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MONTANA ADMINISTRATIVE REGISTER

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1998 ISSUE NO. 23
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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.

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BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of rule 6.6.8301,	)	AMENDMENT OF RULE
concerning updating references to	)	6.6.8301
the NCCI Basic Manual for Workers)	
Compensation and Employers	)	NO PUBLIC HEARING
Liability Insurance, 1996 ed.	)	CONTEMPLATED

TO: All Interested Persons.

1. On January 26, 1999, the Montana Classification Review Committee proposes to amend rule 6.6.8301 updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability, 1996 edition.

2. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., as supplemented through ~~July 1, 1998~~ January 1, 1999, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, MCA. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, MT 59604-4009. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235. Persons obtaining a copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

AUTH: 33-16-1012, MCA
IMP: 33-16-1012, 2-4-103, MCA

3. The proposed amendments are necessary in order to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications for those employers listed below:

Code 5606 Contractor-Executive Supervisor or Construction Superintendent (Effective October 1, 1998)

Purpose: The filing amends the eligibility criteria for assignment to this Code 5606. Construction company owners, officers, supervisors or construction superintendents having administrative or managerial responsibility for construction or erection projects are eligible for Code 5606. The code does not apply when the executive owner, officer supervisor or construction superintendent is directly supervising construction work or engaging in actual construction activities. The code is available for division of a single employee's payroll with other construction classification, provided verifiable payroll records are maintained.

Erection of a New Classification for Retail Bakeries (Effective October 1, 1998)

Purpose: The filing will erect a new classification for retail bakeries. The classification will apply to bakeries that are primarily retail, based on gross receipts, and include bagel, cookie and donut shops, and satellite stores. The new starting rate for this code will be 60% of the rate for Code 2003-Bakery & Drivers plus 40% of the rate for Code 8017 Store: Retail NOC. Furthermore, the phraseology of Code 2003 will be amended to Bakery: Wholesale & Drivers.

Reclassification of street and parking lot striping

Purpose: To change parking lot striping, and the painting of other similar surfaces (e.g., tennis courts) from Code 5474-Painting and Paperhanging to Code 5221-Paving or Repaving floors, driveways, yards or sidewalks. Currently, Code 5221 includes the repaving of parking lots and includes the striping or line painting when performed by the contractor paving the lot. The effective date of this proposal is January 1, 1999 on new and renewal businesses.

Classification change for silk screening operations

Purpose: This change classifies a business that performs silk screen printing, regardless of the material being printed on, to Code 4299-Printing. This change does not apply to silk screen printing in conjunction with the manufacturing of a product. It is proposed that this change be effective January 1, 1999 on new and renewal businesses.

Item B-1352-Fertilizer Dealers and Manufacturers

Purpose: This national item filing adds clarifying language to assist in the proper assignment of Code 4583-Fertilizer Mfg. & Drivers, 8215-Hay, Grain or Feed

Dealer & Local Managers, Drivers, and 0050-Farm
Machinery Operation-By Contractor & Drivers.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Christy Weikart, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, no later than January 15, 1999.

5. If a person who is directly affected by the proposed amendment 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 Christy Weikart, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, no later than January 15, 1999.

6. If the classification review committee of the state of Montana receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; 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 the businesses directly affected has been determined to be 50 based on 500 businesses in the state affected by the proposed change to construction company owners, officers, supervisors or construction superintendents. Ten percent of the businesses directly affected by the proposed change to retail bread bakeries, including bagel, cookie and donut shops has been determined to be 100 based on 1,000 businesses. Ten percent of the businesses directly affected by the proposed change to silk screening operations has been determined to be 25 based on 250 businesses. For Item B-1352, 10% has been determined to be 10 based on 100 businesses.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

CLASSIFICATION AND REVIEW COMMITTEE

By: Christy Weikart
Christy Weikart
Chairperson

By: Russell B. Hill
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State on the 23rd of November, 1998.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF ARM 8.2.208 RENEWAL DATES
to renewal dates)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 2, 1999, the Department of Commerce
proposes to amend the above-stated rule.

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

"8.2.208 RENEWAL DATES (1) through (2)(q) will remain
the same.

(r) December 31 is the renewal date for licenses and
other authorities granted by the boards of nursing, public
accountants, realty regulation, social work examiners and
professional counselors, and is the renewal date for outfitters
(regulated by the board of outfitters), property managers
(regulated by the board of realty regulation), dangerous drug
registration (regulated by the board of pharmacy) and
cosmetology, manicuring, and electrology and esthetic schools
and cosmetologists, manicurists, electrologists, estheticians
and instructors (regulated by the board of cosmetologists)."

Auth: Sec. 37-1-101, MCA; IMP, Sec. 37-1-101, MCA

REASON: In December of 1997, the Board of Cosmetologists
adopted rules pertaining to esthetic schools and licensure of
estheticians. The Board inadvertently omitted amending the
above-stated rule to include esthetic schools and estheticians
for the renewal date of December 31 and, by this notice, is
including them for that date.

3. Interested persons may submit their data, views or
arguments concerning the proposed amendment in writing to the
Board of Cosmetologists, 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., December 31, 1998.

4. If a person who is directly affected by the proposed
amendment 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 Cosmetologists, 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., December 31,
1998.

5. If the Board receives requests for a public hearing on
the proposed amendment from either 10 percent or 25, whichever
is less, of those persons who are directly affected by the
proposed amendment, 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. Those persons directly affected has been determined to be 8 estheticians and one esthetic school in Montana.

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

DEPARTMENT OF COMMERCE

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, November 23, 1998.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF ARM 8.36.601 REQUIREMENTS
to continuing education) AND 8.36.702 NEW LICENSEES
requirements and new licensees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 2, 1999, the Board of Optometry proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.36.601 REQUIREMENTS (1) through (2) will remain the same.

(3) ~~Only six~~ Twelve hours of credit for approved continuing education correspondence courses ~~or approved internet courses~~ will be allowed annually.

(4) and (5) will remain the same."

Auth: Sec. 37-1-312, 37-10-202, MCA; IMP, Sec. 37-1-306, MCA

REASON: This proposed amendment will allow acceptance of continuing education courses provided over the Internet, which meet the standard requirements of proof of participation and appropriate Board approval. This type of continuing education is becoming more common and licensees have sought to have these types of courses allowed to meet the continuing education requirement.

"8.36.702 NEW LICENSEES (1) will remain the same.

(a) On the recommendation of the board of ~~optometrists~~ optometry, these individuals will be granted a certificate by the board of ~~medical examiners~~."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: This amendment is being proposed because the Board of Medical Examiners no longer issues optometrists a certificate. The certificate will be issued by the Board of Optometry.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Optometry, 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., December 31, 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

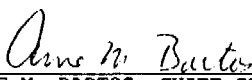
request for a hearing and submit the request along with any comments he has to the Board of Optometry, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., December 31, 1998.

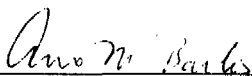
5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision 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 26 based on the 264 licensees in Montana.

6. Persons who wish to be informed of all Board of Optometry 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) 444-5924.

BOARD OF OPTOMETRY
CHARLIENE STAFFANSON, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 23, 1998.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to minimum standards, examination, continuing education program options	)	NOTICE OF PROPOSED AMENDMENT OF ARM 8.52.605A MINIMUM STANDARDS, 8.52.608
	)	EXAMINATION, 8.52.702
	)	CONTINUING EDUCATION PROGRAM OPTIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 2, 1999, the Board of Psychologists proposes to amend the above-stated rules.

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

"8.52.605A MINIMUM STANDARDS (1) A doctorate degree qualifies under 37-17-302(2)(d)(iii), MCA, if it is obtained from a psychology program which meets the following criteria:

(1) through (8) will remain the same, but will be renumbered (a) through (h).

~~(9)~~ (i) The curriculum shall encompass a minimum of three academic years of full-time graduate study with a minimum of one year's residency at the educational institution granting the doctoral degree. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (four five or more graduate quarter hours) in each of these four substantive content areas:

(a) through (e) will remain the same, but will be renumbered (i) through (v).

(i) through (v) will remain the same, but will be renumbered (A) through (E)."

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-17-302, MCA

REASON: The proposed amendment will clarify that the three years of full time academic study required for a doctoral degree in psychology would include a minimum of one year's residency at the educational institution granting the degree. The Board feels that as psychologists are training to deal with the observation, interpretation and modification of human behavior, this necessitates that the work and professional development of those being trained to receive a doctoral degree in psychology must be directly observed by their instructors. The interpersonal interactions and clinical perceptions of

these students must be monitored on a face-to-face personal basis to ensure proper training and thus protection of the public of the state of Montana.

"8.52.608 EXAMINATION (1) through (3) will remain the same.

- (a) psychopathology and diagnosis;
- (b) ~~diagnosis and assessment;~~
- (c) through (5) will remain the same."

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-17-303, MCA

REASON: This proposed amendment will combine psychopathology and diagnosis as one category for evaluation on the oral examination and leave assessment as a category of its own. The Board has determined that for purposes of evaluation of candidates for licensure, these subjects are best grouped as proposed in this rule amendment.

"8.52.702 CONTINUING EDUCATION PROGRAM OPTIONS

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

(b)(i) Documentation of successful completion of the ~~ABPP examination an advanced credential requiring extensive preparation of work samples, research, oral examination, e.g. ABPP.~~

(1)(b)(ii) through (1)(c)(D) will remain the same."

Auth: Sec. 37-1-306, 37-1-319, 37-17-202, MCA; IMP, Sec. 37-1-306, 37-17-202, MCA

REASON: This proposed amendment will also allow successful completion of any advanced credential to count for no more than 20 hours of continuing education instead of only allowing credit for the ABPP credential. The Board has been approached by licensees who earned other, similar credentials and agreed that the extensive study required to obtain these types of credentials should qualify for continuing education for those individuals as well as the ABPP credential holders.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Psychologists, 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., December 31, 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 Psychologists, 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., December 31, 1998.

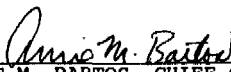
5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the

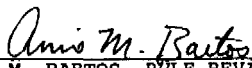
proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 21 based on the 214 licensees in Montana.

6. Persons who wish to be informed of all Board of Psychologists 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) 444-5436.

BOARD OF PSYCHOLOGISTS
JAMES P. MURPHEY, Ph.D., CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 23, 1998.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining	)	OF ARM 8.64.401 DEFINITIONS,
to definitions, continuing	)	8.64.505 CONTINUING EDUCATION
education and unprofessional	)	AND 8.64.508 UNPROFESSIONAL
conduct	)	CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 2, 1999, the Board of proposes to amend the above-stated rules.

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

"8.64.401 DEFINITIONS (1) "For remuneration or hire" shall mean direct or indirect payment for the services rendered. This includes not only monetary payments but also payment by giving or receiving of material goods or services.

(2) will remain the same, but will be renumbered (1).

(2) "For remuneration or hire" shall mean direct or indirect payment for the services rendered. This includes not only monetary payments but also payment by giving or receiving of material goods or services.

(3) will remain the same.

(4) A "veterinarian/client relationship" exists when all of the following conditions have been met:

(a) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal(s) and the need for medical treatment, and the client has agreed to follow the veterinarian's instructions;

(b) The veterinarian has sufficient knowledge of the animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of an examination of the animal(s) or by medically appropriate and timely visits to the premises where the animal(s) are kept; and

(c) The veterinarian is available for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen.

(5) "Veterinary prescription drugs" means those drugs restricted by federal law to use by or on the order of a licensed veterinarian (section 503(f) Food, Drug and Cosmetic Act). The law requires that such drugs be labeled with the statement: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

Auth: Sec. 37-1-131, 37-18-202, MCA; IMP, Sec. 37-18-102, MCA

REASON: This amendment is being proposed to define a veterinary/client/patient relationship as being necessary for the prescription or dispensing of a veterinary prescription drug. There are currently no guidelines in the Montana Veterinary Practice Act for what is required for appropriate veterinary prescribing. This proposed amendment will also add a definition of veterinary prescription drugs to clarify which drugs must be prescribed by veterinarians.

"8.64.505 CONTINUING EDUCATION (1) through (2) will remain the same.

(3) Continuing education courses offered and completed on the internet or via other similar electronic means may be accepted, if all criteria listed in (1) and (2) above are met, for a maximum of 10 credits.

(3) through (5) will remain the same, but will be renumbered (4) through (6)."

Auth: Sec. 37-1-131, 37-1-319, 37-18-202, MCA; IMP, Sec. 37-1-306, MCA

REASON: This proposed amendment will allow acceptance of computerized or electronic (satellite or video) continuing education courses meeting the standard requirements of proof of attendance and appropriate Board approval. This type of continuing education is becoming more common and licensees have sought to have these types of courses allowed to meet the continuing education requirement for veterinarians.

"8.64.508 UNPROFESSIONAL CONDUCT For the purposes of implementing the provisions of 37-1-319, MCA, the board defines "unprofessional conduct" as follows:

(1) through (4) will remain the same.

(5) Dispensing or prescribing a veterinary prescription drug without a valid veterinarian/client/patient relationship.

(5) through (12) will remain the same, but will be renumbered (6) through (13)."

Auth: Sec. 37-1-131, 37-1-319, 37-18-202, MCA; IMP, Sec. 37-1-131, 37-1-316, 37-1-319, MCA

REASON: This proposed amendment adds the dispensing or prescribing of a veterinary prescription drug without a valid veterinary/client/patient relationship to the definition of unprofessional conduct, as the Federal government is extremely concerned with inappropriate animal drugs entering the food chain, and the potential for drug abuse through the improper prescription of veterinary drugs.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Veterinary Medicine, 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., January 2, 1999.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments

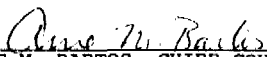
orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., January 2, 1999.

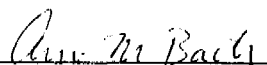
5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision 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 98 based on the 979 licensees in Montana.

6. Persons who wish to be informed of all Board of Veterinary Medicine 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) 444-5436.

BOARD OF VETERINARY MEDICINE
DON SMITH, DVM, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 23, 1998.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment and adoption of) AND ADOPTION OF RULES
rules pertaining to the) PERTAINING TO THE WEIGHTS
Weights and Measures Bureau) AND MEASURE BUREAU

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 2, 1999, the Weights and Measures Bureau proposes to amend and adopt rules pertaining to the Weights and Measures Bureau.

2. The Bureau is proposing to amend ARM 8.77.103. This amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.77.103 NIST HANDBOOK 44 - SPECIFICATION, TOLERANCE AND USER REQUIREMENT FOR WEIGHING DEVICES (1) The bureau of weights and measures with the advice and counsel of the NIST hereby adopts the specifications, tolerances and regulations for commercial weighing and measuring devices published in NIST Handbook 44 - 1998 Edition, as the specifications, tolerances and regulations for commercial weighing and measuring devices for the state of Montana with the following exception:

(a) Section 3.31, Vehicle Tank Meters Code, UR.2.2. Ticket Printer: Customer Tickets shall not be adopted or enforced."

Auth: Sec. 30-12-202, MCA; IMP, Sec. 30-12-202, MCA

REASON: The Weights and Measures Bureau will make an exception to Handbook 44 to relieve the industry representatives from the economic burden of installing ticket printers on their vehicle mounted meters, and we will also address the concerns of the customer who wants a receipt for fuel that is delivered.

3. The proposed new rule will read as follows:

"I RECEIPT TO BE LEFT AT TIME OF DELIVERY (1) For all wholesale or retail deliveries of petroleum products, including, but not limited to, gasoline, diesel fuel, home heating oil or liquefied petroleum gas (LPG), delivered to remote locations such as on-farm storage tanks, a receipt, either mechanically printed or handwritten, denoting the date and total gallons delivered into the customer's tank shall be left at either the delivery location or at a location specified by the customer unless a prior agreement has been made with that customer."

Auth: Sec. 30-12-301, MCA; IMP, Sec. 30-12-407, MCA

REASON: After meeting with and hearing the concerns of the industry groups that would be affected by the enforcement of the Ticket Printer section of the Vehicle Tank Meter Code, such as the Montana Petroleum Marketers Association and the National Airline Transportation Association, the Bureau agreed with their recommendations to exempt them from complying with a section of the Vehicle Tank Meter Code. At this time, the Bureau also contacted numerous consumer groups who would also be affected by this enforcement or lack thereof, among them, the Montana Grain Growers and the Montana Stock Growers. The general attitude of respondents from the consumer groups was that while they did feel strongly that a receipt was necessary at the time of delivery, either a handwritten or mechanically printed receipt would suffice.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Weights and Measures Bureau, Department of Commerce, 1424 9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512, no later than 5:00 p.m., December 31, 1998.

5. If a person who is directly affected by the proposed amendment and adoption wishes to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to the Weights and Measures Bureau, Department of Commerce, 1424 9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile (406) 444-4305, to be received no later than 5:00 p.m., December 31, 1998.

6. Persons who wish to be informed of all Weights and Measures administrative rulemaking hearings or other administrative hearings may be placed on a list of interested persons by advising the Bureau in writing to the Weights and Measures Bureau, Department of Commerce, 1424 9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512.

7. If the Bureau receives requests for a public hearing on the proposed amendment and adoption from either 10 percent or 25 whichever is less, of those persons who are directly affected by the proposed amendment and adoption, 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 10 based on the number of wholesale fuel dealers in Montana.

WEIGHTS AND MEASURES BUREAU
JACK KANE, BUREAU CHIEF

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, November 23, 1998.

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

In the Matter of the Proposed	)	NOTICE OF PUBLIC HEARING
Adoption and Repeal of Rules	)	ON THE PROPOSED ADOPTION
Implementing The Electric	)	AND REPEAL OF CONSUMER
Utility Industry Restructuring	)	INFORMATION AND PROTECTION
and Customer Choice Act (Title	)	RULES APPLICATION TO
69, chapter 8, MCA) And The	)	RESTRUCTURED ELECTRIC AND
Natural Gas Utility	)	NATURAL GAS INDUSTRIES
Restructuring and Customer)	
Choice Act (Title 69, chapter)	
3, MCA), Pertaining to Consumer)	
Information and Protection.)	

TO: All Interested Persons

1. On Thursday, January 7, 1999, at 9:00 a.m. in the Bollinger Room, Public Service Commission Offices, 1701 Prospect Ave., Helena, Montana, the Montana Public Service Commission (Commission) will conduct a hearing to consider the proposed adoption of customer information and protection rules applicable to restructured electricity and natural gas industries.

2. The proposed Rules I, II, and IV through IX do not replace or modify any section currently found in the Administrative Rules of Montana. This notice proposes repeal of the recently adopted rule found at 38.5.8006, which included portions of Rule III. Rule III would add provisions to the current rule 38.5.8006 that apply to natural gas suppliers, as well as additional customer protections.

3. The rules proposed to be adopted provide as follows:

RULE I. VERIFICATION OF CUSTOMER CHOICE OF SUPPLIER

(1) A supplier may not initiate or effect a change in a customer's choice of supplier except when the supplier initiating the change has obtained the customer's written authorization in a form that meets the requirements in this rule. The supplier must retain this authorization for at least 12 months from the date of initiation of service.

(2) The letter of authorization shall be a separate document (or an easily separable document) containing only the authorizing language described in (4) of this rule, the sole purpose of which is to authorize a natural gas or electricity supplier to initiate a change in the customer's choice of supplier. The letter of authorization must be signed and dated by the customer who is responsible for payment of the natural gas or electricity account.

(3) The letter of authorization shall not be a part of any sweepstakes, contest or similar promotional program.

(4) At a minimum, the letter of authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(a) The customer's billing name and address and each account number to be covered by the change order;

(b) The decision to change the customer's choice of supplier from the current supplier to the prospective supplier;

(c) That the customer designates the supplier to act as the customer's agent for the supplier change; and

(d) That the customer understands that any change in supplier may involve a charge to the customer for changing suppliers.

AUTH: 69-3-1404 and 69-8-403, MCA; IMP: 69-8-410 and 69-3-1404, MCA.

RULE II. COMPLAINTS OF UNAUTHORIZED SUPPLIER SWITCHES

(1) Upon receipt of a complaint alleging an unauthorized switch in a customer's supplier, or from the commission or its staff on behalf of a customer, the supplier that initiated the change shall produce the letter of authorization required by Rule I. If the supplier fails to provide the letter of authorization or if it provides documentation that does not conform to the requirements of Rule I, the supplier change will be deemed invalid.

(2) A supplier which initiates a supplier change without authorization from the customer in accordance with these rules shall issue to the customer full credit or refund the entire amount of such customer's supply charges attributable to the supplier's service for the period during which the unauthorized service was provided. In addition, any charges incurred by the customer to re-establish supply service or to change the customer's supplier after the unauthorized switch shall be refunded or credited to the customer by the unauthorized supplier. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date of the initial complaint from the customer, commission, or staff.

AUTH: 69-3-1404 and 69-8-403, MCA; IMP: 69-8-410 and 69-3-1404, MCA.

RULE III. SERVICE CONTRACT (1) All rates, terms and conditions for supply service must be provided to a retail customer in a service contract, written in plain language. The service contract must be signed by the customer and returned to the supplier before any service is provided. For residential and commercial electricity customers (under 300 kW) and natural gas customers (under 500 dkt or mcf), the front page of a service contract shall prominently and clearly disclose in a uniform label prescribed by the commission:

(a) the term of the contract;
(b) the effective price for supply service, in cents per kilowatt-hour or price per dekatherm or mcf, for various levels of consumption typical for the customer's customer segment;

(c) whether the price is fixed or variable and, if variable, a general description of the potential range and possible causes of price variations and the pricing formula or index, as applicable; and

(d) the toll-free telephone number for customer inquiries and the hours during which the customer can contact the supplier at that number.

(2) The service contract must include the information required to appear on the information label and:

(a) an explanation of conditions under which the supplier will terminate the supply agreement;

(b) a prominent identification and explanation of any and all charges, fees and penalties; and

(c) a conspicuous disclosure that there is a 3-day grace period during which the customer may rescind the contract without penalty.

(3) No supplier, distribution service provider, transmission service provider, system services provider, energy service provider, metering service provider, billing service provider, or other company or individual involved in the sale or delivery of electricity or natural gas, may disclose individual customer information to others without prior written consent from the customer except as provided by commission rule or order.

(4) Residential and small commercial (under 300 kW or 500 dkt or mcf) customers shall have a 3-day grace period from the time of entering into a service contract to notify the supplier of termination of the contract without incurring liability for supply services not consumed or taken under the contract.

(5) Residential and small commercial (under 300 kW or 500 dkt or mcf) customers may terminate a service contract without incurring liability for supply services not consumed or taken under the contract by notifying the supplier that the customer is relocating outside the geographic area served by the supplier, or is moving to a location where the customer is not responsible for payment of the service consumed.

(6) A supplier must notify its customers, the commission and the distribution companies in writing at least 30 days prior to ceasing business under an existing license or terminating service to an entire customer segment.

(7) The contract must clearly explain that distribution charges from the customer's local distribution utility are not part of the contract, and whether transmission charges are a part of the contract.

(8) Each supplier must provide its service contract to each of its customers annually, or upon request.

(9) At least 60 days prior to the expiration date of the customer's service contract, the supplier must provide written notice to the customer of either:

(a) the existence and operation of an automatic renewal provision present in the customer's contract; or

(b) the need for the customer to affirmatively renew to retain service from the supplier at the end of the contract term.

(10) If the service contract contains an automatic renewal provision, the supplier may not materially change the terms and conditions of the contract upon the renewal date unless the customer has been provided with written notice of the material changes at least 60 days in advance of their effective date and of his or her right to change suppliers rather than renew the contract.

AUTH: 69-3-1404 and 69-8-403, MCA; IMP: 69-8-403 and 69-3-1404, MCA.

RULE IV. SUPPLIER TERMINATION OF CONTRACT DUE TO CUSTOMER'S NONPAYMENT

(1) A supplier terminating a customer's service contract because of nonpayment shall provide written notice to the customer and the customer's distribution services provider at least 14 days in advance of termination. The notice of contract termination to the customer must clearly state:

(a) the reasons for termination;

(b) the name, address and telephone number of the supplier representative or department who can address questions concerning the contract termination; and

(c) the date on which the supplier will terminate the service contract.

(2) A supplier's notice of contract termination must not state or suggest in any manner that cancellation of the customer's contract with the supplier will result in termination of the customer's service.

(3) The notice of contract termination to the customer must be mailed or provided separately from the bill.

(4) The supplier must notify the distribution services provider prior to the scheduled contract termination date if the customer and the supplier make arrangements which void or otherwise alter the scheduled termination.

AUTH: 69-3-1404 and 69-8-409, MCA; IMP: 69-8-409 and 69-3-1404, MCA.

RULE V. BILLS TO CUSTOMERS (1) If charges for unregulated supply and energy services are combined with regulated charges on a single bill, the unregulated charges must be identified as unregulated and presented as separate line items.

(2) The name of each company for which charges are billed must be prominently identified on all bills in close proximity to each company's charges. Bills for small customers (under 300 kW or 500 dkt or mcf) must provide each company's toll-free telephone number for billing inquiries.

(3) The commission's address and toll-free telephone number for customer complaints must appear on all bills for residential and small commercial customers (under 300 kW or 500 dkt or mcf).

(4) The payment due date must appear on all bills.

(5) Electric distribution services providers and natural gas system services providers may enter into agreements with electricity or natural gas suppliers for billings and collections. The two companies must establish an efficient method of resolving customer inquiries and disputes. The billing entity must be able to provide the customer with the name, address and telephone number of an employee or department responsible for customer dispute resolution.

(6) Bills for electricity services must clearly itemize each service component and its respective price, including:

(a) electricity supply;

(b) transmission and distribution; (i) if charges for transmission and ancillary services are paid by a supplier and passed on to a retail customer in electricity supply charges the supplier must identify the transmission portion of the charges;

(c) transition charges; and

(d) universal system benefits.

(7) Bills for natural gas services must clearly itemize each service component and the price associated with each service component, including:

(a) natural gas supply;

(b) transportation and distribution; (i) if charges for transportation and ancillary services are paid by a supplier and passed on to a retail customer in natural gas supply charges the supplier must identify the transportation portion of the charges;

(c) transition charges; and

(d) universal system benefits.

(8) Bills must separately subtotal charges for regulated and unregulated services. Bills combining charges for both electric and gas services must separate the electricity-related portion of the bill from the natural gas-related portion and separately subtotal the regulated and unregulated charges for each.

(9) Undesignated partial payments of a bill must be applied first to regulated service, then to service other than regulated service in the percentage of each service provider's charges to the total charges to the customer for services other than regulated service. Regulated service may not be affected by billing disputes over unregulated service or service provided by other companies.

(10) A for-profit affiliate of a cooperative utility that uses a regulated distribution service provider's facilities to supply electricity or natural gas to customers outside the cooperative utility's distribution facility service territory must satisfy the billing provisions of this rule.

AUTH: 69-3-1404 and 69-8-409, MCA; IMP: 69-8-409 and 69-3-1404, MCA.

RULE VI. DEFAULT SUPPLIER (1) The electric distribution service provider shall serve as the default supplier in its distribution facilities service territory when a residential or small commercial customer (less than 300 kW) is without supply service because the customer has not selected a competitive supplier or due to contract termination by an electricity supplier, including termination for nonpayment. The natural gas system services provider shall serve as the default supplier when a residential or small commercial customer (less than 500 dkt or mcf) is without supply service because the customer has not selected a competitive supplier or due to contract termination by a natural gas supplier, including termination for nonpayment. Default service shall terminate when the customer begins receiving supply service from a competitive supplier.

(2) A customer enrolled in default supply service shall remain in that service until his account is cleared with the default supplier. Once a customer's past due account is cleared, the customer may select a competitive service option of an alternative supplier. A default supplier may disconnect service to a customer who is in default of payment for its distribution services or default electricity or natural gas supply services. The deposit and termination rules of the commission apply to a default supplier (see ARM 38.5.1101 through 38.5.1112 and ARM 38.5.1401 through 38.5.1418).

(3) After a competitive bid solicitation, an electric distribution services provider or natural gas system services provider may contract with a third-party supplier to meet its default supplier obligations for a term not to exceed two years. The electric distribution services provider or natural gas system services provider is responsible for ensuring compliance with the commission's deposit and termination rules.

AUTH: 69-3-1404, 69-8-403 and 69-8-409, MCA; IMP: 69-8-409 and 69-3-1404, MCA.

RULE VII. SERVICE DISCONNECTION (1) An electric distribution service provider may not disconnect or deny electric distribution service to a customer due to the customer's failure to pay for unregulated service or service provided by another entity. A natural gas system services provider may not shut off or deny natural gas distribution service to a customer due to the customer's failure to pay for unregulated service or service provided by another entity. When the same company acts as both a customer's natural gas system services provider and electric distribution service provider, it may not deny or shut off natural gas service due to the customer's failure to pay for electric service, or deny or disconnect electric service due to the customer's failure to pay for natural gas service.

AUTH: 69-3-1404 and 69-8-403, MCA; IMP: 69-8-403 and 69-3-1404, MCA.

RULE VIII. SUPPLIER COMPLAINT PROCEDURE (1) Each licensed supplier shall have an internal customer complaint procedure which allows for complete, fair and timely decisions and responses regarding complaints by customers. The name, address and toll-free telephone number of the supplier representative responsible for complaints shall be identified on all supplier communications to small residential and commercial customers under 300 kW or 500 dkt. Suppliers shall keep a record of customer complaints.

AUTH: 69-3-1404 and 69-8-403, MCA; IMP: 69-8-403 and 69-3-1404, MCA.

RULE IX. CLAIMS MADE IN MARKETING ELECTRICITY OR NATURAL GAS (1) A supplier intending to advertise, market, promote or represent to customers that electricity or natural gas purchased from the supplier is environmentally beneficial, environmentally benign, preserves or enhances environmental quality, is produced primarily with renewable energy sources or is produced with specific resources or technologies shall include in its license application and in its annual reports sufficient documentation to substantiate any claims made to customers.

(2) The commission may, on its own motion or in response to a complaint from a customer or another supplier, initiate a proceeding to investigate any claims made by a supplier in advertising, marketing, promoting and representing its services to customers. On determining that a supplier's claims are misleading, deceptive, false or fraudulent, the commission may apply appropriate penalties, including license revocation, pursuant to 69-4-408, MCA and 69-3-1405, MCA.

(3) In advertising, marketing, promoting and representing unregulated electricity or natural gas supply and/or retail energy services to customers, unregulated supply affiliates of former vertically integrated, regulated public utilities and for-profit affiliates of cooperative utilities may not refer to, or imply any association with, the reliability, safety, quality, value, history, or economic benefits of service formerly provided by the vertically integrated, regulated utility business.

(4) Promotional material mailed, delivered or given to residential and small commercial (less than 300 kW or 500 dkt or mcf) customers must prominently display the information label described in Rule III.

AUTH: 69-3-1404, 69-8-403, MCA; IMP: 69-8-403 and 69-3-1404, MCA.

4. Rule 38.5.8006, the rule proposed for repeal, is on pages 38-1085 and 38-1086 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA; IMP: 69-8-404, 69-8-408, 69-8-409, 69-8-410, MCA.

5. Rationale. The "Electric Utility Industry Restructuring and Customer Choice Act" and the "Natural Gas Utility Restructuring and Customer Choice Act," both passed by the Montana State Legislature and codified, respectively, at Title 69, Chapter 8, Montana Code Annotated, and Title 69, Chapter 14, Montana Code Annotated, require the Commission to promulgate rules to protect customers from anti-competitive and abusive practices. The Electric Utility Industry Restructuring and Customer Choice Act specifically directs the Commission to promulgate rules related to bill information, customer nonpayment and prevention of unauthorized switching by electricity suppliers, as well as any other rules required to carry out the provisions of the Act.

The Commission has put proposed draft rules on customer information and protection out to a substantial number of interested parties for input, discussion and comment in two separate notices, first on November 7, 1997, then on March 20, 1998. The Commission's March 20, 1998 proposed draft rules respond to comments received on the November 7, 1997 proposed draft rules and explain the Commission's rationale. The Commission has taken into consideration the comments of interested persons in the present notice.

The repeal of Rule 38.5.8006 is necessary because that rule is being moved to another part of Title 38 and is being modified to apply to natural gas suppliers and to add customer protections.

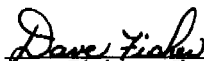
6. Interested persons may submit their data, views, or arguments concerning the proposed adoption and repeal, either orally or in writing, at the hearing. Written data, views or arguments (original and 13 copies) may also be submitted to Denise Peterson, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than Tuesday, January 5, 1999. (PLEASE NOTE: When filing written data, views, or arguments pursuant to this notice, please reference "Docket No. L-98.10.5-RUL.")

7. Anyone needing an accommodation for a physical, hearing or sight impairment in order to attend or participate in the hearing should contact the PSC at 406-444-6199 at least one week before the date of the hearing. The PSC will make every effort to accommodate individual impairments.

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

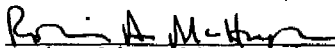
9. Both bill sponsor notice requirements of section 2-4-302, MCA, apply and have been complied with.

10. 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 in which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, PO Box 202610, 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, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 23, 1998.



Reviewed by Robin McHugh

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) AMENDED NOTICE OF AMENDMENT
repeal and adoption of rules) PERTAINING TO THE PRACTICE
pertaining to the practice of) OF PHARMACY
pharmacy)

TO: All Interested Persons:

1. On September 10, 1998, the Board of Pharmacy published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of pharmacy at page 2353, 1998 Montana Administrative Register, issue number 17. On November 19, 1998, the Board of Pharmacy published its notice of adoption of the rules at page 3103, 1998 Montana Administrative Register, issue number 22.

2. The Board adopted ARM 8.40.401, 8.40.404, 8.40.414, 8.40.415, 8.40.502, 8.40.602, 8.40.606, 8.40.903, 8.40.905, 8.40.907, 8.40.909, 8.40.1001, 8.40.1002, 8.40.1003, 8.40.1004, 8.40.1005, 8.40.1203, 8.40.1207, 8.40.1209, 8.40.1212 and 8.40.1215; repealed ARM 8.40.410, 8.40.412, 8.40.501, 8.40.701, 8.40.1201, 8.40.1202, 8.40.1204, 8.40.1205, 8.40.1206, 8.40.1210, 8.40.1211 and 8.40.1214 and adopted new rules I (8.40.417), II (8.40.418) and III (8.40.419) exactly as proposed in the adoption notice.

3. The Board has determined that the amendments of ARM 8.40.404 may be in conflict with CI-75 passed by a vote of the people of Montana on November 3, 1998, and is rescinding, by this amended notice, the adoption of that rule.

BOARD OF PHARMACY
SHIRLEY BAUMGARTNER, PRESIDENT

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, November 23, 1998.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption)
of 12 new rules; the amendment)
of ARM 24.9.101 through 24.9.105,)
24.9.210, 24.9.212, 24.9.213, 24.9.218)
through 24.9.226, 24.9.230, 24.9.231,)
24.9.261, 24.9.262A, 24.9.263, 24.9.264,)
24.9.301 through 24.9.309, 24.9.312)
through 24.9.315, 24.9.317, 24.9.321,)
24.9.323, 24.9.324, 24.9.329, 24.9.330,) NOTICE OF ADOPTION,
24.9.401, 24.9.404 through 24.9.407,) AMENDMENT AND REPEAL
24.9.409, 24.9.601, 24.9.603, 24.9.607,) OF RULES
24.9.1406 through 24.9.1410,)
24.9.1412, 24.9.1501 through 24.9.1503,)
and 24.9.1506 through 24.9.1508; and the)
repeal of ARM 24.9.204 through)
24.9.209, 24.9.216, 24.9.1504 and)
24.9.1505, all relating to the)
organization and functions of the)
Montana Human Rights Commission)

TO: ALL INTERESTED PERSONS

1. On July 16, 1998, the Human Rights Commission published notice of the proposed amendment, adoption and repeal of the above-captioned rules at page 1851 of the 1998 Montana Administrative Register, Issue No. 13.

2. On August 10, 1998, a public hearing was held in Great Falls concerning the proposed amendments, adoptions and repeals. Oral and written comments were offered at that time. Additional written comments were received prior to the closing date of August 17, 1998.

3. The Commission has thoroughly considered the comments on the proposed new rules, the proposed amendments to the existing rules, and the proposed repeals. The following is a summary of the comments received, along with the Commission's response to those comments:

Comment 1: The Montana Landlords Association (MLA) suggested in the interest of increasing the predictability of the Commission's process that the use of the term "liberal construction" in NEW RULE III(2) be eliminated.

Response 1: The Commission has restated how it will view the law, which incorporates language that provides that the Commission will view the law in a reasonable manner.

Comment 2: The MLA also suggested that NEW RULE III(3), relating to the power of the Commission to "suspend, waive or modify these rules for good cause," be deleted in its entirety.

Response 2: The Human Rights Commission is a citizen commission which sits in an appellate role. The Commission concludes that one of the purposes of citizen commissions with an appellate role is to allow non-agency personnel oversight with respect to agency decisions, and to avoid, in the interests of justice, technical applications of procedural rules that might result in a citizen's substantive right to a fair hearing and decision being overlooked. The Commission concludes that it is appropriate for it to retain the power to suspend, waive or modify procedural rules for good cause, while keeping in mind that such actions must balance the rights of other parties to the dispute.

Comment 3: The Montana Association of Realtors (MAR) suggested that the Commission amend NEW RULE IV(2) to include a street or physical address so that parties seeking to file a document in person would know where to go.

Response 3: The Commission agrees with the comment and has amended the rule accordingly. In keeping with the suggestion raised by the comment, the Commission will also list appropriate telephone numbers. The Commission notes, however, that it anticipates that the Human Rights Bureau of the Department of Labor and Industry will be changing the location of its offices within the next year or so, and thus there will be a need to update the street address at that time.

Comment 4: MLA suggested that NEW RULE IV(6), which allows for oral or telephonic filing of motions or requests for procedural relief, additionally require that the Commission give advance notice to all parties that such method of filing has been requested by a party so that all parties may provide their input for the record at the time of such filing. MLA also suggests that the phrase "fair and timely notice" be defined.

Response 4: Upon reconsideration of the proposed subsection in light of the comment, the Commission has deleted the language as not appropriate for an appellate body.

Comment 5: The Department of Labor and Industry's Human Rights Bureau (HRB) suggested that NEW RULE IV(1) be amended to eliminate the requirement that papers filed with the Commission be double-spaced and submitted on calendared bond paper. The HRB anticipates that the Department will propose a simplified format requirement for documents submitted in contested case proceedings, and consistency will make the process easier for the parties.

Response 5: The Commission agrees with the comment and has amended the rule accordingly.

Comment 6: MAR suggested that the Commission amend NEW RULE V to make it consistent with the Rule 6(a) of the Montana Rules of Civil Procedure. NEW RULE V states that "when the period of

time prescribed or allowed is less than seven days, intermittent Saturday, Sundays and Holidays are excluded in the computation." Rule 6(a) of the Montana Rules of Civil Procedure uses eleven days, not seven.

Response 6: The Commission agrees with the comment and has amended the rule accordingly.

Comment 7: MAR suggested that NEW RULE VI conflicts with a rule currently being considered for proposed adoption by the Department. NEW RULE VI states that the Commission has jurisdiction to determine the jurisdiction of the Commission and the Department. The current draft of the Department rule states that the Department has jurisdiction to determine the jurisdiction of the Department.

Response 7: The Commission notes first that the draft Department rules are still in draft form, and have not been formally proposed and noticed for public comment. The Commission concludes that in order to fulfill its statutory duties, it must be able to consider whether a particular matter is properly being treated as an alleged violation of the human rights laws. For example, a complaint alleging a particular set of facts might be characterized as a violation of human rights law by the charging party, but the respondent might well characterize those same facts as not being a violation of human rights laws, and therefore not within the jurisdiction of the Department or Commission. If the Department of Labor and Industry finds "reasonable cause" and the matter goes to hearing, the Commission has jurisdiction to consider the respondent's arguments that the alleged facts do not constitute a cause of action under the human rights law. Likewise, if the Department concludes (following an informal investigation but without holding a hearing) that the alleged facts do not constitute a violation of human rights laws and dismisses the complaint for lack of jurisdiction, the Commission is required to hear an objection of that decision pursuant to 49-2-509(4), MCA (1997), and determine whether the Department has jurisdiction.

Comment 8: MAR and the Montana Chamber of Commerce suggested that rather than generally incorporating other procedural rules "where necessary" without any specification, NEW RULE VII should specifically adopt those portions of the Montana Rules of Civil Procedure and Montana Rules of Evidence which the Commission actually plans to apply.

Response 8: The Commission agrees with the comment. However, in order to give the public an opportunity to make comment on the specific rules of Civil Procedure and Evidence that the Commission plans to apply, the Commission will formally propose and give notice of those specific rules of procedure and evidence which are to be incorporated by reference. Accordingly, the Commission will not adopt NEW RULE VII at this

time and will consider a draft list of rules of evidence and procedure to be incorporated by reference.

Comment 9: MAR suggested that the last sentence of NEW RULE VIII(2) improperly allows the Commission to hold a hearing beyond 120 days of the date of the notice of appeal, if caused by a party's motion to disqualify a member of the Commission. Because the statute does not provide for any exception to the rule that the Commission must hold a hearing within 120 days of the notice of appeal, a more appropriate approach to this issue would be to provide a time limit for the submission of a motion to disqualify.

Response 9: The Commission agrees and has amended the rule to provide that a motion to disqualify a Commission member must be made within 10 days of the filing of the notice of appeal or objection.

Comment 10: HRB suggested that NEW RULE IX rule be renamed "Ex Parte Communications" and that references in the text of the rule to "consultations" be changed to "communications," in order to make the rule more consistent with common legal parlance. It is also suggested that the reference to MAPA in subsection (1) be eliminated.

Response 10: The Commission agrees with the comment and has amended the rule accordingly.

Comment 11: HRB suggested that proposed NEW RULE X be eliminated, as it is unnecessarily redundant of subsections (5), (6) and (7) of current Rule 24.9.104, which applies to the Commission in both "old law" and "new law" cases. MLA made the same suggestion, but for purposes of increasing the predictability of the Commission's process.

Response 11: The Commission agrees that the proposed rule is redundant and will not adopt proposed NEW RULE X.

Comment 12: MAR commented that since the statute provides that appeals must be "filed" with the Commission within 14 days, such requirement may not be met by the "mailing" of a notice of appeal within 14 days, as provided by NEW RULE XI(1). MAR also noted that such a provision is inconsistent with the general filing rule in NEW RULE IV(3), which explicitly states that the determinative date is that of filing, and not of mailing.

Response 12: The Commission agrees that the rules are inconsistent and has amended NEW RULE XI accordingly.

Comment 13: MAR commented with regard to NEW RULE XI(3), the Commission ought to reserve for itself the option of requesting the parties to appear for oral argument, rather than limiting such option to a party's request.

Response 13: The Commission agrees with the comment and has amended the rule accordingly, and made a corresponding amendment in NEW RULE XII.

Comment 14: MAR suggested that NEW RULE XI ought to provide a process for party objections to orders of the Department declining a party's request for dismissal pursuant to 49-2-509(4), MCA.

Response 14: The Commission agrees with the comment and has amended the rule accordingly.

Comment 15: HRB suggested that NEW RULE XI be amended for purposes of clarity in subsections (4)(a) and (b), to use the phrase "informally investigated" in place of "formally investigated," which is consistent with the use of the term "informal investigation" in the statute. HRB also suggested that in NEW RULE XI(4)(b), the phrase "certified for hearing" be eliminated, as this is a new law rule and such phraseology is used in the Commission rules regarding old law cases only.

Response 15: The Commission agrees with the comment and has amended the rule accordingly.

Comment 16: The University of Montana (UM) suggested that the Commission modify NEW RULE XI(4) to provide that upon sustaining an objection to the dismissal of any complaint which alleges more than one basis of discrimination, the Commission will specify those claim(s) on which it is sustaining the objection and remand only those claims for further proceedings. UM suggested that any other claims be held "in abeyance" until the completion of the hearing process.

Response 16: The Commission concludes that for purposes of administrative efficiency and judicial economy, complaints which arise out of a single factual situation but allege more than one basis for discrimination (i.e., employment discrimination on the bases of both sex and race) are and should be treated as a single complaint in the human rights process. If, during the informal investigation, the Department finds reasonable cause to believe that at least one type of discrimination occurred (i.e., sex, but not race), the entire complaint is allowed to proceed to a hearing. In such cases, the Department does not issue a Notice of Dismissal, a legal instrument which would release the charging party from the administrative process and allow suit to be filed in district court. Similarly, where the Commission has sustained an objection to the dismissal of a complaint and remanded the case for a hearing, the entire complaint is reopened and the charging party is prevented from proceeding to district court on any claim alleged in the complaint. The charging party is obligated to proceed through the entire administrative process; there is no option for requesting removal to district court. Because the administrative hearing

is conducted de novo (without regard to the findings of the informal investigation), the charging party is entitled to raise and pursue all legal claims alleged in the complaint. This achieves judicial economy because the factual situation which gave rise to the dispute is litigated only once, and all legal claims are heard in one forum and adjudicated at the same time. If any one claim is clearly without merit and does not warrant an administrative hearing, the respondent is free to file any number of pre-hearing motions to have the claim dismissed prior to hearing.

If, instead, the Department were to allow only those claims for which it found "reasonable cause" to proceed to hearing, it would have to issue a Notice of Dismissal with regard to those claims not being allowed to go forward. (State and federal law would prohibit an administrative agency from denying a charging party access to the administrative process while at the same time refusing to release them from its hold.) If a Notice of Dismissal were to be issued, the charging party would be obliged to file suit on those claims in district court within 90 days. Around the same time, the claim which had proceeded to an administrative hearing would be heard by the hearing examiner. As a consequence, a single factual situation would be heard in two different forums at the same time, wasting both administrative and judicial resources in addition to causing substantial hardship to the parties.

Comment 17: UM also expressed concern with respect to NEW RULE XI that allowing an issue to go to hearing, despite the Department having found (following an informal investigation) that a particular charge had no merit, violates the legal principles of res judicata and collateral estoppel.

Response 17: The informal investigation by the Department is only a preliminary process, and not an administrative proceeding at which the parties are afforded full due process rights. Accordingly, the Commission concludes that the results of the Department's informal investigation does not constitute an adjudication for purposes of res judicata or collateral estoppel.

Comment 18: Timothy Kelly, an attorney in private practice, suggested a revision to NEW RULE XI(3) to clarify the respective burdens of proof placed upon parties during the informal investigation. Kelly stated that the Montana Supreme Court has developed a burden of proof analysis for the purpose of guiding lower courts as they address motions for summary judgment in discrimination cases at the trial court level. Kelly contends that the same burden of proof analysis is applicable to the Commission (and thus to the Department as well) during the administrative process because the Department (and the Commission, in hearing an objection to the Department's dismissal of a case) is essentially determining the same issue:

whether the case should go forward to a formal hearing. Kelly stated that the 1997 changes to the Human Rights Act, designed to make the administrative process more akin to a civil proceeding (including raising the standard of proof from "substantial evidence" to "preponderance of the evidence" and requiring the Department to adopt applicable provisions of the Rules of Civil Procedure and Rules of Evidence) confirms that the two processes are intended to be legally equivalent. Kelly states that the standard of review currently provided in this rule ("abuse of discretion") suggests that the Department and the Commission are being granted the discretion to apply a different standard of proof than that set forth by the Montana Supreme Court. His suggested revision would read as follows:

"NEW RULE XI. ... (3) ... The commission will review an objection under an abuse of discretion standard. The commission will review a department finding that a complaint is not supported by a preponderance of the evidence under the same burden of proof standard as used by the district courts in discrimination cases when ruling on pretrial summary judgment motions."

Response 18: The Commission concludes that the proposed standard is not appropriate because of the differences between an administrative proceeding and a District Court trial. The Commission notes that in District Court, the effect of granting a motion for summary judgment has the effect of making a final decision on the merits and terminating a party's right to proceed with the litigation. A Department finding that a complaint is not supported by a preponderance of the evidence does not preclude a charging party from bringing an action in District Court. Since the effect on a charging party's rights is not so severe, the Commission concludes that such a high standard is not appropriate and inconsistent with the terms of the Human Rights Act. Whatever the legal merit of the argument that the civil standard for summary judgment motions should be imputed to the administrative process, the Commission believes it is more properly the province of the courts to impose such an interpretation.

In any case, the Commission does not interpret the "abuse of discretion" standard to entitle the Department, in its investigation of complaints, to employ any standard of proof other than that provided by law. Rather, it describes the standard of review which will be employed by the Commission, for purposes of administrative efficiency, in its review of objections to Department orders. In general terms, the standard is intended to indicate that the Commission will review a Department order solely for the purpose of determining whether the Department abused its discretion in performing its various statutory duties -- providing a fair process, conducting an investigation, and issuing a reasonable determination based on the law and the facts -- and to distinguish the objection process from the appeal process, wherein the Commission has

broader authority to substitute its own conclusions for those of the Department.

Comment 19: MAR commented that the provisions of NEW RULE XII(1) which authorize the Commission to "return" any non-conforming submissions (and thereby disallow the appeal itself), is too severe a consequence to a party that failed to file the requisite number of copies.

Response 19: The Commission agrees with the comment, and has amended the rule accordingly.

Comment 20: MAR commented that the provisions of NEW RULE XII(2) regarding the extent of documents which the appellant is required to file is excessive, and suggested that the hearing record could instead be transmitted internally within the Department. MAR also stated that it is inappropriate to require the appellant to obtain a transcript of the hearing, and that a transcript could instead be prepared by and transmitted internally within the Department, the costs of which could be charged to the appellant.

Response 20: With regard to these comments, the Commission notes that it is an independent appellate body, separate and distinct from the Department. In light of this autonomy, even if it were appropriate to require the Department to provide continuing clerical support to parties who are no longer appearing before it, it might be improper for the Commission to assign to the Department by rule duties which are not assigned to it by statute. In addition to the appellant's decision whether to file an appeal in the first place, it is entirely within the appellant's discretion to decide (a) whether to appeal the Department's specific findings of fact, and/or (b) whether to request an increase in a monetary award granted by the Department. Only by deciding to exercise one of these two options does an appellant become obliged to submit the complete hearing record. In such cases, as is customary in civil court, it is appropriate and proper to place the burden of reproducing the documentary record and obtaining written transcripts on the appellant. With regard to the hearing transcript, the original recordings of all hearing proceedings are retained for safe-keeping by the Department; only copies of those recordings are provided to the parties at their request. The proposed rule includes measures to ensure the accuracy of the resultant transcript, and it is incumbent upon the opposing party to identify and inform the Commission about any discrepancies between the transcript and the hearing proceedings. On further study of the proposed rule, the Commission acknowledges that this rule as drafted is long and cumbersome, and has attempted to make it clearer, without thereby making any substantive changes. In addition, the Commission noted that NEW RULE XII(2) contained a reference to any "recommended award or penalty". Since the Commission will be reviewing final orders of the Department, the term "recommended" is not appropriate in that

context and has been deleted.

Comment 21: MLA suggested that with regard to NEW RULE XII(8), the Commission eliminate the provision allowing it to grant oral argument to a party who has failed to file a brief in opposition to an appeal within the time provided by rule.

Response 21: The Commission concludes that it is appropriate to keep the rule in place because it allows the Commission to schedule oral argument in a case where the Commission believes that its decision-making will be aided by the oral arguments of the parties.

Comment 22: MAR suggested that NEW RULE XIII(4), which allows a hearing to be continued for good cause, should include a clause making clear that any such continuance would be subject to the statutory limitation that the Commission hold a hearing within 120 days.

Response 22: The Commission agrees and has amended the rule accordingly.

Comment 23: MLA suggested that with regard to NEW RULE XIV(3), the ability of the Commission to grant relief in excess of that recommended by a hearing examiner should be subject to the limitations contained in 2-4-621, MCA, and then only when the hearing examiner's recommended relief is "demonstrably inadequate".

Response 23: The Commission believes that the standards contained in 2-4-621, MCA (and cited by NEW RULE XIV) represent the appropriate standard of review under Montana law. The appropriateness of a "demonstrably inadequate" standard may, of course, be argued in any given case, but the Commission declines to adopt that standard via rule.

Comment 24: MAR questioned the authority of the Commission to appoint a non-member to take the place of a disqualified Commission member pursuant to ARM 24.9.103(1)(b).

Response 24: The comment relates to a portion of the rule for which no change has been proposed. Accordingly, the Commission cannot at this time make any of the changes suggested or requested by the commenter.

However, to respond to the comment, the Commission believes that the comment raises a valid point. The Commission will consider the deletion of that subsection during its next rule-making activity.

Comment 25: The Montana Landlords Association (MLA) suggested in the interest of increasing the predictability of the Commission's process that the use of the term "liberal construction" in ARM 24.9.104(2) be eliminated.

Response 25: The comment relates to a portion of the rule for which no change has been proposed. Accordingly, the Commission cannot at this time make any of the changes suggested or requested by the commenter.

However, to respond to the comment, the Commission notes that it has changed the terminology in NEW RULE III in response to a similar comment. In the interests of consistency, the Commission will, in its next rule-making effort, consider amendments to ARM 24.9.104 to make it consistent with NEW RULE III. See also Comment 1 and Response 1, above.

Comment 26: MLA suggested that ARM 24.9.104(3), relating to the power of the Commission to "suspend, waive or modify these rules for good cause," be deleted in its entirety.

Response 26: The comment relates to a portion of the rule for which no change has been proposed. Accordingly, the Commission cannot at this time make any of the changes suggested or requested by the commenter.

However, to respond to the comment, the Commission refers to Response 2, above, which addresses the same comment with respect to NEW RULE III.

Comment 27: MLA suggested that the amendment to ARM 24.9.226(2), regarding the requirements that must be met before a case will be dismissed pursuant to a conciliation or other settlement agreement, including approval of the agreement by the Department and the Commission, should include a provision that such approval will not be "unreasonably withheld."

Response 27: The comment relates to a portion of the rule for which no change has been proposed. Accordingly, the Commission cannot at this time make any of the changes suggested or requested by the commenter.

However, to respond to the comment, the Commission concludes that it is implicit that for all Commission actions, and all Department actions, those bodies will act in a reasonable manner. Indeed, governmental entities are required to act in a manner that is neither arbitrary or capricious, and therefore they must act in a reasonable manner.

Comment 28: UM suggested that the Commission promulgate specific rules regarding the procedures contemplated by ARM 24.9.312. The reason for this suggestion is to allow parties to make an informed decision as to whether or not to elect to proceed under informal proceedings. In the alternative, UM suggests that the Commission adopt a rule prescribing an informal hearing process when the parties expressly and mutually waive otherwise applicable formal hearing requirements. As a second alternative, UM suggests that the Commission adopt a rule

allowing the parties and the hearing examiner to agree in writing to a unique set of rules and procedures in a given case.

Response 28: The comment relates to a portion of the rule for which no change has been proposed. Accordingly, the Commission cannot at this time make any of the changes suggested or requested by the commenter.

However, to respond to the comment, the Commission notes that the term "informal proceedings" is used in MAPA, in 2-4-604, MCA, and describes what constitutes "informal proceedings". Informal proceedings may generally only be invoked when all parties consent. 2-4-603(2), MCA. It is the Commission's understanding that the hearing examiners generally will consent to most agreements of the parties regarding procedural matters.

Comment 29: MAR questioned the authority of the Commission to not repeal all of its substantive rules interpreting the discrimination laws, presently found in sub-chapters 6, 8, 10 and 12 through 14. MAR interprets the rules in these sub-chapters as "set[ting] policy" and "purporting to establish what is or is not considered illegal discrimination," and suggests that the Commission is only authorized to adopt rules pertaining to its specific procedural responsibilities under the statute, based on the changes to 49-2-204, MCA.

Response 29: The comment relates to a portion of the rule for which no change has been proposed. Accordingly, the Commission cannot at this time make any of the changes suggested or requested by the commenter.

However, to respond to the comment, the Commission notes that pursuant to 49-2-205, MCA, the Commission (and the Department) must not favor, directly or indirectly, complainants or respondents with procedural or substantive matters of discrimination in Montana. The Commission and the Department shall maintain the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in Montana.

The Commission believes that being objective and impartial requires that the Commission follow and apply consistent and objective standards. The Commission further believes that adoption of EEOC guidelines and other standards provides not only a fair statement of the state of anti-discrimination law, but it allows both complainants and respondents a yardstick against which to measure their own and other's behavior. The Commission concludes that the rules help articulate what is the law in Montana. Finally, the Commission notes that the right to be free from illegal discrimination is grounded in Art. II, sec. 4 of the Montana Constitution, and does not arise out of the Commission's rules.

Comment 30: MLA suggested that the reference in ARM 24.9.1506 to the requirements that must be met before a case will be dismissed pursuant to a conciliation or other settlement agreement, including approval of the agreement by the Department on behalf of the Commission, should include a provision that such approval will not be "unreasonably withheld."

Response 30: The comment relates to a portion of the rule for which no change has been proposed. Accordingly, the Commission cannot at this time make any of the changes suggested or requested by the commenter.

However, to respond to the comment, the Commission refers to Response 27, above, which addresses the same comment with respect to ARM 24.9.226.

4. After consideration of the comments received, the Commission has adopted the following rules exactly as proposed:

NEW RULE I (24.9.107) APPLICABILITY OF RULES

NEW RULE II (24.9.203A) SCOPE AND PURPOSE OF RULES

NEW RULE VI (24.9.1705) JURISDICTION TO CONSIDER JURISDICTION

NEW RULE XIV (24.9.1719) DETERMINATION OF APPEALS

5. After consideration of the comments received, the Commission has adopted the following rules as proposed, but with the following changes: (new material underlined, deleted material stricken)

NEW RULE III (24.9.1701) PURPOSE AND SCOPE OF RULES

(1) Remains the same as proposed.

(2) ~~The commission will give liberal construction to the rules to effectuate the purposes of the human rights statutes of Montana within the commission's jurisdiction. "Liberal construction" means, without limitation, giving broad coverage and inclusive interpretation to human rights statutes and rules to assure enforcement and protection of the rights secured by them. The commission will construe the provisions of the act, the code, and these rules in a reasonable manner. A principal objective of the act and code is to ensure that there will be no illegal discrimination in Montana.~~

(3) Remains the same as proposed.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-205, 49-2-501, 49-2-504, 49-2-505 and 49-2-509, MCA

NEW RULE IV (24.9.1703) DOCUMENT FORMAT, FILING AND SERVICE (1) All documents, pleadings, and papers to be filed shall be eight and one-half inches by eleven inches (8½" x 11") in size and clearly legible. ~~Papers must be double-spaced,~~

~~clearly legible and submitted on calendared bond paper in accordance with the format for papers used in district court. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. The commission may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.~~

(2) The place of filing is the offices of the Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. The offices are located at 616 Helena Avenue, Suite 302, Steamboat Block, Helena, Montana. The telephone number is (406) 444-2884; FAX (406) 444-2798; TTY (406) 444-0532.

(3) through (5) Remain the same as proposed.

~~(6) The commission may accept telephonic or oral filings of motions or requests for procedural relief, subject to recording by means of minute entry, note or the subsequent filing of a true and accurate recording of such matters, upon fair and timely notice to all parties of record.~~

(7) Remains the same as proposed, but is renumbered (6).

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-106, 49-2-2-4, 49-2-505 and 49-2-509, MCA

NEW RULE V (24.9.1704) TIME (1) In accordance with Rule 6(a) of the Montana Rules of Civil Procedure, in computing any period of time for acts required by any of the commission's rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the department offices are closed on such day. In that event, the period runs until the end of the next day when the department offices are open which is not one of the aforementioned days. When the period of time prescribed or allowed is less than ~~seven~~ 11 days, intermediate Saturdays, Sundays and holidays are excluded in computation. A half holiday will be considered as other days and not as a holiday.

(2) and (3) Remain the same as proposed.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE VIII (24.9.1711) DISQUALIFICATION OF A MEMBER OF THE COMMISSION (1) Remains the same as proposed.

(2) A party seeking to disqualify a member of the commission may do so only upon the filing of a motion which is supported by a sufficient affidavit showing the particular facts and matters which constitute good cause for disqualification under (1). ~~The party must file the motion and affidavit no later than ten days before an original date set for hearing of the appeal within ten days of service of the notice of objection or appeal. Should a continuance of any proceeding be required by the act of a party in seeking disqualification, such act shall not justify the dismissal of a complaint where an appeal was scheduled to be heard within 120 days of the date of service of a notice of appeal.~~

(3) through (5) Remain the same as proposed.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-611, 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE IX (24.9.1712) EX PARTE CONSULTATIONS
COMMUNICATIONS (1) ~~in accordance with 2-4-613, MCA; no~~ No member of the commission may participate in or initiate any ex parte consultation communication as defined in (2) on the merits of a matter with any party or the department. A member of the commission may engage in a communication concerning administrative or procedural matters where they are necessary under the circumstances and do not adversely affect the substantial rights of a party.

(2) "Ex parte consultation communication" means the act of a party to a contested case, any employee of the department, any person having an interest in the outcome of a contested case or any other person not authorized by law, communicating with a member of the commission regarding the merits of any contested case. Communications which do not constitute discussions or information regarding an issue of fact or law in a contested case, such as discussions of enlargements of time, scheduling, administrative matters and/or questions of procedure do not constitute ex parte communications.

(3) Remains the same as proposed.

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 2-4-613, 49-2-204, 49-2-505 and 49-2-509, MCA

NEW RULE XI (24.9.1714) OBJECTIONS TO DISMISSAL OF COMPLAINT OR REFUSAL TO DISMISS COMPLAINT (1) A party who is dissatisfied with a department decision to dismiss a complaint ~~or to refuse to dismiss a complaint~~ pursuant to 49-2-509, MCA, may seek commission review of the decision by filing ~~or mailing~~ a written objection within 14 days after the decision is served. ~~The date of mailing will be established by U.S. postal service postmark.~~ Briefs are not required. A party who makes an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing ~~or mailing~~ the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may request permission from the commission to file a brief in opposition to the objection.

(2) Briefs on objections to the dismissal of ~~or refusal to dismiss~~ a complaint may not exceed ten pages in length. Each party's brief should provide copies of any specific exhibits from the record which the party believes are essential for the commission to read. Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument

is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

(3) The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested by a party and authorized by the commission. The commission may request that the parties present oral argument. The commission will review an objection under an abuse of discretion standard.

(4) If the commission sustains the objections to the dismissal of a complaint, it will reopen the case by remanding it to the department.

(a) If the complaint has not yet been formally informally investigated, and not more than 90 days (housing cases) or 120 days (non-housing cases) have passed since the date of filing, it will be remanded to the human rights bureau for investigation.

(b) If the complaint has been formally informally investigated, or if more than 90 days (housing cases) or 120 days (non-housing cases) have passed since the date of filing, it will be remanded to the hearings bureau to be certified for hearing to give notice of a hearing.

(5) If the commission affirms the dismissal of a complaint or sustains the objections to a refusal of the department to dismiss a complaint, it will notify the parties of its decision in writing within seven days. The charging party will have 90 days after receipt of the commission's order affirming the dismissal of a complaint to petition the district court for appropriate relief.

(6) If the commission affirms the refusal of the department to dismiss a complaint, it will remand the case to the department for further proceedings.

~~(6)~~ (7) A party may ask the district court to review a decision of the commission to remand a contested case to the department or to affirm or order the dismissal of the complaint.

(7) Remains the same as proposed, but is renumbered (8).

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204 and 49-2-509, MCA

NEW RULE XII (24.9.1717) APPEAL OF FINAL ORDERS OF THE DEPARTMENT (1) Remains the same as proposed.

(a) Once a final order is entered in a contested case, a party that wants to appeal shall provide notice of appeal to the commission, the department, and all parties within ten business days of its receipt of the final order. All parties filing an appeal appellants shall submit an original (or original copy) and six copies of all submissions for the record unless otherwise directed by the commission. The department may reject and return any submission which does not include the required number of copies.

(2) The commission may reject or modify the conclusions of law and interpretations of administrative rules in the final order but may not reject or modify the findings of fact unless

the commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The commission may accept or reduce any recommended award or penalty but may not increase it without reviewing the complete record.

(a) and (b) Remain the same as proposed.

(3) ~~If a party filing an appeal an appellant~~ does not intend to file a transcript of the hearing ~~(or if the appellant intends for the commission to review a transcript and a transcript has been prepared and filed with the commission prior to issuance of the final order)~~, the party ~~appellant~~ must file and serve the appeal, a supporting brief and the portions of the record required for commission review of the appeal within 20 days of service of the final order. Any opposing party must file and serve an answer brief within ten days of service of the appeal and supporting brief. ~~The party filing an appeal appellant~~ must file and serve any reply brief within ten days of service of the answer brief.

~~(4) If a party filing an appeal intends for the commission to review a transcript of the hearing and a transcript of the hearing has been prepared and filed with the commission prior to issuance of the final order, the party must file and serve the appeal, a supporting brief and the record within 20 days of service of the final order. Any opposing party must file and serve an answer brief within ten days of service of the appeal and supporting brief. The party filing an appeal must file and serve any reply brief within ten days of service of the answer brief.~~

~~(5) (4) If a party filing an appeal an appellant~~ intends for the commission to review a transcript, and a transcript of the hearing has not been prepared and filed prior to issuance of the final order, ~~a party filing an appeal the appellant~~ must file a notice of intent to file an appeal stating that commission review of a transcript of the hearing is required.

(a) After the notice of intent to file an appeal is filed, ~~a party filing an appeal the appellant~~ must arrange for preparation of a transcript of the hearing at his or her own expense. ~~The party filing an appeal appellant~~ must file an original and six copies of the transcript with the commission within 40 days of filing the notice of intent to file an appeal.

(b) Remains the same as proposed.

(c) ~~A party filing an appeal The appellant~~ must file the appeal, a supporting brief and the record within 20 days of the date of filing the transcript. Any opposing party must file and serve an answer brief within ten days of service of the appeal and supporting brief. ~~The party filing an appeal appellant~~ must file and serve any reply brief within ten days of service of the answer brief.

(6) Remains the same as proposed, but is renumbered (5).

(7) Remains the same as proposed, but is renumbered (6).

~~(8) (7) If a party filing an appeal an appellant~~ fails to file a brief in support of the appeal within the time provided

by this rule, or within any extension of time granted, any opposing party may move to strike the appeal. If an opposing party fails to file a brief in opposition to appeal within the time provided by this rule, or within any extension of time granted, that party will not be heard at oral argument except by permission or at the request of the commission.

(9) (8) When a party has timely filed an appeal of a final order and has timely filed a supporting brief, the commission will fix a date, not later than 120 days from the notice of appeal, to provide the parties an opportunity to present oral argument to the commission. Each party is allowed one-half hour of argument before the commission. Oral argument may be waived by the parties, except where it is requested by the commission.

(10) Remains the same as proposed, but is renumbered as (9).

(11) Remains the same as proposed, but is renumbered as (10).

AUTH: 49-2-204 and 49-3-106, MCA

IMP: 49-2-204 and 49-2-505, MCA

NEW RULE XIII (24.9.1718) COMMISSION HEARINGS TO CONSIDER APPEALS (1) through (3) Remain the same as proposed.

(4) At the request of a party or a member of the commission, the date of the hearing may be continued upon a showing of good cause, but not beyond the 120 days provided by law.

AUTH: 49-2-204 and 49-3-106, MCA

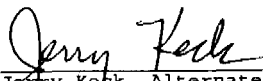
IMP: 49-2-204 and 49-2-505, MCA


6. After consideration of the comments received, the Commission has decided not to adopt proposed NEW RULES VII and X.

7. After consideration of the comments received, the Commission has amended all of the rules proposed for amendment exactly as proposed.

8. No comments were received on the any of the rules proposed for repeal, and the Commission therefore repeals those rules exactly as proposed.

9. The new rules, amendments, and repeals are effective December 4, 1998.


Jerry Keck, Alternate Rule
Reviewer for the Commission


Kevin Braun, Rule Reviewer
for the Department of Labor
and Industry

Montana Human Rights Commission


Jerry Keck, for the Commission

Certified to the Secretary of State: November 23, 1998.

23-12/3/98

Montana Administrative Register

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

In the matter of the transfer of) NOTICE OF TRANSFER
title 11, chapter 5, with the)
exception of reserved and)
repealed rules, pertaining to)
home attendant services)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, home attendant services is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, the above-stated rules are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 47.

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

<u>OLD</u>	<u>NEW</u>	
11.5.901	<u>37.47.901</u>	Home Attendant Services, Definitions
11.5.903	<u>37.47.904</u>	Home Attendant Services, Eligibility
11.5.905	<u>37.47.905</u>	Home Attendant Services, Services Available
11.5.910	<u>37.47.910</u>	Termination of Home Attendant Services

3. The transfer of rules is necessary because this program was transferred from the Department of Family Services to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

Dana Silvia
Rule Reviewer

Dana Silvia
Director, Public Health and
Human Services

Certified to the Secretary of State November 23, 1998.

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


In the matter of the	)	NOTICE OF AMENDMENT AND
amendment of rules 46.12.514,	)	REPEAL
46.12.515, 46.12.516 and)	
46.12.517 pertaining to early)	
and periodic screening,)	
diagnostic and treatment)	
services (EPSDT) and the)	
repeal of 46.12.565,)	
46.12.566 and 46.12.567)	
pertaining to private duty)	
nursing services)	

TO: All Interested Persons

1. On July 16, 1998, the Department of Public Health and Human Services published notice of the proposed amendment and repeal of the above-stated rules at page 1894 of the 1998 Montana Administrative Register, issue number 13.

2. The Department has amended rules 46.12.514, 46.12.515, 46.12.516 and 46.12.517 and repealed rules 46.12.565, 46.12.566 and 46.12.567 as proposed.

3. No comments or testimony were received.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State November 23, 1998.

TO: All Interested Persons

2. The Department has amended the rule as proposed.

3. A public hearing on the proposed amendment was held on October 29, 1998, at 9:00 a.m., in the Bollinger Room, Public Service Commission offices, 1701 Prospect Avenue, Helena, Montana. No written comments on the proposed amendment were submitted. The Mountain Water Company, through its Vice President and General Manager Arvid Hiller, appeared at the hearing in support of the proposed amendment.

Dave Fisher
Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 23, 1998.

Reviewed by Robin McHugh

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) CORRECTED NOTICE OF ADOPTION
of ARM 42.12.104, 42.12.131,)
42.12.144, 42.12.401, 42.12.)
404, 42.12.406, 42.12.410,)
42.12.412, and 42.12.414;)
and ADOPTION of NEW RULE I)
(ARM 42.12.405) relating to)
Lottery Process for Liquor)
Licensing)

TO: All Interested Persons:

1. On November 19, 1998, the Department published notice of the amendments to ARM 42.12.104, 42.12.131, 42.12.144, 42.12.401, 42.12.404, 42.12.406, 42.12.410, 42.12.412, and 42.12.414; and adoption of NEW RULE I (ARM 42.12.405) relating to Lottery Process for Liquor Licensing at page 3132 of the 1998 Montana Administrative Register, issue no. 22.

2. This corrected notice is being filed to correct an error in New Rule I (ARM 42.12.405).

3. New Rule I (ARM 42.12.405) is corrected as follows:

NEW RULE I (42.12.405) RESTAURANT BEER AND WINE LICENSE APPLICATION FEES (1) The ONE TIME ONLY application fee based on seating capacity described in 16-4-420, MCA, must be submitted with an ORIGINAL application to transfer ownership when an ownership change in the business operated under the license results in new owners who are required to meet the qualifications in 16-4-401, MCA, or with an application to transfer location.

(2) No application to transfer ownership and no application fee is required when an owner divests ownership or when ownership interest changes hands between currently qualified and disclosed owners. The licensee must provide satisfactory evidence of the ownership change to the department within 30 days of the change.

(3) If an ORIGINAL application is terminated, either the actual expenses incurred by department of justice and the department of revenue or \$100, whichever is greater, will be retained by the department. The balance of the application fee will be refunded.

AUTH: Sec. 16-1-303, MCA


IMP: Sec. 16-4-420, MCA

4. The department makes this correction based on further review of the legislative record and intent. That review supports the position that the license fee was intended to be a one time only charge and was not intended to require an additional license fee if there is a transfer of location or ownership.

5. All other rule changes adopted within the notice

published on November 19, 1998 regarding the lottery process for liquor licensing remain the same.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State November 23, 1998

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

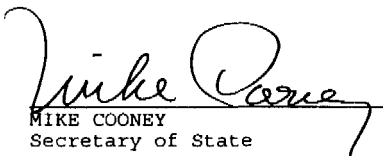
In the matter of the	)	NOTICE OF AMENDMENT OF
proposed amendment of ARM	)	ARM 1.2.519 regarding
1.2.519 regarding Basic	)	Basic Format Instructions
Format Instructions for the	)	for the Montana
Montana Administrative	)	Administrative Register
Register		

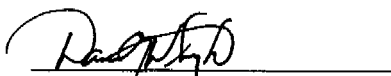
TO: All Interested Persons.

1. On October 22, 1998, the Secretary of State published a notice of proposed amendment of ARM 1.2.519 regarding Basic Format Instructions for the Montana Administrative Register at page 2856 of the Montana Administrative Register, Issue Number 20.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.


MIKE COONEY
Secretary of State


DANIEL J. WHYTE
Rule Reviewer

Dated this 23rd day of November 1998.

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 September 30, 1998. This table includes those rules adopted during the period October 1, 1998 through December 31, 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 September 30, 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 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.

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