

Reserve
KFM
9035
1973
.A245a

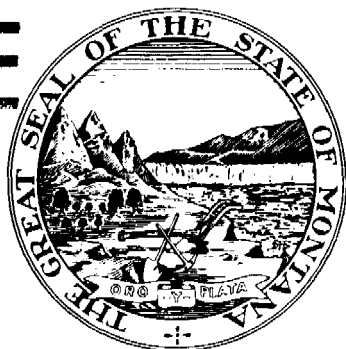
RESERVE

MONTANA ADMINISTRATIVE REGISTER

STATE LAW LIBRARY
AUG 16 1999
OF MONTANA

**DOES NOT
CIRCULATE**

1999 ISSUE NO. 15
AUGUST 12, 1999
PAGES 1717-1781



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

STATE AUDITOR, Title 6

6-118 Notice of Public Hearing on Proposed Amendment - Determination of Reasonableness of Benefits in Relation to Premium Charged in Credit Disability and Credit Life Insurance. 1717-1718

COMMERCE, Department of, Title 8

8-2-6 Notice of Public Hearing on Proposed Amendment - Renewal Dates. 1719-1720

8-40-45 (Board of Pharmacy) Notice of Proposed Amendment - Annual Renewal - Renewal Notice and Application - Non-Compliance - Application for Registration or Re-registration - Wholesale Drug Distributor Licensing. No Public Hearing Contemplated. 1721-1723

EDUCATION, Title 10

10-100-5 (State Library Commission) Notice of Public Hearing on Proposed Repeal and Adoption - Library Standards. 1724-1731

Page Number

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-252 (Fish, Wildlife and Parks Commission)
Notice of Public Hearing on Proposed Amendment -
Limiting the Motor-propelled Water Craft to No-wake
Speed from Porcupine Bridge to the Mouth of the
Swan River. 1732-1733

JUSTICE, Department of, Title 23

23-14-116 Notice of Proposed Amendment - Adding
Two Members to the Peace Officers Standards and
Training Advisory Council. No Public Hearing
Contemplated. 1734-1738

23-16-117 Notice of Proposed Amendment -
Responsible Party for Video Gambling Machine Taxes
and Record Keeping. No Public Hearing
Contemplated. 1739-1743

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-129 Notice of Proposed Amendment - Inpatient
Hospital Services. No Public Hearing Contemplated. 1744-1748

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-148 Notice of Public Hearing on Proposed
Adoption - Unauthorized Product or Service Charges
on Telephone Bills. 1749-1753

38-2-149 Notice of Public Hearing on Proposed
Adoption and Amendment - Operator Service
Providers. 1754-1760

REVENUE, Department of, Title 42

42-2-641 Notice of Negotiated Rulemaking -
Universal System Benefits Programs. 1761-1763

RULE SECTION

AGRICULTURE, Department of, Title 4

AMD (Montana Agriculture Development Council)
Agricultural Marketing Development Program;
Purpose, Goals and Criteria. 1764

COMMERCE, Department of, Title 8

AMD (Board of Hearing Aid Dispensers) Fees. 1765

AMD (Board of Medical Examiners) Fee Schedule -
Fees. 1766

Page Number

PUBLIC SERVICE REGULATION, Department of, Title 38

Corrected Notice of Adoption - Slamming -
Solicitation and Imposition of Preferred
Carrier Freezes. 1767

SECRETARY OF STATE, Title 44

AMD Retention of Records Stored on Digital Media. 1768-1770

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1771-1772

How to Use ARM and MAR. 1773

Accumulative Table. 1774-1781

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rule 6.6.1110	)	ON PROPOSED AMENDMENT
pertaining to determination)	
of reasonableness of benefits)	
in relation to premium)	
charged in credit disability)	
and credit life insurance.)	

TO: All Concerned Persons

1. On September 27, 1999, at 10:00 a.m., a public hearing will be held in the conference room of the State Auditor's Office in the Mitchell Building, at 126 N. Sanders, Room 136, at Helena, Montana, to consider the proposed amendment of rule 6.6.1110.

2. The proposed amendments provide as follows (new text is underlined; text to be deleted is interlined):

6.6.1110 DETERMINATION OF REASONABLENESS OF BENEFITS IN RELATION TO PREMIUM CHARGED (1) through (1)(b) will remain the same.

(2) Creditor, agent and general agent compensation must not be more than a combined total of 37.5% of the net written prima facie premium. This compensation must be apportioned with not more than 30% to the producing creditor or agent and not more than 7.5% to the producing general agent. These compensation limits include any compensation received from creditor, agent or general agent owned reinsurance arrangements.

(2)(a) through (3)(b) will remain the same.

AUTH: Sec. 33-21-111, MCA

IMP: Sec. 33-21-205, MCA

3. This rule is being amended because the current language does not indicate how the 37.5% may be apportioned between the creditor or agent and the general agent. This agency has received requests to clarify this situation, as well as to specify how compensation received from reinsurance arrangements is to be treated.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Frank Cote at the State Auditor's Office, P.O. Box 4009, Helena, Montana, 59604, and must be received no later than September 30, 1999.

5. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to

participate in this public hearing. If you require an accommodation, contact the office no later than 5:00 p.m., September 20, 1999, to advise us of the nature of the accommodation needed. Please contact Darla Sautter at 126 North Sanders, Mitchell Building, Room 270, Helena, MT, 59620; telephone (406) 444-2726; FAX (406) 444-3497; Montana Relay 1-800-332-6148; TDD (406) 444-3246; facsimile (406) 444-3497. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Darla Sautter.

6. Peter Funk, attorney, has been designated to preside over and conduct the hearing.

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 requests 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.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

MARK O'KEEFE, State Auditor
And Commissioner of Insurance

By: 

Frank G. Cote'
Deputy Insurance Commissioner

By: 

Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State August 2, 1999.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

TO: All Concerned Persons:

1. On September 7, 1999, at 9:00 a.m., a public hearing will be held in the small conference room of the Division of Professional and Occupational Licensing, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of 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 (1)(c) will remain the same.

(d) March 31 is the renewal date for licenses and other authorities granted by the boards of barbers, medical examiners and real estate appraisers and is the renewal date for ~~pharmacy wholesalers~~ pharmacists (regulated by the board of pharmacy);

(e) through (h) will remain the same.

(i) June 30 is the renewal date for licenses and other authorities granted by the boards of hearing aid dispensers, landscape architects, professional engineers and land surveyors (every even-numbered year), ~~pharmacies and pharmacists~~ (regulated by the board of pharmacy) and sanitarians;

(j) through (o) will remain the same.

(p) November 30 is the renewal date for pharmacy technicians, wholesale drug distributors, mail order pharmacies, certified pharmacies and dangerous drug act (regulated by the board of pharmacy);

(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, electrology and esthetic schools and cosmetologists, manicurists, electrologists, estheticians and instructors (regulated by the board of cosmetologists)."

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

REASON: The Board of Pharmacy currently renews six different licenses at five different times during the year. Combining four of the different licensure categories under one renewal date will streamline the administrative process of renewal.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on August 23, 1999, to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1698; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Pharmacy, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., September 11, 1999.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Pharmacy maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Board of Pharmacy. Such written request may be mailed or delivered to the Board, faxed to the office at (406) 444-1667 or may be made by completing a request form at any rules hearing held by the Board of Pharmacy.

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

DIVISION OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1999.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.40.608 ANNUAL RENEWAL,
to renewals, non-compliance,) 8.40.1004 RENEWAL NOTICE AND
application for registration) APPLICATION, 8.40.1005 NON-
and wholesale drug distributor) COMPLIANCE, 8.40.1207
licensing) APPLICATION FOR REGISTRATION
) OR RE-REGISTRATION AND
) 8.40.1401 WHOLESALE DRUG
) DISTRIBUTOR LICENSING

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons:

1. On September 11, 1999, the Board of Pharmacy proposes to amend the above-stated rules.

2. The Board of Pharmacy will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy, no later than 5:00 p.m., on August 23, 1999, to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1698; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

"8.40.608 ANNUAL RENEWAL (1) All pharmacies must renew their license annually with the board, in accordance with ARM 8.2.208. ~~Pharmacy licenses expire June 30th each year.~~ No pharmacy is allowed to operate without a currently renewed license."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-321, MCA

"8.40.1004 RENEWAL NOTICE AND APPLICATION (1) The board will mail an appropriate annual renewal notice to all licensed Montana pharmacists prior to June 1 of each year 30 days prior to the renewal date set forth in ARM 8.2.208.

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

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

"8.40.1005 NON-COMPLIANCE (1) Failure to meet the annual license renewal requirements by June 30 of any year set forth in ARM 8.2.208 will be cause for the license to lapse. Reinstatement may be considered as provided in 37-7-303, MCA, as amended. For reinstatement after June 30 March 31 and before July April 1 of the next year, the applicant shall have completed the continuing education requirements and certify that fact to the board as stated in ARM 8.40.1004."

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

"8.40.1207 APPLICATION FOR REGISTRATION OR RE-REGISTRATION (1) and (2) will remain the same.

~~(3) The registration shall expire on December 31 of the year for which the registration was issued.~~

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

Auth: Sec. 50-32-103, MCA; IMP, Sec. 50-32-301, MCA

"8.40.1401 WHOLESALE DRUG DISTRIBUTOR LICENSING

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

~~(3) The wholesale drug distributor license shall expire on March 31 of each year, and shall be renewed annually upon the filing of an application on a form prescribed by the board, together with the appropriate renewal fee.~~

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

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

Auth: Sec. 37-7-201, 37-7-610, MCA; IMP, Sec. 37-7-603, 37-7-604, 37-7-605, 37-7-606, MCA

REASON: The Division of Professional and Occupational Licensing is publishing amendments, in this Montana Administrative Register, to the renewal dates in ARM 8.2.208 under MAR Notice No. 8-2-6. These rules are being amended for the same reason and to comply with that notice.

4. Concerned persons may submit their data, views or arguments concerning the proposed action(s) in writing to the Board of Pharmacy, 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., September 11, 1999.

5. If persons who are directly affected by the proposed action(s) wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Pharmacy, 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., September 11, 1999.

6. If the Board receives requests for a public hearing on the proposed action(s) from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action(s), from the appropriate administrative rule review 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 285 based on the 2850 licensees in Montana.

7. The Board of Pharmacy maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name

added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Board of Pharmacy. Such written request may be mailed or delivered to the Board of Pharmacy, faxed to the office at (406) 444-1667 or may be made by completing a request form at any rules hearing held by the Board of Pharmacy.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

BOARD OF PHARAMCY
JOHN POUSH, R.Ph., CHAIRMAN

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

BY: *Annie M Bartos*
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1999.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
repeal and adoption of rules)
relating to the library)
standards)

TO: All Interested Persons:

1. On September 10, 1999, at 9:00 a.m., a public hearing will be held in the conference room of the Montana State Library, 1515 E. 6th Avenue, at Helena, Montana, to consider the adoption of new rules I - VIII and repeal of ARM 10.102.101, 10.102.1101 through 10.102.1113, 10.102.1116 through 10.102.1122, 10.102.1126, 10.102.1129, 10.102.1130, 10.102.1133 through 10.102.1138 and 10.102.1140 through 10.102.1149 relating to library standards.

2. The State Library Commission is proposing to repeal the following rules:

10.102.101 STATEMENT OF PHILOSOPHY AND OBJECTIVES
located at page 10-1215 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1101 STANDARDS FOR PUBLIC LIBRARIES
located at page 10-1219 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1102 STRUCTURE AND GOVERNMENT OF LIBRARIES
GOVERNANCE, FUNDING AND ADMINISTRATION
located at page 10-1219 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1103 LIBRARY BOARD
located at pages 10-1219 and 10-1220 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1104 BOARD MEETINGS
located at page 10-1220 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1105 BYLAWS
located at page 10-1220 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1106 POLICIES
located at page 10-1220 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1107 PLANNING

located at page 10-1220 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1108 ANNUAL REPORTS

located at pages 10-1220 and 10-1221 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1109 BUDGET

located at page 10-1221 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1110 LEGISLATION

located at page 10-1221 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1111 FEDERATIONS

located at page 10-1221 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1112 MULTITYPE LIBRARY COOPERATION

located at page 10-1221 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1113 SERVICES

located at page 10-1221 and 10-1222 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1116 HOURS OF SERVICE

located at page 10-1222 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1117 REGULATIONS

located at page 10-1222 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1118 REFERENCE SERVICE

located at page 10-1222 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1119 PROGRAMMING

located at pages 10-1222 and 10-1223 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1120 LOCAL HISTORY

located at page 10-1223 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1121 RESOURCES

located at page 10-1223 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1122 SELECTION CRITERIA

located at page 10-1223 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1126 COLLECTION ORGANIZATION

located at page 10-1224 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1129 EPHEMERAL PRINTED MATERIALS

located at page 10-1224 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1130 FILMS

located at page 10-1225 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1133 ACCESS TO MATERIALS located at page 10-1225
of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1134 PERSONNEL

located at page 10-1225 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1135 POSITION CLASSIFICATION

located at pages 10-1225 and 10-1226 of the Administrative
Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1136 WRITTEN PERSONNEL POLICIES

located at page 10-1226 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1137 SALARIES

located at page 10-1226 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1138 STAFFING REQUIREMENTS

located at page 10-1226 of the Administrative Rules of Montana
Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1140 IN-SERVICE TRAINING AND PROFESSIONAL
GUIDANCE located at page 10-1227 of the Administrative Rules
of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1141 PHYSICAL FACILITIES

located at pages 10-1227 and 10-1228 of the Administrative
Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1142 PLANNING FOR BUILDING

located at page 10-1228 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1143 BUILDING FLEXIBILITY

located at page 10-1228 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1144 BUILDING SITE

located at pages 10-1228 and 10-1229 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1145 BUILDING FLOOR LAYOUT

located at page 10-1229 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1146 LIBRARY FURNISHINGS

located at page 10-1229 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1147 LIBRARY LIGHTING

located at page 10-1229 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1148 BOOKMOBILE PARKING

located at pages 10-1229 and 10-1230 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

10.102.1149 LIBRARY COMMUNICATION FACILITIES

located at page 10-1230 of the Administrative Rules of Montana

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

3. The following new rules will read as follows:

RULE 1 PUBLIC LIBRARY STANDARDS (1) Public libraries receiving state payments must meet the following standards by July 2001 and each year following:

(a) the library is legally established under Montana's laws according to Title 7, and 22-1-301 through 22-1-317, MCA;

(b) the board conforms to all applicable state, local, and federal laws, rules, and regulations;

(c) libraries that serve more than 25,000 employ a library director with a graduate degree in library or information science or its equivalent;

(i) the commission will determine equivalency by:

(A) examining the applicant to determine if she or he possesses the knowledge and abilities equivalent to those of a library school graduate and is qualified to carry on library work ably and efficiently; or

(B) determining that the applicant holds a graduate degree in another related curriculum area.

(d) libraries that serve less than 25,000 employ a library director who is, or will be within three years of hire, certified by the state library or employ a library

director who has a graduate degree in library or information science or its equivalent;

(e) paid staff person is present during 90% of all open hours;

(f) the library submits the Montana Public Library Annual Statistical Report to the Montana state library; [See Rule VI]

(g) the library is open during the week at least the following minimum hours:

Population	Minimum hours open	Desirable
Less than 3,500	15	25-40
More than 3,500	30	40-50
More than 10,000	40	50-60
More than 25,000	50	60+

(i) many libraries exceed this minimum because the community, board, and director recognize that the number of hours of public service leads to great use by the public,

(ii) a library with more than one service outlet may use the total non-overlapping hours of all the library's service outlets to meet the minimum weekly hours open requirement,

(iii) if a library has summer hours that differ from its winter hours, the hours for the majority of the calendar year should be the hours used for comparison with the minimum hour table.

(h) the library has a telephone and answers telephone inquiries.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330 and 22-1-331, MCA

RULE II CERTIFICATION STATEMENT (1) Montana state library will send a certification statement to public libraries.

(a) This statement will provide for a status report regarding each standard and will require the signature of the library director and the library board chair.

(b) The signed and dated certification statement will be returned to the state library by August 25th of each year.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330 and 22-1-331, MCA

RULE III DEFERRALS (1) Any library may request a waiver from the state librarian in writing by August 25th of each year.

(a) The state librarian may grant a waiver of any of the standards in [Rule I] if:

(i) the library certifies that application of these standards would cause a hardship; and

(ii) provides a compliance plan by which the library

will meet the standard(s) within three years.

(b) Any library that employs a director without a graduate degree in library or information science or its equivalent as of July 1, 2001 is exempt from [Rule I(1)(c)]. This exemption expires when the director is no longer employed.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

RULE IV FINAL ARBITER (1) For any questions arising because of [Rules I-VIII], the final arbiter is the state library commission.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

RULE V APPEALS PROCESS (1) The following outlines the process that libraries need to follow if they are denied a waiver of one or more of the standards from above.

(a) Any public library shall have the right to appeal. The request for the appeal shall be made to the State Librarian at P.O. Box 201800, Helena, MT 59620-1800 (406-444-3115) within 12 working days of the receipt of the letter denying payment.

(b) Upon receiving a notice of appeal, the state librarian, acting on behalf of the commission, shall convene an independent review committee. The committee shall consist of:

(i) a member named by the appellant who is not from the appellant's library or governing authority;

(ii) a member chosen by the chair of the state library commission, who is not a commissioner or a state library staff member; and

(iii) a member from the library community who is not connected to the appellant, named by the president-elect of the Montana library association.

(c) The independent review committee shall hear the appeal based on procedures, which it shall determine.

(i) both the appellant and the state librarian shall have equal opportunity to present testimony, either in writing or orally, and to respond to points raised by the other party.

(ii) the independent review committee shall make its findings and recommendations to the Montana state library commission, which shall take final action on the appeal.

(d) The commission can affirm, deny, or modify the recommendations of the independent review committee.

(e) The state librarian, upon final determination of the appeal by the commission, shall notify the appellant in writing. This notice shall conclude the appeals process.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-3-330 and 22-1-331, MCA

RULE VI ANNUAL STATISTICAL REPORT (1) The commission, in setting up minimum standards of free public library service

and in certifying such libraries for state monies shall require the filing of an annual statistical report.

(a) This annual report may include such types of information as the Montana state library commissioners shall deem necessary.

(b) In no instance shall the commission require new cumulations of statistical data without providing to each affected public library 60 days prior to the beginning of the period of which information will be collected, notice of the commission's intention to require such cumulations as part of the annual report.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330 and 22-1-331, MCA

RULE VII EFFECTIVE DATE (1) In order to give all public libraries time to meet these standards, [Rules I-VII] will become effective on July 1, 2001.

(2) The effective date for certification requirement of [Rule I(1)(d)], is July 1, 2002.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

RULE VIII ADDITIONAL RECOMMENDED LIBRARY STANDARDS

(1) The Montana state library commission has adopted additional public library standards that are not presented in these rules because they are not mandatory standards.

(2) The commission strongly recommends that all public libraries follow as many of the recommended library standards as possible.

(3) A complete set of voluntary public library standards has been sent to all public libraries in a document labeled: Montana Public Library Standards, August 1999.

(4) Additionally, the full set of standards can be found on the state library's web page at:

<http://msl.state.mt.us/admin/libstandards.htm>.

Auth: Sec. 22-1-103, MCA; IMP, Sec. 22-1-103, MCA

4. The repeal and adoption are proposed for the following reasons:

(a) The standards are the result of a cooperative project between the Montana State Library (MSL) and the Montana Library Association's (MLA) Public Library Division.

(b) Together, MSL and MLA reviewed the 1987 edition of the standards and identified concerns and issues to be addressed in an updated edition.

(c) The joint committee debated each issue through in-person, e-mail, and telephone conversations.

(d) The Montana State Library Commission approved the Montana Public Library Standards in January 1999.

(e) The commission, MSL staff, and the Public Library Division hope that Library staff and trustees find these standards helpful as they plan for the improvement of local

library services.

- (f) In particular, we intend that these standards:
 - (i) provide a tool to assess the quality and effectiveness of the library;
 - (ii) help each library determine areas to improve;
 - (iii) aid each library in taking an active role to gain maximum community support;
 - (iv) provide a basis for collecting useful statistics for planning and evaluation; and
 - (v) provide for additional accountability in the use of state aid monies in Montana libraries.

5. Concerned parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:


Karen Strege
Montana State Library
1515 East 6th Avenue
Helena, Montana 59620-1800

no later than September 17, 1999.

6. Karen Strege, State Librarian, has been designated to preside over and conduct the hearing.

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

8. The state library maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Public Library Grants, State Aid to Libraries, Federation Areas, State Library Services, Scholarship Program, or Depository Procedures for State Documents. Such written request may be mailed or delivered to Karen Strege, Montana State Library, 1515 East 6th Avenue, Helena, Montana 59620-1800, faxed to the State Library at (406) 444-5612, or may be made by completing a request form at any rules hearing held by the state library.


KAREN STREGE
State Librarian and Rule Reviewer

Certified to Secretary of State August 2, 1999.

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

In the matter of the amendment)	
of ARM 12.6.901 limiting the)	NOTICE OF
motor-propelled water craft)	PUBLIC HEARING
to no-wake speed from)	ON PROPOSED
Porcupine Bridge to the mouth)	AMENDMENT
of the Swan River.)	

To: All Concerned Persons

1. On September 1, 1999, the Montana Fish, Wildlife and Parks Commission (commission) will hold a public hearing from 7:00 p.m. to 9:00 p.m. at the Swan River Community Center located on the corner of Highway 83 and Swan Road, Swan River, Montana, regarding the amendment of ARM 12.6.901.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on August 23, 1999, to advise us of the nature of the accommodation that you need. Please contact Mike Jurczak, Department of Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT 59901; (406) 752-5501; FAX (406) 257-0349.

3. The proposed amendment provides as follows (new matter underlined, deleted matter interlined):

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish, wildlife and parks commission.

(a) and (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Bighorn through Hill County remain the same.

Lake County:

(A) on the Swan River; from the mouth of Swan Lake upstream to Porcupine Bridge approximately 4½ miles;

Lewis & Clark County through (2) remain the same.

AUTH: 23-1-106, 87-1-303, MCA; IMP: 23-1-106, 87-1-303, MCA

4. The increased amount of boating traffic that has accrued in the past few years in this area creates a conflict with wildlife because the Swan River is bordered by the National Wildlife Refuge. The Swan River Refuge and adjacent The Nature

Conservancy Oxbow Preserve were purchased to and are managed for the protection of fish, wildlife, and natural habitats. The section of the Swan River protected by this rule supports high densities of beaver, river otter, migratory and resident waterfowl, and shorebirds.

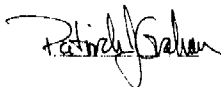
Fast moving water craft in such a productive area interrupts feeding, increases wildlife energy expenditures, and displaces wildlife from the river area. In addition, large wakes by vessels traveling at high speeds cause an increase in torpidity and bank and bed disturbances which directly decrease the quality of riparian and aquatic foraging habitats.

5. Concerned persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Mike Jurczak, Department of Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, Montana 59901, no later than September 9, 1999.

6. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701.

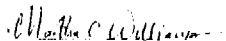
7. Martha Williams or another hearing examiner designated by the department will preside over and conduct the hearing.

By:



PATRICK J. GRAHAM
Commission Secretary

By:



MARTHA WILLIAMS
Rule Reviewer

Certified to the Secretary of State August 2, 1999.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 23.14.401,	)	AMENDMENT
adding two members to the)	
Peace Officers Standards and	)	NO PUBLIC HEARING
Training Advisory Council	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 1, 1999, the Department of Justice proposes to amend ARM 23.14.401(3), which lists and describes the affiliations of the members of the Peace Officers Standards and Training Advisory Council. The proposed amendment adds two additional members to the Council. One of the new members must be recommended by the director of the Department of Corrections. The other new member must be a juvenile detention officer or an administrator of a juvenile detention center.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on September 1, 1999, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-5876; FAX (406) 444-3546.

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

23.14.401 ADMINISTRATION OF PEACE OFFICERS STANDARDS AND TRAINING (1) and (2) remain the same.

(3) There is hereby created in the board of crime control the peace officers standards and training advisory council to consist of no more than ~~15~~ 17 members appointed by the governor which shall advise the board of crime control concerning the administration and purposes of this regulation. Members of this council shall include but not be limited to, the following:

(a) through (l) remain the same.

(m) One member to be an incumbent county attorney recommended by the county attorneys association; ~~and~~

(n) One member to be a 9-1-1 coordinator or public safety communications officer;

(o) One member to be recommended by the director of the department of corrections; and

(p) One member to be a juvenile detention officer or administrator of a juvenile detention center.

(4) remains the same.

(5) Any member who shall cease to hold his or her official office shall, immediately upon the termination of this holding such office, cease to be a member of the council and a successor shall be appointed for the unexpired term in accordance with the provisions of section [3] of this regulation. Such appointment shall be made before the next scheduled meeting of the council.

(6) For the purposes of this regulation, the terms "law enforcement officer" and "peace officer" shall mean the undersheriffs and deputy sheriffs of each county, the members of the police force of every organized city or town, the marshals of every town, state highway patrolmen patrol officers, state fish and game wardens, campus security police of the state university system and the airport police organized by airport commissions or boards who are given general police powers to enforce the state laws and city ordinances, and are salaried, full-time or part-time employees of their law enforcement agencies. The terms "detention officer" and "detention center administrator" mean those defined in 44-4-302, MCA.

(7) The council shall meet at least four times each year. At the first meeting of the council, it shall elect a chairman chairperson. Special meetings may be called by the chairman chairperson, or upon the written request of a majority of the members of the council. The council may establish its own requirements as to quorum, and its own procedures with respect to the conduct of its meetings and other affairs -- provided that all recommendations by the council to the board of crime control pursuant to section [11] of this regulation shall require the affirmative vote of a majority of the members of the council.

(8) and (9) remain the same.

(10) No member of the council shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment to the council, notwithstanding any general, special, or local law, ordinance or city charter to the contrary.

(11) remains the same.

(12) The board of crime control shall appoint an executive director and such additional staff as may be needed to implement the council's recommendations. He The executive director shall perform such duties as may be assigned ~~to him~~ by the board. He The executive director shall receive compensation, as fixed by the board, and reimbursement for expenses within the amounts available by appropriation.

(13) through (15) remain the same.

(a) To approve law enforcement and detention officer training schools administered by state, county, municipal corporations, public school districts, vocational-technical school districts, private institutions and law enforcement ~~schools~~;

(b) through (g) remain the same.

(h) To perform such other acts as may be necessary or appropriate to carry out ~~his~~ the powers and duties ~~as~~ set forth in this regulation; and

(i) and (16) remain the same.

(17) No person shall, after the effective date of this regulation, receive an original appointment on a permanent basis as a law enforcement or a detention officer as defined in this regulation, unless such person has met the minimum employment standards established by the board and has previously been awarded a certificate by the board attesting to the person's ~~his~~ satisfactory completion of an approved state, county, or municipal police or detention officer basic training program; and every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a law enforcement or a detention officer as defined in this regulation, shall forfeit ~~his~~ that person's position as such unless he or she previously has satisfactorily completed, or within the time prescribed by regulations promulgated by the board of crime control, satisfactorily completes an approved basic training program at a law enforcement or a detention officer school and is awarded a certificate by the board attesting thereto and has met the minimum employment standards established by the board.

(18) through (21) remain the same.

AUTH: 44-4-301, MCA

IMP: 44-4-301, 7-32-303, MCA

The 56th Legislature for the State of Montana added new duties to those already assigned to the Peace Officers and Standards Training Advisory Council. The Council became responsible on April 26, 1999, for the evaluation of training programs offered by or on behalf of juvenile detention centers. The Council will become responsible on October 1, 1999, for the establishment of minimum standards for the employment and training of corrections officers. Thus, in order to ensure fair consideration and adequate representation in these areas, it is the opinion of the Department of Justice that the Council should include representatives from the juvenile detention area and from corrections officers.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Jim Oberhofer, Executive Director of POST, Department of Justice, 303 North Roberts, P.O. Box 201408, Helena, MT 59620-1408. Any comments must be received no later than September 10, 1999.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Jim Oberhofer, Executive Director of POST, Department of Justice, 303 North Roberts, P.O. Box 201408, Helena, MT 59620-1408. A written request for hearing

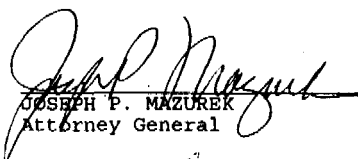
must be received no later than September 10, 1999.

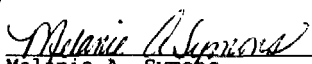
6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not 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 79 persons based on the approximately 90 juvenile detention officers and 700 corrections officers in the state of Montana.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Melanie Symons, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Melanie Symons, or may be made by completing a request form at any rules hearing held by the Department of Justice.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

By:


JOSEPH P. MAZUREK
Attorney General


Melanie A. Symons
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State August 2, 1999.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 23.16.1802,	)	AMENDMENT
23.16.1826, and 23.16.1827)	
Responsible Party for Video	)	NO PUBLIC HEARING
Gambling Machine Taxes and	)	CONTEMPLATED
Record Keeping)	

TO: All Concerned Persons

1. On September 24, 1999, the Department of Justice proposes to amend ARM 23.16.1802, 23.16.1826 and 23.16.1827. ARM 23.16.1802 defines the term "designated representative" of a machine owner for purposes of filing tax reporting documents and limits the authority of that individual. ARM 23.16.1826 sets forth quarterly tax reporting requirements of machine owners who own their own machines, or share ownership or revenue with another; describes procedure for reporting revenue losses from theft; and establishes penalties for filing taxes after the due date. ARM 23.16.1827 establishes machine owners' record keeping requirements.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 25, 1999, to advise us of the nature of the accommodation that you need. Please contact Kathy Fisher, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT, 59620-1424; (406) 444-1973; FAX (406) 444-9157.

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

23.16.1802 DEFINITIONS (1) and (2) remain the same.

(3) "Designated representative" means a person designated on forms provided by the department to be a representative of the ~~licensee of a licensed~~ machine owner. This designation is made for the purposes of filing quarterly reporting documents, receiving of forms, etc. It does not include applications for a permit or ~~necessarily~~ relieve the permit holder ~~or machine owner of responsibility~~ responsibilities for ~~incorrect information being provided to the department maintaining accurate records, filing reports in a timely manner, or paying machine taxes due.~~

(4) through (17) remain the same.

AUTH: 23-5-115(2), MCA
IMP: 23-5-610, MCA

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) Operator Machine owner quarterly reporting requirements are as follows:

(a) For each machine the operator machine owner or his designated representative must file with the department a quarterly tax report signed by the operator machine owner or his designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes and the winning percentage of the machine as required by the act. The following requirements apply:

(1)(i) through (iii) remain the same.

(2) If ~~an operator a machine owner leases, rents, or~~ shares machine ownership, or a machine's revenues with another person or business entity, the operator machine owner or his designated representative must provide upon the same quarterly tax form prescribed by the department in (1) above, information for each machine as follows:

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

(4) For the purposes of this rule the term theft includes the physical break-in or entry into the video gambling machine, or manipulation of the machine by external means, resulting in the accumulation of credits available for redemption without the insertion of money. If the gross income reported for a machine has been reduced to reflect a loss resulting from a theft from the machine, the operator machine owner or his designated representative shall submit the following information together with the quarterly report:

(4)(a) remains the same.

(b) a letter or other document signed by the ~~operator's~~ machine owner's business insurance agent indicating the amount paid or to be paid, if any, by the insurer to cover the loss resulting from the theft; and

(4)(c) and (d) remain the same.

(5) If the operator machine owner or his designated representative fails to file the quarterly tax report or remit the required gross machine income tax when due, the following penalties will be assessed:

(a) through (d) remain the same.

(6) The imposition of these penalties does not preclude the department from taking further action against the ~~operator or route operator~~ operator machine owner responsible for preparing the report, including, but not limited to, temporary cease and desist orders under 23-5-136, MCA.

AUTH: 23-5-115(2), MCA

IMP: 23-5-610, MCA

23.16.1827 RECORD KEEPING REQUIREMENTS (1) Machine operation records must be maintained and made available for inspection by the department upon request. The records must be maintained by the ~~operator or route operator if the responsibility for maintaining records is transferred under a~~

~~location agreement~~ machine owner. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law.

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

(e) a three-way reconciliation of the total actual cash count required in (2)(d), and the total cash activity reflected by both the electronic and mechanical meter readings required in (2)(b) and (c). The three total, actual cash, electronic readings, and mechanical readings must be calculated and reconciled for the same time period and must be completed at least once every two weeks. Any material difference must be documented and the reason for the difference substantiated. A material difference means a difference in the amount of cash counted and cash reflected by the meters that is the lesser than 5% of the total monies placed in the machines during the reconciliation period or \$100. If the difference is due to gambling device malfunction(s), the device(s) must be taken out of play, repaired and service form(s) submitted to the department, before the machine is returned to play. Following a material difference, the ~~operator/route operator~~ machine owner must maintain documentation of the cash count required by (2)(d), by individual machine, until notification is submitted to the department to substantiate that the malfunction has been corrected.

(3) The ~~licensee's~~ machine owner's records required by this rule must be maintained in the state of Montana by the ~~licensee~~ machine owner or his representative for a minimum of 12 full quarters from the previous quarterly report due date.

(4) If the ~~operator's~~ machine owner does not keep records as required in this rule, the department may estimate the tax by utilizing the best available method, e.g., average net daily income for a region, estimate based on historical performance, or a gross-up based on established payouts. The department is not limited to the aforementioned methods of estimating income. However, any method used must be justifiable given the factual circumstances, and is subject to administrative and judicial review.

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

AUTH: 23-5-115(2), MCA
IMP: 23-5-610, MCA

4. These rules are being amended because the legislature passed HB109, effective July 1, 1999, which changed the party responsible for gambling taxes. Prior to passage of HB109, the video gambling machine tax taxpayer was the licensed gambling operator who permitted the machines and offered them for play to the public. After the effective date of HB109, codified at 23-5-610, MCA, the gambling machine owner -- whether that is the gambling operator or another -- is considered the video gambling machine tax taxpayer and is responsible for the tax and record keeping necessary to verify the tax due.

The existing version of ARM 23.16.1802 must be amended because it refers to the gambling "licensee's" designated representative and the gambling "licensee's" tax responsibilities. Consistent with 23-5-610, MCA, the amendments to ARM 23.16.1802 update superseded references to the gambling "licensee" to refer to the gambling "machine owner." The amendments also clarify the machine owner's responsibilities for record keeping, report filing and tax paying.

The existing version of ARM 23.16.1826 must be amended because it refers to the gambling operator's quarterly reporting requirements. Consistent with 23-5-610, MCA, the amendments to ARM 23.16.1826 update superseded references to the gambling "operator" or "route operator" to refer to the gambling "machine owner."

The existing version of ARM 23.16.1827 must be amended because it refers to the gambling "operator's," "route operator's," and "licensee's" responsibility for maintaining records. Consistent with 23-5-610, MCA, the amendments to ARM 23.16.1802 update superseded references to the gambling "operator," "route operator," and "licensee" to refer to the gambling "machine owner."

5. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424. Any comments must be received no later than September 10, 1999.

6. If persons who are directly affected by the proposed amendments wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424. A written request for hearing must be received no later than September 10, 1999.

7. If the agency receives requests for a public hearing on the proposed action(s) from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action(s); from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not 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 179 persons based on the 1793 licensed operators and route operators in Montana.

8. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Melanie Symons, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Melanie Symons, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

By: Chris D. Iverson, Chief Counsel
for Joseph P. Mazurek, Attorney General
Department of Justice

Melanie Symons
Melanie Symons, Rule Reviewer

Certified to the Secretary of State August 2, 1999

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of rules 46.12.503,	)	AMENDMENT
46.12.504 and 46.12.505)	
pertaining to inpatient	)	NO PUBLIC HEARING
hospital services	)	CONTEMPLATED

TO: All Interested Persons

1. On September 11, 1999, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on August 26, 1999, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (1)(c) remain the same but are renumbered (8)(a) through (8)(c).

~~(2) Inpatient hospital services include:~~
~~(a) bed and board;~~
~~(b) nursing services and other related services;~~
~~(c) use of hospital facilities;~~
~~(d) medical social services;~~
~~(e) drugs, biologicals, supplies, appliances and equipment;~~
~~(f) other diagnostic or therapeutic items, or services provided in the hospital and not specifically excluded in ARM 46.12.502;~~

~~(g) medical or surgical services provided by interns or residents in training in hospitals with teaching programs approved by the council on medical education of the American medical association, the bureau of professional education of the American osteopathic association, the council on dental education of the American dental association or the council on podiatry education of the American podiatry association.~~

(3) remains the same but is renumbered (7).

(4) remains the same but is renumbered (15).

(5) remains the same.
(6) remains the same but is renumbered (16).
(6) "Hospital policy adjustor" means a payment to Montana hospitals paid under the DRG payment system with percentage of medicaid inpatient nursery days at or greater than 55% figured by the department from cost reports.

(7) remains the same but is renumbered (3).
(8) remains the same but is renumbered (2).
(9) remains the same but is renumbered (1).
~~(10)~~ (4) "Disproportionate share hospital" means a hospital which meets the following criteria:

(a) it has a medicaid inpatient utilization rate of at least one standard deviation above the mean medicaid inpatient utilization rate for all hospitals receiving medicaid payments in the state or a low income utilization rate exceeding ~~25%~~ 20%; and

(10) (b) through (10) (d) (ii) remain the same but are renumbered (4) (b) through (4) (d) (ii).

(11) remains the same but is renumbered (12).
(12) through (12) (b) remain the same but are renumbered (11) through (11) (b).

(13) remains the same but is renumbered (17).
(14) remains the same but is renumbered (10).
(15) remains the same but is renumbered (14).
(16) remains the same but is renumbered (9).
(17) remains the same but is renumbered (13).

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

46.12.504 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) through (2) remain the same.
(3) Inpatient hospital services include:
(a) bed and board;
(b) nursing services and other related services;
(c) use of hospital facilities;
(d) medical social services;
(e) drugs, biologicals, supplies, appliances, and equipment;

(f) other diagnostic or therapeutic items, or services provided in the hospital and not specifically excluded in ARM 46.12.502;

(g) medical or surgical services provided by interns or residents-in-training in hospitals with teaching programs approved by the council on medical education of the American medical association, the bureau of professional education of the American osteopathic association, the council on dental education of the American dental association or the council on podiatry education of the American podiatry association.

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

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA
MAR Notice No. 37-129 15-8/12/99

6-141, MCA

46.12.505 INPATIENT HOSPITAL SERVICES. REIMBURSEMENT

(1) through (16) remain the same.

(17) Providers identified as eligible for the "hospital policy adjustor" defined in ARM 46.12.503 will receive, in addition to the DRG payment, a payment amount of 5% times the hospital's prospective base rate.

AUTH: Sec. 53-6-113, MCA

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

3. The proposed amendment of these rules is intended to accomplish two actions: (1) it would change the percentage for low income utilization rate from 25% to 20% for qualifying criteria for Disproportionate Share Hospital payment; and (2) it would add a new definition and reimbursement process (referred to as a policy adjustor) for hospitals in Montana paid under the DRG system with percentage of Medicaid inpatient nursery days at or greater than 55%.

Due to the July 1, 1999 change directed by the Montana Legislature, acute care inpatient mental health services for Medicaid recipients will be paid under the DRG system defined in ARM 46.12.503 through 46.12.505. As a result, two psychiatric hospitals will now qualify for disproportionate share hospital payments and their prospective utilization will create an offset for other DRG hospitals in figuring which hospitals will qualify for disproportionate share payments. ARM 46.12.503(4) would be amended to reflect this change.

The proposed changes to ARM 46.12.503(6) would add a new definition, "Hospital policy adjustor" which would be a DRG payment to hospitals in Montana with percentage of Medicaid inpatient nursery days at or greater than 55% figured by the Department from cost reports.

Under the proposed changes to ARM 46.12.505(17), providers identified as eligible for the "hospital policy adjustor" would receive, in addition to the DRG payment, a payment amount of 5% times the hospital's prospective base rate.

The proposed amendment to change the percentage to 20% for qualifying criteria is necessary due to the legislation changing how Medicaid will pay for acute care hospital services for mental health principal diagnoses. If the Department did not lower the percentage, two Montana hospitals would not be eligible for disproportionate share payments. The proposed amendment regarding "hospital policy adjustor" is necessary because there are currently 5 rural hospitals paid under the DRG system who are struggling financially due to a high percentage of Medicaid births. If the Department had not addressed this

issue financially, further hardships would result and could lead to hospital closures and problems for Medicaid recipients who would have had difficulty accessing care.

Alternatively, the Department could have taken no action. This alternative would have resulted in additional financial hardships on the hospitals. The Department has determined the alternative to be unacceptable.

In addition to the substantive amendments, the Department used this opportunity to reorder the definitions in ARM 46.12.503. In its current form, the definitions in that rule are in random order. The proposed amendment would place the definitions in alphabetical order. The Department believes the proposed reordering of ARM 46.12.503 will make it clearer and easier to use.

4. The proposed rule changes will be applied retroactive to July 1, 1999. The proposed changes provide a benefit which the Department intended to extend to the affected hospitals as of July 1, 1999, however, due to staff limitations, the Department was unable to file the notice sooner. The proposed changes do not have a negative impact to those parties affected by the changes. In addition, the proposed changes were discussed with the Montana Hospital Association, which represents the subject facilities, and the association supports the proposed changes.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 9, 1999. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 9, 1999.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing

will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 based on 500 facilities affected by rules covering inpatient hospital services.

Dawn Silva
Rule Reviewer

Laurie Flanagan
Director, Public Health and
Human Services

Certified to the Secretary of State August 2, 1999.

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

In the Matter of the Proposed	)	NOTICE OF PUBLIC HEARING
Adoption of Rules Pertaining	)	ON THE ADOPTION OF NEW
to Unauthorized Product or	)	RULES I THROUGH V
Service Charges on Telephone Bills)	

TO: All Concerned Persons

1. On Thursday, September 9, 1999, at 2:00 p.m., in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to unauthorized product or service charges on telephone bills. Anyone needing accommodations for physical, hearing, or sight impairment in order to attend and participate in the hearing should contact the PSC Secretary at (406) 444-6199 at least one week prior to hearing.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The rules proposed for adoption provide as follows:

RULE I. CUSTOMER AUTHORIZATION REQUIRED PRIOR TO PLACEMENT OF CHARGES ON CUSTOMERS' TELEPHONE BILL (1) A telecommunications carrier or other entity that is neither the customer's local exchange carrier nor presubscribed choice of interexchange carrier may not initiate the placement on a customer's telecommunications bill of charges for services or products except:

(a) When the telecommunications provider or other entity initiating the placement of charges has obtained the customer's written authorization in a form that meets the letter of agency form and content requirements in [Rule II];

(b) When the telecommunications provider or other entity initiating the placement of charges has obtained the customer's electronic authorization to submit the order for the product or service that confirms the information described in the letter of agency form and content in [Rule II]. Carriers or other entities electing to confirm customer authorizations electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the authorization for services or products, including automatically recording the originating automatic number identification; or

(c) When a qualified and independent third party operating in a location physically separate from the carrier's or other entity's telemarketing representative has obtained a customer's

verbal authorization for the product or service, providing the third party verification includes:

(i) A statement that the purpose of the call is to verify the customer's intent to order the product or service. The product or service and all charges applicable to the product or service must be clearly identified to the customer;

(ii) Confirmation that the person whose authorization for a product or service is being verified is the subscriber on the billed telecommunications account or a person authorized by the subscriber to make decisions regarding the billed telephone account on behalf of the subscriber;

(iii) Verification data unique to the customer (e.g., the customer's date of birth or social security number); and

(iv) The name and toll free telephone number of the provider of the requested product or service.

(2) The independent third party:

(a) may not be owned, managed, controlled, or directed by the carrier or other entity or their marketing agent;

(b) may not have any financial incentive to confirm product or service orders for the carrier, other entity, or their marketing agent; and

(c) must operate in a location physically separate from the carrier, other entity or their marketing agent.

(3) Any letter of agency, electronic authorization or verbal authorization verified by an independent third party that does not conform with this rule is invalid. Documentation of valid verbal authorization must demonstrate compliance with each element required by (1) (c) above.

(4) The submitting carrier or other entity shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(5) Where a telecommunications carrier or other entity is selling more than one type of product or service, that carrier or other entity must obtain separate authorization from the subscriber for each product or service ordered, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this rule.

AUTH: 69-3-1304, MCA

IMP: 69-3-1301 and 69-3-1303, MCA

RULE II. LETTER OF AGENCY FORM AND CONTENT (1) A telecommunications carrier or other entity initiating a product or service charge to be placed on a customer's telecommunications bill shall obtain any necessary written authorization from a subscriber by using a letter of agency as specified in this rule. Any letter of agency that does not conform with this rule is invalid.

(2) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in (5) of this rule, the sole purpose of which is to authorize a charge to be placed on the customer's telecommunications bill for a product or service. The letter of agency must be signed and dated by the subscriber to the telecommunications account being authorized for the billing.

(3) The letter of agency shall not be combined on the same document with inducements of any kind.

(4) Notwithstanding (2) and (3) of this rule, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in (5) of this rule and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is ordering a product or service and, by signing the check, is authorizing the billing for product or service on his telephone bill. The letter of agency language also shall be placed near the signature line on the back of the check.

(5) At a minimum, the letter of agency 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 subscriber's billing name and address and the telephone number on which the charge for the product or service will be billed;

(b) The decision to authorize the placement of the charge for the service or product on the subscriber's telephone bill; and

(c) A clear description of the service or product being ordered.

(6) Letters of agency shall not suggest or require that a subscriber take some action in order to prevent the placement of the charge for the product or service on the customer's telephone bill.

(7) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

AUTH: 69-3-1304, MCA

IMP: 69-3-1301 and 69-3-1303, MCA

RULE III. COMPLAINTS OF UNAUTHORIZED CHARGES FOR PRODUCTS OR SERVICES BEING PLACED ON A CUSTOMER'S TELEPHONE BILL

(1) Upon receipt of a complaint alleging an unauthorized charge for a product or service being placed on a customer's telephone bill, either orally or in writing, from the customer, the customer's local exchange company, or from the commission or its staff on behalf of a customer or applicant, the telecommunications carrier or other entity that initiated placement of the charge for the product or service on the customer's telephone bill shall make a suitable investigation and advise the party requesting the investigation of the results. When

advising the customer or party requesting the investigation of the results, the carrier or other entity that initiated the placement of the charge for the product or service on the customer's telephone bill shall provide documentation in accordance with [Rule I] and [Rule II] that confirms the customer's valid authorization for placement of the charge for the product or service on the telephone bill. The burden is on the carrier or other entity that initiated the placement of the charge for the product or service on the customer's telephone bill to produce documentation that valid authorization was obtained from the customer. If a carrier or other entity fails to provide the documentation, all charges for the products or services that the customer did not authorize or that were not provided to the customer will be deemed invalid. A telecommunications carrier or other entity, upon receipt of a complaint from the commission or its staff alleging unauthorized placement of charges for products or service on a customer's telephone bill, shall issue an initial response within five working days.

AUTH: 69-3-1304, MCA

IMP: 69-3-1301 and 69-3-1303, MCA

RULE IV. TELECOMMUNICATIONS CARRIER OR OTHER ENTITY LIABILITY (1) An entity that initiates a placement of a charge for a product or service on a customer's telephone bill in violation of these rules, or that cannot provide documentation that the billing for the product or service was initiated in compliance with these rules, is liable to the customer for all charges and fees related to the product or service being billed on the customer's telephone bill by telecommunications carrier, other entity or their agent during the period of the unauthorized billing.

AUTH: 69-3-1304, MCA

IMP: 69-3-1301 and 69-3-1303, MCA

RULE V. REFUND OF CHARGES (1) A telecommunications carrier or other entity which initiates a placement of a charge for a product or service on the customer's telephone bill 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 charges for the product or service attributable to the telecommunications carrier or other entity. 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: 69-3-1304, MCA

IMP: 69-3-1301 and 69-3-1303, MCA

4. Rationale: Rules I through V are reasonably necessary to implement the 1999 Montana Legislature's HB 598 (now Ch. 244, L. 1999) by establishing the means through which telecommuni-

cations carriers and other entities will comply with that law, the means through which customer complaints pertaining to violation of that law will be processed by the telecommunications carrier, and the means through which verification of compliance may be readily determined when necessary.

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than September 9, 1999. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-99.7.8-RUL.")

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

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

8. Both bill sponsor notification requirements of 2-4-302, MCA, apply and have been complied with.

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


Dave Fisher, Chairman


Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JULY 30, 1999.

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

In the Matter of the Proposed)	NOTICE OF PUBLIC HEARING
Adoption of New Rules and)	ON ADOPTION OF
Amendment of Existing Rules)	NEW RULES I THROUGH III AND
Pertaining to Operator Service)	AMENDMENT OF 38.5.3401,
Providers)	38.5.3405, 38.5.3412 and
)	38.5.3440

TO: All Concerned Persons

1. On Thursday, September 9, 1999, at 9:00 a.m., in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to operator service providers. Anyone needing accommodations for physical, hearing, or sight impairment in order to attend and participate in the hearing should contact the PSC Secretary at (406) 444-6199 at least one week prior to hearing.

2. The new rules proposed for adoption provide as follows:

RULE I. ALLOWABLE RATE (1) Pursuant to 69-3-1102 and 69-3-1105, MCA, an operator service provider may not charge more than an allowable rate, which is a rate for intrastate calls, inclusive of the call rate, aggregator surcharge, and all other calling fees, established by the commission for each category and type of service provided by an operator service provider.

(2) Except for cost-based allowable rates provided in [Rule II] the allowable rate for each category and type of service provided by operator service providers will be established by the commission annually. The allowable rate for each category and type of service will be the average of the intrastate rates charged for each category and type of operator service provider service by AT&T, MCI, Sprint, and U S West, plus 50 percent.

(3) The categories and types of service for which allowable rates will be established are:

(a) assisted - operator dialed calling card; collect call; third party billed; sent paid coin; person to person; operator dialed called number; customer dialed calling card, non-company; and customer dialed calling card, company card;

(b) message toll interLATA - first minute, per mile, and flat, and additional minutes, per mile, and flat; and

(c) message toll intraLATA - first minute, per mile, and flat, and additional minutes, per mile, and flat.

(4) Before an operator service provider may provide a service not identified in this rule, a cost-based allowable rate must be established for that service in accordance with [Rule II].

AUTH: 69-3-103 and 69-3-1103, MCA

IMP: 69-3-201, 69-3-1101, 69-3-1102, and 69-3-1105, MCA

RULE II. COST-BASED ALLOWABLE RATE (1) An operator service provider, determining an allowable rate established in [Rule I] will not permit adequate revenues, may apply to the commission for cost-based allowable rates. Operator service provider applications for cost-based allowable rates must be made in accordance with commission procedural and substantive rules pertaining to telecommunication rate case filings. The cost-based allowable rates established in the resulting proceeding will be specific to the applicant operator service provider, including if the record demonstrates that the cost-based allowable rates should be lower than the allowable rates established in accordance with [Rule I].

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA

IMP: 69-3-102, 69-3-201, 69-3-1102 and 69-3-1105, MCA

RULE III. BILLING DISCLOSURE (1) Telecommunications carriers providing billing services for an operator service provider must disclose on customer bills:

(a) the operator service provider charge, clearly distinguished from the carrier's charges;

(b) the name of the operator service provider; and

(c) the toll-free telephone number of the operator service provider.

(2) Upon request of a customer, the billing telecommunications carrier must provide the exact legal name of the operator service provider, the current and complete street address of the operator service provider, and the mailing address of the operator service provider.

AUTH: 69-3-103, 69-3-822, and 69-3-1103, MCA

IMP: 69-3-102 and 69-3-1106, MCA

3. The existing rules proposed for amendment provide as follows (new matter underlined, deleted matter interlined):

38.5.3401 GENERAL AND DEFINITIONS (1) The provisions of this subchapter shall apply to all operator service providers which provide intrastate "regulated telecommunications services" in Montana as defined in the Montana Telecommunications Act, § 69-3-801 et seq., MCA. Operator service providers must comply with all provisions of these rules on all intrastate telephone calls. Federal laws are applicable to interstate calls.

(2) ~~As Except as context may otherwise demand, terms~~ used in these rules have the following meanings:

~~(d)-(e)~~ "Operator service provider" means any person, firm company, or entity ~~which that~~ provides ~~any~~ automated or live assistance to a ~~consumer~~ customer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than:

(i) automatic completion with billing to the telephone

from which the call originated, or

(ii) completion through an access code used by the consumer customer, with billing to an account previously established with the a telecommunications carrier by the consumer customer. The term "operator service provider" shall exclude "inmate calling provider" as that term is defined in ARM 38-5-3440(1), except as may otherwise be provided by rule or commission order.

(a)(b) "Call blocking" means prohibiting or restricting a consumer's access to a carrier which offers service in the same local exchange area by means of equal access or an access code, including but not limited to 1-800, 950-XXXX, and 10-10XXX-0+ dialing sequences.

(b)(c) "Call splashing" means the transfer of a telephone call from an operator service provider to another operator service provider or carrier in such a manner that the subsequent provider or carrier is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

(c) "Inmate calling provider" or "inmate operator service provider" means a carrier or operator service provider that provides regulated telecommunications services by means of coin or coinless pay telephones for the use of inmates in correctional facilities.

AUTH: 69-3-103, 69-3-822, and 69-3-1103, MCA

IMP: 69-3-102, 69-3-201, 69-3-802, 69-3-1102 and 69-3-1103, MCA

38-5-3405 GENERAL REQUIREMENTS (1) Each An operator service provider must shall:

(a) Identify itself, audibly and distinctly, to the consumer customer at the beginning of each telephone call and before the consumer customer incurs any charges. Each operator service provider must shall also identify itself to the called party on collect calls, and to the billed party when verifying third-party third-party billed calls.

(b) Disclose, audibly and distinctly to the consumer customer, at no charge and before connecting any ~~or call~~ intrastate call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer customer on how to proceed to make the call. The oral voice disclosure required in this subsection shall must instruct consumers each customer that they the customer may obtain applicable rate and surcharge quotations amounts either, at the option of the operator service provider, by dialing no not more than two digits or by remaining on the line.

(c) Upon request, fully and immediately disclose to the consumer customer, at no charge, a quotation of the rates and charges for a call, the operator service provider's method of collecting its charges, a description of the operator service provider's method of resolving consumer customer complaints, a

toll-free telephone number ~~which that~~ can be used to report complaints to ~~or contest charges of~~ the operator service provider, and all other requested information pertinent to the ~~consumer's customer's~~ use of the operator service provider's services. ~~This provision also applies. The provisions of this subsection apply~~ to the called party on collect calls.

(d) Permit the ~~consumer customer~~ to terminate the telephone call at no charge before the call is connected to the called party.

(e) ~~Obtain a positive response from the called party on willingness to accept charges for collect calls.~~

(2) All operator service providers must connect the consumer to the local exchange company operator or explain dialing instructions for such access upon request and at no charge.

~~(3) The name, address and toll-free telephone number of the operator service provider or its billing agent must appear on all bills to consumers containing charges for the operator service provider's services.~~

~~(4) When a caller seeks to charge a call on a calling card or credit card other than one issued by the operator service provider, the caller must be informed that the operator service provider's rates will apply, and must be given a toll-free number by which the customer can receive a rate quotation. The information required by this subsection must be given to the customer before the completion of the call.~~

~~(5) (3)~~ Unless otherwise specifically provided by commission rule or order, all operator service providers must comply with all regulatory requirements imposed by Montana state statutes and rules, including but not limited to the Montana Telecommunications Act (§ 69-3-801 et seq., MCA), the Montana telecommunications service standards (ARM 38.5.3301 et seq.) and the Montana Telecommunications Act rules (ARM 38.5.2701 et seq.).

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA

IMP: 69-3-102, 69-3-201, 69-3-802 and 69-3-1104, MCA

38.5.3412 CALL BLOCKING PROHIBITED (1) ~~All Except as otherwise provided in these rules, all~~ agreements or contracts between an operator service provider and an owner of a pay telephone instrument or private telecommunications system must contain a provision which prohibits call blocking. This requirement applies to all contracts or agreements entered into after the effective date of this rule; however, all operator service providers must comply with (2) of this rule at all times, including during the remaining term of all existing contracts and agreements.

(2) Operator service providers are prohibited from requiring or providing call blocking at any telephone instrument. Operator service providers are prohibited from offering service at any telephone instrument where call blocking exists.

(3) This rule does not prohibit the blocking of 10-10XXX-1+ or 10-10XXX-011+ calls.

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA

IMP: 69-3-102, 69-3-201 and 69-3-802, MCA

38.5.3440 INMATE CALLING OPERATOR SERVICE PROVIDERS ~~(1)~~
~~As used in this rule, "inmate calling provider" means a carrier or operator service provider which provides regulated telecommunications services by means of coin or coinless pay telephones for the use of inmates in correctional facilities.~~

~~(2) Inmate calling providers must:~~

~~(a) Comply with the provisions and requirements applicable to operator service providers contained in ARM 38.5.3405 (1), (3), (4) and (5). Call blocking is permitted. Notwithstanding ARM 38.5.3414, call splashing may be prohibited without exception.~~

~~(b) On collect calls, the operator must obtain a positive response from the called party of his or her willingness to accept the charges prior to connecting the call and beginning to charge for it. Positive response means either verbal acceptance or a pulse/tone generated positive response. If no positive response is received, the inmate calling provider must terminate the call and no charge will ensue.~~

~~(c) Comply with ARM 38.5.3341 (unanswered calls).~~

~~(3) Inmate calling providers are exempt from the provisions of this subchapter, except as provided in this rule or as provided in federal statutes and regulations.~~

~~(4) Unless otherwise specifically provided by commission rule or order, all inmate calling providers must comply with all regulatory requirements imposed by Montana state statutes and rules, including but not limited to the Montana Telecommunications Act (§ 69-3-801 et seq., MCA), the Montana telecommunications service standards (ARM 38.5.3301 et seq.) and the Montana Telecommunications Act Rules (ARM 38.5.2701 et seq.).~~

(1) Inmate operator service providers are not subject to the prohibition on call blocking at ARM 38.5.3412.

(2) Inmate operator service providers may not block calls to a called party number, except on request by the called party or following seven days written notification to the called party.

(3) Inmate operator service providers may not require a deposit from a called party unless requiring the deposit is in compliance with the commission customer deposit rules at ARM 38.5.1101 through 38.5.1112.

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA

IMP: 69-3-102, 69-3-201 and 69-3-802, MCA

4. Rationale: The above new and amended rules are reasonably necessary to implement provisions of the 1999 Montana Legislature's SB 289 (now Ch. 155, L. 1999) and to make the commission's existing rules consistent with that law. A few amendments, noted below, are reasonably necessary to make the commission's existing rules consistent with recent Federal Communications Commission requirements. New rule 1 is reasonably necessary to provide a means through which the

allowable rate may be established and maintained as current without individual rate cases for each operator service provider. New rule II is reasonably necessary to provide a means through which an operator service provider, determining that a new rule I allowable rate is insufficient, may obtain a specific allowable rate. New rule III is reasonably necessary to coordinate the SB 289 bill disclosure requirements with existing commission requirements. Because SB 289 contemplates litigation as a result of allowable rate violations, it is reasonably necessary to require information be made available that will facilitate the commencing and prosecuting of that litigation (e.g., exact legal name, current and complete street address). Amendments to ARM 38.5.3401 are minor amendments reasonably necessary to clarify and make the commission's existing rule consistent with SB 289. Many of the amendments to ARM 38.5.3405 are reasonably necessary for the same reason, but the "positive response" requirement at (1)(e) is new and reasonably necessary to ensure billing on collect charges has been actually accepted, and the deletion of (3) is reasonably necessary because it has been replaced by provisions within new rule III. Deletion of (1)(c)'s "a quotation..." and (4) is reasonably necessary for consistency with FCC requirements. Although amendments to ARM 38.5.3440 (mostly deletions) are reasonably necessary because SB 289 does not provide for a general distinction between inmate operator service providers and other operator service providers, the new provision at ARM 38.5.3412 (i.e., exception) and the new provisions in ARM 38.5.3440 are reasonably necessary as safeguards for the operator service provider and customers in inmate operator service provider operations.


5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than September 9, 1999. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-99.4.4-RUL.")

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

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

8. Both bill sponsor notification requirements of 2-4-302, MCA, apply and have been complied with.

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



Dave Fisher, Chairman



Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JULY 30, 1999.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF ESTABLISHING) NOTICE OF NEGOTIATED
A NEGOTIATED RULEMAKING COMMITTEE) RULEMAKING
relating to Universal System)
Benefits Programs)

TO: All Concerned Persons

1. The department of revenue intends to establish a negotiated rulemaking committee to negotiate and develop proposed rules relating to universal system benefits programs in Montana.

2. The proposed rules must establish specific guidelines for determining if a positive difference exists between credits and the annual funding requirement outlined in 69-8-402, MCA. If it is determined that a difference exists, the department is required to establish a fund to provide for universal system benefits programs other than low-income energy assistance. The fund is to be administered by the department of environmental quality. An additional fund is to be established to provide universal low-income energy assistance. That fund is to be administered by the department of public health and human services. The department of revenue is seeking representation on the negotiated rulemaking committee from both of these agencies.

3. Interests that are likely to be significantly affected by the proposed rules are: public utility companies, cooperative utilities, large customers as defined in 69-8-103, MCA, the state universal system benefits programs fund administrator, and the low-income and energy share customers.

4. The individuals proposed to represent the department on the negotiated rulemaking committee are: Howard Heffelfinger, Office of Dispute Resolution; Gene Walborn, Compliance Valuation Resolution Division; Lawrence Allen, Office of Legal Affairs; and Cleo Anderson, Policy and Performance Management.

5. The department is seeking applications from interested parties to serve on the committee.

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On August 12, 1999, this notice will be published in the Montana Administrative Register (MAR), and in the five major newspapers in Montana. Applications for membership on the negotiated rulemaking committee must be received no later than September 12, 1999. The notice will also be mailed to persons known to the department to have an interest in this matter.

(b) After receipt and consideration of the comments and applications, the department will establish a negotiated rulemaking committee no later than September 22, 1999. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee

members will be notified in writing of their selection. Within 10 days from the notification of selection, the committee members will be sent an information packet.

(c) The negotiated rulemaking committee will convene its first meeting on September 27, 1999 to negotiate and develop proposed rules. The committee must have rules developed and ready to file with the secretary of state no later than October 12, 1999. Teleconferencing and e-mail correspondence will be utilized as much as possible because of the short time frame necessary to accomplish the rulemaking action. The September 27, 1999 meeting will convene at 10:00 a.m. in the Fourth Floor Conference Room, Sam W. Mitchell Building, Helena, Montana. If possible, the committee will begin drafting the rules at this meeting.

(d) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit to the department a report containing the proposed rules. If a consensus cannot be reached on the proposed rules, the committee will transmit to the department a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

(e) Thereafter, and in accordance with Title 2, chapter 4, part 3, MCA (Adoption and Publication of Rules), the department will file with the secretary of state for publication in the Montana Administrative Register the proposed rules for universal system benefits programs.

(f) The department may seek the assistance and advice of the negotiated rulemaking committee with respect to comments received during the formal rulemaking process.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Cleo Anderson, Department of Revenue, P.O. Box 202701, Helena, Montana, 59620-2701, no later than September 12, 1999:

(a) The person's name or the nominee's name, address, and contact information including telephone or fax number or e-mail address.

(b) A description of the interests the person or nominee represents.

(c) Evidence that the person or nominee is authorized to represent parties related to the interests of the persons proposed to be represented.

(d) The relationship of the person or nominee to universal system benefits programs, and the name of the establishment or trade association.

(e) A commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration.

(f) The ability of the person or nominee to cover committee participation costs (such as telephone calls, travel and per diem expenses).

8. Interested parties may submit their views or comments concerning the proposed negotiated rulemaking process to Cleo

Anderson, Department of Revenue, P.O. Box 202701, Helena, Montana, 59620-2701, no later than September 12, 1999.

9. Initially, the department proposes to limit the size of the negotiated rulemaking committee to no more than 15 persons. However, after receipt of comments and applications, the department may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected by the proposed rules. The selected committee members will represent all identified segments of universal system benefits programs and state and local officials. The selected committee members may represent other parties or agencies that have a significant relationship with universal systems benefits programs.

10. The department will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the department of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

(c) The negotiated rulemaking committee may not continue to function and must be disbanded after the adoption of the final rule (2-5-106(4), MCA).

12. The specific grant of rulemaking authority authorizing the proposed rules is found in 69-8-413, MCA. The proposed rules will implement 69-8-103, 69-8-402, 69-8-412, 69-8-414, and 69-8-501, MCA.

Cleo Anderson

CLEO ANDERSON
Rule Reviewer

Mary Bryson

MARY BRYSON
Director of Revenue

Certified to the Secretary of State August 2, 1999.

BEFORE THE MONTANA AGRICULTURE DEVELOPMENT COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 4.16.701, pertaining to)
the agricultural marketing)
development program; purpose,)
goals, and criteria.)

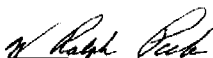
TO: All Concerned Persons

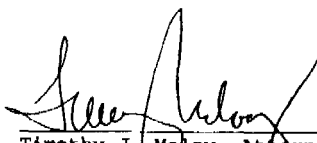
1. On July 1, 1999, the Montana Department of Agriculture published a notice of proposed amendment of ARM 4.16.701, pertaining to the agricultural marketing development program; purpose, goals, and criteria at page 1458 of the 1999 Montana Administrative Register, Issue No. 13.

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

3. No comments or testimony were received.

MONTANA AGRICULTURE DEVELOPMENT COUNCIL
Joe Boyd, Vice Chairman


Ralph Peck, Director
DEPARTMENT OF AGRICULTURE


Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State August 2, 1999.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of a rule pertaining to fees) 8.20.402 FEES

TO: All Concerned Persons:

1. On March 25, 1999, the Board of Hearing Aid Dispensers published a notice of public hearing on the proposed amendment of the above-stated rule at page 443, 1999 Montana Administrative Register, issue number 6. The hearing was held on April 14, 1999 in Helena, Montana.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF HEARING AID DISPENSERS
DUDLEY ANDERSON, CHAIRMAN

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1999.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of rules pertaining to fees) 8.28.420 FEE SCHEDULE,
) 8.28.504 FEES, 8.28.1505
) FEES, 8.28.1701 FEES AND
) 8.28.1806 FEES

TO: All Concerned Persons:

1. On March 25, 1999, the Board of Medical Examiners published a notice of public hearing on the proposed amendment of the above-stated rules at page 447, 1999 Montana Administrative Register, issue number 6. The hearing was held on April 14, 1999 in Helena, Montana.

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

3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS
LAWRENCE MCEVOY, President

BY:

Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY:

Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1999.

In the Matter of the) CORRECTED
Amendment and Adoption of) NOTICE OF ADOPTION
Rules Pertaining To Slamming)

1. On July 1, 1999, the Department of Public Service Regulation published a notice of the amendment and adoption of the above-captioned rules at page 1523 of the Montana Administrative Register, Issue No. 13. These rules contained an error at Rule III(3). The interlined language was deleted in the amendment of adopted emergency rules at page 517 of the Montana Administrative Register, Issue No. 6, but was inadvertently reinserted in the notice of proposed amendment and adoption published at page 329 of the Montana Administrative Register, Issue No. 4.

38.5.3817 SOLICITATION AND IMPOSITION OF PREFERRED
CARRIER FREEZES

(3) ~~Written authorization is required to impose a preferred carrier freeze.~~ A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this rule is invalid and may not be used to impose a preferred carrier freeze.

AUTH: 69-3-822 and 69-3-1304, MCA; IMP: 69-3-102, 69-3-201 and 69-3-1303, MCA.

Dave Fisher
Dave Fisher, Chairman

Reviewed By Robin A. McHugh

Montana Administrative Register

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the)
amendment of rules 44.14.101) NOTICE OF AMENDMENT
and 44.14.102 pertaining to)
the retention of records)
stored on digital media.)

TO: All Concerned Persons

1. On February 25, 1999, The Office of the Secretary of State published notice of the proposed amendment of the above stated rules at page 341 of the 1999 Montana Administrative Register, issue number 4.

2. The Office of the Secretary of State has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

44.14.101 RECORDS WITH A RETENTION PERIOD OF TEN YEARS OR LESS (1) Originals of government records reproduced on optical disk or any other digital medium or government records for which optical disk or digital medium is the original medium may be authorized for destruction or other disposition. Government agencies ~~should~~ must use the record disposal request form RM5 for authority to dispose.

(2) When the retention period is less than ten years the information record may be kept on a digital medium, but must be migrated forward when any upgrade is made to the operating system, hardware, software, storage device(s), server(s) or other component(s) of the digital system. Records which have not met their retention period, but are currently considered inactive must also be migrated to the current prevailing digital format, ensuring their accessibility. ~~After seven years any information kept on a digital medium must be migrated to what is then the current prevailing digital format, ensuring backward compatibility with older generations of technology.~~

AUTH: Sec. 2-6-111 and 2-6-203, MCA

IMP: Sec. 2-6-111, 2-6-203, 2-6-206, 2-6-211, 2-6-213, 2-6-214, 2-6-302, 2-6-304 and 2-15-1003, MCA

44.14.102 RECORDS WITH A RETENTION PERIOD OF MORE THAN TEN YEARS (1) Originals of government records reproduced on optical disk or any other digital medium may be authorized for destruction or other disposition if a paper or an archival quality microform copy, ~~as defined in the Records Management Manual~~ is maintained. Government agencies ~~should~~ must use the record disposal request form RM5 for authority to dispose.

(2) remains as proposed.

(3) An exception to the rule may be proposed by a particular agency and approved by the state records committee on a case-by-case basis. Such a proposal must include, but is not limited to:

(a) a completed and approved records retention schedule for the agency's records; and

(b) a digital migration plan as outlined in ARM 44.14.101(2).

~~(3)~~ (4) Recognizing the availability of a wide variety of digital media in the rapid development of new information technologies, the state records committee will continue to consider issues that affect the availability of government information and the retention or disposition of records in various formats.

AUTH: Sec. 2-6-111 and 2-6-203, MCA

IMP: Sec. 2-6-111, 2-6-203, 2-6-206, 2-6-211, 2-6-213, 2-6-214, 2-6-302, 2-6-304 and 2-15-1013, MCA

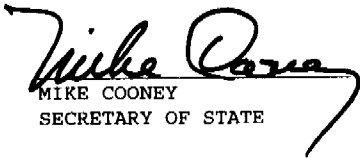
3. The Office of the Secretary of State has thoroughly considered all commentary received. The comments received and the Office's response to each follow:

COMMENT #1: Most of the Commentors recognized the need to amend the rules for records retention due to concerns relating to rapid technological changes, media instability and system obsolescence. One of the Commentors suggested verbiage that regulates the migration of operating systems, hardware, storage devices, servers, etc. and one of the Commentors was concerned because many state agencies are not managing their records to the extent necessary for them to be used as the sole record copy or permanent record.

RESPONSE: The Office acknowledges the Commentors' concerns regarding the wide variety of digital media. As a result, this rule is amended to require the forward migration of records to the current digital format when any upgrade is made to the operating system, hardware, software, storage device, server or other component of the digital system.

COMMENT #2: One Commentor indicated that it was in the best interest of the State of Montana to recognize digital media as a viable means of permanent records retention now rather than waiting for technology to stop evolving. This Commentor suggests that the rule allow agencies to approach the State Records Committee with their own plan which could be reviewed for approval, disapproval or modification.

RESPONSE: It is not the intent of the Office to hamper state agencies' ability to move forward with technology, but to ensure the accessibility of state records and encourage agencies to have approved retention schedules and migrations plans. As a result, this rule is amended to allow a state agency to approach the State Records Committee for an exception to the rule.


MIKE COONEY
SECRETARY OF STATE


DANIEL WHYTE
RULE REVIEWER

Dated this 21st day of July 1999.

**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE
Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

Montana Administrative Register (MAR) 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 | 1. Consult ARM topical index. |
| Subject | Update the rule by checking the accumulative |
| Matter | table and the table of contents in the last |
| | Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and |
| Department | corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1999. This table includes those rules adopted during the period July 1, 1999 through September 30, 1999 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 June 30, 1999, 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 and 1999 Montana Administrative Registers.

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

GENERAL PROVISIONS, Title 1

- 1.3.101 and other rules - Model Rules of Procedure - Amendment of the Sample Forms Attached to the Model Rules, p. 600, 1225

ADMINISTRATION, Department of, Title 2

- I Acquiring Services to Operate the State Charitable Giving Campaign, p. 561, 1292

(Public Employees' Retirement Board)

- 2.43.403 and other rules - Membership, Service Credit, and Service Purchases in Retirement Systems Administered by the Board - Service Purchases - Social Security Coverage for the Employees of the State and Its Political Subdivisions, p. 932, 1504

(Teachers' Retirement Board)

- I and other rules - Teachers' Retirement System, p. 1565

AGRICULTURE, Department of, Title 4

- 4.10.1001 and other rules - Pesticide Enforcement, p. 1, 404
4.12.1428 Assessment Fees on All Produce, p. 2934, 507

- 4.12.3501 and other rules - Grading of Seed Potatoes, p. 677, 1505

(Agriculture Development Council)

- 4.16.701 Agricultural Marketing Development Program; Purpose, Goals, and Criteria, p. 1458

STATE AUDITOR, Title 6

- 6.6.126 Unethical Practices, p. 1272
6.6.302 and other rules - Life Insurance and Annuities Replacement, p. 1575
6.6.801 and other rules - Annuity Disclosures, p. 16, 508
6.6.1105 Allowable Exclusions and Restrictions, p. 1274
6.6.4001 Valuation of Securities, p. 205, 639
6.6.4102 Continuing Education Fees, p. 1600

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 3174, 509

COMMERCE, Department of, Title 8

(Board of Alternative Health Care)

- 8.2.208 and other rules - Renewal Dates - Naturopathic Physician Continuing Education Requirements - Licensing by Examination - Definitions - Midwives Continuing Education Requirements - Licensure of Out-of-State Applicants - Direct Entry Midwife Protocol Standard List, p. 1460
8.4.301 Fees, p. 431, 1121

(Board of Athletics)

- 8.8.2806 Fees, p. 433, 1506

(Board of Barbers)

- 8.10.405 Fee Schedule, p. 435

(Board of Cosmetologists)

- 8.14.814 Fees - Initial, Renewal, Penalty and Refund Fees, p. 439

(State Electrical Board)

- 8.18.407 Fee Schedule, p. 441, 1200

(Board of Hearing Aid Dispensers)

- 8.20.402 Fees, p. 443
8.20.408 and other rule - Unprofessional Conduct - Continuing Educational Requirements, p. 2350, 343
8.20.417 Definitions, p. 207

(Board of Landscape Architects)

- 8.24.409 Fee Schedule, p. 445, 1122

(Board of Medical Examiners)

- 8.28.420 and other rules - Fee Schedule - Fees, p. 447
- 8.28.1508 Quality Assurance of Advanced Practice Registered Nurse Practice, p. 22, 1294

(Board of Funeral Service)

- 8.30.407 Fee Schedule, p. 450, 1201

(Board of Nursing)

- 8.28.1508 Quality Assurance of Advanced Practice Registered Nurse Practice, p. 22, 1294
- 8.32.301 and other rules - Nurse Practitioner Practice - Standards Relating to the Licensed Practical Nurse's Role in Intravenous (IV) Therapy - Prohibited IV Therapies, p. 1467
- 8.32.1409 Prohibited IV Therapies, p. 563, 680

(Board of Nursing Home Administrators)

- 8.34.414 and other rule - Examinations - Fee Schedule, p. 453, 1123

(Board of Optometry)

- 8.36.601 and other rule - Continuing Education Requirements - New Licensees, p. 3180, 511
- 8.36.804 Approved Drugs, p. 1187

(Board of Outfitters)

- 8.39.508 and other rules - Licensure--Renewal - Guide or Professional Guide License - Safety Provisions - Standards for Outfitters, Guides and Professional Guides - Unprofessional Conduct and Misconduct, p. 241, 809

(Board of Pharmacy)

- 8.40.401 and other rules - Practice of Pharmacy, p. 2353, 3103, 3200, 344
- 8.40.404 Fee Schedule, p. 455, 1124

(Board of Professional Engineers and Land Surveyors)

- 8.48.1105 Fee Schedule, p. 457

(Board of Private Security Patrol Officers and Investigators)

- 8.50.437 Fee Schedule, p. 459

(Board of Psychologists)

- 8.52.616 Fee Schedule, p. 461, 1125

(Board of Public Accountants)

- 8.54.410 and other rule - Fee Schedule - Statement of Permit Holders, p. 463, 1203, 1508

(Board of Real Estate Appraisers)

- 8.57.101 and other rule - Board Organization - Continuing Education, p. 1189
- 8.57.412 Fees, p. 465, 1657

(Board of Realty Regulation)

- 8.58.301 and other rules - Definitions - Applications - Fees
- Inactive Licenses - Trust Account Requirements -
Continuing Education - Grounds for License
Discipline - General License Administration
Requirements - Pre-licensing Education - License
Renewal - Inactive Licenses-Reactivation -
Continuing Property Management Education - Trust
Account Requirements for Property Management -
Grounds for License Discipline for Property
Management Licensees - Foreign Land Sales Practices
Act, p. 24, 405

(Board of Respiratory Care Practitioners)

- 8.59.402 Definitions, p. 997

(Board of Sanitarians)

- 8.60.413 Fees, p. 999

(Board of Speech-Language Pathologists and Audiologists)

- 8.62.402 and other rules - Definitions - Supervisor
Responsibility - Schedule of Supervision - Non-
allowable Functions of Speech Aides - Functions of
Audiology Aides, p. 3239, 408
8.62.407 and other rules - Qualifications for Probationary
License - Fees - Unlicensed Person, p. 1470

(Board of Veterinary Medicine)

- 8.64.401 and other rules - Definitions - Continuing Education
- Unprofessional Conduct, p. 3185, 411
8.64.402 Fee Schedule, p. 467, 1126
8.64.508 and other rule - Unprofessional Conduct - Record-
keeping Standards, p. 565, 1509

(Building Codes Division)

- 8.70.101 and other rules - Building Codes Division, p. 1001

(Weights and Measures Bureau)

- 8.77.103 Weights and Measures Bureau - NIST Handbook 44,
p. 469, 1295
8.77.103 Weights and Measures Bureau - NIST Handbook 44,
p. 325

(Local Government Assistance Division)

- I Administration of the 1999 Treasure State Endowment
Program (TSEP), p. 1473
I Administration of the 1999 Federal Community
Development Block Grant Program, p. 3245, 1204, 1511

(Board of Investments)

- 8.97.1101 and other rules - Board of Investments, p. 1018

(Travel Promotion and Development Division)

- 8.119.101 Tourism Advisory Council, p. 471, 1296
8.119.101 Tourism Advisory Council, p. 327

EDUCATION, Title 10

(Board of Public Education)

- I-CCLXXXIV and other rules - Content and Performance Standards for Literature, Writing, Speaking and Listening, Media Literacy, Science, Health, Technology, World Languages, Reading and Mathematics, p. 1030

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

(Fish, Wildlife, and Parks Commission)

- 12.9.801 Creating Game Damage Hunt Rosters, p. 473, 1297

(Fish, Wildlife, and Parks Commission and Department of Fish, Wildlife, and Parks)

- 12.3.123 and other rule - License Refunds, p. 43, 413

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-VI CECRA - Listing, Delisting and Ranking Rules for Comprehensive Environmental Cleanup and Responsibility Act (CECRA) Facilities, p. 1264, 2941, 837
- 17.40.203 Wastewater Operator Certification, p. 1494
- 17.56.101 and other rule - Underground Storage Tanks - Underground Storage Tanks Repairs, p. 1496

(Board of Environmental Review)

- I and other rules - Public Water Supply - Public Water and Sewage System Requirements, p. 578
- I Water Quality - Temporary Water Quality Standards for Daisy Creek, the Stillwater River, and Fisher Creek, p. 482, 1218
- I & II and other rules - Air Quality - Air Quality Transportation - General Conformity Determinations, p. 244, 1216
- 17.8.102 and other rules - Air Quality - Air Quality Incorporation by Reference Rules, p. 1191
- 17.8.301 and other rules - Air Quality - Maximum Achievable Control Technology (MACT) Approval for Hazardous Air Pollutants, p. 572, 1658
- 17.8.504 and other rule - Air Quality - Air Quality Permit Application Operation Fees, p. 1612
- 17.8.601 and other rules - Air Quality - Open Burning, p. 568, 1660
- 17.8.705 and other rules - Air Quality - De Minimis Changes that May Be Made to a Facility Without an Application to Revise the Facility's Air Quality Permit, p. 261, 1206
- 17.24.101 and other rules - Hard Rock - Hard Rock Mining Reclamation, p. 2376, 2994, 640
- 17.24.301 and other rules - Coal and Uranium Mining Program Rules for the Industrial and Energy Minerals Bureau, p. 2995, 811

- 17.30.105 and other rule - Water Quality - Certification Options - General Prohibitions to Surface Water Quality Standards and Procedures, p. 1608
- 17.30.602 and other rules - Water Quality - Trigger Values p. 1603
- 17.30.602 and other rules - Water Quality - Montana Surface Water Quality Standards - Nondegradation - Ground Water Pollution Control System, p. 477, 1617
- 17.30.1341 Water Quality - Permit Requirements of Lagoons, p. 1198, 1661
- 17.38.215 Public Water Supply - Bacteriological Quality Samples for Public Water Supply Systems, p. 257, 1222

(Petroleum Tank Release Compensation Board)

- 17.58.101 and other rules - Procedures and Criteria for Compensation of Petroleum Tank Remedial Costs, p. 1475
- 17.58.336 and other rules - Review and Determination of Claims and Charges, p. 682, 1512

TRANSPORTATION, Department of, Title 18

- I-III Setting Policy for Waiver and Suspension of Motor Fuel Penalties, p. 2666, 513
- I-IV and other rules - Special Fuel Users Tax, Dealers and LPG Tax, p. 2797, 645, 1298
- I-V Procedures for Dealers of Compressed Natural Gas (CNG) and Liquefied Petroleum Gas (LPG), p. 2671, 515, 651

CORRECTIONS, Department of, Title 20

- I-XLIV Operation and Physical Condition of a Private Correctional Facility - Security, Safety, Health, Treatment and Discipline of Persons Confined in a Private Correctional Facility, p. 1276

JUSTICE, Department of, Title 23

- I-IV Permitting the Referral of Department of Justice Debts to the Department of Administration or Other Agency Designated by Law, p. 399, 984
- 1.3.101 and other rules - Model Rules of Procedure - Amendment of the Sample Forms Attached to the Model Rules, p. 600, 1225

LABOR AND INDUSTRY, Department of, Title 24

- 24.16.9003 and other rule - Incorporation by Reference to Federal Davis-Bacon Wage Rates, p. 611
- 24.16.9007 Prevailing Wage Rates - Nonconstruction Services, p. 1289
- 24.16.9007 Montana's Prevailing Wage Rates - Non-construction Services, p. 615

- 24.30.102 Occupational Safety and Health Standards for Public
Sector Employment, p. 617, 1291
24.35.202 and other rules - Independent Contractor Central
Unit, p. 621, 684

LIVESTOCK, Department of, Title 32

- I & II Inspector Examination - Certification, p. 47, 1299A
(Board of Livestock)
I-XI Chronic Wasting Disease, p. 265, 652

MILITARY AFFAIRS, Department of, Title 34

- I-VI Administration of the Education Benefit Program for
the Montana National Guard, p. 1619
I-VI Administration of the Education Benefit Program for
the Montana National Guard, p. 49

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I & II and other rules - State Facility Reimbursement,
p. 492, 1300
I-IV and other rules - Nursing Facilities, p. 696, 1393
I-VII Use of Automated External Defibrillators, p. 1643
I-XXI Network Adequacy in Managed Care, p. 1627
I-XXV and other rules - AFDC Foster Care, p. 964, 1514
I-XLI and other rules - Coverage and Reimbursement of
Mental Health Services for Medicaid Eligible and
Certain Other Low Income Individuals, p. 723, 1301
16.29.101 and other rules - Public Health Control Measures for
Dead Human Bodies, p. 2428, 345
16.30.801 and other rules - Control of Transmission of
Infectious Diseases to Emergency Medical Service
Providers, p. 488, 1127
16.38.307 State Laboratory Fees for Analyses, p. 628, 1229
20.11.111 State Facility Reimbursement, p. 1502
37.12.310 and other rule - Laboratory License Fees - Duration
of a License, p. 625, 1230
37.70.406 and other rules - Low Income Energy Assistance
Program, p. 2551, 414
37.80.202 Child Care Assistance, p. 685, 1378
46.12.502A and other rules - Resource Based Relative Value
Scale (RBRVS), p. 800, 1379
46.12.503 and other rules - Inpatient Hospitals, p. 690, 1388
46.12.572 and other rule - Ambulatory Surgical Centers,
p. 944, 1516
46.12.601 and other rules - Medicaid Dental Services, p. 955,
1522
46.12.3215 Medicaid Health Plan Enrollment, p. 1624
46.20.106 and other rules - Montana Mental Health Access Plan,
p. 3252, 355

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Establishing the Meaning and Effect of the "Landfill Closure Provision" in Class D Motor Carrier Authorities, p. 1291A
- I-IX and other rule - Consumer Information and Protection Rules Application to Restructured Electric and Natural Gas Industries, p. 3191, 1233
- 38.5.3801 and other rules - Emergency Amendment and Adoption - Slamming, p. 362, 517
- 38.5.3801 and other rules - Slamming, p. 329, 1523

REVENUE, Department of, Title 42

- I-VII Ethics of Department of Revenue Employees, p. 1651
- I-XIII Emergency Adoption - Universal System Benefits Programs, p. 1662
- 42.12.106 and other rules - Liquor Licenses, p. 335
- 42.20.454 and other rules - Real and Personal Property Tax Rules, p. 3263, 309

SECRETARY OF STATE, Title 44

- 44.14.101 and other rule - Retention of Records Stored on Digital Media, p. 341
- (Commissioner of Political Practices)
- 44.10.321 and other rules - Reporting of Contributions and Expenditures, p. 635