

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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BRIAN SCHWEITZER
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STATE OF MONTANA

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REC-111

MAR 07 2006

March 7, 2006

LEGISLATIVE COUNCIL
POLICY OFFICE

RE: Montana Environmental Policy Act scoping of proposed changes to the Montana Streamside Management Zone Administrative Rules of Montana; Admin. R. Mont. 36.11.301 – 311

To Whom It May Concern:

The Montana Department of Natural Resources and Conservation, Forestry Division is in the MEPA scoping phase of a proposal to amend and add a new administrative rule to the Streamside Management Zone Administrative Rules. Proposed changes are identified in the attached document, Notice of Public Hearing on Proposed Amendment and Adoption. Changes are proposed to provide the following:

1. Strengthen the SMZ protection language associated with specific current Rules,
2. Comply with 77-5-301(5)(d) MCA of the SMZ law to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone, and
3. Provide DNRC with specific and consistent language for the application of penalties associated with violations of the SMZ Law and Rules.

The purpose of this letter is to identify issues and concerns associated with this proposed action. Please review the proposed action and provide written comments or concerns by April 21, 2006. Written comments may be submitted to the following address:

Dan Rogers
DNRC
2705 Spurgin Rd
Missoula MT 59804

If you have questions or need further information you may contact Rob Ethridge, Chief Forestry Assistance Bureau at 406-542-4303.

If you wish to express your concerns orally, on March 27, 2006, the Department of Natural Resources and Conservation will hold a public hearing pursuant to the Montana

Administrative Procedure Act at 7:00 p.m. at the Department of Fish, Wildlife and Parks, Region 2 Headquarters, 3201 Spurgin Road, Missoula, Montana, to consider the proposed amendment and adoption of the above-stated rules. DNRC will also accept MEPA comments at this hearing.

Respectively,

A handwritten signature in black ink, appearing to read "R. Ethridge". The signature is written in a cursive, flowing style.

Robert Ethridge, Chief
Forestry Assistance Bureau
DNRC

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

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of 36.11.304, equipment)	ON PROPOSED AMENDMENT
operation in the SMZ, ARM 36.11.305,)	AND ADOPTION
retention of trees and clearcutting in the)	
SMZ, ARM 36.11.310, site-specific)	
alternative practices, ARM 36.11.312,)	
definitions, and the adoption of New)	
Rule I regarding penalties for violation of)	
the streamside management zone law)	

To: All Concerned Persons

1. On March 27, 2006, the Department of Natural Resources and Conservation will hold a public hearing at 7:00 p.m. at the Department of Fish, Wildlife and Parks, Region 2 Headquarters, 3201 Spurgin Road, Missoula, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Natural Resources and Conservation 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 March 21, 2006, to advise us of the nature of the accommodation that you need. Please contact Dan Rogers, Forest Stewardship Specialist, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4326; fax (406) 542-4203; or e-mail to DanRogers@mt.gov.

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

36.11.304 EQUIPMENT OPERATION IN THE SMZ (1) Operation of wheeled or tracked equipment in the SMZ except on established roads is prohibited except as provided in this rule.

(2) In order to permit timber harvest on wetlands under conditions that protect the integrity of the SMZ, an operator may, as an alternative practice without site-specific approval, operate wheeled or tracked equipment from the outside edge of an SMZ to within 50 feet of the ordinary high water mark wherever:

(a) the SMZ extends beyond 50 feet from the ordinary high water mark to include adjacent wetlands;

(b) there exist winter conditions with adequate snow or frozen ground; and

(c) operation of the wheeled or tracked equipment:

(i) does not cause rutting or displacement of the soil;

(ii) protects and retains shrubs and submerchantable trees to the fullest extent possible;

(iii) does not remove stumps; and

(iv) otherwise conserves the integrity of the SMZ.

(3) In order to minimize road construction and skid trails necessary for timber harvest on lands adjacent to the SMZ, an operator may, as an alternative practice without site-specific approval, cross the SMZ and the stream or other body of water with wheeled or tracked equipment on a class 3 stream segment or other body of water at locations spaced approximately 200 feet apart or more provided that:

(a) crossings are located in areas where the stream or other body of water is dry and the banks and bottoms are stable;

(b) excavation is minimized;

(c) the capacity of the stream channel or other body of water is maintained;

and

(d) the distance traveled through the SMZ is minimized.

(4) In order to minimize road construction necessary for timber harvest on lands adjacent to the SMZ, an operator may, as an alternative practice without site-specific approval, operate wheeled or tracked equipment inside the SMZ off of established roads on the side of the road away from the stream wherever:

(a) an established road exists inside the SMZ or construction of a road inside the SMZ is authorized under ARM 36.11.306;

(b) the toe of the road fill nearest the stream is at least 25 feet from the ordinary high water mark; and

(c) operations are conducted in such a manner that:

(i) wheeled or tracked equipment stays out of wetlands except under winter conditions as provided in (2) above;

(ii) all skidding of logs takes place on designated skid trails located approximately 200 feet apart or more;

(iii) all skid trails in such areas are reclaimed by installing erosion control measures and reestablishing vegetative cover;

(iv) drainage features are established or reestablished on all roads used under this section; and

(v) logs are not decked on the side of the road toward the stream; and

~~(vi) no landing are constructed in the SMZ.~~

(5) An operator may, as an alternative practice, without site-specific approval, operate equipment on an existing road located in the SMZ, to allow the extraction of logs or trees from within the SMZ. Under these conditions an operator may:

(a) store individual logs or small groups of logs on the side of a road toward the stream provided:

(i) no portion of any stored log encroaches on an area within 15 feet of the ordinary high-water mark;

(ii) all such areas are reclaimed by installing erosion control measures and the reestablishment of vegetative cover; and

(iii) there are no adverse impacts to the functions of the SMZ or to water quality.

~~(5) (6) When logs are being winched or cable yarded across a class 1 or 2 stream segment by equipment located outside the SMZ, the logs must be fully suspended over the stream or stream bank unless approved by the department pursuant to a site-specific alternative practice and unless otherwise authorized~~

pursuant to the Natural Streambed and Land Preservation Act of 1975, 75-7-101 et seq., MCA.

(7) Landings shall not be constructed in the SMZ unless the department has approved a site-specific alternative practice pursuant to ARM 36.11.310.

~~(6)~~ (8) The department may also approve operation of wheeled or tracked equipment in the SMZ as a site-specific alternative practice only under conditions that:

- (a) conserve the integrity of the SMZ;
- (b) do not cause rutting of the soil; and
- (c) protect the residual stand of shrubs and trees.

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-303, MCA

REASONABLE NECESSITY: The Department of Natural Resources and Conservation proposes to amend this rule to clarify when equipment may be operated within the streamside management zone.

36.11.305 RETENTION OF TREES IN THE SMZ – CLEARCUTTING

(1) The forest practice of clearcutting is prohibited in the SMZ unless approved by the department under a site-specific alternative practice.

(2) ~~Further, in~~ In order to provide large woody debris, stream shading, water filtering effects, and to protect stream channels and banks, merchantable and submerchantable trees must be retained in the first 50 feet of the SMZ beyond the ordinary high water mark and in the entire SMZ where the SMZ is extended for wetlands under ARM 36.11.302(2)(a), on each side of streams, and along lakes and other bodies of water as follows:

(a) On each side of class 1 stream segments and lakes retain 50% of the trees greater than or equal to 8 inches dbh, or ten trees greater than or equal to 8 inches dbh in each 100 lineal feet of the SMZ, whichever is greater.

(i) If less than ten trees greater than or equal to 8 inches dbh are present in any 100 lineal-foot segment of the SMZ, then a minimum of ten trees of the largest diameter available must be retained in that segment; ;

(ii) Trees retained must be representative of the species and size of trees in the pre-harvest stand; ; and

(iii) Shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(b) On each side of class 2 stream segments retain 50% of the trees greater than or equal to 8 inches dbh, or five trees greater than or equal to 8 inches dbh in each 100 lineal feet of the SMZ, whichever is greater.

(i) If less than five trees greater than or equal to 8 inches dbh are present in any 100 lineal-foot segment of the SMZ, then a minimum of five trees of the largest diameter available must be retained in that segment; ;

(ii) Trees retained must be representative of the species and size of trees in the pre-harvest stand; ; and

(iii) Shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(c) On each side of class 3 stream segments and other bodies of water, shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(3) Hardwood trees and snags meeting diameter standards of (2) above may be counted toward retention tree requirements in the same approximate proportion as their occurrence in the stand prior to commencement of forest practices.

(4) Trees retained pursuant to this rule must be distributed within the SMZ as guided by the following criteria:

(a) favor bank-edge trees;

(b) favor trees leaning toward the stream and those that cannot be felled without falling into the stream;

(c) where the SMZ is greater than 50 feet wide and harvesting will result in the minimum stocking of trees required to be retained under (2)(a) and (b), concentrate retained trees within 50 feet of the stream;

(d) all trees that have fallen through natural processes, across or in a class 1 or 2 stream, must be retained, unless removal of such trees is conducted pursuant to ARM 36.11.304(5), is approved as a site-specific alternative practice, and is conducted consistently with other applicable federal and state laws and regulations.

(5) Trees retained pursuant to this rule may be salvaged only under the following conditions:

(a) Trees to be harvested meet the definition of salvage found at ARM ~~26.6.604(2)(p)~~ 36.11.312; and

(b) The minimum tree retention requirements of ~~section (2)~~ are met by standing live trees, or by dead or fallen trees where sufficient standing live trees are not available; and

~~(c) All trees that have fallen across or in the stream must be retained, unless salvage of such trees is approved as a site-specific alternative practice subject to other federal and state laws and regulations.~~

(6) All practices which deviate from the tree-distribution criteria provided in (2) and (4) above require approval as site-specific alternative practices.

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-303, MCA

REASONABLE NECESSITY: The Department of Natural Resources and Conservation proposes to amend this rule to clarify the tree retention standard within the streamside management zone.

36.11.310 SITE-SPECIFIC ALTERNATIVE PRACTICES (1) The owner or operator shall comply with the management standards stated in 77-5-303(1), MCA, and this subchapter, unless approval has been obtained from the department for alternative practices designed for site-specific conditions encountered during a timber sale prior to conducting such practices.

(2) The department may approve a proposed alternative practice only if such practice would be otherwise lawful and the department determines with reasonable certainty that the proposed alternative practice would conserve the integrity of the streamside management zone and would not significantly diminish the function of the zone as stated in 77-5-301, MCA:

- (a) to act as an effective sediment filter to maintain water quality;
- (b) to provide shade to regulate stream temperature;
- (c) to support diverse and productive aquatic and terrestrial riparian habitats;
- (d) to protect stream channel and banks;
- (e) to provide large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and
- (f) to promote floodplain stability.

(3) In order to obtain department approval of alternative practices, the owner or operator shall submit to the department an application describing the proposed practices and location. Applications must provide all data specified by the department and must be submitted on forms provided or approved by the department.

(4) Within ten working days of receipt of the application for approval of alternative practices the department shall determine if the application is approved, approved with modification, disapproved, incomplete, requires additional information or environmental analysis, or requires a field review. The department shall notify the owner and the applicant of its decision in writing.

(5) If the department determines a field review is necessary, the field review must be made at a mutually agreeable time. The owner or his designee must be present at the field review.

(6) Within ten working days after all necessary field review is complete, the department shall determine whether the application is approved, approved with modification, disapproved, incomplete, or requires additional information or environmental analysis. The department shall notify the owner and the applicant of its decision in writing.

(7) The department may notify the applicant in writing that it declines to conduct further environmental analysis of an application if it determines that the proposed alternative practices are complex, or affect an environmentally sensitive area, or involve a high degree of uncertainty that the proposed alternative practices will have a significant impact on the quality of the human environment. The notice must briefly describe the department's reasons for declining to conduct further analysis. In this case, the applicant may conduct further environmental analysis and submit documentation to the department. The department shall independently review any further environmental analysis and documentation of the proposed alternative practices provided by the applicant and may adopt such documentation if it is adequate under the Montana Environmental Policy Act (75-1-101 et seq., MCA) and rules adopted thereunder (~~ARM 26.2.628—26.2.663~~ 36.2.521 through 36.2.611). If so adopted, the department may utilize such environmental documentation in further consideration of the application for alternative practices.

(8) In the event the department determines that an application for alternative practices may be of significant interest to the public, the time provided in this rule for considering such application may be extended in order to allow time for the public to

be notified and participate in the department's decision pursuant to 2-3-101 et seq., MCA, and ARM ~~26.2.701—26.2.707~~ 36.2.701 and 36.2.702 .

(9) Persons applying for approval of alternative practices shall agree in writing that approved alternative practices, including any additional conditions imposed by the department, shall have the same force and authority as the standards contained in 77-5-303, MCA, and shall be enforceable by the department under 77-5-305, MCA, to the same extent as such standards. Persons responsible for conducting alternative practices shall comply with all conditions of such practices. In determining whether to approve applications for alternative practices, the department may consider past violations of such standards or of the requirements of previously approved alternative practices by the applicant.

(10) Authorization to conduct alternative practices is valid for ~~2~~ two years from the date of approval or for such period as may be specified by the department.

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-303, MCA

REASONABLE NECESSITY: The proposed amendment is to correct incorrect administrative rule cross-references and to further clarify when site-specific alternative practices may be approved.

36.11.312 DEFINITIONS Wherever used in this subchapter, unless a different meaning clearly appears from the context:

(1) "Alternative practices" means forest practices conducted in the SMZ that are different from the practices required by the standards provided in 77-5-303, MCA, and are approved by the department either by adoption of this subchapter or on a site-specific basis upon application of the operator.

(2) "Broadcast burning" means spreading fire through a continuous fuel cover. The fuels consist of slash resulting from forest practices, surface litter, and duff. Fuels are left in place, fairly uniform, and ignited under certain conditions with the intent to meet planned management objectives in the desired area.

(3) "Class 1 stream segment" means a portion of stream that supports fish; or a portion of stream that normally has surface flow during ~~6~~ six months of the year or more; and that contributes surface flow to another stream, lake, or other body of water.

(4) "Class 2 stream segment" means a portion of stream that is not a class 1 or class 3 stream segment. Two common examples of class 2 stream segments are:

(a) A portion of stream which does not support fish; normally has surface flow during less than ~~6~~ six months of the year; and contributes surface flow to another stream, lake, or other body of water; or

(b) A portion of stream that does not support fish; normally has surface flow during ~~6~~ six months of the year or more; and does not contribute surface flow to another stream, lake, or other body of water.

(5) "Class 3 stream segment" means a portion of a stream that does not support fish; normally has surface flow during less than ~~6~~ six months of the year; and rarely contributes surface flow to another stream, lake, or other body of water.

(6) "Clearcutting" means removal of all or virtually all the trees, large and small, in a stand in one cutting operation. Virtually all woody vegetation is removed from the site preparatory to establishment of new trees.

(7) "Construction" means cutting and filling of earthen material that results in a travel-way for wheeled vehicles.

(8) "Department" means the Department of Natural Resources and Conservation provided for in 2-15-3301, MCA.

~~(8)~~ (9) "Diameter at breast height" (abbreviated "dbh") means the diameter of a tree measured 4 1/2 feet from the ground level. Ground level is the highest point of the ground touching the stem.

~~(9)~~ (10) "Eastern zone" means the counties of Big Horn, Blaine, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Toole, Treasure, Valley, Wibaux, and Yellowstone.

~~(40)~~ (11) "Established road" means an existing access or haul route for highway vehicles that is passable under one or more of the following circumstances:

(a) without any work;

(b) with clearing of windfall or small woody vegetation;

(c) with surface blading;

(d) with replacement of stream crossing structures and drainage structures that were removed to restrict access; or

(e) with removal of constructed access barriers.

~~(44)~~ (12) "Hazardous or toxic material" means substances which by their nature are dangerous to handle or dispose of, or are a potential environmental contaminant, and includes petroleum products, pesticides, herbicides, chemicals, and biological wastes.

~~(42)~~ (13) "Lake" means a body of water where the surface water is retained by either natural or artificial means, where the natural flow of water is substantially impeded, and which supports fish.

(14) "Landing" means a cleared area in the forest to which trees or logs are yarded or skidded for processing or loading onto trucks for transport.

(15) "Major", as used in the damage table in [NEW RULE I], means that the action disturbs the integrity of the SMZ and significantly diminishes two or more of the SMZ functions listed in 77-5-301(1)(a) through (f), MCA.

(16) "Minor", as used in the damage table in [NEW RULE I], means that the action disturbs the integrity of the SMZ but does not significantly diminish more than one of the SMZ functions listed in 77-5-301(1)(a) through (f), MCA.

(17) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

~~(43)~~ (18) "Ordinary high water mark" means the stage regularly reached by a body of water at the peak of fluctuation in its water level. The ordinary high water mark is generally observable as a clear, natural line impressed on the bank. It may be indicated by such characteristics as terracing, changes in soil characteristics, destruction of vegetation, presence or absence of litter or debris, or other similar characteristics.

~~(14)~~ (19) "Other body of water" means ponds and reservoirs greater than 1/10th acre that do not support fish; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

~~(20)~~ (20) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

~~(21)~~ (21) "Prolonged", as used in the damage table in [NEW RULE I], means that the impacts to the functions of the SMZ or water quality will last longer than one growing season (generally more than one to two years).

~~(15)~~ (22) "Road" means a travel-way suitable for highway vehicles.

~~(16)~~ (23) "Salvage" means harvesting trees that have been killed or damaged or are in imminent danger of being killed or damaged by injurious agents other than competition between trees.

~~(17)~~ (24) "Sidecasting" means the act of moving excess earthen material over the side of a road during road maintenance operations.

~~(18)~~ (25) "Slash" means the woody debris that is dropped to the forest floor during forest practices. Timber slash consists of stems, branches, and twigs left behind after forest practices.

~~(19)~~ (26) "Slope distance" means the length of a line between two points on the land surface.

~~(20)~~ (27) "Stream", as defined at 77-5-302(7), MCA, means "a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water."

~~(21)~~ (28) "Streamside management zone" or "zone" (abbreviated "SMZ"), as defined at 77-5-302~~(S)~~(8), MCA, means "the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils."

~~(22)~~ (29) "Temporary", as used in the damage table in [NEW RULE I], means that the impacts to the functions of the SMZ or water quality will be negligible following one full growing season (generally less than one to two years).

~~(23)~~ (30) "Timber sale", as defined at 77-5-302(9), MCA, means "a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes."

~~(24)~~ (31) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas.

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-302, 77-5-303, 77-5-305, MCA

REASONABLE NECESSITY: The proposed amendment is meant to add definitions to assist in the administration of the Streamside Management Zone and to add definitions related to the Penalty Formula established in New Rule I.

4. The rule proposed to be adopted provides as follows:

NEW RULE I PENALTIES (1) Each violation of Title 77, chapter 5, part 3, MCA, rules adopted thereunder, or of an order issued pursuant to 77-5-305, MCA, is subject to a separate civil penalty not to exceed \$1,000, with each day of the violation constituting a separate violation.

(2) If the department determines that a violation does not warrant a civil penalty, as calculated in (5), it may seek voluntary compliance and site rehabilitation through warning, conference, or other appropriate means.

(3) For purposes of assessing penalties, the department shall divide SMZs into 100 lineal-foot segments. Each violation of a forest-practices standard set forth in 77-5-303(1), MCA, that occurs in a separate 100 lineal-foot SMZ segment shall constitute a separate violation and shall be subject to a separate civil penalty.

(4) The penalty matrix set forth in this rule establishes the initial penalty value for each violation. The significance of the violation, whether significant harm resulted to health, environment, water quality and quantity, aquatic and terrestrial riparian habitats, stream channels and banks, may decrease or increase a penalty within the limits listed below. The department shall have the option to select the most appropriate penalty and penalty value for each and every violation of the SMZ law, 77-5-301 through 77-5-307, MCA.

(5) SMZ violations that warrant a civil penalty and site rehabilitation shall be documented on a repair-order form prescribed by the department. For each separate violation, the department shall specify in the repair order the nature of the violation and the damage or unsatisfactory condition resulting from the violation, shall specify the appropriate repair action, and shall, in order to implement the management standards provided in 77-5-303, MCA, and to provide specific direction necessary for owners and operators to understand and comply with the management standards, specify the amount of civil penalty per violation, according to the following formula:

Penalty Formula = [(\$100 x Repair) + (\$100 x Damage)] x # days of violation,

where the repair and damage variables are determined as follows:

(a) Repair – Determined by whether the repair actions are completed by the deadline specified in the department's repair order, with one of the following values inserted into the Penalty Formula as the repair variable:

- 0 - Responsible party exceeds required repair actions.
- 2 - Responsible party meets required repair actions.
- 4 - Responsible party fails to complete repair actions.

(b) Damage – Determined by the extent of watershed damage, duration of impact, and stream class involved, as shown in the following damage table, with one of the following values inserted into the Penalty Formula:

Degree and Duration of Watershed Damage	Class 3 Stream	Class 2 Stream	Class 1 Stream
Minor and Temporary	1	2	3
Minor and Prolonged	2	3	4
Major and Temporary	2	3	4
Major and Prolonged	4	5	6

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-303, 77-5-305, MCA

REASONABLE NECESSITY: The proposed adoption of New Rule I is necessary to provide a consistent and fair manner for the Department of Natural Resources and Conservation to impose civil penalties with respect to violations of the Streamside Management Zone Law, in order for the Department of Natural Resources and Conservation to further comply with its obligation to implement the management standards set forth in 77-5-303, MCA and to provide specific direction necessary for owners and operators to understand and comply with the management standards set forth at 77-5-303, MCA.

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 Dan Rogers, Forest Stewardship Specialist, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4326; fax (406) 542-4203; or e-mailed to DanRogers@mt.gov, and must be received no later than 5:00 p.m. on March 23, 2006.

6. Rob Ethridge, Forestry Assistance Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804 has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the Department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The Department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption 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.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or a combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Tommy H. Butler
Tommy H. Butler
Rule Reviewer

Certified to the Secretary of State February 13, 2006.