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

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

TO: All Concerned Persons

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

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

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

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

(a) through (c) remain the same.

(d) Annual fee for permit to practice (regular permit or special practice permit) 90

(e) through (k) remain the same.

(l) Late fee for failure to timely file profession monitoring program reports 500

(2) remains the same.

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

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

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

8.54.415 LICENSURE OF OUT-OF-STATE APPLICANTS

(1) remains the same.

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

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

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

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

(3) remains the same.

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

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

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

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

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

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

(4) and (5) remain the same.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA
IMP: 37-1-306, 37-50-203, MCA

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

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

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

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

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

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

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

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

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

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

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

(a) the District of Columbia;

(b) Guam; and

(c) all of the states in the United States of America, except:

(i) Colorado;

(ii) Delaware;

(iii) Florida;

(iv) New Hampshire; and

(v) Vermont.

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

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

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

NEW RULE II COMPLIANCE WITH CONTINUING EDUCATION FOR NONRESIDENTS (1) If a nonresident with a special practice permit is in compliance with the continuing education requirements of a jurisdiction where the nonresident is licensed or certified, that person is deemed to have complied with Montana continuing education requirements for the purposes of maintaining the special permit to practice in Montana.

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

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

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

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

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

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

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

businesses that use the services of those CPAs.

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

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

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

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

5. The Board proposes to repeal the following rule:

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

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

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

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

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

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

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

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

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

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

BOARD OF PUBLIC ACCOUNTANTS
GARY KASPER, LPA, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader,
Rule Reviewer

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

Certified to the Secretary of State September 26, 2005