator may grant a loan of any kind at any time to a player or permit a deferred payment including post-dated checks or engage in any similar practice. A check or debit card used to obtain cash on the premises of a licensed operator must be delivered and accepted unconditionally. An operator may not accept or hold a check, ~~credit card, or debit card~~ pending the outcome of a gambling activity. An operator may not accept cash from the person who wrote the check to repurchase a check previously cashed on the premises, unless the cash is tendered by noon on the day following the date written on the check.

(a) remains the same.

(3) ~~Any debt resulting from a credit card transaction to obtain cash for the purpose of gambling may not become a debt owed to the licensee, be assigned to the licensee, or be assigned or sold to a collection agency acting on behalf of a licensee. Debt resulting from a credit card transaction to obtain cash for the purpose of gambling may only become debt owed to the financial institution issuing the credit card.~~ A licensee may accept debit cards to provide cash to customers for gambling purposes. The customer must present the debit card and the cardholder must enter a PIN number.

(4) ~~No licensee may accept credit cards for cash advances for the purpose of gambling by representing the transaction as a sale of merchandise, gift cards, or in any other way that would violate the rules or agreements with the issuing merchant bank or credit card company. Any attempt by a licensee to collect credit card charges from a cardholder made in violation of credit card rules or regulations will constitute a violation of the public policy against credit gambling.~~ No licensee may accept credit cards for cash advances or the sale of items that may be redeemed for cash, such as gambling chips, money orders, checks, e-checks, vouchers, travelers checks, wire transfers, or gift cards.

(5) Any merchandise or services purchased from a licensee with a credit card may be refunded or reimbursed through an adjustment to the customer's credit card account, and not by a cash refund.

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

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-157, MCA

RATIONALE AND JUSTIFICATION: The 2009 Legislature enacted SB 86, which in part amends 23-5-157, MCA, the statute which requires gambling on a cash basis and prohibits credit gambling. The amendment effectively prohibits a person from using a credit card to obtain cash for gambling purposes, but it specifically allows a person to use a debit card to obtain cash for gambling purposes.

Because credit cards may no longer be used for gambling purposes, this rule amendment is necessary to repeal the administrative regulations and restrictions related to the use of credit cards for gambling purposes.

While the amendments recognize gambling patrons may use debit cards to obtain cash for gambling purposes, the rule requires that the card owner physically present the debit card and use a PIN number for all such transactions. This rule amendment is designed to prevent the use of stolen or fraudulently obtained debit cards.

The rule amendments also recognize patrons of gambling establishments may lawfully use credit cards for purposes other than gambling. These rule amendments prohibit gambling establishments from charging merchandise to a credit card which can be redeemed for cash, such as money orders, e-checks, or gift cards. The amendments also require that any refunds from a credit card transaction may not be made in the form of cash to the customer, but must be through a reversal of the charge, or a credit to the cardholder's account.

23.16.401 APPLICATION FOR DEALER LICENSE (1) through (3) remain the same.

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-308, MCA

RATIONALE AND JUSTIFICATION: A recent FBI audit opined the department did not have clear legislative authority to conduct fingerprint background checks for card dealer license applicants. The 2009 Legislature amended 23-5-115, MCA to give the department specific authority to require all gambling license applicants to submit fingerprints for the purpose of conducting fingerprint based background checks. This rule amendment is necessary to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks.

23.16.1245 CARD ROOM CONTRACTORS LICENSE (1) through (2)(g) remain the same.

(3) If a card room contractor ~~alters~~ proposes to amend an existing agreement or enter into additional agreements after obtaining a license, ~~he~~ the contractor shall submit to the department for approval a copy of each proposed amended or additional agreement ~~to the department within ten days after altering or signing the agreement.~~

(4) A card room contractor shall not operate a card room under an amended or additional agreement unless and until such proposed agreement is approved by the department. This restriction does not apply when a proposed amendment to a

previously approved agreement only extends the time period of the agreement and makes no other changes.

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

AUTH: 23-5-115, MCA
IMP: ~~16-4-414~~, 23-5-324, MCA

RATIONALE AND JUSTIFICATION: These rule amendments are necessary to clarify that licensed card room contractors (CRCs) must obtain prior department approval before operating a card room under the terms of a new or amended card room contractor agreement. Currently, some CRCs believed the existing rules require only notification to the department before operating under a new card room contractor agreement or an amendment to an existing card room contractor agreement. The department's practice has been to require approval before a CRC operates under new or amended CRC agreements, but it recognizes the current rules are ambiguous. These rule amendments make clear that CRCs must obtain approval before operating under new agreements or amendments to approved agreements. The rule recognizes, however, that CRCs often enter into amended agreements with licensed operators where the sole modification is an extension to the time period of the agreement. This rule clarifies that CRCs do not need prior department approval in order to operate under an amended agreement when the modification is solely an extension of the time period of the agreement.

A recent FBI audit opined the department did not have clear legislative authority to conduct fingerprint background checks for card dealer license applicants. The 2009 Legislature amended 23-5-115, MCA to give the department specific authority to require all gambling license applicants to submit fingerprints for the purpose of conducting fingerprint based background checks. This rule amendment is necessary to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks.

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

(2) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the processing fee provided for in (1)(~~de~~)(ii) or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the application, the department shall refund any amount not expended as of the date of withdrawal.

(3) The department may waive the application license and processing fee provided in (1)(~~de~~)(i) and (1)(~~de~~)(ii) if the applicant is licensed as a manufacturer, distributor, or route operator and if the applicant is substantially the same and has no strangers to the license.

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

RATIONALE AND JUSTIFICATION: A recent FBI audit opined the department did not have clear legislative authority to conduct fingerprint background checks for card dealer license applicants. The 2009 Legislature amended 23-5-115, MCA to give the department specific authority to require all gambling license applicants to submit fingerprints for the purpose of conducting fingerprint based background checks. This rule amendment is necessary to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks.

Other minor edits are necessary to reflect a change in rule numbering resulting from amendments made in 2005.

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

(2) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the processing fee provided for in (1)(~~e~~)(ii) or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the application, the department shall refund any amount not expended as of the date of withdrawal.

(3) The department may waive the application license and processing fees provided for in (1)(~~e~~) if the applicant is licensed as a manufacturer, manufacturer of illegal devices, or route operator and if the applicant is substantially the same and has no strangers to the license.

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

RATIONALE AND JUSTIFICATION: A recent FBI audit opined the department did not have clear legislative authority to conduct fingerprint background checks for card dealer license applicants. The 2009 Legislature amended 23-5-115, MCA to give the department specific authority to require all gambling license applicants to submit fingerprints for the purpose of conducting fingerprint based background checks. This rule amendment is necessary to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks.

Other minor edits are necessary to reflect a change in rule numbering resulting from amendments made in 2005.

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

(2) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the processing fee provided for in (1)(~~e~~)(ii) or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the application, the department shall refund any amount not expended as of the date of withdrawal.

(3) The department may waive the application license and processing fee provided in (1)(~~de~~)(i) and (1)(~~de~~)(ii) if the applicant is licensed as a manufacturer, manufacturer of illegal devices, or distributor and if the applicant is substantially the same and has no strangers to the license.

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

RATIONALE AND JUSTIFICATION: A recent FBI audit opined the department did not have clear legislative authority to conduct fingerprint background checks for card dealer license applicants. The 2009 Legislature amended 23-5-115, MCA to give the department specific authority to require all gambling license applicants to submit fingerprints for the purpose of conducting fingerprint based background checks. This rule amendment is necessary to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks.

Other minor edits are necessary to reflect a change in rule numbering resulting from amendments made in 2005.

23.16.1916 MANUFACTURER'S LICENSE (1) through (3) remain the same.

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

RATIONALE AND JUSTIFICATION: A recent FBI audit opined the department did not have clear legislative authority to conduct fingerprint background checks for card dealer license applicants. The 2009 Legislature amended 23-5-115, MCA to give the department specific authority to require all gambling license applicants to submit fingerprints for the purpose of conducting fingerprint based background checks. This rule amendment is necessary to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks.

23.16.1916A ACCOUNTING SYSTEM VENDOR LICENSE (1) through (d) remain the same.

(e) a check or money order for ~~\$1,500~~ \$1,100 made payable to the State Treasurer, which includes payment for the:

- (i) ~~\$500~~ \$100 annual license fee; and
- (ii) through (3) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-110, 23-5-112, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The 2009 Legislature enacted SB 86, which in part amends 23-5-112, MCA to define "associated gambling business," and enacts new Section 8 (23-5-178, MCA), which grants the department the authority to adopt rules for licensing associated gambling businesses such as the accounting system

vendor license, and establishes the fee for such licenses at \$100 annually. This rule amendment is necessary to conform the license fee schedule for accounting system vendor licenses, a type of associated business license, to the license fee authorized in SB 86.

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) through (9) remain the same.

AUTH: 23-5-115, 23-5-152, MCA
IMP: ~~16-4-444~~, 23-5-112, 23-5-115, 23-5-152, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

RATIONALE AND JUSTIFICATION: A recent FBI audit opined the department did not have clear legislative authority to conduct fingerprint background checks for card dealer license applicants. The 2009 Legislature amended 23-5-115, MCA to give the department specific authority to require all gambling license applicants to submit fingerprints for the purpose of conducting fingerprint based background checks. This rule amendment is necessary to correctly identify the legislative authority for the department to require gambling license applicants to submit fingerprints for purposes of conducting background checks.

23.16.2602 RAFFLE GENERAL REQUIREMENTS, AUTHORIZED RANDOM SELECTION PROCESSES, AND RECORD KEEPING REQUIREMENTS

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

(2) Any raffle conducted by a nonprofit organization, college, university, public school district as provided in 20-6-101 and 20-6-701, MCA, or nonpublic school as described in 20-5-102(2)(e), MCA, must be publicly identified as a charitable raffle.

(3) For each raffle conducted, the entity conducting the raffle shall maintain for a period of 12 months from the date of the raffle drawing, and provide to the department upon request:

(a) a record of the total proceeds collected;

(b) a detailed description of the prize(s) awarded;

(c) a description of the selection process used to determine the winner(s);

(d) a record reflecting the source of the prize(s), including any money paid to purchase prizes;

(e) a record of any administrative costs paid with raffle proceeds;

(f) a description of how the raffle was publically identified as a charitable raffle, where applicable;

(g) the name and address of the person(s) awarded raffle prize(s); and

(h) a detailed record of the distribution of the charitable raffle proceeds, where applicable.

(4) All raffle terms, including the date of the raffle drawing, must be available to the public prior to the sale of any raffle tickets.

AUTH: 23-5-115, MCA

IMP: 23-5-112, 23-5-413, MCA

RATIONALE AND JUSTIFICATION: The 2009 Legislature enacted SB 86, which in part amends 23-5-413, MCA, the law regulating raffles. The amendments to this statute: (1) remove the provisions for county-issued raffle permits; (2) broaden the scope of groups or entities whose charitable raffles are exempt from the prize limits; (3) give the division clear authority to investigate raffle violations; and (4) delegate rulemaking authority to the department to address raffle record-keeping and game integrity. This rule amendment is necessary to describe how the department will regulate charitable raffles and what notice and records are required for charitable raffles.

The rule amendment requires the person or entity holding a raffle to maintain specific records for a period of twelve months from the date of the raffle drawing. The records required by the rule to be maintained are crafted to allow the department to determine compliance with the law after the raffle drawing has been held. It is anticipated that the twelve-month period for retention of records will be sufficient to allow the department to investigate violations of the law.

The groups exempt from the raffle limits are required by the rule to identify their raffle as charitable prior to the sale of raffle tickets, since under the statute all proceeds are to be used for charitable purposes and/or to purchase raffle prizes. The rule also requires charitable raffles to keep a record of how the raffle was publically identified as a charitable raffle, as well as a detail of how the raffle proceeds were distributed to the charitable cause(s).

The rule amendment also requires that the raffle terms be available to the public before raffle tickets may be sold.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than July 9, 2009.

6. An electronic copy of this Notice of Proposed Amendment is available through the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department of Justice works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://www.doj.mt.gov/resources/forms/interestedperson.pdf>, and mailed to the rule reviewer.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 15, 2009, by e-mail and on May 19, 2009, at the Gaming Advisory Council meeting.

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General, Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State June 1, 2009.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.126.301, definitions;) PROPOSED AMENDMENT
24.126.501, applications; 24.126.511,)
display of license; 24.126.901,)
applications; 24.126.910, continuing)
education; and 24.126.2301,)
unprofessional conduct)

TO: All Concerned Persons

1. On July 7, 2009, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Chiropractors (board) no later than 5:00 p.m., on July 1, 2009, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibschi@mt.gov.

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

24.126.301 DEFINITIONS (1) "Chaperone" as used in ~~37-12-607, MCA,~~
ARM 24.126.2301 means an individual delegated to ensure proper behavior on the part of the provider and the patient during the course of a physical examination or treatment.

(2) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is reasonably necessary to amend this rule to delete an erroneous statutory citation that was included in error when the definition was originally added. The amendment specifies that the definition is used in the board's unprofessional conduct rule.

24.126.501 APPLICATIONS (1) through (6) remain the same.

(a) official transcripts sent directly from the appropriate educational institution, including the applicant's ~~CCE-accredited~~ chiropractic college which is accredited by the Council on Chiropractic Education (CCE) or another accrediting body that is in good standing with the Council on Chiropractic Education International (CCEI);

(b) remains the same.

(c) verification of licensure sent directly from any state in which the applicant has held or holds a license; ~~and~~

(d) a copy of a self-query of the National Practitioners' Databank (NPDB) and the Healthcare Integrity Databank (HIPDB); and

(d) remains the same but is renumbered (e).

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-302, 37-12-304, MCA

REASON: The board is amending this rule to address applicants with chiropractic education obtained at non-Council on Chiropractic Education (CCE) colleges. Following review of an out-of-country application, the board compared the accreditation standards of the Council on Chiropractic Education International (CCEI) with CCE and determined the CCEI requirements to be substantially equivalent and therefore acceptable to the board.

The board is also amending this rule to require that applicants provide a copy of the healthcare databank reports. All states are required by federal law to report to the NPDB and HIPDB all adverse action(s) taken against licensees. Requiring these reports from applicants will give the board the information they need to fully evaluate applicants and ensure the licensure of qualified practitioners.

24.126.511 DISPLAY OF LICENSE (1) and (2) remain the same.

(3) Licenses must not be defaced, or altered ~~or duplicated~~ for display requirements.

(4) Licensees shall immediately notify the department of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request and the appropriate fee to the department.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-104, 37-12-201, MCA

REASON: It is reasonably necessary to amend this rule because the online renewal system allows licensees to print as many licenses as they want, so restricting the duplication of licenses is no longer necessary. Also, since all licenses are printed in black and white, it is impossible to identify a copy vs. an original. The board is also amending this rule to clarify that the department charges a fee for duplicate licenses.

24.126.901 APPLICATIONS FOR CERTIFICATION OF IMPAIRMENT

EVALUATORS (1) and (2) remain the same.

(3) Applicants may qualify for ~~the~~ certification ~~examination~~ by:

(a) successfully completing a board-approved program for education and training of certified chiropractic impairment evaluators and passing the associated exam with a minimum of 75%; or

(b) successfully completing an educational and training program relating to chiropractic orthopedics, impairment ratings, or similar course work from a Council on Chiropractic Education (CCE) status chiropractic college or any other college or university approved by the board and passing the associated exam with a minimum of 75%; or

(c) through (4) remain the same.

~~(5) Applicants shall take and pass an impairment evaluator examination prescribed and approved by the board with a minimum score of 75 percent.~~

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

AUTH: 37-12-201, MCA

IMP: 37-12-201, MCA

REASON: The board is amending (3) of this rule because applicants qualify for the certification and not for an examination. The board is also amending this rule to address confusion among chiropractors and clarify that there is no board-prescribed impairment evaluation examination. The board determined that an applicant who successfully completed an approved impairment program will also have passed any associated exam. The board concluded that these applicants are qualified to be certified as an impairment evaluator and is amending the rule accordingly.

24.126.910 IMPAIRMENT EVALUATOR CONTINUING EDUCATION RENEWAL - DENIAL - REVOCATION (1) A minimum of four hours of specialized continuing education relevant to impairment evaluation shall be taken every four years, ~~or within one year of a new edition to the American Medical Association's guides to the evaluation of permanent impairment.~~

(a) through (4) remain the same.

AUTH: 37-1-136, 37-1-319, 37-12-201, MCA

IMP: 37-1-306, 37-12-201, MCA

REASON: The board has determined it is reasonably necessary to amend this rule to address confusion among licensees. It is unclear how often new editions of the permanent impairment evaluation guides are published, making the rule difficult to understand and to enforce. By requiring impairment evaluation continuing education every four years, the board has determined that licensees will be kept adequately current on impairment evaluation requirements.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.126.2301 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) engaging in, or being involved in, "fee splitting" in which a licensee gives or receives payments or fees in referral of a patient to any professional or company offering payment in exchange for referrals to their products or services;

(e) through (r) remain the same.

(s) entering into a contract which would obligate a patient to pay for care to be rendered in the future, unless the contract provides that the patient is entitled to a complete refund for any care not received within a reasonable amount of time;

(s) and (t) remain the same, but are renumbered (t) and (u).

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, ~~37-12-201~~, 37-12-301, 37-12-322,
MCA

REASON: The board is amending this rule in response to information being distributed to licensed chiropractors in Montana offering payment in return for referrals to specific company's products. A chiropractor who receives payment in return for referrals to a particular product may make referrals for unnecessary treatment or treatment that is not in the best interest of the patient. The board is amending the rule to specify that such action is unprofessional conduct.

The board is adding (1)(s) to ensure that chiropractors who enter into contracts with their patients include a provision that the patient is entitled to a refund for care not received. The board has received complaints from patients who contracted with a chiropractor and then did not receive money back for services not rendered when the patient left the chiropractor's care. The board determined that the public is not protected when chiropractors are allowed to contract in this manner and is amending the rule to establish such behavior as unprofessional conduct.

Implementation cites are being amended to accurately reflect the statutes implemented through the rule.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibschi@mt.gov, and must be received no later than 5:00 p.m., July 15, 2009.

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

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

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

8. Anjeanette Lindle, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
TOM FULLERTON, DC, PRESIDENT

/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 June 1, 2009

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.210.301 definitions,) PROPOSED AMENDMENT
24.210.601 licensing, 24.210.635)
renewals, 24.210.641 unprofessional)
conduct, 24.210.667 and 24.210.674)
continuing education)

TO: All Concerned Persons

1. On July 2, 2009, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on June 26, 2009, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail realestate@mt.gov.

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

24.210.301 DEFINITIONS (1) through (10) remain the same.

(11) "Entry-only listing" is a listing that requires the listing agent to enter the listing into a listing service, but does not require any other representation or negotiation obligation from the listing agent.

(11) through (22) remain the same but are renumbered (12) through (23).

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-51-202, MCA

REASON: The board determined it is reasonable and necessary to adopt a definition of an entry-only listing, a limited type of listing available between licensees and sellers. The new definition will provide clarity in the proposed amendments to the unprofessional conduct rule at ARM 24.210.641.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) through (10) remain the same.

(11) If the seller and the seller agent agree that prospective purchasers and their agents may speak directly to the seller, the terms of that agreement must be contained in the listing agreement and shall also be included in any listing information available to other agents and consumers (MLS, newspapers, TV, etc.).

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: The board is amending this rule to require notification to anyone who might participate in a transaction where the seller and the seller agent have agreed to limit the licensee's involvement in the transaction process. To ensure a buyer agent doesn't violate 37-51-321(1)(l), MCA while working with a new entry-only listed property, the buyer agent and other potential consumers must be aware of the existence of the entry-only terms that would require all purchasing inquiries to be made directly to the seller rather than the entry-only listing agent. The amendment will give notice to any licensee representing another party that they are able to communicate with the seller directly without violating 37-51-321(1)(l), MCA.

24.210.635 RENEWALS (1) through (3) remain the same.

(4) All continuing education requirements must be met before a license is renewed.

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

AUTH: 37-1-319, 37-51-203, MCA

IMP: 37-1-141, 37-1-319, 37-51-202, MCA

REASON: The board determined it is reasonably necessary to address confusion and clarify to licensees that meeting all continuing education (CE) requirements is a minimum condition of renewal, per 37-1-141, MCA. The board and department cannot renew a license if the licensee has not complied with the board's continuing education requirements set forth in rule.

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(al) remain the same.

(am) submitting a competing offer as a principal in a transaction with the licensee's client; ~~or~~

(an) failing to account for or misappropriation of funds being held in trust; ~~or~~

(ao) failing as a listing agent of an entry-only listing, to include in the listing agreement the ability for a buyer agent to negotiate directly with the seller.

(6) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: The board is amending this rule to add failure of a licensee to provide notice of the limited duties of the listing agent when entering into an entry-only listing

as unprofessional conduct. Entry-only listings are a newly recognized activity under the current scope of licensed activity. The board concluded that failure to include this information in the listing agreement could cause uncertainty for the buyer agent as to talking directly to the seller, which, without a waiver, is a violation of 37-51-321(1)(l), MCA. The board is amending ARM 24.210.601 to require the relevant information in such a listing agreement and is amending this rule to align with that requirement.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) remains the same.

(2) Courses completed after the renewal deadline will result in a late renewal and penalty regardless of when the licensee submits the renewal application.

(2) through (4) remain the same but are renumbered (3) through (5).

~~(5)(6) No mandatory hours may be carried over except as elective credits.~~

~~For the reporting period beginning January 1, 2007, no No carry over hours will be recognized or allowed.~~

(6) through (15) remain the same but are renumbered (7) through (16).

AUTH: 37-1-131, 37-1-136, 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

REASON: To address confusion among licensees, the board is amending this rule to clarify and reinforce the timeframe for meeting CE requirements and the ramifications late CE completion has on the licensee's renewal. Complying with the CE requirements as a condition to renew is established in 37-1-141, MCA, and failure to comply with those requirements prior to the renewal deadline results in an untimely renewal.

The board is amending (6) to remove unnecessary implementation language from the rule. The board hasn't allowed carryover CE since January 2007 and is now striking the past implementation date.

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL (1) and (2) remain the same.

(3) A course may be advertised for credit only after a completed course application has been submitted to the board office accompanied by all required attachments and fees. Courses not submitted for approval may not be advertised for credit. After a course submission, but prior to approval, the course may be advertised if all advertising includes the statement that the course is "pending approval". This advertising must appear in comparable font size and color as the rest of the advertising. A course is not "pending approval" unless a completed course application has been submitted to the board office accompanied by all required attachments and fees.

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

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

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

REASON: The board determined it is reasonable and necessary to amend this rule to clarify when CE courses may be advertised for credit. The board received information that some course providers were advertising courses as approved when the courses had not even been submitted to the board for approval. This caused confusion for licensees and created the risk of licensees passing up legitimate courses for those that never receive board approval, and then having a deficit in CE credits at renewal. The board is amending this rule to clarify when and how course providers may advertise CE courses that are pending board approval.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to realestate@mt.gov, and must be received no later than 5:00 p.m., July 10, 2009.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to realestate@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Barb McAlmond, program manager, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
CINDY WILLIS, 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 June 1, 2009

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC
42.20.515 relating to taxable value of newly) HEARING ON PROPOSED
taxable property) AMENDMENT

TO: All Concerned Persons

1. On July 1, 2009, at 9:30 a.m., a public hearing will be held in the 4 East Conference Room (Fourth Floor) of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rule.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., June 22, 2009, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

ARM 42.20.515 DETERMINATION OF TOTAL TAXABLE VALUE OF NEWLY TAXABLE PROPERTY (1) For the ~~2004~~ 2009 tax year and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of class four newly taxable property as follows:

(a) For tax years ~~2001 and 2002~~ 2009 and subsequent years, the department shall determine the ~~reappraisal market~~ market value of class four newly taxable property in a taxing jurisdiction. ~~The reappraisal value of newly taxable class four property is calculated as the difference between the current year total reappraisal value of class four property and the previous year total reappraisal value of class four property.~~ Beginning with tax year 2001, class Class four newly taxable property in a taxing jurisdiction will include the total ~~reappraisal market~~ market value of class four property for any tax increment financing district which has been dissolved or terminated.

(b) ~~For tax year 2003 and subsequent tax years, the~~ The current year total ~~reappraisal market~~ market value is determined by valuing each current year parcel with the ~~2003 current cycle~~ 2003 current cycle valuation schedules and models. These values for current year parcels are then added together to arrive at the current year total market value. The previous year total ~~reappraisal market~~ market value is determined by valuing each previous year parcel with the ~~2003 current cycle~~ 2003 current cycle valuation schedules and models. These values for previous year parcels are then added together to arrive at the previous

year total market value. The difference between the current year total reappraisal market value and the previous year total reappraisal market value is the reappraisal total market value of class four residential newly taxable property and class four commercial newly taxable property.

(c) The ~~total taxable value of newly taxable property~~ value for class four residential property for the current tax year is determined by multiplying the current year total class four residential reappraisal market value by the current year full reappraisal to taxable value conversion factor for class four residential property appropriate current year exemption percentage and the current year class four tax rate.

(d) ~~The total taxable value of newly taxable property for class four commercial for the current tax year is determined by multiplying the current year total class four commercial reappraisal value by the current year full commercial to taxable value conversion factor for class four commercial property.~~

(e) ~~For example, applying the steps set forth in (1)(b), the total reappraisal value of newly taxable class four residential property for a taxing jurisdiction would be determined as follows:~~

Current year total class four residential reappraisal value	\$2,000,000
Previous year total class four residential reappraisal value	<u>-1,800,000</u>
Reappraisal value of new class four residential property	\$ 200,000

(f) ~~Using the above example, the total taxable value of newly taxable class four residential property in the taxing jurisdiction for the 2001 tax year would be determined by multiplying the total reappraisal value of newly taxable class four residential property by the 2001 full reappraisal to taxable value conversion factor for class four residential property in that jurisdiction as shown below:~~

Total reappraisal value of new class four residential property	\$ 200,000
2001 full reappraisal to taxable value conversion factor for class four residential property	x <u>2.51%</u>
Total taxable value of newly taxable class four residential property	\$ 5,020

(g) ~~In addition to the taxable value of residential property shown in (1)(d) and taxable value of commercial property in (1)(e), the newly taxable class four residential and commercial property will be the taxable value of the phased-in reappraisal value of the newly taxable class four residential and commercial property identified in the reappraisal period tax year 2003 to tax year 2008.~~

(2) For tax year 2004 2009 and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of newly taxable property that is classified as class five, seven, eight, nine, twelve, thirteen, and fourteen, fifteen, and sixteen property. The taxable value of newly taxable property of class five, seven, eight, nine, twelve, thirteen, and fourteen, fifteen, and sixteen property

shall be determined as follows:

(a) The department shall determine the total market value of newly taxable property in a taxing jurisdiction. The total market value of newly taxable property is calculated as the difference between the current year total ~~reappraisal~~ market value for each class of property and the previous year total ~~reappraisal~~ market value of the same class of property.

(b) through (3) remain the same.

(4) The total taxable value of all newly taxable property in a taxing jurisdiction shall be determined by adding together the separate taxable values as determined above for class three, four, five, seven, eight, nine, ten, twelve, thirteen, ~~and~~ fourteen, fifteen, and sixteen property for that taxing jurisdiction.

(5) If the newly taxable value, as calculated according to (1) through (4), for any class of property in any taxing jurisdiction is less than zero, then the newly taxable value for that class of property in that taxing jurisdiction is zero.

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

IMP: 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.515 because of new direction from the 2009 Legislature as provided in House Bill 658, which provides clarification for the calculation of newly taxable property values.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than July 9, 2009.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which

includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 27, 2009, by regular mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State June 1, 2009

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

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Vigilante Kids' Fishing Pond and) TEMPORARY EMERGENCY RULE
picnic area in Madison County)

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) A state engineer inspected a dam on Alder Creek upstream of the Vigilante Kids' Fishing Pond and picnic area on May 21, 2009 and determined that the dam is in a "state of imminent failure".

(b) A combination of factors including runoff from above average snow pack, a small stream flooding advisory that is in effect, and the lack of an existing spill way around the dam could make water levels rise rapidly and make the area below the dam unsafe for public use.

(c) Vigilante Kids' Fishing Pond is designated as a children's fishing water and is open only to anglers 14 years of age and younger. Due to the flood danger, possible rapid increase of the water level and the age of the anglers allowed to fish in the pond, this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 11 of the 2009 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov.

3. The temporary emergency rule is effective May 27, 2009 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I VIGILANTE KIDS' FISHING POND AND PICNIC AREA
TEMPORARY EMERGENCY CLOSURE (1) The Vigilante Kids' Fishing Pond and picnic area closure is located in Madison County.

(2) Vigilante Kids' Fishing Pond and picnic area is closed to all boating, floating, and swimming and any other public occupation of the pond and picnic area.

(3) This rule is effective as long as the dam upstream from Vigilante Kids' Fishing Pond and picnic area is in a state of imminent failure.

AUTH: 2-4-303, 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the commission determines the pond and picnic area is again safe for boating, floating, fishing, swimming and any other occupation of the pond and picnic area. This will depend on the extent and duration of necessary repairs to the dam. Signs restricting use of the area will be removed when the rule is no longer in effect. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Fitzpatrick, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov. Any comments must be received no later than July 6, 2009.

8. 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 that 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.

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

/s/ Joe Maurier

Joe Maurier, Secretary

Fish, Wildlife and Parks Commission

/s/ Bill Schenk

Bill Schenk

Rule Reviewer

Certified to the Secretary of State May 27, 2009.

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

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Belt Creek within Sluice Boxes State) TEMPORARY EMERGENCY RULE
Park from Logging Creek Bridge to)
Riceville Bridge in Cascade County)

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) A log jam has created an obstruction in a narrow, steep-walled section of a canyon that has caused the river to be impassable by recreationists.

(b) Persons recreating on the river in this condition would be subjected to:

(i) collisions with the log jam;

(ii) becoming stranded and having to hike out of steep canyon areas; or

(iii) drowning.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 11 of the 2009 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov.

3. The temporary emergency rule is effective May 27, 2009 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I BELT CREEK TEMPORARY EMERGENCY CLOSURE

(1) The closed portion of Belt Creek is located in Cascade County.

(2) Belt Creek is closed to all floating within in the seven mile stretch of waters flowing through Sluice Boxes State Park from Logging Creek Bridge and Riceville Bridge.

(3) This rule is effective as long as there is a log jam on Belt Creek. The commission delegates its authority to the Department of Fish, Wildlife and Parks (department), in consultation with the commissioner in the region, to determine when this portion of the creek is again safe for floating and to rescind the temporary emergency closure.

AUTH: 2-4-303, 87-1-303, MCA
IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the river is again safe for boating, floating, and swimming and any other occupation of the river. This will depend on the extent and duration of the ice in the area. Signs restricting use of the river will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Fitzpatrick, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov. Any comments must be received no later than July 6, 2009.

8. 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 that 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.

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

<u>/s/ Joe Maurier</u>	<u>/s/ Bill Schenk</u>
Joe Maurier, Secretary	Bill Schenk
Fish, Wildlife and Parks Commission	Rule Reviewer

Certified to the Secretary of State May 27, 2009.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.30.405 pertaining to)
Vocational Rehabilitation Program)
payment for services)

TO: All Concerned Persons

1. On April 16, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-466 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 407 of the 2009 Montana Administrative Register, Issue Number 7.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Cary B. Lund
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 1, 2009.

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 P.O. 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 March 31, 2009. This table includes those rules adopted during the period April 1, 2009, through June 30, 2009, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2009, 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 2008 and 2009 Montana Administrative Register.

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

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