MONTANA ADMINISTRATIVE REGISTER

1998 ISSUE NO. 11
JUNE 11, 1998
PAGES 1452-1545

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

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

<u>Page Number</u>

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.6401, 2.21.6403 and 2.21.6422 and the repeal of ARM 2.21.6402, 2.21.6411 and 2.21.6413 through 2.21.6415 related to performance appraisal	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 2.21.6401, 2.21.6403 AND 2.21.6422 AND THE REPEAL OF ARM 2.21.6402, 2.21.6411 AND 2.21.6413 THROUGH 2.21.6415 RELATED TO PERFORMANCE APPRAISAL

TO: All Interested Persons.

1. On July 2, 1998, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.6401, 2.21.6403 and 2.21.6422 and the repeal of ARM 2.21.6402, 2.21.6411 and 2.21.6413 through 2.21.6415 related to performance appraisal.

2. The rules proposed to be repealed are found on pages 2-1461 through 2-1467 of the Administrative Rules of Montana. Authority and implemented cites for these rules are:

AUTH: 2-18-102, MCA; IMP 2-18-102, MCA.

3. The proposed amendments provide as follows:

2.21.6401 SHORT TITLE (1) This sub-chapter may be cited as the ~~P~~performance ~~Appraisal~~ management and evaluation policy.
(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.6403 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that: ~~there be regular performance appraisal of all full time and part time employees in permanent positions.~~

(a) each agency shall be required to manage and evaluate the performance of permanent employees on a regularly recurring basis;

(b) a process implemented by an agency shall be based on an evaluation of contributions made and results achieved by individual employees and teams of employees through measures of performance including competence;

(c) employee involvement in performance management and evaluation is encouraged;

(d) an employee shall have the right to submit a written response to an evaluation which shall be retained with the evaluation in the employee's personnel record. The response shall be submitted within 10 working days of the evaluation or in a time period established in an agency's policy of not less than 10 working days;

(e) procedural errors which are subject to the filing of

a grievance pursuant to ARM 2.21.8001 et seq., grievances, are failure of an evaluator to:

(i) inform an employee of the performance management plan at the start of an evaluation period or changes to the plan made during the evaluation period;

(ii) provide an employee with the completed evaluation and any reviewer's comments; and

(iii) advise an employee of the right to submit a written response.

(f) no employee may file a grievance based on the content of a performance management plan, the evaluation or reviewer's comments;

(g) an employee who has not attained permanent status may not file a grievance under ARM 2.21.8001 et seq., grievances, involving any aspect of the performance management and evaluation process; and

(h) initiation of informal or formal disciplinary actions under the discipline handling policy, ARM 2.21.6501 et seq., are not dependent on completion of the performance evaluation process.

(2) It is the objective of this policy pursuant to 2-18-102, MCA, to:

~~(a) establish minimum standards for performance appraisal, as directed by House Joint resolution 13 (1979 Leg.), and under the authority of 2-18-102, MCA; and~~

~~(b) establish performance appraisal which will maintain and encourage improved performance.~~ delegate to each agency the authority to select a method of performance management and evaluation which implements this policy and which may be adapted to the mission and needs of the agency.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.6422 CLOSING (1) Remains the same.

~~(2) Forms mentioned are available from the department of administration publications and graphics division.~~

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

4. It is reasonably necessary to amend and repeal these rules in order to delegate to the agencies the responsibility for developing an employee evaluation process which meets the agency mission and needs. The current rules establish a "one size fits all" approach which in reality fits no one. State agencies requested the ability to create systems which will be effective in their unique work environments. They also requested that basic requirements for employee evaluation remain in administrative rule. Agencies worked with the department to create the broad framework reflected in the proposed amendments. The department also anticipates that better compliance with the rules will result from the changes proposed.

ARM 2.21.6401 changes the short title of the sub-chapter from Performance Appraisal to Performance Management and Evaluation. The change more accurately describes an ongoing process of planning, observation and rating which is desirable in an employee evaluation system.

ARM 2.21.6402, Definitions, is proposed for repeal because the terms no longer are used in the policy.

ARM 2.21.6403, Policy and Objectives, establishes the framework for performance management and evaluation. The concept of competency-based human resource management is introduced for performance management systems. Competency-based human resource systems currently are undergoing intense study and are being implemented by state agencies. The concept of evaluating teams of employees is introduced as this method of organization has become common in state agencies. Adoption of a performance management system with employee involvement is encouraged.

ARM 2.21.6411, Appraisal Process, is proposed for repeal to eliminate the requirements for specific procedural steps and rating scales. The section of this rule which allows initiation of disciplinary action before completion of the appraisal process is incorporated into ARM 2.21.6403.

ARM 2.21.6413, Reviewer, is proposed for repeal because it is a procedural step. Agencies may use a reviewer.

ARM 2.21.6414, Grievance or Rebuttal, is proposed for repeal and an employee's right to submit a response to an evaluation and to file a grievance over specified procedural errors is incorporated in ARM 2.21.6403.

ARM 2.21.6415, Records, is proposed for repeal as a procedural step.

ARM 2.21.6422, Closing, is proposed for amendment to delete the reference to obsolete forms.

The department is committed to supporting agency development efforts through direct technical assistance, model policies, guides, training, and monitoring of the performance management functions of the human resource database software.

5. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gale Kuglin, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to gkuglin@mt.gov. All responses must be received no later than July 10, 1998.

6. Gale Kuglin, address given in paragraph 5 above, has been designated to preside over and conduct the hearing.

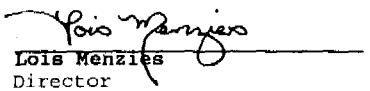
7. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Gale Kuglin, at the address given in paragraph 5 above, or telephone (406)-444-3984. For those with a TDD, relay service is available by dialing 1-800-253-4091.

8. The State Personnel Division maintains an interested persons list and sends copies of proposed rule notices to everyone on the list. Anyone wishing to be placed on the list may contact State Personnel Division's receptionist at

(406)444-3871 or send a request to State Personnel Division, PO Box 200127, Helena, MT 59620-0127 and ask to be placed on the interested persons list for proposed rule changes. Interested persons may also request to be placed on the list at the scheduled hearing.

BY: 

Dal Smilie
Rule Reviewer



Lois Menzies
Director

Certified to the Secretary of State June 1, 1998

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications for examination - temporary permits, application of out-of-state cosmetologists, manicurists, estheticians, transfer students, continuing education, salons, and booth rental licenses and the repeal of a rule pertaining to restrictions of temporary permits	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND REPEAL OF RULES PERTAINING TO THE PRACTICE OF COSMETOLOGY, MANICURING, ELECTROLOGY AND ESTHETICS

TO: All Interested Persons:

1. On July 10, 1998, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment and repeal of rules pertaining to the practice of cosmetology, manicuring, electrology and esthetics.

2. The proposed amendment of ARM 8.14.803, 8.14.805, 8.14.807, 8.14.815, 8.14.816, 8.14.817 and 8.14.818 will read as follows: (new matter underlined, deleted matter interlined)

"8.14.803 APPLICATIONS FOR EXAMINATION - TEMPORARY PERMITS (1) With respect to cosmetology students, no application for examination will be accepted unless accompanied by the proper fees, credentials, the student's hour records showing that the 2,000 hours have been completed, a cosmetology school diploma issued, proof of applicant's high school graduation or equivalency and a photostatic copy of applicant's birth certificate or other verifiable evidence of applicant's birth date.

(2) and (3) will remain the same.

~~(4) Applicants who register for the first available Montana examination are eligible for a temporary permit.~~

~~(5) Out-of-state applicants who do not qualify for a license under 37-1-304, MCA, and who have chosen to take the license examination in lieu of additional education and training, may apply for a temporary practice permit. A temporary practice permit is not available for applicants taking additional training.~~

~~(6) A graduate of a cosmetology, manicuring or esthetics school may work under a temporary practice permit pursuant to 37-1-305, MCA.~~

~~(7) Any person holding a temporary practice permit must practice under the direct, on premises supervision of a licensee in the scope of practice for the applicant. Supervision must be evidenced by the signature of the~~

~~supervising licensee on the application for the temporary practice permit.~~

~~(8) A temporary practice permit will not be issued for more than 90 days. Only one temporary permit will be issued to an individual.~~

~~(9) If the applicant does not register for the first available examination, for any reason, the temporary practice permit will be void and must be returned to the board office immediately.~~

(4) All applications for the examination will be submitted to the examination administration services with which the board has contracted.

(5) The Montana board of cosmetologists will not issue a temporary permit to practice under 37-1-304, MCA."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-1-304, 37-1-319, 37-31-304, 37-31-308, 37-31-311, MCA

REASON: Section 37-1-305, MCA, permits boards to issue temporary practice permits to individuals who meet all licensure requirements except successful completion of the license examination. The statute is framed using the permissive "may" which the board interprets to be the legislature's direction that the determination to issue temporary permits is within the individual boards' discretion. Based upon the following rationale, the board proposes to exercise such discretion and remove from its rules the issuance of temporary permits.

The board of cosmetologists has issued temporary practice permits in the past. Unfortunately, many of the license applicants who have been extended the privilege of securing a temporary practice permit, and the salon owners who supervise permit holders, have been utilizing permits in a variety of circumstances involving the entire spectrum of unprofessional conduct ranging from unlicensed practice to fraud in securing a license. During board inspections, inspectors discovered permit holders working without supervision, salon owners allowing permit holders to continue working after the temporary permit expired and permit holders attempting to "booth rent," using a temporary permit. In May alone, the board has placed no less than six temporary permit holders on license probation for violations committed with regard to violations committed while the licensee worked with a temporary permit. Such actions are a threat to public health, safety and welfare in that permit holders who have not yet passed the licensure exam and in many cases, failed the exam, are being allowed to perform cosmetological services on members of the public without being able to demonstrate minimum competence in the performance of those services.

"8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/ MANICURISTS, ESTHETICIANS (1) and (1)(a) will remain the same.

~~(2) For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" for manicurists as 350 hours of formal training and successful completion of a written and~~

~~practical examination by a passing score set forth by board rule. Applicants who do not possess 350 hours of formal training shall either take and successfully pass the written and practical examinations, or obtain additional hours as may be directed by the board to achieve the total 350 hours. Work experience obtained in the profession may not be considered as part of a manicurist applicant's qualifications.~~

~~(a) To qualify for licensure by endorsement, an out-of-state manicurist must submit an application prescribed by the board with the appropriate fees and proof of completion of 350 hours of training in an approved school of manicuring or manicuring course, a certified true copy of applicant's birth certificate or other verifiable proof of birth date, a certified true copy of high school graduation or equivalency, a certified true copy of a current out of state license and an original board transcript from each state in which you hold a license. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.~~

(3) and (3)(a) will remain the same, but will be renumbered (2) and (2)(a).

(4) will remain the same, but will be renumbered (3).

~~(5) Out of state manicuring applicants with less than the 350 hours of training must take the national practical and written examinations for cosmetology or obtain additional hours as may be directed by the board to achieve the total of 350 hours.~~

(6) through (9) will remain the same, but will be renumbered (4) through (7).

(8) Instructor applicants will be required to take and pass both the national interstate council of state boards of cosmetology's written and practical examinations.

(9) The electrologist applicants will be required to take and pass the national interstate council of state boards of cosmetology's written examination."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-1-304, 37-31-303, 37-31-304, 37-31-308, MCA

REASON: Section 37-1-304(1), MCA, permits the board to issue a license to an individual licensed in another state, if the state from which the individual applies has licensing requirements "substantially equivalent to or greater than the standards in this state," and there is no basis for denial under the applicable Montana licensing provisions. This statute is codified using the permissive "may" which the board interprets as the legislature's clear direction that the determination to permit reciprocity is within the board's discretion. Based upon the following rationale, the board proposes to remove the possibility of licensure by reciprocity (endorsement) from its rules.

In recent months, the board's office has been flooded with fraudulent documents pertaining to manicurists seeking reciprocal licensure. Many application packets submitted for board review contain altered high school diplomas, fraudulent

identification, altered court documents, incomplete licensure information and, in some instances, graduation certificates from manicure schools which no longer exist or have never existed. To make matters more complex, several states have revealed that licenses have been secured through illegal means and that these states issued as many as several thousand licenses to individuals who were not qualified to obtain a manicurist license.

The board has a statutory obligation to protect public health, safety and welfare. Because the board is no longer secure in its ability to verify that information submitted by license applicants is accurate, or the ability to correctly identify any particular license applicant, the board must amend the rule to no longer allow licensure by reciprocity.

The amendment will allow those individuals who, through independent verification between the various state offices, have taken and passed the National Interstate Council of State Boards of Cosmetology (NIC) examination, both written and practical, and passed with a score of 75% or better. All other license applicants will be required to take and successfully pass the NIC examination.

"8.14.807 TRANSFER STUDENTS - OUT-OF-STATE - COSMETOLOGY, MANICURING, ESTHETICS (1) will remain the same.

(2) Transfer students and ~~o~~out-of-state students will be considered entry level students until the board office has received and reviewed their transcript of hours, enrollment form and/or any other papers or documents which the board may deem necessary and may not be permitted to work on members of the public."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, MCA

REASON: The rule previously made no reference to the subject matter contemplated in the title and, therefore, the Board proposes to add a reference for clarity.

"8.14.815 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) will remain the same.

(2) Continuing education courses must meet the following requirements to be considered for approval by the board:

(a) be available to all licensed instructors;

(b) provide proof of advertising or notice to licensees at least 30 days prior to the course start date;

(c) be germane to the practice of cosmetology, manicuring or esthetics.

(2) through (5) will remain the same, but will be renumbered (3) through (6).

~~(6)~~ (7) An inactive instructor licensee desiring to activate a license must submit evidence of completion of 15 credits of approved continuing education obtained within the twelve-month period prior to activating the license. The licensee must then complete an additional ~~15~~ 30 credits of continuing education before the December 31 renewal date."

Auth: Sec. 37-1-131, 37-1-306, 37-1-319, 37-31-203, MCA; IMP, Sec. 37-1-306, 37-31-322, MCA

REASON: The board has received an increasing number of continuing education requests only available to a limited population of licensees, and in topics which are not even related to the profession. Such a program defeats the purpose of continuing education and is not to be tolerated. Therefore, the board proposes to amend the rule to ensure that all licensees have ample opportunity for continuing education and that courses are designed to elevate the competence of attendees. The board is also changing the requirement from 15 credits every year to 30 credits every two years, to coincide with the biennial renewal adopted in December 1997.

"8.14.816 SALONS - COSMETOLOGICAL, MANICURING OR ESTHETICS (1) and (2) will remain the same.

(a) The current annual inspection report will be made available to the inspector or designee upon request.

(b) Inspection report violations must be addressed and a response provided to the board office, by the salon owner/manager or booth renter, within 30 days of the inspection date.

(3) through (9) will remain the same.

(10) The ~~S~~salon licenses~~e~~ must be ~~placed~~ posted in a ~~location~~ conspicuous place within the salon that can be viewed by the general public. ~~Personal and booth rental licenses for personnel must be displayed at the person's work station. The address on personal licenses may be covered.~~"

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-312, MCA

REASON: The board is adding clarification to the board's response policy and posting procedures regarding annual salon and booth rental inspections.

"8.14.817 BOOTH RENTAL LICENSES (1) will remain the same.

(2) Booth renters must display at their station a clear legible sign, with the dimensions not less than 6 inches by 2 inches or 5 inches by 3 inches, indicating that the booth/station is a booth rental and rented by the booth renter. If the booth rental station is shared by more than one booth renter, the station must display a sign for each renter.

(3) If booth renters have other areas of the salon, such as retail, roll-abouts, carts, manicure tables, etc., these areas must be labeled clearly with the booth renter's name.

(4) Booth rental licenses must be posted at the independent contractor's booth rental station."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

REASON: The board is adding the requirement of posting a booth rental sign to enable the public and board inspectors to better

identify the independent contractor booth renters, particularly for those occasions when the inspector performs an annual inspection and the booth renter is not present.

"8.14.818 BOOTH RENTAL LICENSE APPLICATION SUPPLEMENTS (1) Applicants for booth rental licenses must ~~include with their~~ submit an application~~s correct copies of diagrams of the complete salon areas where the booth will be located~~ prescribed by the board."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

REASON: The diagram is submitted by the salon owner with the salon application and is not required to be submitted by the booth renter.

3. The Board is proposing to repeal ARM 8.14.819 (authority sections 37-1-131, 37-31-203, MCA; implementing sections 37-1-306, 37-1-319 37-31-203, 37-31-302, MCA), located at page 8-438, Administrative Rules of Montana. The rule is being proposed for repeal because the Board is deleting the language pertaining to temporary permits which makes this rule redundant.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., July 1, 1998, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Cosmetologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4288; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Jeannie Worsech.

5. Interested 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 Cosmetologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., July 9, 1998.

6. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

7. Persons who wish to be informed of all Board of Cosmetologists administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in

writing to the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4288.

BOARD OF COSMETOLOGISTS
VERNA DUPUIS, CHAIRMAN

BY: Anne M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1998.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to net client hunting use	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.39.804 REVIEW OF OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER AN EXISTING OPERATIONS PLAN

TO: All Interested Persons:

1. The Board of Outfitters will hold two public hearings on the proposed amendment of the above-stated rule. Both hearings will be held on July 7, 1998. The hearing in Helena will be held at 9:00 a.m., in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson. The hearing in Billings will be held at 7:00 p.m., in the Bighorn room at the Holiday Inn Billings Plaza, 5500 Midland Road.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.39.804 REVIEW OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER AN EXISTING OPERATIONS PLAN (1) through (7)(d) will remain the same.

(e) any sportspersons' or outfitters' association requesting to receive such proposal; ~~and~~

(f) the Montana wildlife federation~~.~~; and

(g) the department of fish, wildlife and parks regional offices in the area of proposed expansion.

(8) The board shall review the proposal and any comments received before the expiration of the deadline for receipt of such comments. The board shall utilize comments received, in conjunction with criteria specified below, to decide whether to approve the proposal. The board shall not approve a new operations plan or the proposed expansion of net client hunting use under the existing operations plan if it finds that the proposal will cause an undue conflict with existing hunting uses of the area, constituting a threat to the public health, safety, or welfare. The criteria the board may consider when identifying undue conflict include, but are not limited to:

(a) sufficiency of land for personal safety and adequate wildlife for a quality hunt;

(b) restriction of public access to private or public lands utilized for public hunting use;

(c) pending disciplinary actions or current license restrictions;

(d) veracity of statements made in application; and

(e) existing hunting uses of the area.

(9) and (10) will remain the same."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

REASON: The Board received direction from the Montana Administrative Code Committee to adopt more specific criteria pertaining to the review and determination on Net Client Hunting Use expansion requests. The Board responded by simply amending the rule to reflect the criteria which have evolved as a result of the board's case-by-case review and consideration of expansion requests to date.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., June 30, 1998, to advise us of the nature of the accommodation that you need. Please contact Mat Rude, Executive Director, Board of Outfitters, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3738; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mat Rude.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearings. Written data, views or arguments may also be submitted to the Board of Outfitters, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., July 9, 1998.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct the hearings.

6. Persons who wish to be informed of all Board of Outfitters administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearings or in writing to the Board at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3738.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1998.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to examinations - schedule of supervision and continuing education	))))	NOTICE OF PROPOSED AMENDMENT OF 8.62.404 EXAMINATIONS - 8.62.502 SCHEDULE OF SUPERVISION - CONTENTS AND 8.62.703 CONTINUING EDUCATION REQUIRED - WHEN NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 11, 1998, the Board of Speech-Language Pathologists and Audiologists proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.62.404 EXAMINATIONS (1) through (4) will remain the same.

(5) Applicants must also take and pass a jurisprudence examination as composed and corrected by the board, which measures the competence of the applicant regarding the statutes and rules governing the practice of speech-language pathology and audiology in Montana. The jurisprudence examination must be passed with a score of 95% or greater. Any applicant who fails the jurisprudence examination may re-take the examination two subsequent times. After a third failure, the applicant shall petition the board for each future re-examination."

Auth: Sec. 37-1-131, 37-15-202, MCA; IMP, Sec. 37-15-304, MCA

REASON: The proposed amendment will establish a jurisprudence examination as a requirement for licensure by the board. The board has noted some instances of licensees' failure to follow board statutes and rules, and would therefore like to ensure all licensees have an opportunity to learn the statutes and rules when they apply for a license. The examination will be open-book format, sent directly to the applicant, and will not create additional examination administration work for the board.

"8.62.502 SCHEDULE OF SUPERVISION - CONTENTS (1) through (3) will remain the same.

(4) Each supervisor must also submit a supervisor summary form, as prescribed by the board, which lists each speech or audiology aide, number of hours and other information as required by the board. The board will review the supervisor summary forms which indicate a supervisor supervises three or

more speech or audiology aides, for compliance with the appropriate ratio of supervisor hours as stated in the rules.

(4) will remain the same, but will be renumbered (5)."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, 37-15-313, MCA

REASON: This amendment is being proposed because distance to travel and location of schools where aides are located may be a prohibitive number in order for proper supervision to occur. The board will therefore monitor the number of aides by use of a supervisor summary form.

"8.62.703 CONTINUING EDUCATION REQUIRED - WHEN

(1) ~~Documentation of continuing education units must be provided when applying for licensure renewal no later than February 1 of each odd-numbered year.~~ Each licensee shall affirm completion of the required continuing education hours before February 1 of each odd-numbered year, on the renewal form. The board will randomly audit 10% of the renewed licensees continuing education hours submitted each odd-numbered year. Certificates of completion for continuing education credits reported must be submitted upon request of the board.

(2) through (5) will remain the same."

Auth: Sec. 37-1-319, 37-15-202, MCA; IMP, Sec. 37-1-306, MCA

REASON: This amendment is being proposed because the Division of Professional and Occupational Licensing has determined that performing audits on 100% of licensees, which is the current procedure, is too time consuming for administrative staff.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Speech-Language Pathologists and Audiologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 9, 1998.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Speech-Language Pathologists and Audiologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 9, 1998.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana

Administrative Register. Ten percent of those persons directly affected has been determined to be 38 based on the 375 licensees in Montana.

6. Persons who wish to be informed of all Board of Speech-Language Pathologists and Audiologists administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3091.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
LYNN HARRIS, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1998.

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to the Microbusiness Finance Program	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO THE MICROBUSINESS FINANCE PROGRAM

TO: All Interested Persons:

1. On July 22, 1998, at 1:00 p.m., a public hearing will be held in the Upstairs Conference Room at the Department of Commerce, 1424 9th Avenue, Helena, Montana 59620, to consider the proposed amendment of rules pertaining to the Microbusiness Finance Program.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.99.506 DEVELOPMENT LOAN - RENEWAL REQUIREMENTS

(1) will remain the same.

(2) The department may renew the terms of the development loan up to four years ~~and~~ with interest only payments, or may require the repayment of the loan in full or in part.

(3) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

REASON: The reason for the rule change is to provide clarification regarding the interest only payment of the loan.

"8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) through (4) will remain the same.

(5) The ~~initial~~ interest rate charged to microbusiness borrowers by MBDCs~~, will be the New York prime rate published weekly by the Montana board of investments, plus 3% as a minimum annual percentage rate and plus 7% as a maximum annual percentage interest rate~~ shall be, at a minimum, the highest rate charged by the department to the MBDC for development loans and, at a maximum, the rate allowed by Montana law pursuant to 31-1-107, MCA. The interest rate charged borrowers will be set by the MBDC board of directors or its delegated committee and made public. The loan interest rate determination must be by board resolution with a copy forwarded to the department. Interest charged to borrowers will be at a fixed rate for the term of the loan. MBDCs will report quarterly, in writing to the department, the interest rate charged to borrowers.

(6) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

REASON: In order to allow for local analysis of the cost of MBDC loans, and better serve the credit requirements

of microbusiness borrowers, the Department is delegating to the MBDC Board of Directors or its selected committee the task of setting interest rates, within the limits prescribed by the Department, charged to microbusiness borrowers. Local control of the interest rates charged to microbusiness borrowers is necessary given the differing economic conditions within the State.

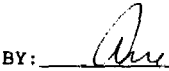
3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., July 15, 1998, to advise us of the nature of the accommodation that you need. Please contact the Economic Development Division, 1424 9th Avenue, Helena, Montana 59620; telephone (406) 444-4325, Montana Relay 1-800-243-4091; TDD (406) 444-2971; facsimile (406) 444-2903. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule making process should contact Lynn Robson at the above address.

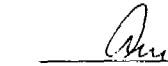
4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Economic Development Division, 1424 9th Avenue, Helena, Montana 59620, no later than July 22, 1998.

5. Persons who wish to be informed of all Economic Development Division administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Division at the rulemaking hearing or in writing to the Economic Development Division, 1424 9th Avenue, Helena, Montana 59620.

6. Greg Overturf, attorney, has been designated to preside over and conduct the hearing.

ECONOMIC DEVELOPMENT DIVISION

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1998.

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

In the matter of the amendment of 46.12.303, 46.12.502A, 46.12.505, 46.12.508, 46.12.540, 46.12.541, 46.12.542, 46.12.703, 46.12.802, 46.12.806, 46.12.1005, 46.12.1015 and 46.12.1025 pertaining to medicaid coverage and reimbursement of various medical items and services	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 8, 1998, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of 46.12.303, 46.12.502A, 46.12.505, 46.12.508, 46.12.540, 46.12.541, 46.12.542, 46.12.703, 46.12.802, 46.12.806, 46.12.1005, 46.12.1015 and 46.12.1025 pertaining to medicaid coverage and reimbursement of various medical items and services.

The Department of Public Health and Human Services 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 request an accommodation, contact the department no later than 5:00 p.m. on June 26, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (16) remain the same.

(17) Medicaid coverage and reimbursement is available only for services or items that are provided in accordance with all applicable medicaid requirements and within the scope of practice permitted under state licensure laws and other mandatory standards applicable to the provider.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131 and 53-6-141, MCA

46.12.502A RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) through (3)(b) remain the same.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year ~~1998~~ 1999 is:

(a) ~~$34.14~~ $34.40 for medical and surgical services, as specified in (2); and

(b) ~~$26.51~~ $26.93 for anesthesia services.

(5) through (7)(b)(iii) remain the same.

(c) if neither medicare nor medicaid sets RVUs, then reimbursement will be by report. For ~~state fiscal year 1998~~ services provided on or after July 1, 1998, the "by-report" rate is ~~58%~~ 55% of the ~~providers~~ provider's usual and customary charges.

(8) through (11) remain the same.

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

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) through (2)(b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is ~~$1,950.63~~ $1,979.89, effective for services provided on or after July 1, ~~1997~~ 1998.

(2)(d) through (13) remain the same.

(14) The Montana medicaid DRG relative weight values, average length of stay (ALOS), outlier thresholds and stop loss thresholds are contained in the DRG table of weights and thresholds (June ~~1997~~ 1998 edition). The DRG table of weights and thresholds is published by the department of public health and human services. The department hereby adopts and incorporates by reference the DRG table of weights and thresholds (June ~~1997~~ 1998 edition). Copies may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(15) through (17) remain the same.

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

46.12.508 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) through (5)(a)(iii) remain the same.

(b) Fees for emergency room and clinic service groups described in (5)(a)(i) through (iii) above for sole community

hospitals and non-sole community hospitals are specified in the department's outpatient hospital emergency room fee schedule. The department hereby adopts and incorporates herein by reference the outpatient hospital emergency room fee schedule (June ~~1997~~ 1998). A copy of the emergency room fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(5)(c) through (10)(a) remain the same.

(b) The department determines a fee for each day procedure group which reflects the estimated cost of hospital resources used to treat cases in that group relative to the statewide average cost of all medicaid cases. Fees for day procedure groups for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital fee schedule. The department hereby adopts and incorporates by reference the outpatient hospital ambulatory surgery fee schedule (June ~~1997~~ 1998). A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(10)(c) through (11) remain the same.

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

46.12.540 HEARING AID SERVICES, ~~DEFINITION~~ DEFINITIONS (1) ~~Hearing aid means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing~~ "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and includes the parts, attachments or accessories of the instrument or device.

(2) "Hearing aid dispenser" or "dispenser" means ~~any person, partnership, corporation, or association engaged in the sale, lease, or rental of hearing aids to a medicaid recipient~~ a person holding a current license issued by the Montana board of hearing aid dispensers under Title 37, chapter 16, MCA to engage in selling, dispensing or fitting hearing aids. The term does not include any person to the extent that the person acts beyond the scope of the person's hearing aid dispenser license.

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

46.12.541 HEARING AID SERVICES, REQUIREMENTS AND LIMITATIONS (1) These requirements are in addition to those contained in ~~ARM 46.12.301 through 46.12.308~~ rule provisions generally applicable to medicaid providers.

(2) Medicaid payment for purchase or rental of hearing

aids will be made only to a licensed hearing aid dispenser for medicaid covered services provided in accordance with all applicable medicaid requirements and within the scope of practice permitted under the dispenser's license.

(3) A hearing aid may be ~~provided for~~ covered under the medicaid program if:

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

(i) for persons over 21 years of age, the audiological examination results show that there is an average pure tone loss of at least 40 decibels over the frequency at 500, 1,000, 2,000 and 3,000 ~~at 35db~~ hertz in the best ear. The following criteria shall apply to adults aged 21 years or older for binaural hearing aids:

(3)(c)(i)(A) through (6) remain the same.

~~(7) Hearing aid repairs shall be limited to the invoice cost from the manufacturer plus a $10.00 handling fee. The cost of repair shall not exceed $175.00 per calendar year for each hearing aid.~~

(7) For individuals age 21 or over, a hearing aid purchased by medicaid will be replaced no more than once in a 5 year period and only if:

(a) the original hearing aid has been irreparably broken after the 1 year warranty period or has been lost;

(b) the provider's records document the loss or broken condition of the original hearing aid; and

(c) the hearing loss criteria specified in this rule continue to be met.

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

46.12.542 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the ~~lowest~~ lower of the following for covered hearing aid services and items:

(a) the provider's ~~actual submitted~~ reasonable usual and customary charge for the service or item;

(b) the amount specified for the particular service or item in the department's hearing aid fee schedule contained in ~~this rule~~ the department's medicaid hearing aid services provider manual. The department hereby adopts and incorporates by reference the medicaid hearing aid services provider manual (July 1998). The manual contains requirements and instructions related to medicaid coverage and reimbursement of hearing aids. A copy of the medicaid hearing aid services provider manual may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(2) Medicaid payment for hearing aid purchase or rental will cover only the following items in the amounts indicated:~~

~~List of Services~~ ~~Fee~~

~~Purchase of instrument .....~~	~~Manufacturer's invoice plus a dispensing fee of $208.08 for a monaural (single) hearing aid and $312.12 for binaural (two hearing aids, one for each ear) hearing aids.~~
~~Hearing aid rental .....~~	~~$1.21 per day~~
~~Hearing aid service & repair (which includes a 6 month warranty).....~~	~~Invoice price plus $20.00 handling fee~~
~~Hearing aid recasing .....~~	~~Invoice price plus $20.00 handling fee~~
~~Accessories (Cords, receivers, etc.) .....~~	~~Invoice cost plus $20.00 handling fee~~
~~Bone ossilator .....~~	~~Invoice cost plus $20.00 handling fee~~
~~Ear mold .....~~	~~Invoice cost plus $20.00 handling fee~~
~~Hearing aid batteries .....~~	~~$1.15 per cell~~
~~Hearing aid dispenser's in office repair .....~~	~~BR (Paid at 90% of billed amount)~~

~~(3)~~(2) The provider may bill medicaid for a dispensing fee, as specified in the fee schedule adopted in (1)(b), in addition to the invoice price for the purchase of a hearing aid or aids. The dispensing fee covers and includes ~~consists of~~ the initial ordering, the fitting, the orientation, the counseling, two return visits for the services listed, and the insurance for loss or damages covered under a ~~one~~ 1 year warranty.

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

46.12.703 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (2)(a) remain the same.

(b) The dispensing fees assigned shall range between a minimum of $2.00 and a maximum of ~~$4.14~~ $4.20.

(2)(c) through (2)(d) remain the same.

(3) In-state pharmacy providers that are new to the Montana medicaid program will be assigned an interim $3.50 dispensing fee until a dispensing fee questionnaire, as provided in (2) above, can be completed for 6 months of

operation. At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the ~~$4.14~~ $4.20 dispensing fee. Failure to comply with the 6 months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of $2.00.

(4) through (5) remain the same.

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in ~~ARM 46.12.301 through 46.12.309~~ rule provisions generally applicable to medicaid providers. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing facility residents are contained in the department's rules governing nursing facility reimbursement.

(2) through (3) remain the same.

(4) The following items are not reimbursable by the program:

(4)(a) remains the same.

(b) orthopedic shoes, corrections, and shoe repairs unless the criteria in (4)(b)(i) or (ii) are met and the physician's prescription indicates that:

(i) the shoes are attached to a brace or orthotic device which cannot be accommodated in a regular shoe. ~~This information must be indicated on the physician's prescription~~; or

(ii) the shoes are covered under medicare criteria for therapeutic shoes for diabetics. The department hereby adopts and incorporates by reference the Durable Medical Equipment Regional Carrier (DMERC) Region D supplier manual for coverage of therapeutic shoes for diabetics (March 1998). This manual describes the conditions under which the medicare program will cover therapeutic shoes for diabetics. A copy of these medicare criteria is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(4)(c) through (5) remain the same.

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

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) through (2)(d) remain the same.

(i) For all oxygen systems, portable and stationary, reimbursement will be made in accordance with the department's oxygen fee schedule dated ~~March~~ May 1, 1998, which is hereby adopted and incorporated by reference. A copy of the oxygen fee

schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(e) For all diapers and diaper-related supplies, the department's fee schedule shall be the diaper fee schedule dated ~~October 1, 1995~~ July 1998, which the department hereby adopts and incorporates by reference. A copy of the department's ~~October 1, 1995~~ July 1998 diaper fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2)(f) through (4) remain the same.

(a) The department shall increase or decrease those fees established as provided in (2)(b), ~~and~~ (2)(d)(i) and (2)(e) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective as provided by the legislature.

(4)(b) remains the same.

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

46.12.1005 TRANSPORTATION AND PER DIEM, REIMBURSEMENT (1) The department pays the lower of the following ~~reimbursement~~ reimbursement rates for transportation services:

(1)(a) through (2)(a) remain the same.

(b) regularly scheduled air, train, bus or air charter - usual fee or rate negotiated with the department;

(c) commercial ground transportation, including taxi and limousine service for trips up to 16 miles total - usual fee not to exceed a total of ~~$10.07~~ $10.37 for a one way trip;

(d) commercial ground transportation, including taxi and limousine service for trips exceeding 16 miles - ~~$.63~~ $.65 per mile that a person is a passenger.

(3) The department fee schedule for per diem items is the following:

(a) ~~A0180~~ breakfast (12:01 a.m. to 10:00 a.m.) . $2.75
(b) ~~A0190~~ lunch (10:01 a.m. to 3:00 p.m.) $3.30
(c) ~~A0200~~ dinner (3:01 p.m. to 12:00 a.m.) $6.60
(d) ~~A0210~~ per diem, including lodging $22.44

(4) through (5) remain the same.

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

46.12.1015 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department's fee schedule for specialized nonemergency medical transportation is the following:

(a) Transportation under 16 miles.....~~$10.07~~

$10.37 one way

(b) Transportation over 16 miles.....~~$ .63~~ $.65 per mile

(c) Waiting time for transportation over 16 miles.....~~$ 5.03~~ $5.20 per hour computed in 15 minute increments or fraction thereof

(d) Waiting time for under 16 miles....No payment

(e) When one way transportation is over 16 miles and the unloaded miles exceed ten percent of the loaded miles, the miles from the departure point to the pick-up point plus the miles from the delivery point to the departure point shall be paid for at the rate of.....$ .33 per mile

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

46.12.1025 AMBULANCE SERVICES, REIMBURSEMENT (1) through (4)(a) remain the same.

(b) The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature.

(5) remains the same.

(6) Except as provided in ~~subsection~~ (9), current fees for ambulance services are published by the department in ~~a pricing manual~~ the July 1998 medicaid ambulance services provider manual, which the department hereby adopts and incorporates by reference. A copy of the department's July 1998 medicaid ambulance services provider manual may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(7) remains the same.

(8) Copies of the pricing manual, billing codes and HCPCS may be obtained from the Department of Public Health and Human Services, ~~Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210~~ Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(9) remains the same.

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

3. The proposed rule changes generally pertain to implementing 1.5% increases in medicaid provider reimbursement authorized in the 1997 General Appropriations Act, Ch. 551, L. 1997. The reimbursement increases affect the Resource Based Relative Value Scale (RBRVS), inpatient and outpatient hospital services, hearing aid services, outpatient drugs, prosthetic devices, durable medical equipment, and medical supplies, and transportation services. These proposed changes include:

(1) for RBRVS, updating the conversion factors and "by-report" rate for fiscal year 1999;

(2) for inpatient and outpatient hospital services, implementing aggregate legislative funding increases for fiscal year 1999; updating the DRG base price and the DRG table of weights and thresholds; and updating the reference to the department fee schedules for emergency room and ambulatory surgical services;

(3) for hearing aid services, revising the definitions of "hearing aid" and "hearing aid dispenser", for consistency with Montana licensure laws; specifying that the medicaid requirements apply to both purchase and rental of hearing aids; removing incorrect technical language; and removing the fee schedule and replacing it with a reference to the fee schedule published in the department's hearing aid services provider manual dated July, 1998;

(4) for outpatient drugs, increasing the maximum dispensing fee to $4.20;

(5) for prosthetic devices, durable medical equipment, and medical supplies, including coverage of therapeutic shoes for diabetics meeting Medicare criteria; changing the dates of fee schedules which are incorporated by reference to reflect the most current fee schedules; and adding the diaper fee schedule to those fees which are increased or decreased by legislative direction;

(6) for transportation services, adding train and bus as alternative modes of transportation and providing for negotiated rates; increasing rates for commercial ground transportation; removing obsolete codes for per diem items; and increasing rates for non-emergency medical transportation and ambulance services.

The proposed changes to ARM 46.12.303 would add new subsection (17) to codify longstanding department policy and rule interpretation that medicaid will not cover or reimburse services that are provided outside the scope of practice

permitted by applicable licensure laws and other standards. This is necessary to specify in rule longstanding department policy and rule interpretation that medicaid will not reimburse services that are provided outside the scope of applicable licensure and other standards. This requirement is necessary to provide a reasonable degree of assurance that the services and items purchased for medicaid recipients are provided by qualified practitioners and entities and that medicaid recipients receive quality care.

In 46.12.502A(4), 1998 is changed to 1999 to reflect the new fiscal year for which the proposed new conversion factors will be effective. The conversion factors are updated in 46.12.502A(4)(a) from $34.14 to $34.40 and (b) from $26.51 to $26.93. These changes are required to implement the provider increase for RBRVS authorized by the 1997 General Appropriations Act (Chapter 551, Laws of Montana, 1997) and are in accordance with the legislative intent as implemented in ARM 46.12.502A(2)(b). The amendment of 46.12.502A(5)(c) is necessary to specify the "by-report" rate for services provided in fiscal year 1999 and future years. Without this change, the rate is unspecified for fiscal years after 1998. The by-report percentage is updated from 58% to 55% based on the RBRVS reimbursement methodology. Since the legislature has specified the reimbursement methodology for RBRVS, no other options were considered.

The proposed changes to ARM 46.12.505(2)(c) are necessary to implement aggregate legislative funding increases for hospital reimbursement for state fiscal year 1999. The 1997 legislature appropriated funds in 1997 General Appropriations Act (Chapter 551, Laws of Montana, 1997) for increases in medicaid rates to hospitals. For fiscal year 1999 the funding increases are expected to be implemented by updating the average DRG base price from $1,950.63 to $1,979.89. This represents a 1.5% increase in the base price which reflects the Medicare market basket update factor recommended by the Tax Equity and Fiscal Responsibility Act of 1986 (TEFRA). Because the legislature specified the hospital rate increase, no other options were considered.

The proposed rule change to ARM 46.12.508(5)(b) is necessary to update the reference to the department's outpatient hospital fee schedules for emergency room services under outpatient hospital services from June 1997 to June 1998. The fee schedule increases the prospective rates for emergency room services by 1.5%. The proposed rule change to ARM 46.12.508(10)(b) is necessary to update reference to the department's ambulatory surgical services from June 1997 to June 1998. The fee schedule increases the prospective rates for ambulatory surgical services under outpatient hospital services by 1.5%. The proposed change to ARM 46.12.508(14) is necessary to update reference to the

department's DRG table of weights and thresholds from June 1997 to June 1998. The DRG table of weights and thresholds is modified to update the outlier thresholds to account for increases in providers charges for services. The option of leaving the rules unchanged is not being selected because that option would compromise the intent of the legislative directive as well as the integrity of the program.

The proposed changes to ARM 46.12.540(2) revise the definitions of hearing aid and hearing aid dispenser for consistency with state licensing requirements. These changes are necessary to ensure that providers are licensed in accordance with state law and that medicaid reimburses only items and services provided by licensed practitioners within the scope of practice under state licensing law. The option of retaining the current definition of hearing aid was not selected because the current definition is different than the licensing definition, and the department believes that consistency will avoid issues and disputes regarding the scope of medicaid coverage. The option of retaining the current definition of hearing aid dispenser was not selected because it does not include the requirements the dispenser be licensed and practicing within the practitioner's authorized scope of practice.

In ARM 46.12.541(2), purchase or rental has been added to specify that medicaid payment is available for both types of transaction. This change is necessary to eliminate confusion about medicaid's reimbursement for these services. The option of allowing for only purchase or for only rental is rejected because it would not allow for the flexibility needed to determine the most effective instrument for the individual.

The proposed rule change to ARM 46.12.541(3)(c)(i) deletes "at 35 DB" from the text. This change is necessary because the current language is technically incorrect; frequency is measured in hertz rather than decibels.

The proposed rule change to ARM 46.12.541(7) removes the language regarding hearing aid repairs. These fees will be incorporated in the Hearing Aid Services Provider Manual dated July 1998.

The new language for ARM 46.12.541(7) clarifies the services included in the dispensing fee and is moved from ARM 46.12.542(3), which will be incorporated by reference under proposed ARM 46.12.542(1)(b).

The proposed addition of ARM 46.12.541(7), whereby a limitation is placed on the purchase of hearing aid(s) for individuals age 21 and over, is necessary to provide cost savings for the department. The current rule lacks limitations and therefore, the department is obligated to purchase replacement hearing aids

upon expiration of the one year warranty. The option of not instituting a limit has been rejected being not cost effective.

The proposed changes to ARM 46.12.542(1) and (1)(a) correct the grammar in the subsections, clarify that reimbursement is available only for medicaid covered items and services, and limit the provider's reimbursable charges under (1)(a) to the provider's reasonable usual and customary charges, rather than whatever charge is actually submitted. These changes are necessary to avoid any possible implication that reimbursement is available for any service provided without regard to medicaid coverage requirements and to establish a reasonable limit on provider charges. The option of not including a charge limitation was not selected because without the limit providers would be entitled to demand payment for any amount, however unreasonable, for services or items that are covered but for which no fee has been set in the department's fee schedule.

The proposed change to ARM 46.12.542(1)(b) removes the fee schedule from the rule and instead adopts and incorporates the department's Hearing Aid Services Provider Manual dated July, 1998, which contains the fee schedule. Inclusion of the fee schedule in the manual provides for a convenient method of distribution of fee information to providers. The proposed changes to ARM 46.12.542(3) specify when a dispensing fee is billable in addition to other charges. This is necessary to avoid issues and disputes regarding entitlement to dispensing fees. The option of not adopting this change was rejected because the department believes that is preferable to avoid potential issues by clearly addressing this point.

The maximum dispensing fee referred to in ARM 46.12.703(2)(b) and in 46.12.703(3) is increased from $4.14 to $4.20. These changes are required to implement the provider increase for outpatient drugs authorized by the 1997 General Appropriations Act (Chapter 551, Laws of Montana, 1997). As an alternative, the 1.5% provider increase could have been applied to the product component rather than the dispensing fee. For example, the department could have altered its method of calculating product cost to pay AWP less 8.5%. This option was not selected based on several factors. First, federal regulations require that the state pay the estimated acquisition cost of the drug. Studies of the AWP suggest that it overstates pharmacies' acquisition costs by 10 to 20%. Thus, in order to meet federal assurance requirements, the state cannot pay more than AWP less 10%. Second, the current methodology provides an automatic provider increase by paying pharmacies more as drug prices increase. Since the 10% discount does not vary with drug price increases, pharmacies receive a relatively larger reimbursement as prices increase. Third, applying the increase to the dispensing fee provides the most equitable compensation for

services since it applies to each prescription dispensed.

The proposed change to ARM 46.12.802(4)(b) is necessary to provide therapeutic shoes for Medicaid-eligible individuals with diabetes. Medicare has changed its program to cover this service, and the department has determined that it is reasonable for Medicaid to provide this coverage also. This change is consistent with currently accepted diabetic treatment and is recommended by the department in its diabetes educational programs. The option of not covering the therapeutic shoes has been rejected because evidence shows that providing this service can prevent other, more costly health consequences to the individual.

The proposed changes to ARM 46.12.806, prosthetic devices, durable medical equipment, and medical supplies, implement the 1.5% provider increase authorized by the 1997 General Appropriations Act (Chapter 551, Laws of Montana, 1997) for all devices, equipment, and supplies except prosthetic and orthotic devices, wheelchairs, and oxygen. The provider increase has not been applied to reimbursement of prosthetic and orthotic devices or wheelchairs because reimbursement for these items is based upon by-report pricing. By-report pricing reimburses providers at a percentage of usual and customary charges. For prosthetic and orthotic devices the percentage is 90% of billed charges and for wheelchairs the percentage is 83% of billed charges. Thus, providers may reflect increases in wheelchair costs in their billing, and the department's reimbursement methodology provides an automatic increase. In the case of oxygen, an audit by the Legislative Auditor's Office showed that the department was paying more than surrounding states for oxygen services. As a result, the department thoroughly studied oxygen reimbursement in 1997 and decreased rates for oxygen concentrators provided in the community and nursing facility setting. Implementing a provider increase at this time would be counter to our study and recent actions.

In ARM 46.12.806(2)(d)(i) the date of the oxygen fee schedule is amended to May 1998. This change is necessary because the fee schedule was not published on March 1, 1998, and May 1998, is the correct publication date.

The date for the diaper fee schedule is amended in ARM 46.12.806(2)(e) from October 1, 1995, to July 1998. A revised diaper fee schedule is necessary in order to implement the provider increase authorized by the 1997 General Appropriations Act (Chapter 551, Laws of Montana, 1997). The rule change is necessary to reflect the accurate fee schedule. The option of leaving the rule unchanged may result in consumers lacking access to these products or receiving products that are of less than adequate quality.

The proposed amendment of ARM 12.806(4)(a) is necessary to include subsection (2)(e) of this rule, the diaper fee schedule, with the other fee schedules which will increase or decrease according to authorization or direction by the legislature. This change is necessary to ensure that this fee schedule is updated as intended by legislative action.

The Department incorporated the 1.5% increase into the Department's Transportation Provider (pricing) Manuals effective July 1, 1997 by Medicaid Notice dated June 30, 1997. Providers were reimbursed accordingly. However, the 1.5% increase was not previously incorporated into administrative rule for the medicaid transportation program. Retroactive application of the rule benefits rather than adversely affects those to whom the rule applies.

The proposed changes to ARM 46.12.1005(2)(c) and (d), 46.12.1015(2) and 46.12.1025(4)(b) and (6) are necessary to implement the commercial provider increases authorized by the 1997 General Appropriations Act (Chapter 551, Laws of Montana, 1997). These rates were calculated to reflect the 1.5% increase for July 1, 1997 plus the additional 1.5% increase effective July 1, 1998. For example, in ARM 46.12.1005(2)(c), prior to July 1, 1997, the maximum reimbursement for a one way trip under 16 miles via taxicab was $10.07. Effective July 1, 1997, adding 1.5%, the maximum reimbursement rate became $10.22. Effective July 1, 1998, adding an additional 1.5%, the maximum reimbursement rate becomes $10.37. The option of leaving the rules unchanged is not being selected because that option would compromise the intent of the legislative directive as well as the integrity of the program.

The proposed changes to ARM 46.12.1005(2)(b) are necessary to include the reimbursement rates for transportation by train and bus. These are commonly used modes of travel not currently addressed in the rules. The option to not revise this section has been rejected, because the department believes it is necessary to include specific language regarding the actual transportation services reimbursed by medicaid to preserve the integrity of the program.

The proposed changes to ARM 46.12.1005(3)(a) through (3)(d) remove procedure codes A0180, A0190, A0200 and A0210. These code references are incorrect. The option to leave these subsections unchanged has not been selected because of the potential for confusion and conflict in billing. The proposed change to ARM 46.12.1025(8) is necessary to reflect the current address of the Health Policy and Services Division.

The estimated financial impacts of the reimbursement changes are estimated to result in aggregate increases in reimbursement as follows:

(1) RBRVS: $556,279 for FY99, including $389,395 in federal funds and $166,884 in state funds;

(2) inpatient and outpatient hospital: $959,827 for FY99, including $671,879 in federal funds and $287,948 in state funds;

(3) hearing aids: $2,682 for FY99, including $1,877 in federal funds and $805 in state funds;

(4) outpatient drugs: $66,000 for FY99, including $46,200 in federal funds and $19,800 in state funds;

(5) prosthetic devices, durable medical equipment and medical supplies: $120,084 for FY99, including $84,059 in federal funds and $36,025 in state funds;

(6) transportation: $17,970 for FY98, including $12,579 in federal funds and $5,391 in state funds and $17,449 for FY99, including $12,214 in federal funds and $5,235 in state funds. The total for all programs for FY 99: $1,722,321, including $1,205,625 in federal funds and $516,696 in state funds.

4. The proposed changes to ARM 46.12.502A will apply to services provided on or after August 1, 1998. The other proposed changes that grant provider rate increases will apply to services provided on or after July 1, 1998.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than July 16, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 1, 1998.

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

In the matter of the transfer of rules 20.14.501 and 20.14.503 through 20.14.512, and the transfer and amendment of 20.14.502 pertaining to certification of mental health professionals	)))))))	NOTICE OF PROPOSED TRANSFER AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 11, 1998, the Department of Public Health and Human Services proposes to transfer rules 20.14.501 and 20.14.503 through 20.14.512, and the transfer and amendment of 20.14.502 pertaining to certification of mental health professionals.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on June 26, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
20.14.501	37.91.101	Professional Person Certification
20.14.503	37.91.106	Definitions
20.14.504	37.91.201	Application Process
20.14.505	37.91.205	Expiration and Renewal of Certification
20.14.506	37.91.210	Revocation of Certification
20.14.507	37.91.601	Appeal Process
20.14.508	37.91.401	Requirements for Full Mental Health Certification
20.14.509	37.91.402	Privileges of Full Mental Health Certification
20.14.510	37.91.406	Requirements for Facility Mental Health Certification
20.14.511	37.91.407	Privileges of Facility Mental Health Certification
20.14.512	37.91.220	Continuation of Certification

3. The Department is transferring and amending 20.14.502 as follows. Material to be added is underlined. Material to be deleted is interlined.

20.14.502 [37.91.102] EXEMPTIONS (1) Medical doctors who are licensed to practice in Montana by the board of medical examiners are designated mental health professional persons by 53-21-102, MCA and are therefore exempt from the provisions of ~~the following rule~~ ARM 37.91.106.

AUTH: Sec. 53-21-102 and 53-21-106, MCA
IMP: Sec. 53-21-102 and 53-21-106, MCA

4. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, Certification of Mental Health Professionals was transferred from the Department of Corrections to the Department of Public Health and Human Services. In order to implement that legislation, 20.14.501, 20.14.502 and ARM 20.14.503 through 20.14.512, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 91.

The transfer of rules is necessary because under Chapter 546, Laws of Montana 1995, the Certification of Mental Health Professionals program functions exercised by the Department of Corrections were assumed by the Department of Public Health and Human Services.

ARM 20.14.502 is being amended and transferred to ARM 37.91.102. The amendment is necessary to correctly identify which rule provisions are being referred to in the text. Since the rules have been renumbered, the text indicating "the following rule" is now incorrect as the next rule is a reserved rule and the rule being referred to ARM 20.14.503, is being renumbered ARM 37.91.106.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59601-4210, no later than July 9, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are complied according to subjects or programs of interest. For placement on the mailing list, please write the person at the above address.

6. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59601-4210, no later than July 9, 1998.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from any association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the number of individuals affected by rules covering certification of mental health professionals.

Dawn Slack
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 1, 1998.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed Repeal of an Existing Rule and the Proposed Adoption of a New Rule, both Involving Utility to Consumer Notice of Proposed Tariff Changes	NOTICE OF PUBLIC HEARING ON REPEAL OF ARM 38.5.1502 AND ADOPTION OF NEW RULE I

TO: All Interested Persons

1. On Friday, August 14, 1998, at 9:00 a.m., in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to utility to consumer notice of proposed tariff changes. Anyone needing accommodations for physical, hearing, or sight impairment in order to attend and participate in the hearing should contact the PSC Secretary at (406) 444-6199 at least one week prior to hearing.

2. The rule proposed for repeal is as follows:

38.5.1502 PROPOSED RATE CHANGES INFORMATION
AUTH: 69-3-103, MCA; IMP: 69-3-102, MCA

The complete text of this rule proposed for repeal can be found at page 38-671 of the Administrative Rules of Montana.

3. The rule proposed for adoption provides as follows:

RULE I. UTILITY NOTICE TO CONSUMERS (1) Public utilities, transmission service providers, distribution service providers, and other providers of utility services regulated by the commission, on filing with the commission an application for approval of a proposed change in tariffed rates, services, or policies, must notify each current utility consumer subscribing to services which may be affected by the proposed change. Proposed changes in rates, services, or policies which are exempt from this notice requirement and a waiver procedure for proposed changes not specifically exempt are identified below.

(2) Notice required by this rule must be in writing and provided to each affected consumer within 30 days of (preceding or following) the filing of the application for a proposed change with the commission. Notice may be through a bill insert or separate mailing.

(3) The notice shall inform consumers:

(a) of the effect the proposal may have on rates, services, and policies;

(b) of the amount of the change proposed, in percentage change compared to the existing rate and in dollars and cents per measured service or commodity unit supplied and per month or other billing cycle per unmeasured service or rate component;

(c) of the reason for the proposed change;

(d) that a hearing on the proposal may be held before the commission upon request to the commission by any person directly affected;

(e) that the time and location of any hearing on the proposal will be available from the utility, commission, and consumer counsel as soon as a hearing is scheduled; and

(f) that the consumer counsel is available to represent consumer interests regarding the proposal.

(4) Except as the commission may otherwise direct the utility within 60 days of the filing of an application for approval of a proposed change in rates, services, or policies, the following proposals are exempt from the requirements of this rule:

(a) rate decreases;

(b) new services which are optional to consumers;

(c) rate increases for services which are optional to consumers;

(d) rate increases based on commission-approved commodity cost tracking and adjustment procedures; and

(e) changes not required by law to be made only after hearing or an opportunity for hearing.

(5) A public utility, transmission service provider, distribution service provider, or other provider of utility services regulated by the commission, may request the commission grant a one-time or permanent waiver for other specific types of changes which may be proposed to tariffed rates, services, or policies. The request shall clearly identify the type of change for which waiver is requested and the reason why it should not be subject to this rule. The request must be filed no less than 60 days prior to an application for a change to which the waiver would apply. All waivers granted, whether the grant expressly states or not, are subject to the commission otherwise directing within 60 days of the filing of an application to which the waiver applies.

AUTH: 69-3-103, MCA; IMP: 69-3-102, MCA

4. Rationale: The proposed repeal of ARM 38.5.1502 is reasonably necessary as its substantive provisions are duplicative of or in conflict with proposed Rule I. Proposed Rule I is reasonably necessary as a means to provide consumers of utility services meaningful and timely notice of proposed changes in utility tariffs. Experience has demonstrated that the customary methods of providing public notice of matters before the PSC, which will continue to be complied with as well, are not fulfilling their intended purpose.

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than August 14, 1998. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-98.5.1-RUL.")

6. The Public Service Commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The bill sponsor notification requirements of section 2-4-302, MCA, do not apply as this is not the first rulemaking activity on the subject.

9. The Public Service Commission maintains a list of persons interested in Commission rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the Commission, providing a name, address, and description of the subject or subjects which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. In addition, persons may be placed on the list by completing a request form at any rules hearing held by the Public Service Commission.

Dave Fisher

Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE MAY 28, 1998.

Martin Jacobson

Reviewed by Martin Jacobson

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED AMENDMENT of ARM 42.12.132 relating to Management Agreements	NOTICE OF THE PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 31, 1998, the Department of Revenue proposes to amend ARM 42.12.132 relating to management agreements.

2. The rule as proposed to be amended provides as follows:

42.12.132 MANAGEMENT AGREEMENTS (1) Subject to the terms and conditions stated in this rule, an alcoholic beverage licensee may employ a manager as the licensee's agent to oversee the alcoholic beverages business conducted in the licensee's licensed premises. The manager must either be a natural person or if not, the manager must identify the person who will perform the management function. The manager or the person designated to represent the manager must possess a past record and present status as a business person and citizen which demonstrates that they are likely to operate the licensed establishment on behalf of the licensee in compliance with all applicable laws of the state and local governments.

(2) Within 30 days of employing the manager, an original signed copy of the written management agreement must be filed with the ~~liquor division~~ department of revenue which clearly discloses the following information:

(a) the manager's name, address, telephone number, mailing address if different from street address, and one of the following:

(i) social security number for individuals; or

(ii) federal identification number for business;

(b) the amount of compensation; and

(c) the specific duties and responsibilities delegated to the manager by the licensee.

(3) The ~~division~~ department will review the agreement for compliance with the following standards:

(a) the licensee must retain the possessory interest in the premises through ownership, lease, rent or other agreement with the owner of the premises;

(b) while the agreement may delegate duties to the manager, the licensee must retain ultimate control, liability, responsibility, and accountability for the retail liquor operation. The agreement may not assign or limit any of the rights or responsibilities of ownership. In particular, the agreement may not grant or assign to the manager:

(i) control of business hours, types of alcoholic beverage

products sold, selling price, level of inventory maintained, and overall business atmosphere;

(ii) exclusive authority over business accounts, and operation funds;

(iii) authority to remodel or otherwise make ~~adjustments, alterations, or~~ changes in the business operation requiring non-routine actions;

(iv) ~~authority to lawfully discipline or discharge~~ ultimate decision making regarding the hiring, firing, advancement or promotion, or any other change of status of other employees;

(3)(b)(v) through (j) remain the same.

(4) Management agreements failing to meet any of the standards set forth in ~~subsections~~ (1), (2) and (3) of this rule will be marked as rejected and returned to the licensee together with a written explanation of the reasons for the rejection. If the deficiencies are not corrected within a period of time set by the ~~liquor division~~ department, the tendered management agreement will be deemed to be void. Failure of the licensee to terminate operations under a void management agreement constitutes a violation of Montana law and the departmental rules.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-4-404, MCA.

3. ARM 42.12.132 is proposed to be amended because the department received a request from Ellen Feaver, Partner, Employee Benefit Resources, LLP. Ms. Feaver requested the amendments to resolve a wage and hour issue for store managers overseeing the operation of licensed establishments. The amendments to the description of a manager's duties are intended to support the exempt status of a person in charge of the day to day operation of a store. The manager is a salaried employee and exercises discretion and independent judgment on matters within a scope of authority as delegated to that position.

4. Interested parties may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 10, 1998.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 10, 1998.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of

the persons who are directly affected by the proposed action; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

7. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section 4 above.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State June 1, 1998

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to applications, examination requirements, temporary permit, renewals, unprofessional conduct and the adoption of a new rule pertaining to endorsement	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF CHIROPRACTIC

TO: All Interested Persons:

1. On January 15, 1998, the Board of Chiropractors published a notice of proposed amendment and adoption of rules pertaining to the practice of chiropractic at page 49, 1998 Montana Administrative Register, issue number 1.

2. The Board has amended ARM 8.12.601, 8.12.603, 8.12.604, 8.12.606, 8.12.607, and adopted new rule I (8.12.617) exactly as proposed.

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: One comment was received from T.J. Campbell, D.C., concerning the proposed professional boundaries rule. He is opposed to the rule and recommends the Board not implement it. His reason is the rule would put a blanket of guilt over the entire profession.

RESPONSE: The Board voted to adopt the rule as proposed, but stated, as an explanation to the doctor, that professional boundaries education also encompasses risk management training.

COMMENT NO. 2: One comment was received from Dr. James Vancho stating that the requirement of professional boundaries continuing education is unnecessary and creates an undue hardship.

RESPONSE: The same response will be made to Dr. Vancho as to Dr. Campbell, with an additional note that the Board does not view the proposal for an additional, one-time requirement of four hours of training over the next two years, as a hardship to anyone. Also, the Montana Chiropractic Association

will be offering several opportunities for chiropractors to receive the training in Montana.

BOARD OF CHIROPRACTORS
KARLENE BERISH, D.C., CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1998.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to reactivation of licenses	)))	NOTICE OF AMENDMENT OF 8.58.413 REACTIVATION OF LICENSES

TO: All Interested Persons:

1. On February 12, 1998, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 407, 1998 Montana Administrative Register, issue number 3.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF REALTY REGULATION
JOHN BEAGLE, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1998.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to minimum standards for licensure and continuing education	)))	NOTICE OF AMENDMENT OF ARM 8.60.408 MINIMUM STANDARDS FOR LICENSURE AND 8.60.414 CONTINUING EDUCATION

TO: All Interested Persons:

1. On April 16, 1998, the Board of Sanitarians published a notice of public hearing pertaining to the amendment of the above-stated rules at page 824, 1998 Montana Administrative Register, issue number 7.

2. The Board has amended ARM 8.60.408 exactly as proposed, and amended ARM 8.60.414 as proposed, but with the following changes:

"8.60.414 CONTINUING EDUCATION (1) will remain the same as proposed.

(2) A licensee must affirm on his license renewal form that the licensee has obtained a minimum of 15 clock hours (50 to 60 minutes per hour) or 1.5 continuing education units ~~in~~ with every consecutive odd-numbered year.

(3) It is the responsibility of the licensee to maintain records of all affirmed continuing education hours or credits and to provide documentation of compliance if so requested during a random audit. A random audit will be conducted on a biennial basis.

(4) through (9) will remain the same as proposed."

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: One comment was received from Craig Taft, R.S., Big Horn County Sanitarian, making several non-substantive suggestions simply clarifying and assisting in readability of the rule.

RESPONSE: The Board concurred with Mr. Taft's suggestions and amended the rule as shown above.

BOARD OF SANITARIANS
DENISE MOLDROSKI, CHAIRMAN

ANNIE M. BARTOS
RULE REVIEWER

BY: ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 1, 1998.

BEFORE THE WEIGHTS AND MEASURES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and adoption of rules pertaining to the Voluntary Registration of Serviceperson and Service Agencies and the Uniform Regulation for National Type Evaluation	)))))	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE VOLUNTARY REGISTRATION OF SERVICEPERSON AND SERVICE AGENCIES AND THE UNIFORM REGULATION FOR NATIONAL TYPE EVALUATION

TO: All Interested Persons:

1. On February 26, 1998, the Weights and Measures Bureau published a notice of public hearing on the proposed amendment and adoption of rules pertaining to the Voluntary Registration of Serviceperson and Services Agencies and the Uniform Regulation for National Type Evaluation at page 517, 1998 Montana Administrative Register, issue number 4.

2. The Bureau has amended ARM 8.77.102, 8.77.103, 8.77.201 and adopted New Rule I (8.77.108) exactly as proposed. The Bureau amended ARM 8.77.101, 8.77.104 and adopted New Rule II (8.77.109) as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.77.101 SCALE PIT CLEARANCE (1) and (2) will remain the same as proposed.

(3) Electronic scales which do not require a pit for their installation, operation or maintenance shall be installed in strict compliance with the manufacturer's specification for each specific model and with the National Institute of Standards and Technology (NIST) Handbook 44, 1998 Edition.

(4) will remain the same as proposed."

"8.77.104 VOLUNTARY REGISTRATION AND FEES OF SERVICEPERSONS AND SERVICE AGENCIES (1) through (1)(d) will remain the same as proposed.

(e) the bureau shall issue a "certificate of registration" to approved qualified applicants. ~~The certificate of registration authorizes weights and measures officials to remove rejection seals and tags previously placed on commercial and law enforcement weighing or measuring devices, and, in addition, are authorized to place in service repaired or newly installed devices~~;

(f) through (2) will remain the same as proposed.

(3) There will be an annual fee of $5 per registered serviceperson and $10 per registered service agency to cover costs of administering the plan. Said fee shall be paid to the bureau at the time application for registration is made, and annually~~,~~ thereafter, during the month of January~~, to be paid to the bureau~~.

(4) and (5) will remain the same as proposed.

(6) Applicants must have available sufficient standards

and equipment to adequately test devices as set forth in the notes section of each applicable code in NIST Handbook 44, 1998 Edition, "Specifications, Tolerance, and Other Technical Requirements for Weighing and Measuring Devices." When applicable, this equipment will meet the specifications of:

(a) through (c) will remain the same as proposed.

(7) The bureau will review and check the qualifications of each applicant. Upon receipt and acceptance of a properly executed application form, ~~T~~the bureau shall issue to the applicant a "certificate of registration", including an assigned registration number, which shall remain effective until December 31 each year unless revoked under (11) below ~~if it is determined that the applicant is qualified. The "certificate of registration" will expire one year from the date of issuance~~.

(8) through (11)(c) will remain the same as proposed.

(d) failure to adjust commercial or law-enforcement devices to comply with NIST Handbook 44, 1998 Edition, subsequent to service or repair.

(12) will remain the same as proposed."

"8.77.109 UNIFORM REGULATION FOR NATIONAL TYPE EVALUATION

(1) The weights and measures bureau of the department of commerce adopts and incorporates by reference herein the Uniform Regulation for National Type Evaluation, as found in the NIST Handbook 130, 1998 Edition. A copy of NIST Handbook 130, 1998 Edition can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001. Uniform Laws and Regulations 1998 Edition has been published in the National Conference on Weights and Measures, Publication 14 on page 127, "National Type Evaluation Program, Administrative Procedures, Technical Policy, Checklists, and Administrative Procedures" and is adopted in its entirety with the following exceptions:

(a) through (c) will remain the same."

3. The Bureau has thoroughly considered all comments and testimony received. Those comments and the Bureau's responses are as follows:

COMMENT NO. 1: The Bureau received a written comment from Larry McBride of B & L Scales which questioned the reference to "weights and measures officials" in rule 8.77.104(1)(e). He commented that the reference should be to the registered serviceperson.

RESPONSE: The Bureau concurs with Mr. McBride's comments insofar as the reference to "weights and measures officials" is misleading. Rather than "weights and measures officials", the authority conferred by the rule is to "registered service persons." To clarify the issue, the Bureau has deleted the sentence referring to "weights and measures officials." The duties of a registered serviceperson are set forth in 8.77.104(8).

COMMENT NO. 2: The Bureau received a written comment from Mr. Robert A. Reinfried, Executive Director of the Scales Manufacturers Association. The Association agrees with and endorses the proposed rule changes and adoption.

RESPONSE: The Bureau appreciates the comment received from the Scales Manufacturers Association.

COMMENT NO. 3: The Bureau received a written comment from Mr. Darrell Flocken of Mettler-Toledo, Inc., a major scale manufacturer. Mettler-Toledo, Inc., agrees with and endorses the proposed rule changes and adoption. They further recommend that the Bureau follow the standards of the National Institute of Standards and Technology Handbook 130.

RESPONSE: The Bureau appreciates the comment received from Mettler-Toledo, Inc., and notes the suggested standards are used in Montana.

COMMENT NO. 4: The Bureau received a written comment from Tim Tobel, Area Service/Sales Manager, Fairbanks Scales. Fairbanks Scales is a major scale manufacturer. Fairbanks Scales raised two issues. First, they were concerned with proposed changes to the wording in 8.77.101(1) concerning pit depth. The second issue concerned the language in 8.77.101(4) concerning pit wall thickness.

RESPONSE: Regarding the first issue, the Bureau discussed this matter with Mr. Tobel. The language he wishes to preserve remains in the rule. Regarding the second issue, the Bureau declines to adopt the numerical standard suggested by Fairbanks Scales. The Bureau believes the standard as written better allows manufacturers and the inspectors to take into account the different conditions present at scale sites. While the numerical standard suggested by Fairbanks Scales may be appropriate in some instances, it is not appropriate in every instance. Accordingly, the Bureau will leave the language in 8.77.101(4) as proposed.

COMMENT NO. 5: The Bureau received a written comment from Mr. Stephen Langford, P.E., Vice-President, Marketing of the Cardinal Scale Manufacturing Company. Cardinal agrees with and endorses the proposed rule changes and adoption.

RESPONSE: The Bureau appreciates the comment received from Cardinal Scale Manufacturing Company.

COMMENT NO. 6: The Bureau notes that the language in the proposed amendment to 8.77.104(3) and 8.77.104(7) is unclear. Further, the Bureau was not consistent with adding the 1998 Edition to Handbook 44 and Handbook 130 in 8.77.101, 8.77.104 and New Rule II (8.77.109).

RESPONSE: The bureau has revised the language in 8.77.104(3) to properly reflect the due date for fees collected from registered servicepersons. Further, the Bureau has revised the language in 8.77.104(7) to properly reflect the duration of a registered serviceperson certification. The new language more clearly reflects the intended time frames and

does not alter the substance of the rule. Finally, in 8.77.101, 8.77.104, and New Rule II (8.77.109), "1998 Edition" was added to Handbook 44 and Handbook 130.

WEIGHTS AND MEASURES BUREAU
JACK KANE, BUREAU CHIEF

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 1, 1998.

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

In the matter of the transfer of rules 20.3.201 through 20.3.203, 20.3.205 through 20.3.209, 20.3.212 through 20.3.218, 20.3.301 through 20.3.303, 20.3.501 through 20.3.504, 20.3.508 through 20.3.510, 20.3.513, 20.3.514 and 20.3.601 through 20.3.606, with the exception of any repealed rules, pertaining to chemical dependency treatment program	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the chemical dependency treatment program is transferred from the Department of Corrections to the Department of Public Health and Human Services. In order to implement that legislation, rules 20.3.201 through 20.3.203, 20.3.205 through 20.3.209, 20.3.212 through 20.3.218, 20.3.301 through 20.3.303, 20.3.501 through 20.3.504, 20.3.508 through 20.3.510, 20.3.513, 20.3.514 and 20.3.601 through 20.3.606, with the exception of any repealed rules, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 27. The history notes of repealed rules will be placed in the repealed rule table in Title 37.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
20.3.201	37.27.101	Chemical Dependency Treatment Programs
20.3.202	37.27.102	Definitions
20.3.203	37.27.106	Department Procedures for Approval of Chemical Dependency Treatment Programs
20.3.205	37.27.108	Administrative Management - Governing Body
20.3.206	37.27.115	All Programs - Acceptance of Persons into the Treatment Program
20.3.207	37.27.116	All Programs - Clients Rights
20.3.208	37.27.120	All Programs - Organization and Management
20.3.209	37.27.121	All Programs - Personnel, Staff Development and Certification
20.3.212	37.27.128	Detoxification (Emergency Care)

		Component Requirements
20.3.213	37.27.129	Inpatient - Hospital Component Requirements
20.3.214	37.27.130	Inpatient - Free Standing Care Component Requirements
20.3.215	37.27.135	Intermediate Care (Transitional Living) Component Requirements
20.3.216	37.27.136	Outpatient Component Requirements
20.3.217	37.27.137	Day Treatment Component Requirements
20.3.218	37.27.138	Intensive Outpatient Treatment Requirements
20.3.301	37.27.301	Submission Date
20.3.302	37.27.302	Approval Date
20.3.303	37.27.303	Content of County Plans
20.3.501	37.27.501	Chemical Dependency Educational Courses: Cost of Treatment
20.3.502	37.27.502	Chemical Dependency Educational Courses: Definitions
20.3.503	37.27.506	Chemical Dependency Educational Courses: General Educational Course Requirements
20.3.504	37.27.507	Education Course Requirements for MIP Offenders (MIP Program)
20.3.508	37.27.515	Chemical Dependency Educational Courses: Required Services
20.3.509	37.27.516	Chemical Dependency Educational Courses: Course Curriculum
20.3.510	37.27.517	Chemical Dependency Educational Courses: Monitoring Requirements
20.3.513	37.27.521	Chemical Dependency Educational Courses: Act Program Provider Requirements
20.3.514	37.27.525	Chemical Dependency Educational Courses: Record Keeping and Reporting Requirements
20.3.601	37.27.701	Montana Chemical Dependency Center: Purpose
20.3.602	37.27.702	Montana Chemical Dependency Center: Definitions
20.3.603	37.27.705	Montana Chemical Dependency Center: Applicability
20.3.604	37.27.710	Montana Chemical Dependency Center: Criminal Justice System Referrals
20.3.605	37.27.711	Montana Chemical Dependency Center: Admission Policies and Procedures
20.3.606	37.27.718	Montana Chemical Dependency Center: Discharge Process to Level II or I

3. The transfer of rules is necessary because these programs were transferred from the Department of Corrections to the Department of Public Health and Human Services by the 1995

legislature by Chapter 546, Laws of Montana 1995.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 1, 1998.

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

In the matter of the transfer of rules 20.14.104 through 20.14.112 and 20.14.301 through 20.14.309, with the exception of any repealed rules, pertaining to mental health inpatient facilities	))))))	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the mental health inpatient facilities program is transferred from the Department of Corrections to the Department of Public Health and Human Services. In order to implement that legislation, rules 20.14.104 through 20.14.112 and 20.14.301 through 20.14.309, with the exception of any repealed rules, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 66. The history notes of repealed rules will be placed in the repealed rule table in Title 37.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
20.14.104	37.66.101	Purpose
20.14.105	37.66.102	Definitions
20.14.106	37.66.106	Admission Criteria
20.14.107	37.66.107	Application Procedures
20.14.108	37.66.109	Admission Procedures
20.14.109	37.66.115	Treatment
20.14.110	37.66.120	Transfer and Discharge Criteria
20.14.111	37.66.130	Appeal Procedure
20.14.112	37.66.108	Application Materials
20.14.301	37.66.301	Voluntary Admission Procedure
20.14.302	37.66.302	Definitions
20.14.307	37.66.306	Screening Process
20.14.308	37.66.312	Parameters for Voluntary Admission to Montana State Hospital
20.14.309	37.66.316	Release of Confidential Records

3. The transfer of rules is necessary because these programs were transferred from the Department of Corrections to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 1, 1998.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Adoption of Rules Implementing SB396 (Natural Gas Utility Restructuring and Customer Choice Act, Title 69, chapter 3, part 14, MCA) and Pertaining to Standards of Conduct, Anticompetitive and Abusive Practices, Supplier Licensing, and Universal System Benefits	)))))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On December 15, 1997, the Department of Public Service Regulation, Public Service Commission (Commission or PSC) published a notice of public hearing on the proposed adoption of rules pertaining to implementation of SB396, at pages 2263 through 2272, issue number 24 of the 1997 Montana Administrative Register.

2. The Commission has adopted the following rule as proposed:

RULE III. (38.5.7002) GENERAL -- PROCEDURES IN GENERAL -- PROPRIETARY INFORMATION AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP: Secs. 69-3-105, 69-3-1405, MCA.

3. The Commission has determined that it will not adopt the following proposed rules:

RULE II. GENERAL AUTH: Sec. 69-3-103, MCA; IMP: Secs. 69-3-103, 69-3-1402, 69-3-1404, 69-3-1405, 69-3-1408, MCA.

RULE VI. SUPPLIERS -- ANTICOMPETITIVE AND ABUSIVE PRACTICES AUTH: Secs. 69-3-103, 69-3-1404, MCA; IMP: Sec. 69-3-1404, MCA.

4. The Commission has adopted the following proposed rules, but with amendments as indicated:

RULE I. (38.5.7001) CONTEXT AND DEFINITIONS (1) These rules implement Montana's Natural Gas Utility Restructuring and Customer Choice Act, 69-3-1401 through 69-3-1409, MCA, and shall be construed in that context. Except in administration of 69-3-1408, MCA (universal system benefits program), the commission does not intend these rules to apply to a "natural gas utility" as defined at 69-3-1401, MCA, so long as the utility does not restructure as described at 69-3-1403, MCA, or become a "natural gas supplier" as defined at 69-3-1401, MCA. Unless otherwise provided through rule or through order of the commission, these rules shall apply in all gas utility restructurings, including

in periods of transition to customer choice and pilot programs which may be a part of a restructuring plan.

(2) Words used in these rules shall have the meanings assigned in 69-3-1402, MCA, and, if not defined there, shall have their common meanings in the context of gas utility and gas pipeline regulation and restructuring. Words used in these rules also have the meanings assigned by this rule, unless the context otherwise clearly demands:

(a) "affiliate" means a parent, subsidiary, division, or the like, regardless of designation, owning or controlling the provider, owned or controlled by the provider, under common ownership with the provider, or under common control with the provider;

(b) "provider" means a system services provider;

(c) "service" generally includes all incidents to service (e.g., applying for service, communicating in regard to service);

(d) "supplier" means "natural gas supplier," as defined at 69-3-1402, MCA, ~~and (advisory only)~~ which includes any person offering to sell gas to end-use customers but not if the offering is ~~a sale for resale or~~ by a public utility as a public utility and in accordance with commission-approved tariffs;

(e) "supply service" means providing natural gas for end-use, whether or not regulated by the commission;

(f) "system services" includes gas transmission services, distribution services, storage services, and all other gas services regulated by the commission, directly or indirectly, excluding supply services;

(g) "utility" means a "public utility" as defined at 69-3-101, MCA.

AUTH: Sec. 69-3-103, MCA; IMP: Secs. 69-3-103, 69-3-1402, 69-3-1404, 69-3-1405, 69-3-1408, MCA.

RULE IV. (38.5.7005) ~~SERVICES~~ SERVICE PROVIDERS -- STANDARDS OF CONDUCT (1) ~~A~~ Except as provided in (2), a commission-regulated system services provider shall:

(a) apply all discretionary tariff provisions in the same manner to all persons to whom the tariff provisions apply;

(b) process all similar requests for service in the same manner and period of time;

(c) strictly enforce all mandatory tariff provisions;

(d) prevent any discrimination in favor of its own supply, other services, divisions, or affiliates;

(e) prevent all forms of self-dealing that could result in noncompetitive prices to consumers;

(f) grant others (e.g., consumers, suppliers) access to retail transmission, storage, and distribution on a nondiscriminatory basis at rates, terms, and conditions comparable to that which ~~it and~~ its affiliates have;

(g) disclose no service or market information received from a non-affiliate to others, including an affiliate (information received from an affiliate may be treated in the same fashion, unless otherwise required by these rules);

(h) disclose at the same time to all non-affiliates all service and market information disclosed to an affiliate (a non-affiliate may agree to limit the scope of information to be provided by the system services provider and may agree that information need be provided only on request);

(i) for customers requesting information on available supply, if identifying any supplier, identify all licensed gas suppliers serving in the service area in which the customer resides, and, in providing information to customers on behalf of any supplier, offer to provide information on behalf of all other suppliers on the same terms;

(j) make known to non-affiliates at the same time any discounts offered to an affiliate, the terms and conditions under which the discount is offered, and the means through which the non-affiliates can obtain a comparable offer (affiliates may be advised in the same fashion, unless otherwise prohibited by these rules); and

(k) function independently of its affiliate suppliers and cause its employees and employees of its affiliate suppliers to function independently, to the maximum extent practicable.

(2) A commission-regulated system services provider having or applying for commission-approved standards of conduct to be tariffed in accordance with 69-3-1404, MCA, may request that a tariffed standard depart from the standards in this rule. The commission may grant a waiver of the requirements in this rule upon a showing of good cause and circumstances unique to the provider's operations which justify the waiver.

AUTH: Sec. 69-3-103, MCA; IMP: Sec. 69-3-1404, MCA.

RULE V. (38.5.7006) ~~SERVICES~~ SERVICE PROVIDERS -- STANDARDS OF CONDUCT -- REVIEW OF SERVICE POLICIES (1) Through ~~application~~ request by the system services provider, or complaint by any other provider, supplier, customer, or other interested person, or on its own motion, the commission may review ~~the application of~~ a system service provider's service rule or policy, tariffed or otherwise, to determine whether ~~the application~~ the rule or policy as applied is just and reasonable under the circumstances, including in regard to whether ~~the application is~~ it results in abusive or anticompetitive practices.

AUTH: Sec. 69-3-103, MCA; IMP: Sec. 69-3-1404, MCA.

RULE VII. (38.5.7010) GAS SUPPLIERS -- APPLICATION FOR LICENSE

(1) The application to the commission for a natural gas supplier license shall include the following provisions, complete and in detail (except as provided in (5)):

(a) the business name of the applicant;

(b) the street address and the mailing address of the applicant;

(c) the telephone number of the applicant;

(d) a description of the applicant's business organization (e.g., sole proprietorship, partnership, corporation), including a diagram of organization, an identification of the state in

which organized, and a statement as to whether the applicant owns or operates gas distribution, transmission, or storage facilities, where those facilities are located, and whether those facilities are open and accessible on a nondiscriminatory basis to all gas suppliers, a list of the applicant's affiliates, a description of each affiliate's business activities and purposes, a statement as to whether any affiliate owns or operates gas distribution, transmission, or storage facilities, and an explanation of where those facilities are located and whether the facilities are open and accessible on a nondiscriminatory basis to all gas suppliers;

(e) the name, address, and telephone number of the supplier representative to be contacted regarding the application;

(f) the name, address, and toll-free telephone number of the supplier representative or office that may be contacted by consumers in regard to supply;

(g) the name, mailing address, street address, and telephone number of the applicant's agent for service of process in Montana, if required to by law to designate such agent;

(h) information demonstrating the gas supply offered or to be offered by the applicant will be provided as offered;

(i) information demonstrating the gas supply offered or to be offered by the applicant will be adequate in terms of quality, safety, and reliability;

(j) information demonstrating the applicant's financial integrity as a gas supplier, including a current and detailed balance sheet, income and profit and loss statement, statement of ~~projected~~ cash flows, and the most recent of the applicant's annual reports to owners (e.g., stockholders);

(k) information demonstrating adequate firm deliverability (including supply, pipeline capacity, and interconnection agreements) to meet load requirements;

~~(l) information identifying all distribution, transmission, and storage service providers affiliated with the applicant;~~

~~(m) a description of the applicant's marketing plan for Montana, including intended marketing methods and training of sales persons;~~

~~(n)~~ (l) a brief description of all federal and state judicial and administrative actions pending against the applicant (including on appeal) in which judgment is sought in an amount of 10 percent or more of the applicant's net worth; and

~~(o)~~ (m) identification of all federal and state judicial and administrative actions, if any, whether pending at the time of application (including on appeal) or concluded within 5 years prior to the time of application, which involve ~~approval of~~ the applicant's authority to supply, market, and broker natural gas.

~~(p) a description of the business activities and purposes of the applicant, including a description of customer segments served or to be served (e.g., residential, commercial, industrial), products offered or to be offered to each customer segment including any time differentiated pricing, and the principal geographic areas, including a list of Montana cities~~

~~within those areas, served or to be served; and~~

~~(g) a corporate (or other business) organization diagram, including a list of the applicant's affiliates, a description of each affiliate's business activities and purposes, a statement as to whether any affiliate owns or operates gas distribution, transmission, or storage facilities, and an explanation of where those facilities are located and whether the facilities are open and accessible on a nondiscriminatory basis to all gas suppliers.~~

(2) Applicants shall also file a sample of each type of contract intended to be used in the providing of supply to residential and small commercial consumers.

(3) At the time of making application to the commission for a supplier license, applicants shall notify ~~and provide a copy of the application to all suppliers licensed by the commission~~ distribution services providers in accordance with 69-3-1405, MCA.

(4) ~~If a supplier license is issued by the commission all~~ All information provided by the applicant in regard to the application shall be updated by the licensee each time any change in that information occurs.

(5) Some of the above requirements may not apply to certain types of suppliers. If an applicant believes that to be the case in regard to an application, the applicant shall clearly state that and the reason supporting such determination, in lieu of the information requested.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP: Sec. 69-3-1405, MCA.

RULE VIII. (38.5.7011) GAS SUPPLIERS -- ELECTRONIC REGISTRATION (1) All applicants and licensed suppliers must complete and maintain an electronic registration established by the commission on its internet web site as a condition of becoming and remaining licensed. Applicants and suppliers must provide the following information electronically:

(a) a complete business name, and all other names (complete) that may be used when marketing natural gas and other unregulated energy services to consumers;

(b) the complete street address and mailing address of the principal office;

(c) the name, address, direct telephone number, fax number, and e-mail address of the supplier representative or office to be contacted regarding the license application and the license; and

(d) a listing of customer segments served.

(2) If residential and small commercial customers are solicited or served, applicants and suppliers must also provide the following information:

~~(d)~~ (a) a toll-free customer service telephone number; and

~~(e)~~ (b) a listing of ~~the customer segments served and~~ the principal geographic areas served, including a list of Montana cities where ~~service is provided~~ residential and small commercial customers are solicited and served.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP: Sec. 69-3-1405, MCA.

RULE IX. (38.5.7012) GAS SUPPLIERS -- LICENSES (1) Except as otherwise allowed or required by operation of law or order of the commission, gas suppliers may commence operations in the Montana service areas of restructured utilities, and those areas otherwise allowing a competitive supply, upon issuance of a license by the commission.

(2) Upon issuance of a license, the gas supplier shall notify all distribution~~, transmission, and storage~~ service providers serving in the area of the gas supplier's intended operations ~~and all other licensed gas suppliers serving in that area~~.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP: Sec. 69-3-1405, MCA.

RULE X. (38.5.7014) GAS SUPPLIERS -- ANNUAL REPORTS

(1) Annual reports must be filed by each licensee at calendar year end. ~~Annual reports will be used to monitor supplier activities, the development of a competitive market, and to determine whether anticompetitive and abusive practices are occurring, as well as for other purposes.~~

(2) Annual reports shall be on a form approved by the commission and include the following information (the commission may require that information from suppliers be filed more frequently, if deemed necessary):

(a) a descriptive list of all services offered during the year and at the end of the year;

~~(b) a table with market areas (e.g., cities, counties) listed on one axis and services listed on the other (each cell must contain for each customer class the date on which the service was first offered, the average number of customers billed, and the average revenue per therm);~~

~~(c)~~ (b) quality and reliability-of-service reports (e.g., Btu content, outages, customer quality and reliability-of-service complaints), itemized by month; and

~~(d) an audited balance sheet;~~

~~(e) an audited operating statement that includes revenues by service categories and operating ratios for each service category;~~

~~(f)~~ (c) an organization chart showing ownership and control relationships among any holding companies and subsidiaries;.

~~(g) a statement of relationships with other suppliers, including purchases, leases, billings, other contracts, and indicating the services involved;~~

~~(h) a schedule of sales in units and revenues by service category, itemized by month;~~

~~(i) a schedule of price changes and discounts, with date and itemized by month;~~

~~(j) a summary schedule of facilities owned by others, by account number, and the capacity of the itemized facilities;~~

~~(k) a summary schedule of facilities provided to others, by account number, and date provided, and the capacity of the itemized facilities; and~~

~~(l) a summary schedule of facilities acquired from others, by account number, and date acquired, and the capacity of the itemized facilities.~~

~~(3) In addition, information submitted with an application must be updated each time a change in that information occurs (See [Rule VII].)~~

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP: Sec. 69-3-1405, MCA.

RULE XI. (38.5.7016) GAS SUPPLIERS -- LICENSE REVOCATION (1) The commission may revoke the license of a gas supplier if the gas supplier:

(a) violates any federal or state law which has as its purpose, directly or indirectly, fair competition among suppliers;

(b) violates any federal or state law which has as its purpose, directly or indirectly, protection of consumers;

(c) violates any rule of the commission;

(d) provides false information or materially incomplete information to the commission in regard to licensing or reporting;

(e) fails to file an annual report;

(f) otherwise fails to abide by the laws of the United States and the state of Montana which pertain to business, business structure, antitrust, trade, contracts, truth in labeling, consumer protection, privacy, and like laws which are applicable, generally or specifically, to the provision of ~~gas system services or~~ gas supply;

(g) fails to supply gas in accordance with its agreements with customers and representations to the commission; ~~and~~ or

(h) engages in anticompetitive or abusive practices.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP: Sec. 69-3-1405, MCA.

RULE XII. (38.5.7020) UNIVERSAL SYSTEM BENEFITS PROGRAM (1) Pursuant to 69-3-1408, MCA, natural gas utilities shall implement a universal system benefits program (USBP), a public purpose program for cost-effective local energy conservation, low-income weatherization, and low-income energy bill assistance (69-3-1402, MCA)~~.~~, The USBP shall be funded through a universal systems benefit charge (USBC), a nonbypassable rate or charge to be imposed on ~~a~~ each customer ~~to pay the customer's share of the universal system benefits program costs~~ (69-3-1402, MCA).

(2) The USBC shall be an amount, per dekatherm or Mcf of natural gas delivered to each end user, whether by utility, distribution services provider, or transmission services provider (if for end use), collected through a rate or charge (per dekatherm or Mcf) to each end user, and, except as provided in 38.5.7021, established so as to generate, system-wide, an annual amount no less than ~~1.42~~ 1.12 percent of the utility's,

distribution services provider's, or transmission services provider's annual revenues derived from natural gas services to end-users. From the amount collected system wide an amount at least equal to .42 percent of the annual revenues must be applied to low-income weatherization and bill assistance.

(3) The USBP may be administered by each utility, distribution services provider, or transmission services provider implementing a USBP or by another on its behalf. A USBP may be done in coordination with a federal, state, or local government agency or otherwise. Examples of acceptable USBPs include energy share and low income energy assistance program.

AUTH: Secs. 69-3-103, 69-3-1408, MCA; IMP: Sec. 69-3-1408, MCA.

RULE XIII. (38.5.7021) UNIVERSAL SYSTEM BENEFITS PROGRAM -- PROCEDURE (1) Each utility, distribution services provider, and transmission service provider (if delivering gas for end-use) shall file with the commission a USBP plan no later than ~~May 2~~ August 5, 1998.

(2) The filing shall include:

(a) a description of the proposed USBP plan, with supporting testimony;

(b) proposed tariffs reflecting changes to rates, if required, to fund the USBP at no less than the minimum annual amount (percentage of annual revenues) established in 38.5.7020;

(c) if the utility objects to the minimum annual amount established in 38.5.7020, the utility may also file, in addition to the requirements of (2)(a) and (b), above, an alternative proposal, with supporting testimony; and

(d) a description of the utility's or provider's USBP, formal or informal, in place for the period May 2, 1997, to ~~May 2~~ August 5, 1998, ~~identify~~ identifying the amount (in ~~percent~~ percentage of annual revenues) at which the program was funded, and ~~identify~~ the amount (in ~~percent~~ percentage of annual revenues) which was applied to low-income weatherization and bill assistance, and a proposal for implementing (4), if applicable.

(3) The commission may approve the plan on an interim basis and commence contested case proceedings to determine whether the plan should be approved on a final basis, and, if the utility has objected to minimum annual amount pursuant to (2)(c), above, whether good cause has been shown to adjust that amount.

(4) Utilities and providers not having a program in place on May 2, 1997, and thereafter, funded to at least .42 percent of annual revenues and from which at least .42 percent of annual revenues was applied to low-income weatherization and bill assistance shall, in the USBP filing and in addition to establishing a USBC to generate, system-wide, an annual amount ~~no less than 1.42 percent of annual revenues derived from natural gas services to end-users~~ as established in 38.5.7020, establish a USBP accounting reserve computed by applying .42 percent of annual revenues from May 2, 1997, to ~~May 2~~ August 5, 1998. The

reserve will be allocated to approved ongoing USBPs, one time USBPs, USBP start-up expenses for new programs, and like expenses, all relating to low-income weatherization and bill assistance. At such time as these are implemented recovery of the reserve will be allowed over a one year period.

AUTH: Secs. 69-3-103, 69-3-1408, MCA; IMP: Sec. 69-3-1408, MCA.

5. Comments Received and Commission Responses

General Comments pertaining to the PSC's proposed rules implementing Montana's Natural Gas Utility Restructuring and Customer Choice Act (Act) were received from Energy West Resources (EWR), Montana-Dakota Utilities Co. (MDU), Commercial Energy (CE), Enron Energy Services (Enron), Montana Power Trading and Marketing (MPTM), Montana Power Company Services Division (MPC), Energy Share, the state Department of Health and Human Services (HHS), and Tom Schneider. Not all of these persons commented on each of the proposed rules and some commented on only one or a few rules.

Rule I. Enron suggests a substitution for the PSC's definition of "affiliate" at (2)(a). The PSC has reviewed Enron's suggested definition and determines that a substitution should not be made. Enron's definition is detailed beyond present needs. MDU argues that if "service provider" at (2)(b) means a utility that restructures, it must be clarified. The PSC determines that (2)(b) is clear. It is merely a designation of short form terminology, i.e., when "provider" is used in the rules it means "system services provider." However, it appears from MDU's comments at this point and elsewhere that MDU believes it has an important question, the answer to which it simply cannot glean from the rules. MDU's question appears to be whether the PSC is intending through these rules and other administration of the Act to apply the rules to public utilities that have not restructured. The answer is a qualified "no." Except for statutes and rules applicable to USBP, if a public utility's services are provided in the normal course of events as a public utility, if the public utility does not restructure, and if the public utility does not become a supplier within the meaning of the Act (e.g., MDU the public utility offers to sell gas to open access customers on MPC's system) then the PSC does not intend these rules to be applicable to that public utility. The PSC is not certain that clarification on this point is necessary, but amends the rule in attempt to clarify it and reflect the PSC's intentions. In addition, the definition at (2)(d) will be modified, which also may help resolve MDU's concerns. MDU questions why there is an "advisory only" part of (2)(d), as the statute clearly distinguishes between suppliers and utilities. MPTM also argues the "advisory only" language in (2)(d) should be deleted so the rule will be consistent with statute and eliminate the confusion. The PSC agrees in part and disagrees in part. The PSC agrees that the need for the label "advisory only" is questionable.

However, although the intent of the legislature may be clear, the statutory definition of "natural gas supplier" is not clear to all and has generated questions directed to the PSC, particularly in regard to whether it applies only to "aggregators, market aggregators, brokers, and marketers" or also to others offering gas to end-use customers. The rule definition is necessary to resolve this problem. However, the PSC determines that the rule can be reworded, still accomplish what it was intended to accomplish, and at least partially resolve MDU's and MPTM's concerns. The rule is amended accordingly.

Rule II. The PSC received comments critical of this proposed rule. Although the PSC does not agree with each of the comments received, it recognizes that several of them may be sound and for that reason and the PSC's own reconsideration of the rule, determines the rule should not be adopted at this time.

Rule III. No comments were received regarding Rule III.

Rule IV. MDU argues the code of conduct must be established by contested case and placed in tariffs and cannot be established by rulemaking. The PSC disagrees. MDU is apparently focusing on 69-3-1404(1)(b), MCA, which provides that a restructured gas utility shall "adopt and comply with commission-approved standards of conduct to be included in a tariff to govern its...services." That provision must be complied with by a restructuring public utility, but it is not exclusive as to standards and does not preclude the PSC from making general standards under 69-3-1404(2), MCA, which is a separate statutory mandate to "develop standards that protect consumers and... suppliers from anticompetitive and abusive practices." MDU also argues the rule should be stricken or clearly state that it applies only to a utility restructuring under the Act. The PSC believes MDU's concern has been addressed through PSC responses and rule modifications regarding Rule I. MPTM and MPC argue (1)(e) is vague, and the remaining subsections specify self-dealing situations, making it unnecessary. The PSC does not agree. The provision may be general, but it is not legally vague. MPTM and MPC argue that (1)(f), as written, does not properly recognize the interim period (pre-pilot and pilot periods) in restructuring and would be impossible to comply with during an interim period because of differing transportation requirements between MPC-the-regulated-supplier (pre-restructuring) and MPC-the-marketer (post-restructuring). The PSC agrees and has amended the rule to resolve the problem. MPTM and MPC argue that (1)(g) is discriminatory because it treats affiliates differently than non-affiliates. The PSC agrees and amends the rule accordingly. MPTM and MPC argue that (1)(h) should differentiate between transmission and market information and, like MPC's GTC-1, it should require transmission information to be disclosed contemporaneously, but market information to be disclosed on a request-only basis. MPTM and MPC believe this would allow a marketer to obtain market

information without disclosing its plans to other marketers. MPTM and MPC also argue that (1)(h) requires disclosure of customer information which could disadvantage the customer. The PSC disagrees with those arguments. The rule provisions are necessary in the interests of fair conduct. The solution to the problems identified by MPTM and MPC is for MPC simply not to disclose the referenced information to its affiliate. MPTM and MPC argue (1)(i) should be deleted as the utility should not have this responsibility and the information is available through the PSC's web site. The PSC disagrees, but amends the rule to apply only to situations where the utility chooses to provide the name of a supplier. MPTM and MPC argue (1)(j) is unnecessary because the right to discounts is tariffed and can only be granted in specific situations, and in MPC's situation it loses the revenue until a rate case and intervenors can raise concerns then. MPTM and MPC also argue that a customer might want to keep a discount confidential for competitive reasons. The PSC disagrees for rule purposes, but has included a new provision regarding requests for waivers where tariff provisions might depart from rule provisions, which is available to address such situations. CE argues that the notification period for (1)(j) be thirty days before such discount. The PSC disagrees. The purpose of the rule is to allow suppliers to be aware that a discount has been offered, not to create a situation where one supplier's efforts to obtain a discount are first disclosed through notice to other suppliers, which could be anticompetitive. MPTM and MPC argue that (1)(k) is vague as it fails to establish specific guidelines and the provider does not know what to expect. MPTM and MPC believe that MPC's GTC-1 addresses the concern in more detail. Enron argues that (1)(k) does not meet the statutory requirement of functional separation. CE argues that (1)(k) should be amended to prohibit shared management and employees and related time and expense allocations, as allowing it creates a risk of subsidization. The PSC disagrees. The rule is not legally vague, is in accord with functional separation, and allows for flexibility in required supplier information. The specific prohibitions suggested by CE would go beyond functional separation. Enron argues the rules should also address tying of services, assignment of customers, cycling of employees, transfer of goods and services, utility products and service, restrictions on the use of the utility logo, and should include reporting requirements because Montana restructuring maintains a merchant function in utility affiliates (Enron states that these are no longer in FERC's rules, the apparent basis for the PSC's rules, because FERC eliminated the pipeline merchant function). Enron includes an appendix of proposed rules relating to this and other rule topics. Enron's comments are appreciated, but the PSC disagrees that adopting provisions such as those suggested was envisioned in the Act, given the Act specifically allows functional separation. Enron argues the standards are not precise and should be revised to allow an objective evaluation. Enron argues that some of the standards are vague and therefore might not be enforceable. The PSC disagrees. Some of the standards

may be general, but they are not legally vague. CE suggests an additional section be added to require a utility that distributes information or educates customers on behalf of its affiliate offer the same service to non-affiliates. The PSC agrees in concept and amends the rule (at (1)(i)) accordingly.

Rule V. MPC argues that the rule is difficult to understand because "application" is used in more than one sense. The PSC agrees and amends the rule accordingly. MPC argues the rule is unnecessary because the PSC has statutory authority to do this already. The PSC agrees it has statutory authority, but the rule is necessary to describe the details. MDU argues the purpose of this rule is unclear, only tariffed codes of conduct can be enforced by complaint proceedings, and the PSC cannot broadly supervise the management of an electing utility under the "anticompetitive or abusive" standard. The PSC disagrees. The PSC has broad authority to supervise utilities and electing utilities and especially electing utilities in regard to anticompetitive and abusive practices. Enron argues service providers and competitive suppliers should be given the opportunity to work out disputes without PSC intervention. Enron suggests this be done through a rule-imposed utility complaint procedure. Enron suggests a substitute rule and related rules pertaining to enforcement and penalties. The PSC agrees in part and disagrees in part. Providers and suppliers can and should have reasonable internal mechanisms to resolve disputes without PSC intervention. However, the PSC disagrees that such should be rule-imposed. The applicable penalty is established by statute and does not appear to be of such nature that rulemaking is also contemplated.

Rule VI. The PSC received comments critical of this proposed rule. Although the PSC does not agree with each of the comments received, it recognizes that several of them may be sound and for these reasons and the PSC's own reconsideration of the rule determines the rule should not be adopted at this time. However, the PSC intends to consider further rulemaking activity on the subject of proposed Rule VI.

Rule VII. EWR argues the rule should be limited by eliminating (1)(h) through (l), (m), (p), and (q). EWR's rationale is not clear, but, based on other comments received, the PSC agrees in part and amends or deletes several of the referenced provisions accordingly. MDU argues (1)(j) is onerous, (1)(g) is unnecessary and assumes every entity doing business in Montana must have an agent for service of process, and (f) and (m) through (q) exceed the requirements of the Act and assume the PSC has the power to regulate the conduct of gas suppliers. For the most part PSC disagrees, but (1)(g) is amended to address the concern and (1)(m), (p), an (q) are deleted for other reasons. In all other regards the referenced provisions are reasonably necessary for the PSC to fulfill its obligations under the Act. CE argues there should be different licensing

standards for incumbents and new entrants because of the differences in market power. The PSC disagrees such requirement would be reasonable or was envisioned by the Act. CE argues that (1)(j) through (p) should not apply to independent, nonaffiliated suppliers. The PSC disagrees. Although some of the provisions have been deleted for other reasons, the remaining requirements are as important, if not more important, as applied to independent, nonaffiliated suppliers. CE suggests that certain information from new entrants be held confidential. The rules provide a means for protection of confidential information (Rule III). CE argues (1)(k) is unnecessary as it is covered by Stipulation #2 in MPC Docket No. D96.2.22. The PSC disagrees. The stipulation does not govern rules and the rules apply to restructurings other than MPC's. Enron argues (1)(d), (l), and (p), on location of distribution, transmission, and storage, and names of affiliate providers must be revised. The PSC agrees in part and (l) and (p) will not be adopted. In regard to (d) the information is necessary for the PSC to fulfill its obligations under the Act. Enron recognizes the statutory reciprocity requirement, but argues that the required information is beyond the statutory requirements and burdensome. The PSC disagrees. The information is essential for an accurate analysis regarding reciprocity. Enron suggests that PSC simply require the applicant to indicate whether it has these things or not. The PSC does not believe that limited requirement would be sufficient to allow proper administration of the Act. Enron argues (1)(h), (i), and (k) do not specify what is required to meet the obligations. The PSC agrees, but disagrees that it should present any problem, as applicants simply need to provide the PSC with information demonstrating what is required to be demonstrated. Enron also argues that PSC review of upstream capacity is unnecessary, review would be costly, it would involve proprietary information, and be subject to frequent change in the dynamic market. Enron's assessment might be correct in some regards, but the required information is essential to an accurate analysis of the capabilities of an applicant as a supplier. Enron believes that the utility tariffs are where these things should be addressed. The PSC disagrees. The utilities tariffs would apply only after license is issued and would be of little help in determining the applicant's capabilities as a licensee. Enron argues (1)(j) is unduly burdensome and unnecessary, as creditworthiness standards establish financial integrity. The PSC disagrees. The information is required for the PSC to directly assess the applicants financial integrity. Enron objects to (1)(m) and (p) as requiring proprietary information and being beyond the PSC's statutory authority. The PSC disagrees in part, but has determined those provisions will not be adopted for other reasons. Enron objects to (1)(n) as the legal-action information sought is not indicative of financial integrity, is burdensome, and is beyond the PSC's authority. The PSC disagrees. The required brief description is not likely to be unduly burdensome and the information may be indicative of circumstances which would be important in regard to an applicant's abilities as a supplier.

Enron objects to (1)(o) as information valuable to competitors, burdensome, and beyond the PSC's authority. The PSC disagrees for the same reasons expressed in regard to Enron's comments on (1)(n), plus the PSC has provided for protection of confidential information (Rule III). MPTM argues (1)(m) and (p) should be deleted because the information is not related or necessary to licensing as described in the statutes and seem to be only for regulation of suppliers and the market. The PSC has determined that the referenced provisions should not be adopted. MPTM argues that (1)(q) should be deleted as it requests the same as (1)(d) and (l). The PSC agrees in part and has consolidated (q) with (d). MPTM argues (1)(j) appears onerous, especially for small suppliers and the PSC should exercise its flexibility (i.e., require the information only if problems arise). The PSC disagrees. The information is necessary for the PSC to properly evaluate the applicant. MPTM suggests the PSC establish a standard for measuring financial integrity. The PSC disagrees. It is anticipated that a demonstration of financial integrity must be case-by-case and will not be so complicated that a standard of measurement is essential. MPTM argues (1)(h) and (l) are vague and do not specify the kind of information that will satisfy the requirement. The PSC disagrees. The rules are clear without the suggested specificity. Applicants simply need to provide information which demonstrates the required elements. MPTM argues (1)(k) will be impossible to comply with because markets have yet to develop and customers types and numbers are not known and the PSC should allow for innovation of suppliers to meet their obligations. The PSC disagrees. Applicants must have at least some idea of what they intend to do in regard to these things in their role as a supplier. MPC argues that, although not affected by the rule, in the interests of competition, the rule demonstrates a distrust in competition and a desire to regulate with requirements that run counter to the workings of competition, will hinder aggressive competition, and may lead to price leadership through its disclosure requirements. The PSC disagrees. The PSC is charged by provisions of the Act with meaningful responsibilities in regard to licensure of suppliers and the rule properly complies with that charge. MPC suggests that (1)(m) and (p) be deleted. The PSC has deleted these sections. MPC argues that (1)(j) be more detailed and require an indication of number of customers to be served, as financial integrity will vary by customer number. The PSC believes the rules already require all information necessary to properly evaluate an applicant. MPC argues that (1)(k) should require a filing of this information at a more meaningful time, i.e., before actual marketing, as details will not be known at the time of the application. The PSC disagrees. At the time of application, the applicant must at least know something about its intentions as a supplier in regard to (1)(k). MPC argues that sufficient firm deliverability is important to the service provider and the information on it should be filed at times like before the peak heating season. The PSC agrees, but expects the update requirement of the rule will address this. MPC argues that criteria for "adequate deliverability" should be stated and

things like interruptible capacity should not be allowed when supply obligations are firm. The PSC believes the criteria is self-evident (i.e., adequate deliverability to meet the expected load, firm for firm, interruptible for interruptible). MPC argues that (1) (q) is not necessary, as the same information is required in (d) and (l). The PSC agrees and amends the rule to combine (d), (l), and (q). Tom Schneider argues the definition of supplier, as applied in this rule and maybe elsewhere, should distinguish between types of suppliers because each operates differently (e.g., an aggregator might not even contemplate having supplies). The PSC agrees and amends the rule to allow for such situation (new section (5)). EWR argues (2) should be eliminated. MDU argues (2) is inappropriate, as the PSC cannot regulate supply contract terms. MPTM argues (2) should be deleted as it is not related to statutory licensing requirements. Enron objects to (2) as proprietary and beyond the PSC's authority. The PSC disagrees. A sample of each type of contract is essential for complete assessment of the applicant as a licensee. MPC suggests (3) be amended to require a copy to the PSC only. EWR argues (3) should be eliminated. MPTM argues (3) should be deleted as the statute does not require it. MDU argues (3) conflicts with the Act, which requires the application be distributed to distribution service providers, not suppliers. The PSC agrees and amends the rule accordingly. EWR argues (4) should be eliminated, but suggests it could be retained if modified to require material changes in application information only. CE argues the updating requirements are onerous, unworkable, and ridiculous in the fast moving energy market and (4) is overly burdensome. MPC argues that (4) be deleted as it is burdensome and annual reports will supply the necessary information. Enron objects to the requirements (except for the most basic of supplier information), arguing this can be accomplished through annual reports. The PSC disagrees. The information in the application is important to administration of the Act. It is also important that the information remain accurate at all times. The update requirement is the means to ensure the information remains accurate.

Rule VIII. MDU argues (1)(d) and (e) should be deleted from the rule, as toll free numbers, and electronic listing of market area information is not required by the Act. The PSC disagrees, but determines that a toll-free number and a listing of customer segments, geographical areas, and cities served is only necessary for residential and small commercial customers. These customers should not be required to bear the expense of contacting suppliers only to find out the supplier will not or cannot serve the customer. The PSC amends the rule to require former (d) and a part of former (e) only when residential and small commercial customers are served. Enron argues the PSC should be the only recipient of the information as some information may be confidential. Enron particularly objects to (1)(e) as being proprietary. Not necessarily agreeing that the

referenced information is proprietary, the PSC has provided for protective orders which are available to protect information that is proprietary (Rule III).

Rule IX EWR argues (2) should be eliminated, as it requires sensitive business information which the PSC has no need in fulfilling its legislative mandates. The PSC sees no sensitive business information requirement in this rule. However, amendments made for other reasons might eliminate EWR's concerns. MDU argues the PSC will not be able to apply (1) to marketers whose operations predate the Act. The PSC disagrees. The Act most clearly applies to suppliers who may "predate" the Act and the rule is intended to do that also. MDU argues (2) should be amended to eliminate the requirement that a supplier must notify other suppliers of its intended operations or anything else disclosing how it will compete with others. Enron objects to (2) insofar as it requires notice to other than distribution service providers, which is beyond statutory requirements. Enron also argues that the PSC will maintain a list and there is no reason for additional notification. MPTM argues (2) is unnecessary, burdensome, and not reasonably related to the purpose of licensing (except for distribution providers). MPTM argues the PSC will have the information and customers and other suppliers can request it from the PSC or the supplier if needed. MPC argues that (2) be deleted, as the PSC web site should be sufficient to provide notice. The PSC agrees with some of the comments pertaining to who should be noticed and amends the rule accordingly. The PSC disagrees that its web site is sufficient notice.

Rule X EWR argues the rule should be deleted, substituting a requirement that suppliers update licensing information. MDU and Enron make similar comments. MDU argues the PSC cannot regulate suppliers and this rule demonstrates the PSC is intending to do that. MDU argues the information required is confidential and has no relationship to the licensing requirements. MDU also argues that the rule will be burdensome to comply with. CE argues, in the interests of competition, that annual reports should only be required from the incumbent's affiliates and made voluntary for independents. CE argues that (2)(b) and (d) though (1) are beyond the PSC's authority when applied to independents and will chill competition. Enron argues this rule is onerous, serves as a barrier to competition, requires proprietary information, and the purpose of some of the requirements is not clear. Enron suggests that information regarding anticompetitive and abusive behavior will not be obtained by the PSC through reports, but through the complaint process. MPTM argues the second sentence in (1) should be deleted as it goes beyond the authority of the PSC. MPTM does not see authority for PSC monitoring of activities in the context of competitive markets. MPTM argues that (2) should be deleted for the same reason. MPTM argues that (3) should be deleted because the statutes do not authorize reporting of changes each time a change occurs. MPTM argues that even

quarterly updates may be too often. MPC argues that "to monitor supplier activities, the development of a competitive market," in (1) is not consistent with statutory language and should be replaced. MPC argues that (2)(b), (e), and (1) exceed the PSC's authority, as they do not pertain to quality, safety, and reliability and would provide competitive information to competitors and chill competition. MPC argues (3) should be deleted as burdensome, unnecessary, and unrealistic, as the PSC does not need the information, especially on a real time basis. The PSC agrees in part with some of the above comments and, for that reason, and for other reasons based on its own reconsideration the PSC has amended the rule. The PSC intends to consider further rulemaking activity on the subject of proposed Rule X.

Rule XI MDU argues the rule should be modified to parallel the licensing requirements. MDU argues revocation should be based on a departure from licensing standards. MDU argues the PSC should not broaden the standards, as it will not be able to adjudicate violations not pertaining to the statutes it administers. The PSC disagrees. Confining grounds for license revocation to violation of the licensing requirements would provide insufficient protection of suppliers and consumers from anticompetitive and abusive practices. The PSC can adjudicate violations of law which pertain to its regulatory authority. Enron argues the rule should be revised to meet the statutes on procedures and due process and burden of proof. The PSC disagrees. Procedures, due process, burden of proof, and like matters are covered by procedures referenced in Rule III, which are applicable in all PSC contested case proceedings, including revocation proceedings. Enron suggests penalties less than revocation should be available (e.g., fines). The PSC may have discretion to take some administrative actions less than revocation (e.g., impose a probationary period), but the PSC does not have direct authority to collect fines. MPTM and MPC argue the rule is unnecessary, as the statute allows revocation for just cause. MPTM and MPC also argues that the rule may inadvertently broaden or restrict authority. The PSC disagrees. Some basis for revocation should be stated, even if in general terms, if for no other reason than to educate suppliers. Listing the bases does not preclude other application of other bases for just cause. MPTM and MPC argue that (f) should not refer to "system services" because service providers are not licensed. The PSC agrees and amends the rule accordingly. MPTM and MPC also suggests that "wilfully" should be inserted in (f). The PSC disagrees, but whether an act is wilful or otherwise might be a factor considered in a decision regarding revocation.

Rule XII MDU argues (2) must be eliminated and (1) and (3) must be modified because the USBP and USBC are utility specific and must be based on individual contested case determinations. The PSC does not agree entirely with MDU's assessment. The Act seems to contemplate a statewide, uniform USBC (per annual percentage), as 69-3-1408(2), MCA, provides the PSC "shall establish a universal systems benefits charge that...all...

[utilities]...shall charge to all end-use customers" (emphasis supplied). The words "a" charge that "all" utilities will charge do not support the idea of separate charges for each utility. However, 69-3-1408(2), MCA, includes as a factor for consideration in establishing the USBC "the current level of expenditure by the natural gas utility" (emphasis supplied). Such language seems to be utility-specific in nature. The PSC determines, based in part on MDU's comments and on the possibility of an ambiguity in the statute and on other reasons, that Rule XIII (a companion rule) should be amended to allow for a procedure a utility can use to obtain a utility-specific charge. MPC questions the 1.42 percent and argues fixing the proper amount must take into consideration the current level of expenditure of the utility (which is presently much less for MPC and MPC's is the highest in the state), the cost effectiveness, and the similar costs imposed in other states. The PSC agrees in part. The PSC did consider the factors required, to the extent accurate information was then available. Post hearing information is roughly the same (i.e., other states may be considering imposing such costs, but apparently do not impose such costs at this time and, for four gas utilities in this state, the present USBP expenditures are 0.00 percent for Cutbank Gas, about 0.01 percent for MDU, about 0.66 percent for GFG, and in the neighborhood of 1.00 percent for MPC). The PSC does agree the 1.42 percent is high and amends the amount to 1.12 percent. Additionally, the procedure now available through Rule XIII provides a means for a utility to demonstrate that an alternative annual percentage is appropriate under its circumstances. MPC suggests the specific percentage not be specified by rule because the percentage may vary through time. The PSC disagrees. The Act does not seem to contemplate a percentage that will vary though time, at least without administrative action. MPC suggests that the revenues to be included in the calculation should be specified (e.g., whether just non-gas costs or gas costs are to be included). The PSC disagrees. The statute references "annual revenues" and the PSC sees no need to clarify that. Energy Share argues that there are poor in Montana and assistance through the USBP is needed. HHS argues the SB396 USBP levelizes the consumer assistance environment to require all utilities to participate. The PSC agrees and believes that the legislature has recognized this through enactment of the USBP requirement. Other amendments to the rule, not specifically discussed above, are for the purpose of clarification.

Rule XIII MDU argues (2) and (3) must be eliminated, as the Act does not contemplate a statewide fund and there is no legal or factual basis for establishing a charge prior to PSC approval of a utility's plan. The PSC disagrees. There is no mention in the rule of "a statewide fund." There is a statewide charge (per annual revenues), which the Act contemplates. However, this rule has been amended as explained in PSC responses to comments on Rule XII. The amendment allows a utility to present a case regarding the applicability of the statewide

percentage of annual revenues to its USBP circumstances. The legal authority for establishing the charge (at least to the extent of .42 percent of annual revenues) as of May 2, 1997, is that the date is the effective date of the Act. The Act requires natural gas utilities to implement a USBP, the Act is effective May 2, 1997, and the Act makes no mention of any allowance dependent upon when a utility might decide it will create a USBP. In accordance with the Act, effective May 2, 1997, gas utilities must have a USBP. The rule is amended to reflect changes in compliance dates to accommodate the delay in meeting the anticipated adoption date. Other amendments to the rule, not specifically discussed above, are for the purpose of clarification.

Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 1, 1998

Reviewed By Robin McHugh

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.21.113 relating to)
the Personal Property)
Schedules)

TO: All Interested Persons:

1. On April 30, 1998, the Department published notice of the proposed amendment of ARM 42.21.113 relating to Personal Property Schedules at page 1153 of the 1998 Montana Administrative Register, issue no. 8.

2. No comments were received regarding these rules.

3. The Department has amended the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State June 1, 1998

VOLUME NO. 47 OPINION NO. 15

CRIMINAL LAW AND PROCEDURE - Application of sexual and violent offender registration laws to persons convicted of sexual or violent offense outside the State of Montana;
CRIMINAL LAW AND PROCEDURE - Release of information regarding persons registered due to commission of sexual or violent offenses outside the State of Montana;
RIGHT TO KNOW - Dissemination of information regarding sexual offenders by local law enforcement agency;
SEXUAL OFFENDER REGISTRATION ACT - Registration of out-of-state sexual offenders and dissemination of that information by local law enforcement agency;
STATUTES - Sexual offender registration act;
MONTANA CODE ANNOTATED - Sections 46-23-502(6), (9), -504(1)(c), -508, -509, -511;
MONTANA LAWS OF 1997 - Chapter 375;
MONTANA LAWS OF 1995 - Chapter 407;
MONTANA LAWS OF 1989 - Chapter 293.

HELD: 1. A sexual or violent offender convicted of any violation of law of another state or the federal government reasonably equivalent to a violation under the provisions of Mont. Code Ann. § 46-23-502(6) or (9), and sentenced on or after July 1, 1989, must register with the local law enforcement agency within ten days of entering a county of this state for the purpose of taking up residence in Montana on either a permanent or a temporary basis.

2. At a minimum, the name of the registered sexual offender may be disclosed. Additional information may be disclosed if the offender is determined to be a risk to the safety of the community and disclosure may protect the public.

May 26, 1998

Mr. Gerald Navratil
Dawson County Attorney
P.O. Box 1307
Glendive, MT 59330-1307

Dear Mr. Navratil:

You have requested my opinion on the following question:

> Does the sexual or violent offender registration act require registration with the local law enforcement agency by an individual who was convicted of a sex offense in another state, but who has not been in custody or under supervision in Montana? If so, is

> the local law enforcement agency authorized to make such information public under Mont. Code Ann. § 46-23-508?

In 1989 the legislature enacted the Sexual Offender Registration Act (SORA) requiring the registration of sexual offenders. In 1995 the SORA was amended to require registration of certain violent offenders and to clarify confidentiality requirements to allow additional public notification. 1995 Mont. Laws, ch. 407. The SORA was again amended in 1997 to require community notice of the location of registered offenders where necessary for public safety. The provisions relating to registration are retroactive to 1989 for sex offenders and to 1995 for violent offenders. 1997 Mont. Laws, ch. 375. While your question refers specifically to the case of a sex offender, the SORA generally treats sexual and violent offenders alike, and the conclusions expressed herein apply to both classes of offenders.

In enacting these provisions the legislature found that the danger of recidivism posed by sexual and violent offenders and the protection of the public from these offenders were of paramount concern to government and the people. The legislature further found that law enforcement is impaired in its efforts to protect communities when there is a lack of information about offenders. Offender registration provides law enforcement with the information critical to preventing victimization and resolving incidents of sexual or violent offenses promptly, including notification of the public when necessary. In addition, the legislature found that persons who have committed a sexual or violent offense have a reduced expectation of privacy because of the public's interest in safety. See preamble to 1997 Mont. Laws, ch. 375. Consistent with these findings, the statement of intent with respect to the 1997 amendments provides:

> [I]t is the policy of the State of Montana to assist local law enforcement agencies' efforts in protecting their communities by requiring that sexual or violent offenders register and to authorize the release of necessary and relevant information about sex offenders to the public.

To fully implement the policy of the SORA, the legislature extended its application not only to sex offenders convicted and sentenced in this state, but also to out-of-state offenders who reside in Montana. Montana Code Annotated § 46-23-504 designates those persons who must register under the SORA. Applicable to your question is subsection (1)(c), which requires registration of a sexual or violent offender "within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more *if the offender was sentenced in another state.*" (Emphasis supplied.) A "sexual or violent offender" is anyone who has been convicted

of a sexual or violent offense. Mont. Code Ann. § 45-23-502(7). A "sexual offense" includes specifically enumerated offenses under Montana law and "any violation of a law of another state or the federal government reasonably equivalent to a violation listed" under Montana law. Mont. Code Ann. § 46-23-502(6). In answer to your first question, the SORA explicitly requires registration by an offender who is convicted of a sexual offense, as defined by § 46-23-502(6), and who is sentenced on or after July 1, 1989, upon setting up residence or temporary domicile in Montana. This requirement applies whether or not the state in which the offender was convicted has a registration program.

The more difficult question is the extent to which this information may be disseminated by the local law enforcement agency. Montana Code Annotated § 46-23-508(1) provides that information maintained under the SORA is confidential criminal justice information. There are two exceptions to this rule. First, the name of a registered sexual or violent offender is public criminal justice information. Mont. Code Ann. § 46-23-508(1)(a). Public criminal justice information may generally be disseminated upon request without restriction under the Criminal Justice Information Act. See Mont. Code Ann. § 44-5-301. This would include the name of an out-of-state sexual offender who is registered in Montana under the SORA.

The second exception to the general rule of confidentiality is contained in Mont. Code Ann. § 46-23-508(1)(b). That subsection mandates dissemination of information in the following circumstances:

> [A] law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:
>
> (i) if an offender was given a level 1 designation under 46-23-509, the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;
>
> (ii) if an offender was given a level 2 designation under 46-23-509, the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town, or part of a county;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

(E) any conditions imposed by the court upon the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under 46-23-509, the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that the offender's exact address must be included. The agency shall also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.

Obviously, an out-of-state offender will not have been given a level designation under Mont. Code Ann. § 46-23-509, so that the "minimum" dissemination requirements of Mont. Code Ann. § 46-23-508(1)(b)(i) to (iii) are not controlling. Nonetheless, the general language of § 46-23-508(1)(b) is relevant and governs the dissemination of information regarding out-of-state sexual offenders who are registered in Montana. That subsection contemplates release of "any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public."

In making the risk assessment for purposes of dissemination under Mont. Code Ann. § 46-3-508(1)(b), it would be helpful for the local law enforcement agency to obtain any available information on the offender from the sentencing state. Of particular importance would be a level designation already imposed by a state which has a system similar to ours. Under Montana law, a level 1 designation is given if the risk of a repeat sexual offense is low; level 2 is given if the risk is moderate; and level 3 is given if the risk is high, there is a threat to public safety, and the offender is a "sexually violent predator." Mont. Code Ann. § 46-23-509(2).

Under the federal sexually violent offender registration program, known as the Jacob Wetterling Act, as well as its amendments, states are free to adopt their own rules on risk

assessment, but the designation as a "sexually violent predator" is a requirement which should be applied by all states that have come into compliance with the federal Act. If that designation has been assigned to an out-of-state offender registering in Montana, it would be appropriate to consider that offender the equivalent of a level 3 designation under Montana law for purposes of information dissemination, regardless of the label given by the originating state to the risk assessment.

In the absence of a level designation comparable to Montana law, the local law enforcement agencies will have to rely on other sources of information. The registration form will note the date and place of conviction, and there is nothing that would prohibit law enforcement from contacting their counterparts in the state of the offender's conviction to obtain additional information that would aid in the determination of what information to release. At a minimum, the name of an offender is always public criminal justice information (§ 46-23-508(1)(a)) and law enforcement is required to notify "the agency in whose jurisdiction the offense occurred of the registration." Mont. Code Ann. § 46-23-508(1)(b)(i). At the time that notice is given, the law enforcement agency may be able to obtain additional information about the offender that would aid in the determination whether the offender is a risk to the safety of the community. If local law enforcement authorities determine that the offender is a risk to community safety and that disclosure of the information may protect the public, they may release additional information. Law enforcement also has the option of requesting a review by the district court of its determination of how much information should be disseminated. Mont. Code Ann. § 46-23-508(1)(c). Note that the identity of a victim cannot be released without his or her permission. Mont. Code Ann. § 46-23-508(2).

As a final point, the SORA explicitly exempts state or local agencies, private entities, and their employees from liability as a result of good faith decisions regarding the release of information. Mont. Code Ann. § 46-23-511. However, immunity does not extend to gross negligence or willful or wanton misconduct. The Ninth Circuit has recognized that release of information is "tailored to help the community protect itself from sexual predators under the guidance of law enforcement, not to punish sex offenders." Russell v. Gregoire, 124 F.3d 1079, 1090 (1997).

THEREFORE, IT IS MY OPINION:

1. A sexual or violent offender convicted of any violation of law of another state or the federal government reasonably equivalent to a violation under the provisions of Mont. Code Ann. § 46-23-502(6) or (9), and sentenced on or after July 1, 1989, must register with the local law enforcement agency within ten days of entering a county of this state for the

purpose of taking up residence in Montana on either a permanent or a temporary basis.

2. At a minimum, the name of the registered sexual offender may be disclosed. Additional information may be disclosed if the offender is determined to be a risk to the safety of the community and disclosure may protect the public.

Very truly yours,

JOSEPH P. MAZUREK
Attorney General

jpm\ja\mlr

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has 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. In addition, the Committee 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 or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1998. This table includes those rules adopted during the period April 1, 1998 through June 30, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1998, 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 1996, 1997 and 1998 Montana Administrative Registers.

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

GENERAL PROVISIONS, Title 1

1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913, 2301

ADMINISTRATION, Department of, Title 2

I-VI and other rules - Payroll Administration - Decedent's Warrants, p. 1855, 2278
2.13.201 and other rules - 9-1-1 Emergency Telephone Systems, p. 1691, 2178
2.21.1412 and other rules - Employment Preference for Persons with Disabilities, p. 1845, 2277, 157
2.21.3704 and other rules - Recruitment - Selection, p. 1861, 2279

(Public Employees' Retirement Board)
I Members of Retirement Systems who may Elect Coverage under the Guaranteed Annual Benefit Adjustment, p. 1843, 2280
2.43.302 and other rules - Definitions used in Rules and Statutes - Actuarial Data - Mailing for Non-profit Groups, p. 376, 920

(State Compensation Insurance Fund)

I and other rules - Employers' Liability - Premium Rates, p. 1697, 158

I&II Individual Loss Sensitive Dividend Distribution Plan, p. 695, 1273

AGRICULTURE, Department of, Title 4

I Weed District Supervisor Training, p. 811

4.5.203 Category 2 Noxious Weeds, p. 809

4.9.401 Wheat and Barley Assessment - Refunds, p. 807

4.12.3801 and other rule - Grading Standards for Mustard Seed, p. 1869, 345

4.13.1001A Grain Fee Schedule, p. 698, 1276

4.13.1004 and other rules - Change of Implementing Statutes, p. 1867, 346

STATE AUDITOR, Title 6

I Fidelity Bond, p. 1706, 2180

I-XV Annuity Disclosure and Sales Illustrations, p. 382

6.6.302 and other rules - Replacement of Life Insurance, p. 395

6.6.2503 and other rules - Group Health Insurance in the Large and Small Group Markets - Individual Health Insurance, p. 1

6.6.4001 Valuation of Securities other than those Specifically Referred to in Statutes, p. 47, 528

6.6.5101 Plan of Operation for the Small Employer Health Reinsurance Program, p. 814, 1406

(Classification Review Committee)

6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 599, 1407

COMMERCE, Department of, Title 8

8.63.101 and other rules - Passenger Tramways, p. 1960, 643

(Board of Alternative Health Care)

8.4.405 and other rules - Naturopathic Physician Continuing Education Requirements - Licensing by Examination - Midwives Continuing Education Requirements - Natural Substances Formulary List, p. 2134, 529

8.4.510 Licensure of Out-of-State Applicants, p. 515, 921

(Board of Architects)

8.6.405 and other rules - Licensure of Out-of-State Applicants - Examinations - Individual Seal - Renewals - Unprofessional Conduct - Fees - Architect Partnerships - Screening Committee - Solicitation of Business by Architects from other States - Use of Title, p. 2142, 449

(Board of Landscape Architects)
8.24.409 Fee Schedule, p. 1058

(Board of Medical Examiners)
8.28.414 and other rules - Physician Temporary Certificate - Fee Schedule - Acupuncture - Podiatry - Nutrition Practice Rules, p. 1746, 2197

(Board of Funeral Service)
8.30.402 and other rules - Applications - Licensure of Out-of-State Applicants - Examination - Fee Schedule - Sanitary Standards - Transfer or Sale of Mortuary License - Crematory Facility Regulation - Processing of Cremated Remains - Board Meetings - Disclosure of Funeral Arrangements - Methods of Quoting Prices - Itemization - Disclosure Statement - Cemetery Regulation - Federal Trade Commission Regulations - Disclosure Statement on Embalming, p. 1228

(Board of Nursing)
8.32.306 Application for Recognition, p. 1308
8.32.1408 Standards Relating to the Licensed Practical Nurse's Role in Intravenous (IV) Therapy, p. 623

(Board of Nursing Home Administrators)
8.34.414A Application for Licensure, p. 1423, 161

(Board of Optometry)
8.36.409 and other rules - Fees - Licensure of Out-of-State Applicants - Continuing Education Requirements - Approved Programs or Courses, p. 235, 925

(Board of Outfitters)
I Watercraft Identification, p. 2224, 740
8.39.505 and other rules - Outfitter Applications and Renewals - Guide or Professional Guide Licenses and Qualifications - Safety Provisions - Unprofessional Conduct, p. 816

(Board of Pharmacy)
8.40.404 and other rules - Fees - Internship Regulations - Pharmacy Technicians, p. 1628, 2060, 163

(Board of Physical Therapy Examiners)
8.42.402 and other rules - Fees - Temporary Licenses - Continuing Education, p. 2169, 460

(Board of Plumbers)
8.44.402 and other rule - Definitions - Fees, p. 1751, 2226, 1158

(Board of Professional Engineers and Land Surveyors)
Establishment of a Negotiated Rulemaking Committee on Fire Extinguisher Systems - Need for Engineering Services, p. 700

Establishment of a Negotiated Rulemaking Committee on Wastewater Treatment Systems - Need for Engineering Services, p. 703

8.48.507 Classification of Experience, p. 1504, 534

(Board of Psychologists)

8.52.604 and other rules - Application Procedures - Continuing Education - Unprofessional Conduct - Ethical Practice of Psychology - Unprofessional Conduct, p. 57, 927

(Board of Public Accountants)

8.54.408 and other rules - Education Requirements - Fees - Enforcement Against Licensees, p. 2172, 463

(Board of Radiologic Technologists)

8.56.402 and other rules - Applications - Continuing Education - Permit Application - Types - Unprofessional Conduct, p. 1241

(Board of Real Estate Appraisers)

8.57.407 and other rules - Qualifying Education Requirements for Licensed Appraisers - Residential Certification - General Certification - Continuing Education - Ad Valorem Tax Appraisal Experience, p. 238, 744

(Board of Realty Regulation)

8.58.413 Reactivation of Licenses, p. 407

8.58.419 and other rules - Grounds for License Discipline - General Provisions - Unprofessional Conduct - Grounds for License Discipline of Property Management Licensees - General Provisions - Unprofessional Conduct, p. 821

(Board of Sanitarians)

8.60.408 and other rules - Minimum Standards for Licensure - Continuing Education, p. 824

(Board of Veterinary Medicine)

8.64.401 and other rules - Definitions - Application Requirements - Temporary Permits - Support Personnel, p. 1633, 464

(Building Codes Division)

8.70.101 and other rules - Building Codes Division, p. 1310

8.70.101 and other rules - Building Codes Bureau, p. 1509, 2061, 164

(Weights and Measures Bureau)

8.77.101 and other rules - Voluntary Registration of Servicepersons and Service Agencies - Uniform Regulation of National Type Evaluation, p. 517

(Consumer Affairs Division)

I-XX New Motor Vehicle Warranty Act, p. 68, 746, 930

8.78.401 and other rules - Proprietary Schools, p. 2016, 165

(Banking and Financial Institutions Division)
I-VIII Annual Fees - Examinations - Reports by the Foreign Capital Depositories, p. 1871, 2283

(State Banking Board)
I-XI Application Procedure for a Charter - Notice of Hearing - Grounds for Denial - Procedural Rules for Determination - Procedural Rules for Discovery and Hearing - Application Charter Fee for the Foreign Capital Depositories, p. 1882, 2286

(Local Government Assistance Division)
I Administration of the 1998 Treasure State Endowment Program (TSEP), p. 2228, 758, 932
8.94.3707 and other rule - 1991 Federal Community Development Block Grant Program - Administration of the 1998 Federal Community Development Block Grant Program, p. 2230, 751
8.94.3714 Administration of the 1998 Federal Community Development Block Grant Program, p. 706

(Economic Development Division)
8.99.401 and other rules - Microbusiness Advisory Council - Microbusiness Finance Program, p. 1547, 466

(Board of Housing)
8.111.402 and other rules - Reverse Annuity Mortgage (RAM) Loans, p. 92, 644

(Travel Promotion and Development Division)
8.119.101 Tourism Advisory Council, p. 526, 933

(Burial Preservation Board)
I-VI Unmarked Burials within the State of Montana, p. 2233, 478

EDUCATION, Title 10

(Superintendent of Public Instruction)
10.16.2215 and other rules - School Funding - Budgeting - Transportation, p. 1244

(Board of Public Education)
10.55.602 and other rules - Content and Performance Standards for Reading and Mathematics, p. 1358
10.57.204 Teacher Certification - Experience Verification, p. 826
10.57.215 Teacher Certification - Renewal Requirements, p. 836
10.57.220 Teacher Certification - Recency of Credit, p. 830
10.57.301 Teacher Certification - Endorsement Information, p. 838
10.57.301 Teacher Certification - Endorsement Information, p. 832

10.57.301 Teacher Certification - Endorsement Information, p. 1962, 347
10.57.401 Teacher Certification - Class 1 Professional Teaching Certificate, p. 834
10.57.403 Teacher Certification - Administrative Certificate, p. 840
10.57.404 Teacher Certification - Class 4 Vocational Certificate, p. 409, 934
10.57.406 Teacher Certification - Class 6 Specialist Certificate, p. 828
10.58.527 Teacher Certification - Areas of Permissive Special Competency, p. 1964, 348
10.65.101 and other rules - Hours and Days of Instruction - Pupil Instruction-Related Days, p. 1966, 349

(State Library)
10.102.4001 Reimbursement to Libraries for Interlibrary Loans, p. 1262

(Montana Historical Society)
I-XVI Procedures that State Agencies must Follow to Protect Heritage Properties and Paleontological Remains - General Procedures which the State Historic Preservation Office must Follow in Implementing its General Statutory Authority, p. 411

FISH, WILDLIFE, AND PARKS, Department of, Title 12

I-III Angler Education Events, p. 626
12.3.202 Establishing a New Class of License Agent who may Receive Compensation from Clients for Preparation of Hunting License and Permit Applications, p. 629

(Fish, Wildlife, and Parks Commission)
I Defining Guiding Services for Use of Class B-10 and B-11 Licenses which are Outfitter-sponsored Nonresident Big Game Combination Licenses, p. 1753, 166
I-VIII Creating "Primitive Fishing Access Site Designation" where Site Development and Maintenance are Limited, p. 423
12.6.901 Limiting the Use of Motor-propelled Water Craft to Ten Horsepower on Lake Helena, p. 95, 1160

ENVIRONMENTAL QUALITY, Department of, Title 17

I&II and other rules - Underground Storage Tanks - Assessment of Administrative Penalties for Violations of the Underground Storage Tank Act - Issuance of Emergency Underground Storage Tank Permits, p. 842
I-VI CECRA - Listing, Delisting and Ranking Rules for Comprehensive Environmental Cleanup and Responsibility Act (CECRA) Facilities, p. 1264

CORRECTIONS, Department of, Title 20

I-VII Siting and Construction Standards of Private Correctional Facilities in Montana, p. 1895, 172, 1175
I-X Siting, Establishment, and Expansion of Pre-release Centers or Juvenile Transition Centers in the State of Montana, p. 428
20.9.501 and other rules - Licensure of Youth Detention Facilities, p. 289

JUSTICE, Department of, Title 23

I-VII Valuation and Taxation of Light Motor Vehicles - Imposition of Fees in Lieu of Tax on Buses, Heavy Trucks, Truck Tractors and Trailers, p. 1901, 2292
23.16.101 and other rules - Public Gambling, p. 2023, 1176
23.17.108 Establishment of a Tuition Fee at the Montana Law Enforcement Academy, p. 709, 1279

LABOR AND INDUSTRY, Department of, Title 24

24.16.9003 and other rule - Prevailing Wage Rates - Establishing Rates for Building Construction Services, p. 718, 1060
24.21.414 Adoption of Wage Rates for Certain Apprenticeship Programs, p. 723
24.28.101 and other rule - Workers' Compensation Mediation, p. 1061
24.29.207 and other rules - Workers' Compensation Matters, p. 1064
24.29.1425 and other rules - Hospital Rates Payable in Workers' Compensation Cases, p. 433, 759
24.30.102 Occupational Safety and Health Standards for Public Sector Employment, p. 439
24.30.1302 Safety Standards for Coal Mines, p. 443, 760, 966
24.33.121 and other rules - Operation of the Construction Contractor Registration Program, p. 1078
24.35.111 and other rules - Independent Contractor Exemption, p. 1082
24.35.202 and other rules - Independent Contractor Central Unit, p. 1086

(Workers' Compensation Court Judge)
24.5.101 and other rules - Workers' Compensation Court, p. 711, 1281

LIVESTOCK, Department of, Title 32

(Board of Livestock)
I-VI and other rule - Equine Infectious Anemia - Importation of Animals into Montana, p. 1090
32.3.212 Brucellosis Vaccination(s), p. 1641, 656

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Land Commissioners and Department of Natural Resources and Conservation)

(Board of Oil and Gas Conservation)

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

I-III	Income Tax Credit for the Preservation of Historic Buildings, p. 1980, 184
I-IV	Family Education Savings Act, p. 2175, 680
42.2.601	Tax Assessment Review Process, p. 1814, 2199
42.11.244	and other rules - Liquor License Transfers, p. 1139
42.11.301	and other rules - Commissions Earned by Agents Operating Liquor Stores in Montana, p. 1132
42.14.102	and other rules - Accommodation Tax, p. 1983, 182
42.15.506	and other rule - Elderly Homeowner Renter Credit, p. 1975, 183
42.15.507	and other rules - Charitable Endowment Funds, p. 150, 1004
42.15.601	and other rules - Medical Care Savings Account, p. 2273, 1015
42.19.1203	and other rules - Industrial Property Trend - New Industrial Property - Personal Property Trended Depreciation Schedules, p. 1782, 2297
42.20.160	and other rules - Forest Classification and Appraisal for Property Tax, p. 1128
42.21.113	Personal Property Schedules, p. 1153
42.31.131	Cigarette Tax Refunds/Distributions, p. 148, 681
42.31.331	Tobacco Rules - Sales from Vending Machines, p. 733, 1417
42.31.401	Emergency Telephone Service, p. 1978, 185
42.38.101	and other rules - Unclaimed Property, p. 1399

SECRETARY OF STATE, Title 44

I	Schedule of Fees for the Centralized Voter File, p. 735, 1283
1.2.419	Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913, 2301
44.9.101	and other rules - Mail Ballot Elections, p. 737, 1285

(Commissioner of Political Practices)

44.10.331	Limitations on Receipts from Political Committees, p. 1986, 186