

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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(1) Except as provided in (2), Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) through (b)(iv) remain the same.

(2) Terminal piping is exempt from the requirements of ARM 17.56.204(2) and (3), 17.56.304(3)(f)(i), 17.56.408(1)(a) through (d), 17.56.504(1)(a), and 17.56.701(4)(b)(ii) and (d)(ii). The department may exempt other associated piping on a case-by-case basis, if the department determines the exemption would not cause harm to human health or the environment.

(3) The exempt piping referenced in (2) must be annually leak tested using:

(a) the procedures described in American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," with the following exceptions:

(i) the minimum leak test pressure ratios may not be less than 1.0;

(ii) the leak test duration may not be less than one hour; and

(iii) leak acceptance criteria must be based on 5% decrease in pressure of the pipeline segment during the test period; or

(b) another leak test procedure approved by the department.

(4) The department adopts and incorporates by reference the version in effect on July 1, 2008, of American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," which sets forth guidelines for pressure testing steel pipelines for the transportation of gas, petroleum gas, hazardous liquids, highly volatile liquids, or carbon dioxide, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956.

AUTH: 75-11-302, 75-11-505, MCA

IMP: 75-11-302, 75-11-505, MCA

REASON: The department is proposing to add the definition of "terminal piping" to ARM 17.56.101 and to amend ARM 17.56.402 to exempt terminal piping from the leak detection and tightness testing requirements of ARM 17.56.204(2) and (3), 17.56.304(3)(f)(i), 17.56.408(1)(a) through (d), 17.56.504(1)(a), and 17.56.701(4)(b)(ii) and (d)(ii). Because of the high volume operating pressures of terminal piping, the existing leak detection testing methods required in ARM Title 17, chapter 56, do not work.

The proposed rule revisions would provide an alternative technically feasible method for leak detection. The exempt piping would be annually leak tested using the procedures described in American Petroleum Institute Recommended Practice 1110, "Recommended Practice for Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide," with the following exceptions:

(a) the minimum leak test pressure ratios may not be less than 1.0;

(b) the leak test duration may not be less than one hour; and

(c) leak acceptance criteria must be based on 5% decrease in pressure of

the pipeline segment during the test period.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than November 6, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. James Madden, attorney, has been designated to preside over and conduct the hearing.

6. The department 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 must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Richard H. Oppen

RICHARD H. OPPER

Director

Certified to the Secretary of State September 29, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE HUMAN RIGHTS COMMISSION
STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 24.8.101, 24.8.103, 24.8.105,)	ON PROPOSED AMENDMENT,
24.8.201, 24.8.203, 24.8.205, 24.8.207,)	AMENDMENT AND TRANSFER,
24.8.210, 24.8.212, 24.8.216, 24.8.220,)	ADOPTION, AND REPEAL
24.8.301, 24.8.401, 24.8.403, 24.8.410,)	
24.9.101 24.9.102, 24.9.103, 24.9.104,)	
24.9.105, the proposed amendment and)	
transfer of ARM 24.9.1701, 24.9.1703,)	
24.9.1704, 24.9.1705, 24.9.1711,)	
24.9.1712, 24.9.1714, 24.9.1717, and)	
24.9.1718, the proposed adoption of NEW)	
RULES I through XXIII, the proposed)	
repeal of ARM 24.8.405, 24.9.107,)	
24.9.210, 24.9.212, 24.9.213, 24.9.218,)	
24.9.219, 24.9.220, 24.9.221, 24.9.222,)	
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24.9.404, 24.9.405, 24.9.406, 24.9.407,)	
24.9.409, 24.9.410, 24.9.411, 24.9.412,)	
24.9.414, and 24.9.1719 pertaining to)	
allegations of unlawful discrimination)	

TO: All Concerned Persons

1. On October 30, 2008, at 10:00 a.m., the Department of Labor and Industry (department) and the Human Rights Commission (commission) will hold a joint public hearing to be held in the State Capitol, first floor, Room 152, Helena, Montana to consider the proposed amendment, amendment and transfer, adoption, and repeal of the above-stated rules.

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 require an accommodation, contact the department no later than 5:00 p.m., on October 22, 2008, to advise us of the nature of the accommodation that you need. Please contact the Office of Legal Services,

Department of Labor and Industry, Attn: Marieke Beck, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2917; fax (406) 444-1394; TDD (406) 444-5549; or e-mail mabeck@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department and the commission have separate but related responsibilities associated with processing complaints of unlawful discrimination arising under the Montana Human Rights Act (act) and the Governmental Code of Fair Practice (code). Although the department and the commission have separate rulemaking authority, both parties determined that it was necessary to work jointly on this rules project in order to coordinate the rules that govern how a complaint of discrimination brought pursuant to the act and/or the code proceeds through the department's administrative process.

A complaint of discrimination has the potential of passing through three separate and distinct organizational units before the issuance of a final agency decision, namely: the department's Human Rights Bureau, the department's Hearings Bureau, and Human Rights Commission, which is administratively attached to the department.

The department and the commission have determined that there is reasonable necessity to amend, amend and transfer, adopt, and repeal a number of the rules related to complaints of discrimination because a number of participants in the process have expressed confusion regarding the role and function of the separate units. Consequently, the bulk of the proposed rule amendments reflect clarifications and additions that help better explain the existing functions of the separate units.

With the amendments and transfers, the department and the commission propose to group administrative rules according to each organizational unit and then place the rules in order of how a complaint might typically graduate through the process. As for NEW RULES I through XXIII, the department's Hearings Bureau has been operating without specific administrative rules for human rights complaints for several years. The new rules will assist the parties in understanding their rights and responsibilities in front of the Hearings Bureau.

In addition, the department and the commission note that it is reasonably necessary to update certain rules in order to conform to recent legislative changes to the enforcement provisions of the Montana Human Rights Act (Chapter 28, Laws of 2007). Additionally, since all of the pre-July 1, 1997, discrimination cases have passed through the administrative process, all references to language that governs or controls complaints filed prior to July 1, 1997, are being removed. For example, ARM Title 24, chapter 9, subchapter 4, dealing with declaratory judgments is no longer applicable.

The majority of the proposed amendments are technical and nonsubstantive in nature, such as renumbering, correcting syntax, streamlining, eliminating redundancies, and improving readability. In addition, references to the department

have been changed throughout the rules to accurately reflect the different organizational entities (e.g., Human Rights Bureau, Hearings Bureau) contained in the department.

The authority and implementation citations are being amended throughout to accurately reflect the legislative changes and to clarify that the rules apply equally to matters arising under the act and under the code.

This general statement of reasonable necessity applies to all of the proposed amendments, new rules, repeals, and transfers. Where additional specific bases for proposed action exists, those bases are identified and set forth in the statement of reasonable necessity that immediately follows the rule.

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

24.8.101 PURPOSE AND SCOPE OF RULES; -- EFFECT OF PARTIAL INVALIDITY (1) The purpose of the rules in this chapter is to describe the procedures followed by the Department of Labor and ~~Industry~~ Industry's ~~(department)~~ Human Rights Bureau and Hearings Bureau ~~in investigating and conciliating complaints of discrimination and enforcing the laws prohibiting discrimination in administering complaints of discrimination filed pursuant to the Montana Human Rights Act (act) and the Governmental Code of Fair Practices (code) contained in Title 49, chapters 2 and 3, MCA. These rules apply to complaints of discrimination filed on or after July 1, 1997.~~

(2) The ~~department~~ Human Rights Bureau and the Hearings Bureau will construe the provisions of the act, the code, and these rules with a view to ~~affect~~ effect their objects and to promote justice. A principal objective of the act and code is to assure that there will be no discrimination in certain areas of the lives of Montana citizens, except under the most limited of circumstances.

(3) In construing the provisions of the act and code, the ~~department~~ Human Rights Bureau and the Hearings Bureau will refer to federal civil rights case law where it is both useful and appropriate and does not conflict with the purposes and intentions of state law.

(4) remains the same.

(5) ~~The department may disregard nonprejudicial errors of law or procedure which do not deny a party due process, a fair hearing or fundamental justice.~~ Parties who assign error for the violation of any rule have the burden to demonstrate that a failure to comply with these rules is in fact prejudicial or constitutes prejudice as a matter of law.

(6) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the ~~department~~ Human Rights Bureau and the Hearings Bureau may modify, waive, or excuse their application. ~~The department may not modify, waive, or excuse mandatory acts which are unless~~ required by statute or due process of law.

(7) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to

the provisions of (6). The ~~department~~ Human Rights Bureau and the Hearings Bureau may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory to assure fundamental fairness.

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

IMP: Title 49, ch. 2 and ch. 3, MCA

24.8.103 DEFINITIONS The following definitions apply throughout this chapter:

(1) and (2) remain the same.

(3) "Charging party" means a person who files a discrimination complaint with the ~~department~~ Human Rights Bureau or a federal agency with whom the ~~department~~ Human Rights Bureau has a work-sharing agreement.

(4) through (6) remain the same.

(7) "Contested case" means proceedings before the Hearings Bureau to determine the legal rights, duties, and privileges of the parties.

(8) "Department" means the Department of Labor and Industry.

(9) "Hearing officer" means administrative law judge appointed by the Hearings Bureau to preside over contested case proceedings.

(10) "Hearings Bureau" means the organizational unit of the department that conducts contested case proceedings after the Human Rights Bureau has issued a reasonable cause finding on a complaint of discrimination.

(11) "Human Rights Bureau" means the organizational unit of the department that informally investigates and seeks resolution to complaints of unlawful discrimination.

~~(7)~~(12) "Notice of dismissal and right to sue" means a document ~~which terminates the jurisdiction of the department over a complaint under the Act or Code and which allows a charging party or aggrieved party to~~ provided to the charging party by the Human Rights Bureau indicating that charging party has completed the department's administrative process and can file a discrimination action in district court pursuant to 49-2-511, MCA.

~~(8)~~(13) "Reasonable cause" means that based on an informal investigation a preponderance of the evidence supports a finding of unlawful discrimination. ~~A finding of "reasonable cause" is equivalent to "merit" as provided in 49-2-504, MCA.~~

~~(9)~~(14) "Respondent" means any person against whom a complaint is filed.

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

IMP: Title 49, ch. 2 and ch. 3, MCA

24.8.105 APPLICABILITY OF COMMISSION RULES (1) In discharging its ~~their~~ responsibilities for investigating and enforcing the laws prohibiting discrimination, the ~~department~~ Human Rights Bureau and the Hearings Bureau ~~applies~~ will apply the interpretive rules of the commission contained in ARM Title 24, chapter 9, sub-chapters ~~6 (Proof of Unlawful Discrimination), 10 (Sex Discrimination in Education), 12 (Maternity Leave), 13 (Insurance and Retirement Plans), and 14 (Guidelines for Employment).~~

AUTH: 49-2-204, MCA
IMP: 49-2-204, 49-2-205, MCA

REASON: There is reasonable necessity to amend this rule so that it is clear that both the Human Rights Bureau and the Hearings Bureau will apply the interpretive rules set forth in ARM Title 24, chapter 9. The interpretive rules include references to the Equal Employment Opportunity Commission (EEOC) guidelines. Both the department and the commission understand that the EEOC guidelines are to be read and construed in a manner consistent with Montana case law, statute, and the existing ARM. To the extent that there is a conflict, Montana case law, statute, and administrative rules will be controlling.

24.8.201 FILING OF COMPLAINTS (1) A complaint may be filed with the ~~department~~ Human Rights Bureau by or on behalf of any aggrieved party. Complaints ~~shall~~ must be filed with the ~~department~~ Human Rights Bureau by mail addressed to the Human Rights Bureau, P.O. Box 1728, Helena, MT 59624-1728; personal delivery to 1625 Eleventh Avenue (USF&G Building, second floor), Helena, MT 59601; or fax to (406) 444-2798.

(2) remains the same.

(3) A complaint is considered to be filed on the date it is received by the ~~department~~ Human Rights Bureau, either by mail, hand-delivery, or facsimile. If the last day of the time limit falls upon a Saturday, Sunday, legal holiday, or the department offices are closed on such day, the time limit will run until the end of the next day when the department offices are open.

(a) In the case of a complaint which is deferred or transmitted to the ~~department~~ Human Rights Bureau by any government agency pursuant to any agreement entered into between the agency and the department, the complaint is deemed filed as of the date it was filed with ~~or received by~~ the agency which deferred or transmitted the complaint.

(4) remains the same.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-210, 49-2-501, ~~49-2-504~~ 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule in order to clarify the status of complaints that are due on a day that the Human Rights Bureau office is closed.

24.8.203 FORM OF COMPLAINTS (1) A complaint is a written document filed with the ~~department~~ Human Rights Bureau. An aggrieved party or a person filing on behalf of an aggrieved party may draft and file a complaint. Except as provided in (2), a complaint ~~shall~~ must contain, at a minimum, the following information:

(a) through (2) remain the same.

(3) ~~A charging party must submit a verified complaint before the bureau will require a response from the respondent.~~ The ~~department~~ Human Rights Bureau will notify the charging party of the obligation to submit a verified complaint. If the

charging party does not submit a verified complaint, the bureau will dismiss the complaint.

(4) If the charging party does not allege facts sufficient to constitute a short and plain statement of the claim showing that the charging party is entitled to relief under Title 49, chapters 2 and 3, MCA, the ~~department~~ Human Rights Bureau will notify the charging party that the department does not have jurisdiction over the complaint, and the case will be dismissed unless the charging party amends the complaint to state a valid claim.

(5) Any person may file a complaint on behalf of any person claiming to be aggrieved if the person is the aggrieved party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative. The person making the complaint must provide ~~the department with~~ the name and address of the person on whose behalf the charge is made. During its investigation, the ~~department~~ Human Rights Bureau ~~shall~~ will verify the authorization of such complaint by the person(s) on whose behalf the complaint is made. If the person on whose behalf the complaint is filed indicates in writing ~~to the department~~ that he or she does not wish the complaint processed, the ~~department~~ Human Rights Bureau shall dismiss the complaint.

(6) A person wishing to file a complaint on behalf of a class must identify a representative for the members of a class. This representative must adequately reflect the interests of the members. As part of the informal investigation, the Human Rights Bureau will notify the respondent or respondents that the complaint was filed on behalf of a class, but the Human Rights Bureau will not rule on class status.

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

IMP: 49-2-501, 49-2-504, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule in order to resolve a conflict that unnecessarily impedes the Human Rights Bureau's informal investigation. As written, the rule allows a charging party to verify a complaint at any time after the initial filing, but the same rule then restricts the Human Rights Bureau from beginning its investigation until it can require a response from the respondent. The change prevents undue delay of the informal investigation. Additionally, the rule clarifies the Human Rights Bureau's role when a complaint is filed on behalf of a class.

24.8.205 INTAKE PROCEDURE (1) A person claiming unlawful discrimination may contact the ~~department~~ Human Rights Bureau by mail or telephone to inquire about filing a complaint of discrimination. Any advice or assistance provided to a potential charging party who contacts the ~~department~~ Human Rights Bureau ~~with questions about filing a complaint, or who seeks the assistance of the department in drafting a complaint,~~ shall be offered objectively and impartially pursuant to 49-2-205, MCA.

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

IMP: 49-2-205, 49-2-504 49-3-315, MCA

24.8.207 NOTICE OF FILING OF COMPLAINTS (1) Within ten business days of the filing of a complaint, the department Human Rights Bureau shall serve notice of filing upon the parties by ~~certified mail or personal service~~. The notice shall:

- (a) through (e) remain the same.
- (f) advise the parties of their right to receive a copy of all other information submitted with the complaint and during the investigation and right to review their file subject to the provisions of ARM 24.8.210; and
- (g) remains the same.

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

IMP: 49-2-301, 49-2-303, 49-2-305, 49-2-504, 49-2-510, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule to remove the requirement that the Human Rights Bureau serve notice of the complaint upon respondent or respondents by certified or personal service. At the informal investigation stage, the statute merely requires that the Human Rights Bureau "notify" the respondent or respondents that a complaint has been filed. Mont. Code Ann. 49-2-504(3). In the event that the informal investigation determines that there is reasonable cause to believe that a preponderance of the evidence supports a finding of discrimination, then the matter is certified to the Hearings Bureau. After a complaint is certified, the Hearings Bureau serves a copy of the complaint on the respondent.

24.8.210 CONFIDENTIALITY AND RELEASE OF INFORMATION

(1) ~~The department finds that there~~ There is a compelling state interest in the elimination of illegal discrimination in Montana pursuant to Art. II, sec. 4 of the Montana Constitution (1972). ~~The department also recognizes that the Montana Constitution expressly provides for an individual right of privacy in Art. II, sec. 10. The department finds that in~~ In some cases, the interest of a person in viewing documents material related to a complaint or gathered as part of the investigation will compete with individual privacy interests. In order to balance these interests, the Human Rights Bureau will take the following steps upon receiving a request for information:

~~(2)(a) If~~ When a person ~~other than a party subject to the terms of 49-2-504(1)(a), MCA,~~ requests information or materials for which an individual right of privacy has been asserted or might be asserted, ~~or asserts a privacy interest in information or materials in the possession of the department,~~ the department Human Rights Bureau will take the following steps:

~~(a) The department will review the request for information or assertion of privacy rights and will attempt to contact the parties and provide them an opportunity to state why their individual privacy interests should outweigh the public's right to know~~ object to the release of this information.

~~(b) If a party objects there is an objection to the release of the charge of discrimination information,~~ the department Human Rights Bureau will promptly notify

~~both parties of the objection. The department will also advise the requesting person that he or she requestor has ten business days from the receipt of notice of the department's refusal in which to~~ that the requestor may file a written request for review of the objection to release department's decision.

(c) Upon receipt of a written request for review, The the department Human Rights Bureau shall immediately refer a the request for review under (2)(b) to the Hearings Bureau, and the Hearings Bureau shall will promptly provide the parties an opportunity to be heard regarding the internal decision, under hearings bureau procedures.

(i) A party that has provided information to the department about a nonparty may assert a privacy interest on behalf of a nonparty.

(ii) The Human Rights Bureau may assert an interest in delaying the release of information until the completion of its informal investigation if the release of information would threaten the integrity of a pending investigation.

~~(3) After a finding of reasonable cause or no reasonable cause or other agency action terminating the investigation of a case, the complaint, information obtained in the investigation of the complaint, and other information in the department file which does not relate to privacy interests protected by law, becomes public information. If a privacy interest is involved, the procedures as outlined in (2) shall apply.~~

~~(4)(2)~~ The department may restrict disclosure of information regarding complaints alleging violations of federal law which are within the jurisdiction of the department because of work sharing arrangements with federal agencies, pursuant to provisions of federal law.

~~(5)(3)~~ All ~~settlement and conciliation~~ voluntary resolution agreements are public information except to the extent that they relate to privacy interests protected by law. A governmental entity does not have a privacy interest in any settlement or conciliation agreement.

(4) A hearing officer's decision regarding the release of information is considered the final agency decision for the purpose of judicial review pursuant to the Montana Administrative Procedure Act.

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

IMP: 2-4-702, 49-2-501, 49-2-504, through 49-2-505, 49-2-506, 49-2-510, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule in order to make the process for requesting information clearer. As written, it only applies to third-party requests for information. However, this rule has been applied to party requests for information. *Owen v. Billings Police Dep't*, 331 Mont. 10,127 P.3d 1044 (2006).

24.8.212 INFORMAL INVESTIGATION BY THE DEPARTMENT (1) The department's Human Rights Bureau has the authority to gather sufficient information to allow a thorough scrutiny of the circumstances surrounding complaints of discrimination through an informal investigation. The investigation shall be conducted in a fair and impartial manner. The department Human Rights Bureau will normally utilize methods such as written information requests and telephone and

personal interviews to obtain information in the course of the informal investigation; ~~relying on more formal investigative tools such as subpoenas and depositions only after attempts to achieve voluntary cooperation have been unsuccessful.~~

~~(2) The department, in investigating a charge of discrimination under the Act, may request the commissioner to exercise any and all powers provided for in 49-2-2-3, MCA.~~

~~(3) Subject to the provisions of 49-2-506(3), MCA, the department may exercise its investigative powers in determining if a conciliation agreement is being honored or an order of the department is obeyed.~~

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

IMP: 49-2-203 49-2-205, 49-2-504, 49-2-506, and 49-2-509 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule to emphasize the scope of the investigation as set out in *Montana Human Rights Comm. v. City of Billings*, 199 Mont. 434, 649 P.2d 1238 (1982). Additionally, the department is proposing that the rule emphasize the informal nature of the investigation, thereby removing language that indicates that the Human Rights Bureau conducts depositions. The Human Rights Bureau's investigation is not subject to either the Montana Rules of Civil Procedure or the Rules of Evidence. After the informal investigation is complete, the charging party is afforded the opportunity to pursue his or her complaint *de novo* (either in front of a district court or in front of the department's Hearings Bureau). These hearings are subject to both the Montana Rules of Civil Procedure and the Rules of Evidence.

24.8.216 EFFECT OF FAILURE TO COOPERATE WITH INVESTIGATION

~~(1) When a charging party or an aggrieved party refuses to comply with a request by the department Human Rights Bureau for information or evidence reasonably necessary for the investigation, conciliation or litigation of the complaint, or fails to advise the department of a change of address causing the department to be unable to locate them, the department shall dismiss the case and issue a notice of dismissal and right to sue, or shall dismiss so much of the complaint as relates to that charging party or aggrieved party.~~

~~(2) If a respondent has been notified of a complaint and the department has requested information in the course of its investigation which the respondent fails to provide within the time specified, the department the Human Rights Bureau may take one or more either or both of the following actions to complete its investigative responsibilities:~~

- ~~(a) request the commissioner to issue a subpoena; and~~
- ~~(b) draw an adverse inference against respondent the unresponsive party as to the evidence sought, if respondent willfully fails to produce information; and~~
- ~~(c) make a finding of merit of the complaint, engage in conciliation and, if unsuccessful, set the case for contested case hearing.~~

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

IMP: 49-2-504, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule so that the provisions regarding failure to cooperate apply equally to both charging parties and respondents.

24.8.220 FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE AND FINAL INVESTIGATIVE REPORT (1) Within 120 days (for cases filed pursuant to 49-2-305, MCA) or 180 days (for all other cases, pursuant to ~~49-2-504(4)~~ 49-2-504, MCA), the ~~department~~ Human Rights Bureau will conclude its informal investigation by issuing a written finding in a final investigative report. The finding will include a brief statement of the reasons for the ~~department's~~ Human Rights Bureau's conclusions and will be mailed to all parties.

(a) If any or all of the allegations of discrimination contained in the complaint are supported by a preponderance of the evidence, the ~~department~~ Human Rights Bureau will issue a finding of reasonable cause and the complaint will be certified for hearing, pursuant to 49-2-505, MCA.

(b) If none of the allegations of discrimination in the complaint are ~~not~~ supported by a preponderance of the evidence, if the Human Rights Bureau determines that the complaint is untimely, or if the department Human Rights Bureau determines that it lacks jurisdiction over the complaint, the department will issue a finding of no reasonable cause. A finding of no reasonable cause will be accompanied by a notice of dismissal and right to sue in accordance with ARM 24.8.403. After a receipt of a notice of dismissal and right to sue, a charging party may continue the administrative process by filing objections with the commission or discontinue the administrative process and commence proceedings in district court as provided in 49-2-511, MCA.

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

IMP: 49-2-305, 49-2-504, 49-2-505, ~~49-2-506, 49-2-507~~ 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule so that it conforms to the language of the statute. A complaint of discrimination may contain several different allegations of discrimination (e.g., failure to hire, retaliation). When the Human Rights Bureau concludes that there is reasonable cause to believe that a preponderance of the evidence supports some or all of the charging party's allegations of discrimination, the statute states that the Human Rights Bureau shall certify the "complaint." Mont. Code Ann. 49-2-504(7)(c). The statute does not give the Human Rights Bureau the discretion to separate a complaint by allegation when it prepares to certify that complaint for hearing.

24.8.301 CONCILIATION AND SETTLEMENT VOLUNTARY RESOLUTION AGREEMENTS (1) ~~At any time during the complaint process, the department~~ The Human Rights Bureau may undertake efforts to achieve a voluntary resolution of the case ~~through mediation efforts~~ with the parties. Any voluntary resolution of the complaint agreed to by the parties before the Human Rights Bureau begins its informal investigation is referred to as a mediation agreement. Any voluntary resolution of a complaint agreed to by the parties after the investigation has begun and before the department Human Rights Bureau issues a finding on the merits of

the claim is referred to as a settlement agreement. Any voluntary resolution agreed to after the department Human Rights Bureau issues a reasonable cause finding is referred to as a conciliation agreement.

(2) Any ~~settlement or conciliation~~ voluntary resolution agreement reached while the complaint is pending in the administrative process, whether mediated by the department Human Rights Bureau or agreed to by the parties independently, is subject to the provisions of this rule.

(2)(3) If the department Human Rights Bureau issues a reasonable cause finding, it shall attempt to resolve the case through conciliation. During conciliation, the department Human Rights Bureau may require affirmative relief provisions to eliminate the discriminatory practice confirmed in the informal investigation. Such affirmative relief provisions may include any remedy which could be ordered by the department Hearings Bureau after hearing. If the ~~department determines that~~ conciliation is not possible, the department Human Rights Bureau shall inform the parties in writing that the conciliation period is concluded and set certify the case for hearing, pursuant to 49-2-505, MCA.

(3)(4) No statement made by any party in the course of a ~~settlement or conciliation offer~~ voluntary resolution discussions, or in any oral or written discussion concerning conciliation, will be admissible in any hearing held concerning the complaint except as provided for by Rule 408, M.R.Evid. Agreement to a ~~settlement or conciliation~~ voluntary resolution of a case does not necessarily constitute an admission of violation of any law by the respondent.

(4)(5) A ~~settlement or conciliation~~ voluntary resolution agreement reached by the parties must be in writing, signed by the parties, and approved by the department Human Rights Bureau. ~~Upon approval of a settlement or conciliation agreement, the department shall dismiss the case.~~ Dismissal of a case based on a ~~settlement or conciliation~~ voluntary resolution agreement shall constitute the end of the administrative process.

(5)(6) A ~~settlement or conciliation~~ voluntary resolution agreement may include terms for monitoring compliance with the agreement, not to extend beyond one year from the date of the agreement.

(6)(7) The parties must inform the department Human Rights Bureau of all terms of any ~~settlement or conciliation~~ voluntary resolution agreement entered into while the complaint is pending in the administrative process. In addition, the parties must inform the department Human Rights Bureau of all terms of any ~~conciliation agreement~~ voluntary resolution entered into after the ~~department or the commission has issued a final agency decision has been issued order.~~

(7)(8) The department Human Rights Bureau may refuse to approve a ~~settlement~~ voluntary resolution agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination. Alternatively, the department Human Rights Bureau may treat a ~~settlement or conciliation~~ voluntary resolution agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination as a withdrawal in accordance with ARM 24.8.401, and may initiate the complaint as a commissioner complaint for further proceedings.

(8)(9) A conciliation agreement may be enforced by the commissioner, the Human Rights Bureau, or by any party in the same manner as a final order of the

department by seeking appropriate orders in the district court, pursuant to 49-2-508, MCA.

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

IMP: 49-2-504, 49-2-505, 49-2-508, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule in response to confusion expressed by parties participating in the process. The changes clarify that there are three different stages of voluntary resolutions that are possible during the informal investigation and the role of the Human Rights Bureau is different at all three stages.

24.8.401 WITHDRAWAL OF COMPLAINT DURING THE INFORMAL INVESTIGATION (1) Any person who has filed a complaint with the ~~department~~ Human Rights Bureau or any person on whose behalf a complaint has been filed may make a request in writing that the complaint be withdrawn. This request may be made at any time ~~during the administrative process~~ before a finding is issued and must be approved by the Human Rights Bureau. Upon approval by the ~~department~~ Human Rights Bureau, withdrawal of a complaint completes the administrative process.

(2) remains the same.

(3) The ~~department~~ Human Rights Bureau ~~shall~~ may dismiss the complaint upon receipt of a written request for withdrawal of a complaint and approval of that request, except for those parts which the commissioner may initiate as a commissioner complaint.

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

IMP: 49-2-210, 49-2-501, 49-2-504, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to clarify that the Human Rights Bureau only has the authority to dismiss or consider the dismissal of complaint before it issues a finding and further, that the Human Rights Bureau's authority to dismiss is discretionary.

24.8.403 DISMISSAL BY THE DEPARTMENT HUMAN RIGHTS BUREAU (1) The ~~department~~ Human Rights Bureau shall conclude the department's administrative proceedings and issue a notice of dismissal and right to sue if:
(a) the ~~department~~ Human Rights Bureau determines that it lacks jurisdiction or the statutory authority to investigate ~~over~~ the allegations of the complaint; or
(b) ~~the charging party fails to cooperate in the investigation of the complaint or fails to keep the department advised of changes in address;~~
(c)(b) the ~~department~~ Human Rights Bureau determines that the allegations of the complaint are not supported by a preponderance of the evidence; ~~or~~
(d) ~~the department determines that it will not or cannot hold a hearing on the complaint within 12 months of the filing date, pursuant to 49-2-509(3)(d), MCA, and the parties do not permit the department to retain jurisdiction as provided in 49-2-505(2), MCA.~~

(2) remains the same.

~~(3) At any time after a complaint is filed, the department may issue a notice of dismissal and right to sue without prejudice if the parties and issues before the department are also before a court of competent jurisdiction and the court's decision will be determinative of the issues before the department. If the court later finds that it does not have jurisdiction over a case in which the notice of dismissal and right to sue was issued because of the improper issuance of the notice, the charging party may apply to reopen the complaint before the department.~~

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

IMP: 49-2-509 49-2-504, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to remove language that indicates that the Human Rights Bureau has the ability to determine that neither the Hearings Bureau nor the commission could conduct a hearing on a complaint within 12 months. The amendments also remove language that suggests that the statutory deadlines in the Montana Human Rights Act/Governmental Code of Fair Practices are tolled when a charging party chooses to file in a district court setting. The department does not have the authority to toll the statute by rule.

24.8.410 NOTICE OF DISMISSAL AND RIGHT TO SUE; OBJECTIONS TO DISMISSALS (1) remains the same.

(2) Each notice of dismissal and right to sue issued by the ~~department~~ Human Rights Bureau shall be issued to all parties by ~~certified mail or personal delivery~~ and shall set forth the following information:

(a) through (e) remain the same.

~~(3) If a court finds that it does not have jurisdiction over a case in which the notice of dismissal and right to sue was issued because of the improper issuance of the notice, the charging party may apply to reopen the complaint before the department.~~

~~(4) A party who is dissatisfied with a decision of the department to issue or not issue a notice of dismissal and right to sue may file written objections with the commission as provided in ARM 24.9.1714.~~

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

IMP: 49-2-509 49-2-504, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to remove language that requires certified or personal delivery for the notice of dismissal and right to sue. Changes to the legislation provide a charging party with an allotted amount of time "after the issuance" of the documents. It no longer reads "after the receipt" and therefore there is no reason to keep track of when the documents are received. Additionally, the amendments remove language that suggests that the statutory deadline in the Montana Human Rights Act/Governmental Code of Fair Practices are tolled when a charging party chooses to file in a district court setting. The department does not have the authority to toll the statute by rule.

24.9.101 ORGANIZATION OF THE HUMAN RIGHTS COMMISSION

(1) and (2) remain the same.

~~(a) For complaints filed before July 1, 1997, the commission is responsible for investigating, conciliating and hearing the allegations of discrimination made in the complaint. These functions are delegated to the Department of Labor and Industry, which acts on behalf of the commission. The commission hears objections to dismissals of complaints, hears exceptions to proposed orders issued after contested case hearings, and issues final orders.~~

~~(b) For complaints filed on or after July 1, 1997, the department is responsible for investigating, conciliating and hearing the allegations of discrimination made in the complaint. The commission hears objections to dismissals of complaints and hears appeals of final orders issued after contested case hearings.~~

AUTH: 2-15-1706 2-4-201, 49-2-204, 49-3-106, MCA

IMP: 2-4-201, 49-2-501, through 49-2-505, 49-2-510, 49-5-511, 49-3-315, MCA

24.9.102 RESPONSIBILITIES OF THE DEPARTMENT OF LABOR AND INDUSTRY AND THE COMMISSION (1) For all complaints of discrimination filed before July 1, 1997, the commission has with the department, the Human Rights Bureau delegated the investigative function to the Human Rights Bureau of the Department of Labor and Industry will conduct the informal investigation into the allegations contained in the complaint. The Hearings Bureau will conduct contested case proceedings. The commission has delegated the hearing function to the Hearings Bureau of the Department of Labor and Industry, which issues proposed orders made final by order of the commission will conduct informal hearings on objections to the dismissal of complaints by the Human Rights Bureau and appeals of Hearings Bureau decisions.

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

IMP: 2-4-201, 49-2-204, 49-2-501, through 49-2-504, 49-2-505, 49-5-506, 49-2-510, 49-5-511, 49-3-315, MCA

24.9.103 COMMISSION MEETINGS: -- QUORUM; AND DECISION MAKING AUTHORITY (1)(a) The commission shall meet six times per year or upon call of the chairperson, or at the written request of at least three members, the time or place to be designated by the person calling the meeting.

~~(b) A majority of the membership constitutes a quorum to do business. A contested case in a case filed before July 1, 1997 may be heard before a hearing officer, an individual member of the commission acting as hearing officer, or by at least three members of the commission. The commission may designate one or more non-members to substitute for a commission member or members in the case of disqualification or other appropriate circumstances.~~

~~(c)~~(2) The department shall provide a staff member to act as secretary of the commission. The staff member will keep general minutes of all commission meetings whether in person or by telephone conference call as a public record.

~~(2)~~(3) A single commission member may issue an order in a contested case proceeding before the commission which is of a purely procedural nature. For example, a single member of the commission may sign an order regarding a briefing schedule, or an order extending the time in which a party may file exceptions when both parties stipulate that such may be done.

(4) At the commission's discretion, it may choose to meet via electronic telecast that is available to the public.

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

IMP: ~~49-2-201~~, 49-2-204, 49-2-205, ~~49-2-502~~, 49-2-505, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to clarify for the participants and the public that the commission is only in session every other month. Additionally, the rule change provides for meetings via electronic telecast. This would only be in cases where there is no request for oral argument and no request regarding the introduction of new evidence. This will save the state of Montana's resources.

24.9.104 LIBERAL CONSTRUCTION; -- EFFECT OF PARTIAL INVALIDITY

(1) and (2) remain the same.

(3) In construing the provisions of the act ~~and~~, the code, and the rules, the commission will refer to federal civil rights ~~case law~~ and guidance where it is both useful and appropriate and does not conflict with the purposes and intentions of state law.

(4) through (7) remain the same.

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

IMP: 49-2-205, 49-2-501, 49-2-504, 49-2-505, 49-3-304, 49-3-305, 49-3-307, 49-3-308, 49-3-315, MCA

24.9.105 DEFINITIONS The following definitions apply throughout this chapter:

(1) remains the same.

(2) "Charging party" means a person who files a complaint with the Human Rights Bureau of the Department of Labor and Industry ~~(for complaints filed on or after July 1, 1997) or the Human Rights Commission (for complaints filed before July 1, 1997) under 4-2-501, MCA.~~

(3) through (5) remain the same.

(6) "Notice of dismissal and right to sue" means a document provided to the charging party by the Human Rights Bureau indicating that the charging party has completed the department's administrative process and can file a discrimination action in district court pursuant to 49-2-511, MCA.

~~(6)~~(7) "Respondent" means any person against whom a complaint is filed.

~~(7)~~(8) "Person" means a person as defined in 49-2-101, MCA.

~~(8) "Right to sue letter" means a document which terminates the jurisdiction of the department and commission over a complaint filed before July 1, 1997 under~~

~~the act or code and allows a charging party or aggrieved person to file a discrimination action in district court.~~

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

IMP: 49-2-101, 49-2-501, ~~49-2-509~~ 49-2-511, 49-3-101, ~~49-3-312~~ 49-3-315, MCA

5. The rules proposed to be amended and transferred provide as follows, stricken material interlined, new material underlined:

24.9.1701 (24.9.109) PURPOSE AND SCOPE OF RULES (1) The purpose of the rules in this subchapter is to set forth the procedures the commission will follow for hearing party objections to the dismissal of ~~cases~~ complaints under ~~49-2-509(4)~~ 49-2-511, MCA and appeals of final orders under 49-2-505(4), MCA. ~~These rules apply only to complaints of discrimination filed on or after July 1, 1997.~~

(2) and (3) remain the same.

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

IMP: 49-2-204, 49-2-205, 49-2-501, 49-2-504, 49-2-505, ~~49-2-509~~ 49-2-511, 49-3-315, MCA

24.9.1703 (24.9.111) DOCUMENT FORMAT, FILING, AND SERVICE

(1) All documents, pleadings, and papers to be filed shall be eight and one-half inches by eleven inches (8½" x 11") in size, standard quality, opaque, unglazed paper, with a minimum 50% recycled content, of which least 10% shall be postconsumer waste, and in 12-point font or larger, double-spaced, and clearly legible. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. The commission may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) The place of filing is the offices of the Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. The offices are located at ~~616 Helena Avenue, Suite 302, Steamboat Block~~ 1625 11th Avenue, Helena, Montana. The telephone number is (406) 444-2884; fax (406) 444-2798; TTY (406) 444-0532.

(3) through (6) remain the same.

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

IMP: 2-4-106, 49-2-204, ~~49-2-505~~ 49-2-511, ~~49-2-509~~ 49-3-315, MCA

24.9.1704 (24.9.113) TIME (1) In accordance with Rule 6(a) of the Montana Rules of Civil Procedure, in computing any period of time for acts required by any of the commission's rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the department offices are closed on such day. In that event, the period runs until the end of the next day when the department offices are open which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11

days, intermediate Saturdays, Sundays, and holidays are excluded in computation. ~~A half holiday will be considered as other days and not as a holiday.~~

(2) remains the same.

(3) Except as to dates fixed by statute and not subject to modification, the commission may enlarge the time to perform an act. In accordance with Rule 6(b) of the Montana Rules of Civil Procedure, the time may be enlarged for good cause shown, ~~with or without a motion or notice, when a request for enlargement of time is made prior to the expiration of the time in which the act is to be performed. If the request is made after the expiration of the specified period in which to act, enlargement may be allowed only upon a showing of excusable neglect in the failure to act.~~

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

IMP: 49-2-204, ~~49-2-505, 49-2-509~~ 49-2-511, 49-3-315, MCA

24.9.1705 (24.9.115) JURISDICTION TO CONSIDER JURISDICTION

(1) The commission shall, at all times, have jurisdiction to determine the jurisdiction of the commission ~~and the department~~ over any particular contested case. In such situations the rules of procedure of the commission shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case.

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

IMP: 49-2-204, ~~49-2-505, 49-2-509~~ 49-2-511, 49-3-315, MCA

24.9.1711 (24.9.117) DISQUALIFICATION OF A MEMBER OF THE COMMISSION (1) through (5) remain the same.

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

IMP: 2-4-611, 49-2-204, ~~49-2-205, 49-2-505, 49-2-509~~ 49-3-315, MCA

24.9.1712 (24.9.119) EX PARTE COMMUNICATIONS (1) remains the same.

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

(3) The commission may consult with ~~any person not a party to the pending matter, or with~~ the department regarding the interpretation of a point of law.

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

IMP: 2-4-613, 49-2-204, ~~49-2-505, 49-2-509~~ 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule in order to clarify a conflict between section (2) and section (3) with regard to the commission communicating with the department on points of law.

24.9.1714 (24.9.121) OBJECTIONS TO DISMISSAL OF COMPLAINT OR REFUSAL TO DISMISS COMPLAINT (1) A party who is dissatisfied with a department decision to dismiss a complaint ~~or to refuse to dismiss a complaint~~ pursuant to 49-2-509, MCA, may seek commission review of the decision by filing a written objection within 14 days after the ~~decision is served~~ issuance of the notice of dismissal. ~~Briefs are not required.~~

(2) A party who makes an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may ~~request permission from the commission to file a brief in opposition to the objection.~~

(2) Briefs on objections to the dismissal of ~~or refusal to dismiss~~ a complaint may not exceed ten pages in length and comply with the formatting requirements set forth in ARM 24.9.111. Each party's brief should ~~provide~~ attach copies of any specific exhibits ~~from the record which the party believes are essential for the commission to read in the commission's consideration of the matter.~~

(3) Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

~~(3)~~(4) The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested by a party and authorized by the commission. The commission may request that the parties present oral argument.

(5) The commission will review an objection to the Human Rights Bureau's decision to dismiss a complaint under an abuse of discretion standard.

~~(4)~~(6) If the commission sustains ~~the objections~~ an objection to the dismissal of a complaint, it will reopen the case by remanding it to the department.

(a) and (b) remain the same.

~~(5)~~(7) If the commission affirms the dismissal of a complaint ~~or sustains the objections to a refusal of the department to dismiss a complaint~~, it will notify the parties of its decision in writing within seven days. The charging party ~~will have~~ has 90 days after receipt of the commission's order affirming the dismissal of a complaint to ~~petition the file the complaint in the appropriate district court for appropriate relief.~~

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

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

~~(8) If the court later finds that it does not have jurisdiction over a contested case in which the complaint was improperly dismissed, then the charging party may apply to the department to reopen the complaint.~~

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

IMP: 49-2-204, ~~49-2-509~~ 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to remove language that suggests that the statutory deadlines in the Montana Human Rights Act/Governmental Code of Fair Practices are tolled when a charging party chooses to file in a district court setting. The department does not have the authority to toll the statute by rule.

24.9.1717 (24.9.123) APPEAL OF FINAL ORDERS OF THE DEPARTMENT HEARING OFFICER DECISIONS (1) Following entry of a final order hearing officer decision that resolves the complaint ~~after a contested case hearing~~, pursuant to 49-2-505, MCA, parties shall have the opportunity to file an appeal, present briefs, and present oral argument to the commission as provided in this rule.

~~(a) Once a final order is entered in a contested case, a~~

(2) A party that wants to appeal shall provide notice of appeal to the commission, the department, and all parties within ten business 14 days of its receipt of the final order the issuance of the notice of the hearing officer decision. All appellants shall submit an original (or original copy) and six copies of all submissions for the record unless otherwise directed by the commission.

(3) All briefing must conform to the commission's formatting requirements set forth in ARM 24.9.111. A brief on appeal of a hearing officer decision may not exceed 20 pages in length.

~~(2)(4)~~ The commission may reject or modify the conclusions of law and interpretations of administrative rules in the final order hearing officer decision but may not reject or modify the findings of fact unless the commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. ~~The commission may accept or reduce any award or penalty but may not increase it without reviewing the complete record.~~

(a) A party asserting that a finding of fact is clearly erroneous must identify the specific finding that is in error and then cite to the portion or portions of the record that support the party's assertion that the finding is erroneous.

(b) A party asserting that a damage award is clearly erroneous must point out the findings that are in error and then cite to the portion or portions of the record that support a different calculation of the damages. If a party is asserting an alternative amount for monetary relief, the proposed amount and its method of computation must be set out in the supporting brief and supported by citations to the record. The commission may deny an appeal on the issue of damages if a party fails to specify

the amount of damages sought or if a party fails to support that amount with references to the record.

(c) The commission may grant all relief permitted by 49-2-506, MCA, including full affirmative relief.

~~(a)~~(5) Unless all parties stipulate otherwise, a party filing an appeal requiring commission review of the complete record, must file six copies of all contested case prehearing submissions, hearing exhibits, a transcript of the hearing, all posthearing submissions, and the final order hearing officer decision.

~~(b)~~ A party filing an appeal not requiring commission review of the complete record must file six copies of all portions of the contested case record, including the final order hearing officer decision, required for the commission's review of the appeal.

~~(3)~~(6) If an appellant does not intend to file a transcript of the hearing ~~(or if the appellant intends for the commission to review a transcript and a transcript has been prepared and filed with the commission prior to issuance of the final order)~~, the appellant must file and serve the appeal, a supporting brief and the portions of the record required for commission review of the appeal within 20 days of service of the final order appealing party's notice of appeal. Any opposing party must file and serve an answer brief within ten days of service of the ~~appeal and supporting brief supporting the appeal~~. The appellant must file and serve any reply brief within ten days of service of the answer brief.

~~(4)~~(7) If an appellant intends for the commission to review a transcript, and a transcript of the hearing has not been prepared ~~and filed~~ prior to issuance of the final order hearing officer decision, the appellant must file a notice of intent to file an appeal a transcript with the notice of appeal stating that commission review of a transcript of the hearing is required.

(a) and (b) remain the same.

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

~~(5) No enlargement of time will be allowed for compliance with any of the requirements of this rule except on a showing of good cause.~~

~~(6)~~(8) Except upon stipulation of all parties, a transcript shall be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript shall be a verbatim and complete account of all proceedings on the record of the hearing and shall be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.

~~(7)~~(9) If an appellant fails to file a brief in support of the appeal within the time provided by this rule, or within any extension of time granted, any opposing party may move to strike the appeal. If an opposing party fails to file a brief in opposition to appeal within the time provided by this rule, or within any extension of time

granted, that party will not be heard at oral argument except by permission or at the request of the commission.

~~(8)(10)~~ When a party has timely filed an appeal of a ~~final order~~ hearing officer decision and has timely filed a supporting brief, the commission will fix a date, not later than 120 days from the notice of appeal, to provide the parties an opportunity to present oral argument to the commission. Each party is allowed a total of one-half hour of argument before the commission, including cross-appeals. Oral argument may be waived by the parties, except where it is requested by the commission.

~~(9)(11)~~ ~~The chair~~ A member of the commission, ~~his or her designee, or a hearing officer appointed by the commission~~ may consider procedural motions and enter procedural orders as necessary for commission review.

~~(10)(12)~~ ~~The commission may appoint a~~ A member of the commission ~~for the purpose of conducting~~ may conduct a prehearing conference prior to the commission's consideration of the appeal.

(13) The commission shall render a decision which affirms, rejects, modifies, and/or remands the hearing officer decision within 90 days of the hearing of the appeal. The final decision of the commission is the final agency decision.

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

IMP: 49-2-204, 49-2-505, 49-2-506, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule in order to clarify the arguments and information that are necessary for proper application of the standard of review when a party that chooses to appeal the hearing officer decision.

24.9.1718 (24.9.125) COMMISSION HEARINGS TO CONSIDER APPEALS

(1) On the date fixed by the commission for oral argument ~~upon the appeal of a party~~, a quorum of the commission shall ~~hear oral argument~~ consider objections to dismissals by the Human Rights Bureau and appeals of hearing officer decisions.

(2) ~~Any~~ Upon motion of the commission, any member of the commission who is absent at the presentation of oral argument may participate in deliberations and the entry of a final decision or order of the commission if he or she, where required, reviews the complete record of the contested case, including a recording or transcript of the oral argument of the parties.

(3) At the time of oral argument, and subject to the rule of the commission chair, any member of the commission may pose questions to a party, or his or her representatives.

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

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

IMP: 49-2-204, ~~49-2-505~~ 49-2-511, 49-3-315, MCA

6. The proposed new rules provide as follows:

NEW RULE I JURISDICTION TO CONSIDER JURISDICTION (1) The Hearings Bureau shall, at all times, have jurisdiction to determine the jurisdiction of the department over any particular contested case. In such situations the rules of procedure of the Hearings Bureau shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case.

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

IMP: 49-2-505, 49-3-315, MCA

NEW RULE II INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE (1) To the extent these rules do not provide for or specify procedures, the Hearings Bureau adopts and applies the Montana Rules of Civil Procedure and Montana Rules of Evidence. This adoption excludes references to jury trials, issuance of subpoenas by attorneys, and other exclusively judicial features.

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

IMP: 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE III REPRESENTATION IN A CONTESTED CASE PROCEEDING (1) All parties before the Hearings Bureau have the right to be represented by an attorney of their choice.

(2) The Hearings Bureau will not provide counsel for parties or provide funds for the payment of counsel.

(3) The department may appear in any contested case for the limited purpose of representing the interests of the public.

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

IMP: 49-2-505, 49-3-315, MCA

NEW RULE IV APPOINTMENT AND AUTHORITY OF HEARING OFFICER (1) Contested cases will be presided over and heard by a hearing officer appointed by name in the initial notice of hearing issued by the Hearings Bureau.

(2) The hearing officer has general authority to regulate the course of contested cases, and may exercise those powers and authority provided by 2-4-611, MCA, including all powers and authority provided or implied by law.

(3) The hearing officer may establish prehearing and hearing dates and procedures, rule upon procedural petitions and motions, make procedural rulings and orders which appear necessary from the record, and otherwise regulate the conduct and adjudication of contested cases as provided by law.

(4) No ruling, order, decision, or exercise of the power and authority of a hearing officer is reviewable by the commission prior to the entry of the hearing officer's decision that resolves the complaint, except as otherwise provided in these rules or unless a manifest and irreparable injustice would result.

(5) The authority of a hearing officer terminates upon the entry of a decision on the merits unless the commission further delegates authority for other proceedings or exercise of authority.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-611, 49-2-505, 49-3-315, MCA

NEW RULE V DISQUALIFICATION OF A HEARING OFFICER (1) A party may disqualify a hearing officer from presiding over any matter governed by these rules only upon an affirmative showing, made in good faith, of personal bias, a lack of independence, disqualification by law, or other ground for disqualification allowed by law.

(2) A party seeking to disqualify a hearing officer may do so only upon the filing of a motion which is supported by a sufficient affidavit showing the particular facts and matters which constitute good cause for disqualification under (1). The party must file the motion and affidavit no later than 30 days after that party has notice of the assigned presiding hearing officer.

(3) Following the filing of a motion and affidavit of disqualification and a reasonable period of time for an opposing party to comment upon it, the bureau chief of the Hearings Bureau or his or her designee shall either enter an order of recusal or decline disqualification. That order must specify the particular facts and grounds upon which it is based.

(4) When disqualification is declined, a party objecting to the ruling must petition the commission for an order of disqualification within ten days following the date of the order declining disqualification. If no such petition is filed, the order is not appealable to the commission.

(5) A hearing officer may make an order or give a notice of recusal or self-disqualification at any time.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-611, 49-2-505, 49-3-315, MCA

NEW RULE VI EX PARTE CONSULTATIONS (1) A presiding hearing officer may not participate in or initiate any ex parte consultation, as defined in (2), on the merits of a matter with any party or the department.

(2) "Ex parte communication" means the communication with the presiding hearing officer by any person having interest in the outcome of the contested case proceeding regarding the merits of the case without notice or argument by any person adversely interested. A hearing officer may engage in communication concerning administrative or procedural matters where necessary under the circumstances and which does not adversely affect the substantial rights of a party.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-613, 49-2-505, 49-3-315, MCA

NEW RULE VII CONTESTED CASE RECORD (1) The record in a contested case shall include all documents listed in the Hearings Bureau docket, including without limitation:

- (a) all pleadings, motions, intermediate rulings;
- (b) all evidence received or considered, including a stenographic record of oral proceedings when requested by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections and rulings thereon;
- (e) proposed findings and exceptions; and
- (f) any decision, opinion, or report by the hearing officer presiding at the hearing.

(2) The hearing will be recorded electronically unless a party requests a stenographic record. The cost of the transcription shall be paid by the requesting party. If provided, an original transcript shall be included in the record of the contested case.

(3) If an electronic recording of any hearing or proceeding is defective or cannot be transcribed, the hearing officer may reconstruct the record or the parties may reconstruct the record by stipulation.

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

IMP: 2-4-614, 49-2-505, 49-3-315, MCA

NEW RULE VIII PLACE OF HEARING (1) The hearing officer shall hold contested case hearings in the county where the unlawful conduct is alleged to have occurred, unless a party requests a change of venue for good cause shown. The hearing officer may change venue for the hearing of a contested case upon the entry of a default against a respondent, to expedite hearing, or otherwise to provide for a fair hearing upon good cause which appears of record.

(2) The hearing officer may require a party to make arrangements for a suitable place of hearing and bear the cost of facilities to conduct the hearing.

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

IMP: 49-2-505, 49-3-315, MCA

NEW RULE IX FORMAL PROCEEDINGS (1) All contested case proceedings shall be formal unless informal proceedings or disposition under 2-4-604, MCA, are permitted by stipulation of the parties, agreed settlement, consent order, or default.

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

IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE X INFORMAL PROCEEDINGS (1) Informal proceedings may be conducted where the parties to a contested case jointly waive a formal proceeding, where the default of a party is entered, or where informal proceedings are appropriate following the imposition of sanctions upon a party.

(2) When informal proceedings are used, the hearing officer shall give parties an opportunity to present evidence at a convenient time and place, using fair procedures.

(3) During informal proceedings, the hearing officer may receive and consider evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, but may not receive or consider evidence which is irrelevant, immaterial, or unduly repetitious. Hearsay evidence may be received and considered to supplement or explain other evidence, but such hearsay evidence may not be considered to support a finding unless it would otherwise be admissible under the Montana Rules of Evidence.

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

IMP: 2-4-604, 49-2-505, 49-3-315, MCA

NEW RULE XI DOCUMENT FORMAT, FILING, AND SERVICE (1) All documents, pleadings, and papers to be filed shall be eight and one-half inches by eleven inches (8½" x 11") in size, standard quality, opaque, unglazed paper, with a minimum 50% recycled content, of which at least 10% shall be postconsumer waste, and be printed on both sides (double sided). Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. A hearing officer may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) The place of filing is the offices of the Hearings Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or during a hearing, by personal delivery to the presiding hearing officer.

(3) Filing with the Hearings Bureau is effective upon actual receipt at the offices of the department or by the hearing officer at the hearing and not upon mailing.

(4) Copies of all submissions filed must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes, and all submissions must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made. Service of copies of submissions upon parties shall be made in accordance with the Montana Rules of Civil Procedure and may be made by means of first class mail, postage prepaid, unless the hearing officer designates another manner of service.

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

(6) Filing of a facsimile copy of a document of no more than 20 pages, which is an exact duplicate of the original, shall meet the filing requirements of these rules only if the facsimile copy is followed within five days by filing of the original or original copy of the document and required copies.

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

IMP: 2-4-106, 49-2-505, 49-3-315, MCA

NEW RULE XII APPEARANCE, DISMISSAL, AND DEFAULT (1) Answers to complaints following the service of the notice of hearing are not required. The contentions of the parties and fair notice of them to prepare for hearing shall be developed through discovery and/or prehearing orders.

(2) Each party shall make its appearance in a contested case within 20 days of the date on which service of the notice of hearing is made upon the party or his or her legal representative. Appearance shall be in the form of a written notice acknowledging service of certification, and a designation of the name, address, and telephone number of the attorney for a party. If a party chooses not to be represented by counsel, such fact shall be indicated in the written appearance. This rule is subject to the provisions of 2-4-106, MCA, and Rule 4D of the Montana Rules of Civil Procedure governing service by mail.

(3) In the event a party fails to appear, fails to comply with an order, fails to prosecute or defend the case, fails to engage in discovery, or otherwise fails to do an act required by law or these rules, the hearing officer may enter an appropriate order terminating the contested case or limiting prosecution or defense of the contested case. Such orders may include dismissal of a complaint, entry of default, disposition by informal procedure, or entry of other appropriate orders.

(4) A party may be relieved of any of the sanctions provided in (3) upon a showing of excusable neglect, good cause, and a good faith willingness to comply with the further orders of the hearing officer or the commission. A party may request such relief by the filing of a motion and supporting affidavit within ten days of the entry of an order imposing such sanctions.

(5) Upon the entry of a default against a respondent, the hearing officer may fix a date or procedures for informal disposition of the complaint. Upon the default, the charging party must present evidence in support of the complaint and proof of damages.

(6) Before the entry of an order of dismissal of a complaint, on any basis other than a decision on the merits, in cases where the department has made a reasonable cause determination, the hearing officer shall notify the department of the proposed dismissal of the case in order to permit the department an opportunity to intervene or seek redesignation for the limited purpose of obtaining the appropriate affirmative relief.

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

IMP: 2-4-106, 2-4-603, 49-2-505, 49-3-315, MCA

NEW RULE XIII INTERVENTION AND LIMITED PARTICIPATION

(1) Intervention will be governed by the applicable rules of civil procedure, except that there is no intervention of right once a case has been certified to the Hearings Bureau for a contested case.

(2) The hearing officer may permit a party who does not seek to intervene as of right to participate in a matter in a limited capacity, but not as a party. A person who may not seek intervention as of right may be permitted to participate in a contested case in a limited manner, such as a friend of the tribunal, where such participation would not cause prejudice to a party, delay proceedings, or deny a fair

hearing. In such instances, a limited participant shall not have the right to control proceedings.

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

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XIV CLASS ACTIONS (1) A complaint may be prosecuted as a class action where the outcome of a contested case will affect a class of persons and where a class action would otherwise be allowed under Rule 23 of the Montana Rules of Civil Procedure.

(2) Class action applications, motions, and procedures following certification of a contested case for hearing shall be governed by Rule 23 of the Montana Rules of Civil Procedure and any Montana law governing class actions.

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

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XV MOTIONS (1) Any party may seek relief in a contested case by means of an appropriate motion. Motions shall clearly state the relief sought by a party, the grounds and authority supporting the entry of an order granting the motion, any prejudice which would result should the motion be denied, and the precise relief desired. All motions which assert factual matters not of record as the grounds for relief must be accompanied by affidavits or verified exhibits which show the facts upon which the proposed relief is grounded. Each motion must be supported by a brief or memorandum of law showing the moving party's entitlement to relief as a matter of law.

(2) The hearing officer may deny any motion which is not supported by an affidavit, where required, and which is not supported by a brief or memorandum of law.

(3) Upon filing a motion, the moving party shall file its supporting brief and any other supporting materials. Within ten days after service of that brief, the opposing party shall file an answer brief and any other supporting materials. Within ten days after the service of the answer brief, the moving party may file a reply brief or other appropriate response.

(4) The failure of a moving party to file a brief in support of the motion may be treated as an admission that the motion is without merit. The failure to file an answer brief may be treated as an admission the motion is well taken and should be granted. The filing of a reply brief by the movant is optional and failure to file one will not subject the motion to summary ruling.

(5) The hearing officer may order live or telephonic oral argument upon a motion on its own motion or that of a party. Oral argument on any motion, including a motion for summary judgment, is waived unless requested by the moving party in the moving party's brief in support of the motion or by the party responding to the motion in the answer brief.

(6) At the discretion of the hearing officer, oral motions may be heard during the course of a hearing or in extraordinary situations which do not result in prejudice to a party.

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

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XVI EVIDENCE (1) The evidence received and considered in contested case proceedings shall conform to the Montana Rules of Evidence and the provisions of 2-4-612, MCA, except as modified for informal proceedings under 2-4-603 and 2-4-604, MCA.

(2) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(3) Parties have the right to conduct cross-examination for a full and true disclosure of facts, and other examination by way of examination beyond the scope of direct, cross, or redirect examination shall be within the sound discretion of the hearing officer or the commission.

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

IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE XVII DISCOVERY (1) The methods, scope, and procedures of discovery are those governed and permitted by the Montana Rules of Civil Procedure, recognizing that the hearing officer is not permitted by law to make an award of attorney fees as a sanction for failure to make discovery.

(2) The hearing officer may fix the times, places, and methods of discovery by conference, prehearing order, or otherwise, and may enter appropriate orders for violations of orders fixing discovery procedures.

(3) Depositions, interrogatories and answers to them, requests for production of documents and responses to them, and other discovery documents shall not be filed with the Hearings Bureau without prior leave of the hearing officer.

(4) The use of depositions at hearing or in lieu of testimony by a witness shall be governed by the Montana Rules of Civil Procedure. Where portions of a deposition are necessary for consideration, the hearing officer may order the preparation of excerpts of a deposition to avoid a bulky record or consideration of irrelevant or prejudicial matter.

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

IMP: 2-4-602, 49-2-505, 49-3-315, MCA

NEW RULE XVIII AMENDMENT OF COMPLAINT (1) A charging party may amend a complaint to cure defects or omissions, including procedural defects or defects in verification, and to allege new facts and matters arising out of continuing violation of law. A charging party may also amend a complaint where an amendment is necessary to provide a respondent with fair notice of the allegations of a party.

(2) The allowance or denial of an amendment to a complaint shall be governed by the provisions of 49-2-501, MCA, with respect to the time for filing complaints except when the new material relates back to the filing of the original complaint.

(3) The redesignation of a complaint pursuant to 49-2-201, MCA, on behalf of the commissioner shall not, unless so specified, constitute the filing of a new complaint but shall relate to the underlying complaint in a contested case as an amendment to it.

(4) The charging party may amend the complaint only by leave of the hearing officer or consent of an adverse party.

(5) A complaint may be amended by way of a prehearing order which contains the contentions of the parties and which is substituted for pleadings in the contested case.

(6) To the extent the amendment of pleadings is not otherwise addressed in this rule, such amendments shall be governed by the provisions of Rule 15 of the Montana Rules of Civil Procedure.

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

IMP: 49-2-501, 49-2-505, 49-3-315, MCA

NEW RULE XIX PREHEARING CONFERENCES AND ORDERS (1) The hearing officer may hear contested cases based upon a prehearing order which contains the full contentions of the parties as to fact and law, along with their claims for relief. A prehearing order supersedes all prior pleadings in the contested case.

(2) The hearing officer may order preliminary prehearing conferences, prehearing conferences, or other procedures as necessary to appropriately regulate the conduct of the contested case proceeding.

(3) If a party fails to comply with an order to prepare a prehearing memorandum or portions of one, or fails to participate in any prehearing conference or proceeding, a hearing officer may impose sanctions upon that party by way of dismissal of the complaint, default, limitation of evidence in support of or in defense to a complaint, or otherwise.

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

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XX SUBPOENAS (1) The hearing officer may issue subpoenas without a request or upon that of a party for the attendance of witnesses or production of evidence. The procedure for service of subpoenas and payment of fees shall conform to the manner provided in civil actions.

(2) The hearing officer may enter appropriate orders, as allowed by law, for the failure of a person subject to the provisions of a subpoena to comply with its terms.

(3) A party seeking to subpoena a state employee, including the Human Rights Bureau investigator, must, as required by 26-2-507 and 26-2-515, MCA, reimburse the department for regular pay and benefits paid to that state employee for time spent answering the subpoena in advance of his or her appearance.

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

IMP: 2-4-104, 2-4-602, 26-2-507, 26-2-515, 49-2-203, 49-2-505, 49-3-315, MCA

NEW RULE XXI HEARING (1) A contested case hearing shall be conducted in the manner of civil actions before the district court, sitting without a jury, and the hearing officer may enter appropriate orders during the course of the hearing to assure the conduct of a fair hearing. The method and scope of the presentation of evidence at hearing, as well as the conduct of the hearing, recesses, and continuances, is within the sound discretion of the hearing officer.

(2) The hearing officer may enter appropriate orders to control the conduct of the parties or their attorneys, including conduct which is disruptive or constitutes contempt, and may recess, continue, or limit the course of hearing.

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

IMP: 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE XXII HEARING OFFICER DECISIONS (1) Following the close of hearing or other proceeding which allows the parties an opportunity for hearing, the hearing officer shall prepare a written hearing officer decision consisting of findings of fact, conclusions of law, and recommended relief, if any. Findings of fact must be based exclusively on the evidence and on matters officially noticed. Each conclusion of law must be supported by authority or by a reasoned opinion. Copies of the hearing officer decision shall be served upon all parties of record.

(2) A hearing officer may render an opinion of law in lieu of detailed references to authority in the making of conclusions of law.

(3) Hearing officer decisions are indexed and available at the offices of both the Human Rights Bureau and the Hearings Bureau and may also be accessed through their respective web sites.

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

IMP: 2-4-621, 2-4-623, 49-2-505, 49-2-506, 49-3-315, MCA

NEW RULE XXIII NOTIFICATION OF ENTRY OF HEARING OFFICER DECISION (1) Upon the entry of the hearing officer decision, the hearing officer shall give the parties written notice of the entry of that order, including the date of entry of the order and a notification of the rights of the parties to file exceptions to it for review by the commission.

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

IMP: 2-4-621, 49-2-505, 49-3-315, MCA

7. The department and the commission propose the repeal of the following rules:

24.8.405 DISMISSAL BY REQUEST OF A PARTY found at ARM page 24-330.

AUTH: 49-2-204, MCA
IMP: 49-2-305, 49-2-509, MCA

24.9.107 APPLICABILITY OF RULES found at ARM page 24-362.

AUTH: 49-2-204, 49-3-106, MCA
IMP: Title 49, ch. 2 and 3, MCA

24.9.210 AMENDMENT OF COMPLAINTS found at ARM page 24-365.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-2-503, 49-2- 504, 49-2-505, MCA

24.9.212 CONFIDENTIALITY found at ARM page 24-365.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-504, 49-2- 505, 49-3-307, 49-3-308, MCA

24.9.213 COMPLAINT; WITHDRAWAL OF COMPLAINT BY CHARGING PARTY; REDESIGNATION OF COMPLAINT found at ARM page 24-366.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-603, 49-2-504, 49-3-307, MCA

24.9.218 COMPLAINT, COMMENCEMENT OF INVESTIGATION, MEDIATION found at ARM page 24-368.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-603, 49-2-504, 49-3-307, MCA

24.9.219 INVESTIGATION found at ARM page 24-368.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-203, 49-2-504, 49-2-506, 49-3-307, 49-3-309, MCA

24.9.220 EMERGENCY ORDER found at ARM page 24-369.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-503, 49-3-306, MCA

24.9.221 INVESTIGATION; FAILURE TO COOPERATE WITH INVESTIGATION found at ARM page 24-369.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-203, 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA

24.9.222 INVESTIGATION; FAILURE OF CHARGING PARTY OR AGGRIEVED PERSON TO COOPERATE OR KEEP THE DEPARTMENT ADVISED OF CHANGES IN ADDRESS found at ARM page 24-370.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-504, 49-2-509, 49-3-307, 49-3-312, MCA

24.9.223 INVESTIGATION; FAILURE TO PRODUCE EVIDENCE found at ARM page 24-371.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA

24.9.224 INVESTIGATION; FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE found at ARM page 24-372.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-504, 49-3-307, MCA

24.9.225 PROCEDURE ON FINDING OF NO REASONABLE CAUSE found at ARM page 24-372.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, 49-3-312, MCA

24.9.226 CONCILIATION AND SETTLEMENT found at ARM page 24-372.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA

24.9.230 CERTIFICATION OF A CASE FOR HEARING found at ARM page 24-374.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-2-506, 49-3-308, 49-3-312, MCA

24.9.231 NOTICE OF CERTIFICATION FOR HEARING found at ARM page 24-374.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, 49-3-312, MCA

24.9.261 DISMISSAL OF COMPLAINT ALSO PENDING IN COURT found at ARM page 24-387.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-204, 49-2-501, 49-2-505, MCA

24.9.262A ISSUANCE OF RIGHT TO SUE LETTER WHEN REQUESTED BY A PARTY found at ARM page 24-387.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-509, 49-3-312, MCA

24.9.263 CONTENTS OF RIGHT TO SUE LETTER found at ARM page 24-389.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-509, 49-3-312, MCA

24.9.264 EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER found at ARM page 24-389.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-509, 49-3-312, MCA

24.9.265 DOCUMENT FORMAT, FILING, SERVICE AND TIME found at ARM page 24-391.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-106, 49-2-504, 49-2-509, 49-3-307, 49-3-312, MCA

24.9.301 PURPOSE AND SCOPE OF RULES found at ARM page 24-411.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.302 DEFINITIONS RELATING TO CONTESTED CASES found at ARM page 24-411.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-611, 2-15-1706, 49-2-101, 49-2-201, 49-2-505, 49-3-101, 49-3-308, MCA

24.9.303 JURISDICTION TO CONSIDER JURISDICTION found at ARM page 24-412.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.304 INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE found at ARM page 24-412.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-612, 49-2-505, 49-3-308, MCA

24.9.305 PRESENTATION OF A CASE IN SUPPORT OF A COMPLAINT
found at ARM page 24-413.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-2-510, 49-3-308, MCA

24.9.306 APPOINTMENT AND AUTHORITY OF HEARING EXAMINER
found at ARM page 24-413.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-611, 49-2-505, 49-3-308, MCA

24.9.307 DISQUALIFICATION OF A HEARING EXAMINER OR MEMBER
OF THE COMMISSION found at ARM page 24-414.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-611, 49-2-505, 49-3-308, MCA

24.9.308 EX PARTE CONSULTATIONS found at ARM page 24-415.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-613, 49-2-505, 49-3-308, MCA

24.9.309 CONTESTED CASE RECORD found at ARM page 24-415.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-614, 49-2-505, 49-3-308, MCA

24.9.310 PLACE OF HEARING found at ARM page 24-416.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.311 FORMAL PROCEEDINGS found at ARM page 24-416.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA

24.9.312 INFORMAL PROCEEDINGS found at ARM page 24-417.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-604, 49-2-505, 49-3-308, MCA

24.9.314 DOCUMENT FORMAT, FILING AND SERVICE found at ARM page
24-418.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-106, 49-2-505, 49-3-308, MCA

24.9.316 APPLICATION OF RULES AND UNREPRESENTED PARTIES
found at ARM page 24-421.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.317 APPEARANCE, DISMISSAL AND DEFAULT found at ARM page
24-421.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-106, 2-4-603, 49-2-505, 49-3-308, MCA

24.9.318 INTERVENTION found at ARM page 24-422.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.319 CLASS ACTIONS found at ARM page 24-423.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.320 MOTIONS found at ARM page 24-423.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.321 EVIDENCE found at ARM page 24-425.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA

24.9.322 DISCOVERY found at ARM page 24-425.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-602, 49-2-505, 49-3-308, MCA

24.9.323 AMENDMENT OF COMPLAINT found at ARM page 24-427.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-501, 49-2-505, 49-3-304, 49-3-308, MCA

24.9.324 PREHEARING CONFERENCES AND ORDERS found at ARM
page 24-428.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-505, 49-3-308, MCA

24.9.325 SUBPOENAS found at ARM page 24-429.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-104, 2-4-602, 49-2-203, 49-2-505, 49-3-308, MCA

24.9.326 HEARING found at ARM page 24-429.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-612, 49-2-505, 49-3-308, MCA

24.9.327 PROPOSED ORDERS found at ARM page 24-430.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-621, 49-2-505, 49-2-506, 49-2-507, 49-3-308, 49-3-309, 49-3-310, MCA

24.9.328 NOTIFICATION OF ENTRY OF PROPOSED ORDER found at ARM page 24-430.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-621, 49-2-505, 49-3-308, MCA

24.9.401 PURPOSE AND SCOPE OF RULES found at ARM page 24-441.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.402 CONSTRUCTION OF STATUTES AND RULES found at ARM page 24-441.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-401, 49-2-402, 49-2-403, 49-3-105, MCA

24.9.403 FORM AND CONTENT OF PETITION found at ARM page 24-442.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-401, 49-3-105, MCA

24.9.404 FILING AND DOCKETING FOR HEARING found at ARM page 24-442.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.405 APPOINTMENT OF HEARING EXAMINER AND AUTHORITY
found at ARM page 24-443.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.406 NOTICE found at ARM page 24-443.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.407 PARTIES found at ARM page 24-444.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.409 PREHEARING CONFERENCES found at ARM page 24-445.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.410 NATURE OF HEARINGS found at ARM page 24-445.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 2-4-603, 2-4-604, 49-2-401, 49-3-105, MCA

24.9.411 PROPOSED ORDERS found at ARM page 24-445.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 2-4-621, 2-4-623, 49-2-401, 49-3-104, MCA

24.9.412 FINAL ORDERS found at ARM page 24-446.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 2-4-623, 49-2-401, 49-3-105, MCA

24.9.414 INCORPORATION OF OTHER RULES BY REFERENCE found at
ARM page 24-446.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 2-4-501, 49-2-401, 49-3-105, MCA

24.9.1719 DETERMINATION OF APPEALS found at ARM page 24-587.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-204, 49-2-505, 49-2-506, MCA

8. 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: Marieke Beck, Agency Counsel, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-1394; or by e-mail to mabeck@mt.gov, and must be received no later than 5:00 p.m., November 7, 2008.

9. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

10. The department and the commission each maintain 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

11. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by U.S. mail on September 7, 2007.

12. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ RYAN RUSCHE

Ryan Rusche, Chair
Human Rights Commission

Certified to the Secretary of State September 29, 2008

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.85.903 and 37.85.905) PROPOSED AMENDMENT
pertaining to general Medicaid)
services, physician-administered)
drugs)

TO: All Concerned Persons

1. On November 6, 2008, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on October 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

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

37.85.903 PHYSICIAN-ADMINISTERED DRUGS, DEFINITIONS

(1) "340B Drug Pricing Program (340B)" means a federal program administered by the Health Resources and Services Administration (HRSA) which allows qualified entities to purchase pharmaceuticals at a substantially reduced cost under PL 102-585, section 602, of the Veterans Health Care Act of 1992.

(2) "Carve out" means the process by which qualified entities may remove Medicaid clients from 340B program activities and, therefore, purchase pharmaceuticals at a non-340B cost.

~~(1) "Centers for Medicare and Medicaid Services (CMS) Top 20" means the list of National Drug Codes (NDCs) as determined under Section 1927(a)(7)(B) of the Social Security Act requiring the Secretary of CMS to publish a list of the 20 multiple source physician administered drugs with the highest dollar volume dispensed under the Medicaid program.~~

(2) (3) "Healthcare eCommon pProcedures eCoding sSystem (HCPCS)" means the national uniform coding method maintained by the CMS that incorporates the American Medical Association (AMA) Physicians Current Procedural Terminology (CPT) and the three HCPCS unique coding levels, I, II, and III.

(a) For purposes of physician-administered drugs, HCPCS refers to billable codes ~~that may be cross-walked to NDCs with corresponding rebatable National Drug Codes (NDC).~~

~~(3)~~ (4) "National Drug Codes (NDC)" means an 11 digit numerical code maintained by the Federal Drug Administration (FDA) under the Drug Listing Act of 1972 that identifies the manufacturer, drug, product, and package size assigned by the Federal Drug Administration (FDA).

~~(4) "Physician-administered drugs" means covered outpatient drugs under section 1927(k)(2) of the Social Security Act that are typically furnished incident to a physician's service.~~

~~(a) These drugs are injectable or intravenous drugs administered by a medical professional in a physician's office or other outpatient clinical setting.~~

~~(b) Reimbursement for physician-administered drugs is allowed only if the drug is a covered drug under 42 USC 1396r-8.~~

(5) "Physician-administered drugs" means drugs other than vaccines covered under section 1927(k)(2) of the Social Security Act that are typically furnished incident to a physician's services.

(a) Physician-administered drugs are administered by a medical professional in a physician's office or other outpatient clinical setting.

(b) Physician-administered drugs are incident to a physician's services that are separately billed to Medicaid.

(c) Reimbursement for physician-administered drugs is allowed only if the drug qualifies for rebate in accordance with 42 USC 1396r-8.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, MCA

37.85.905 PHYSICIAN-ADMINISTERED DRUGS, BILLING

REQUIREMENTS (1) Effective April 1, 2008, all billable claim lines submitted for physician-administered drugs must include the NDC, the corresponding HCPCS code, and the units administered for each code. Billable claim lines submitted for reimbursement of physician-administered drugs must:

~~(a) Claim lines billed for HCPCS that represent physician-administered injections will be denied if there is no NDC on the line. include a valid 11 digit NDC;~~

(b) include the drug quantity billed for each code;

(c) state the NDC unit of measure as one of the following:

(i) international unit - F2;

(ii) gram - GR;

(iii) milliliter - ML; or

(iv) units - UN;

(d) include corresponding CPT/HCPCS codes; and

(e) include a drug price.

~~(b)~~ (2) Reimbursement will be made only on those drugs manufactured by companies that have a signed rebate agreement with the CMS.

~~(2) The requirements of this rule do not apply to claims reimbursed under all-inclusive payment methodologies.~~

(3) A nonrebatable drug with a medically accepted indication may be prior authorized at the department's discretion. Prior authorized drugs will be reimbursed according to provider type.

(4) Drugs and devices purchased under the 340B Drug Pricing Program are exempt from this rule.

(5) Providers participating in the 340B Drug Pricing Program:

(a) shall not submit a NDC for claim lines that are billed utilizing physician-administered drugs purchased under the 340B Drug Pricing Program;

(b) shall submit CPT/HCPCS code(s) with all claims submitted to Montana Medicaid;

(c) shall bill Montana Medicaid their actual acquisition cost; and

(d) must notify Montana Medicaid of newly acquired 340B status immediately upon approval from the Office of Pharmacy Affairs.

(6) Providers may elect to "carve out" Medicaid clients from their 340B program activities when billing non-340B priced physician-administered drugs and register their intent with the Office of Pharmacy Affairs.

(7) Providers who have registered with the Office of Pharmacy Affairs:

(a) shall bill all claims as described in (1)(a) through (f); and

(b) will be reimbursed according to their provider type.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.903 and 37.85.905, pertaining to physician-administered drugs. The proposed rule amendments are necessary to comply with section 1903(i)(10) of the Social Security Act (the Act) prohibiting Medicaid federal financial participation (FFP) for physician-administered drugs unless states submit the utilization data described in section 1927(a) of the Act and limit Medicaid reimbursement for at least the top 20 multiple source physician-administered drugs. States must then obtain rebates from the manufacturers of such drugs.

Description of proposed rule changes

The department is proposing amendments to ARM 37.85.903 and 37.85.905 to help it comply with the utilization data reporting requirements and the rebate requirements for physician-administered drugs.

States are required to obtain rebates on a minimum of 20 multiple source physician-administered drugs with the highest dollar volume dispensed under the Medicaid program and manufactured by companies that have a signed rebate agreement with CMS. States may require the reporting of National Drug Codes (NDC) on all Medicaid physician-administered drug claims for rebate purposes. The department elected to enforce collection of rebates on all reimbursable National Drug Codes to maximize rebate dollars generated which, in turn, will offset the high automation costs associated with NDC collection. The specific proposals are described below.

ARM 37.85.903

The department is proposing amendments to the definitions rule to make the rules easier to read and understand. A new definition specifically describing the "340B Drug Pricing Program" would make these rules easier to understand. The department is also proposing a simplified definition of "physician-administered drugs".

ARM 37.85.905

The department is proposing amendments to this rule to make it easier to read and understand. Physician-administered drugs purchased by providers participating in the 340B Drug Pricing Program under the Public Health Service Act 42 USCA section 256b (Supp. 1998) are exempt from reporting National Drug Codes. The department is proposing an amendment to require such providers to notify it of newly acquired 340B status immediately upon approval from the Office of Pharmacy Affairs. This will make it easier to administer the physician-administered drug program.

Payment to the provider for physician-administered drugs is currently made using the reimbursement methodology for each provider type. The department is proposing an amendment to the rule specifically stating this policy. The reimbursement methodologies would not change as a result of the proposed amendment.

Alternative considered

The department considered and rejected the alternative to the proposed amendments, which would have been to make no changes to the existing definitions or reimbursement provisions. The department's experience with the administration of the physician-administered drug rules indicates that the proposed amendments would make the rules easier to read and understand.

Fiscal Effects

The department expects the proposed amendments to minimally change reimbursement to affected providers. There is no impact to clients. No direct fiscal effects are expected.

Persons and entities affected

The proposed amendments would affect about 5,000 physicians, mid-level practitioners, and other professionals as well as about 350 hospitals, birthing centers, and other outpatient medical service providers.

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

submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 13, 2008.

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

7. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 29, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of	)	NOTICE OF PUBLIC
ARM 42.21.113, 42.21.123, 42.21.131,	)	HEARING ON PROPOSED
42.21.137, 42.21.138, 42.21.139, 42.21.140,	)	AMENDMENT
42.21.151, 42.21.153, 42.21.155, 42.21.156,)	
and 42.22.1311 relating to personal,)	
industrial, and centrally assessed property)	
taxes)	

TO: All Concerned Persons

1. On November 3, 2008, at 10:30 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., October 24, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) Leased or rental equipment that is leased or rented on an hourly, daily, or weekly basis, but is not exempt under ~~15-6-201(1)(cc)~~ 15-6-219, MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of \$0 to \$500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2007	70%
2006	43%
2005	18%
2004 and older	9%
<u>2008</u>	<u>70%</u>
<u>2007</u>	<u>38%</u>

<u>2006</u>	<u>16%</u>
<u>2005 and older</u>	<u>8%</u>

(b) For equipment that has an acquired cost of \$501 to \$1,500, the department shall use a five-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 2.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2007</u>	<u>85%</u>
<u>2006</u>	<u>69%</u>
<u>2005</u>	<u>52%</u>
<u>2004</u>	<u>34%</u>
<u>2003 and older</u>	<u>20%</u>
<u>2008</u>	<u>85%</u>
<u>2007</u>	<u>71%</u>
<u>2006</u>	<u>53%</u>
<u>2005</u>	<u>35%</u>
<u>2004 and older</u>	<u>21%</u>

(c) For equipment that has an acquired cost of \$1,501 to \$5,000, the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2007</u>	<u>92%</u>
<u>2006</u>	<u>86%</u>
<u>2005</u>	<u>81%</u>
<u>2004</u>	<u>74%</u>
<u>2003</u>	<u>64%</u>
<u>2002</u>	<u>55%</u>
<u>2001</u>	<u>44%</u>
<u>2000</u>	<u>34%</u>
<u>1999</u>	<u>28%</u>
<u>1998 and older</u>	<u>23%</u>
<u>2008</u>	<u>92%</u>
<u>2007</u>	<u>86%</u>
<u>2006</u>	<u>80%</u>
<u>2005</u>	<u>73%</u>
<u>2004</u>	<u>65%</u>
<u>2003</u>	<u>56%</u>
<u>2002</u>	<u>45%</u>
<u>2001</u>	<u>35%</u>
<u>2000</u>	<u>28%</u>

1999 and older

24%

(d) For equipment that has an acquired cost of \$5,001 to \$15,000, the department shall use the trended depreciation schedule for heavy equipment. The schedule will be the same as ARM 42.21.131.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2008	80%
2007	65%
2006	58%
2005	55%
2004	50%
2003	45%
2002	42%
2001	38%
2000	35%
1999	32%
1998	30%
1997	30%
1996	29%
1995	29%
1994	27%
1993	25%
1992	24%
1991	23%
1990	23%
1989 and older	22%
<u>2009</u>	<u>80%</u>
<u>2008</u>	<u>65%</u>
<u>2007</u>	<u>63%</u>
<u>2006</u>	<u>56%</u>
<u>2005</u>	<u>50%</u>
<u>2004</u>	<u>44%</u>
<u>2003</u>	<u>40%</u>
<u>2002</u>	<u>37%</u>
<u>2001</u>	<u>35%</u>
<u>2000</u>	<u>32%</u>
<u>1999</u>	<u>28%</u>
<u>1998</u>	<u>29%</u>
<u>1997</u>	<u>29%</u>
<u>1996</u>	<u>29%</u>
<u>1995</u>	<u>26%</u>
<u>1994</u>	<u>26%</u>
<u>1993</u>	<u>24%</u>

<u>1992</u>	<u>23%</u>
<u>1991</u>	<u>22%</u>
<u>1990 and older</u>	<u>22%</u>

(e) For rental video tapes and digital video disks the following schedule will be used:

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2007</u>	<u>25%</u>
<u>2006</u>	<u>15%</u>
<u>2005 and older</u>	<u>10%</u>
<u>2008</u>	<u>25%</u>
<u>2007</u>	<u>15%</u>
<u>2006 and older</u>	<u>10%</u>

(2) through (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, 2007
2008.

AUTH: 15-1-201, 15-23-108, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 41.21.113 to clarify through the trend tables how the department arrives at market value as required by 15-8-111, MCA. Annually, the department updates these schedules to inform taxpayers of the current percentages used by the department when valuing and taxing their property. To determine the market value of personal property, the department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rule, and that method is not being changed. The First Judicial District Court indicated in 1986 that the department must publish these trend tables annually and these amendments are in compliance with that order.

The department is further amending ARM 42.21.113 to correct the statutory reference found in (1) from 15-6-201(1)(cc), MCA to 15-6-219, MCA to reflect a change enacted by the 2005 Legislature in Senate Bill 68.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) through (4) is listed below and shall be used for tax year 2008 2009. The schedule is derived by using the guidebook listed in (1) as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale value.

TRENDED % GOOD

<u>YEAR NEW/ACQUIRED</u>	<u>AVERAGE WHOLESale</u>
2008	80%
2007	75%
2006	70%
2005	70%
2004	67%
2003	59%
2002	52%
2001	48%
2000	44%
1999	39%
1998	38%
1997	36%
1996	33%
1995	33%
1994	28%
1993	26%
1992 and older	25%
<u>2009</u>	<u>80%</u>
<u>2008</u>	<u>75%</u>
<u>2007</u>	<u>70%</u>
<u>2006</u>	<u>70%</u>
<u>2005</u>	<u>64%</u>
<u>2004</u>	<u>60%</u>
<u>2003</u>	<u>52%</u>
<u>2002</u>	<u>46%</u>
<u>2001</u>	<u>42%</u>
<u>2000</u>	<u>39%</u>
<u>1999</u>	<u>36%</u>
<u>1998</u>	<u>35%</u>
<u>1997</u>	<u>33%</u>
<u>1996</u>	<u>31%</u>
<u>1995</u>	<u>31%</u>
<u>1994</u>	<u>26%</u>
<u>1993 and older</u>	<u>23%</u>

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, 2007
2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.131 HEAVY EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2), (3), and (4) is listed below and shall be used for tax year ~~2008~~ 2009. The values derived through the use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
2008	80%
2007	65%
2006	58%
2005	55%
2004	50%
2003	45%
2002	42%
2001	38%
2000	35%
1999	32%
1998	30%
1997	30%
1996	29%
1995	29%
1994	27%
1993	25%
1992	24%
1991	23%
1990	23%
1989 and older	22%
<u>2009</u>	<u>80%</u>
<u>2008</u>	<u>65%</u>
<u>2007</u>	<u>63%</u>
<u>2006</u>	<u>56%</u>
<u>2005</u>	<u>50%</u>
<u>2004</u>	<u>44%</u>
<u>2003</u>	<u>40%</u>
<u>2002</u>	<u>37%</u>
<u>2001</u>	<u>35%</u>
<u>2000</u>	<u>32%</u>
<u>1999</u>	<u>28%</u>
<u>1998</u>	<u>29%</u>

<u>1997</u>	<u>29%</u>
<u>1996</u>	<u>29%</u>
<u>1995</u>	<u>26%</u>
<u>1994</u>	<u>26%</u>
<u>1993</u>	<u>24%</u>
<u>1992</u>	<u>23%</u>
<u>1991</u>	<u>22%</u>
<u>1990 and older</u>	<u>22%</u>

(6) This rule is effective for tax years beginning after December 31, ~~2007~~ 2008, and applies to all heavy equipment.

AUTH: 15-1-201, 15-23-108, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT (1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~2008~~ 2009.

SEISMOGRAPH UNIT

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>WHOLESALE % GOOD</u>
2008	100%	1.000	100%	80%	80%
2007	85%	1.000	85%	80%	68%
2006	69%	1.053	73%	80%	58%
2005	52%	1.106	58%	80%	46%
2004	34%	1.200	41%	80%	33%
2003	20%	1.242	25%	80%	20%
2002 and older	5%	2.67	6%	80%	5%
<u>2009</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>	<u>80%</u>	<u>80%</u>
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>	<u>80%</u>	<u>68%</u>
<u>2007</u>	<u>69%</u>	<u>1.033</u>	<u>71%</u>	<u>80%</u>	<u>57%</u>
<u>2006</u>	<u>52%</u>	<u>1.094</u>	<u>57%</u>	<u>80%</u>	<u>46%</u>
<u>2005</u>	<u>34%</u>	<u>1.149</u>	<u>39%</u>	<u>80%</u>	<u>31%</u>
<u>2004</u>	<u>20%</u>	<u>1.247</u>	<u>25%</u>	<u>80%</u>	<u>20%</u>
<u>2003 and older</u>	<u>5%</u>	<u>1.291</u>	<u>6%</u>	<u>80%</u>	<u>5%</u>

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2008	100%	1.000	100%
2007	85%	1.000	85%
2006	69%	1.053	73%
2005	52%	1.106	58%
2004	34%	1.200	41%
2003	20%	1.242	25%
2002 and older	5%	1.267	6%
<u>2009</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>1.033</u>	<u>71%</u>
<u>2006</u>	<u>52%</u>	<u>1.094</u>	<u>57%</u>
<u>2005</u>	<u>34%</u>	<u>1.149</u>	<u>39%</u>
<u>2004</u>	<u>20%</u>	<u>1.247</u>	<u>25%</u>
<u>2003 and older</u>	<u>5%</u>	<u>1.291</u>	<u>6%</u>

(5) This rule is effective for tax years beginning after December 31, ~~2007~~
2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) and (2) remain the same.

(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year ~~2008~~ 2009.

OIL AND GAS FIELD PRODUCTION EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2008	100%	1.000	100%
2007	95%	1.000	95%
2006	90%	1.053	95%
2005	85%	1.106	94%
2004	79%	1.200	95%
2003	73%	1.242	91%
2002	68%	1.267	86%
2001	62%	1.274	79%
2000	55%	1.286	71%

1999	49%	1.307	64%
1998	43%	1.313	56%
1997	37%	1.327	49%
1996	31%	1.344	42%
1995	26%	1.370	36%
1994	23%	1.421	33%
1993 and older	20%	1.450	29%
<u>2009</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2008</u>	<u>95%</u>	<u>1.000</u>	<u>95%</u>
<u>2007</u>	<u>90%</u>	<u>1.033</u>	<u>93%</u>
<u>2006</u>	<u>85%</u>	<u>1.094</u>	<u>93%</u>
<u>2005</u>	<u>79%</u>	<u>1.149</u>	<u>91%</u>
<u>2004</u>	<u>73%</u>	<u>1.247</u>	<u>91%</u>
<u>2003</u>	<u>68%</u>	<u>1.291</u>	<u>88%</u>
<u>2002</u>	<u>62%</u>	<u>1.317</u>	<u>82%</u>
<u>2001</u>	<u>55%</u>	<u>1.324</u>	<u>73%</u>
<u>2000</u>	<u>49%</u>	<u>1.336</u>	<u>65%</u>
<u>1999</u>	<u>43%</u>	<u>1.358</u>	<u>58%</u>
<u>1998</u>	<u>37%</u>	<u>1.365</u>	<u>50%</u>
<u>1997</u>	<u>31%</u>	<u>1.379</u>	<u>43%</u>
<u>1996</u>	<u>26%</u>	<u>1.396</u>	<u>36%</u>
<u>1995</u>	<u>23%</u>	<u>1.424</u>	<u>33%</u>
<u>1994 and older</u>	<u>20%</u>	<u>1.476</u>	<u>30%</u>

(4) through (5) remain the same.

(6) This rule is effective for tax years beginning after December 31, 2007
2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-213, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.139 WORK-OVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year ~~2008~~ 2009.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
2008	100%	1.000	80%	80%

2007	92%	1.000	80%	74%
2006	84%	1.053	80%	71%
2005	76%	1.106	80%	67%
2004	67%	1.200	80%	64%
2003	58%	1.242	80%	58%
2002	49%	1.267	80%	50%
2001	39%	1.274	80%	40%
2000	30%	1.286	80%	31%
1999	24%	1.307	80%	25%
1998 and older	20%	1.313	80%	21%

<u>2009</u>	<u>100%</u>	<u>1.000</u>	<u>80%</u>	<u>80%</u>
<u>2008</u>	<u>92%</u>	<u>1.000</u>	<u>80%</u>	<u>74%</u>
<u>2007</u>	<u>84%</u>	<u>1.033</u>	<u>80%</u>	<u>69%</u>
<u>2006</u>	<u>76%</u>	<u>1.094</u>	<u>80%</u>	<u>67%</u>
<u>2005</u>	<u>67%</u>	<u>1.149</u>	<u>80%</u>	<u>62%</u>
<u>2004</u>	<u>58%</u>	<u>1.247</u>	<u>80%</u>	<u>58%</u>
<u>2003</u>	<u>49%</u>	<u>1.291</u>	<u>80%</u>	<u>51%</u>
<u>2002</u>	<u>39%</u>	<u>1.317</u>	<u>80%</u>	<u>41%</u>
<u>2001</u>	<u>30%</u>	<u>1.324</u>	<u>80%</u>	<u>32%</u>
<u>2000</u>	<u>24%</u>	<u>1.336</u>	<u>80%</u>	<u>26%</u>
<u>1999 and older</u>	<u>20%</u>	<u>1.358</u>	<u>80%</u>	<u>22%</u>

(6) This rule is effective for tax years beginning after December 31, 2007 2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a ten-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by Marshall and Swift Publication Company. The "% good" for all drill rigs less than one year old shall be 100%. The trended depreciation schedule for tax year ~~2008~~ 2009 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2008	100%	1.000	100%
2007	92%	1.000	92%
2006	84%	1.053	88%
2005	76%	1.106	84%

2004	67%	1.200	80%
2003	58%	1.242	72%
2002	49%	1.267	62%
2001	35%	1.274	45%
2000	30%	1.286	39%
1999	24%	1.307	31%
1998 and older	20%	1.313	26%
<u>2009</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2008</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2007</u>	<u>84%</u>	<u>1.033</u>	<u>87%</u>
<u>2006</u>	<u>76%</u>	<u>1.094</u>	<u>83%</u>
<u>2005</u>	<u>67%</u>	<u>1.149</u>	<u>77%</u>
<u>2004</u>	<u>58%</u>	<u>1.247</u>	<u>72%</u>
<u>2003</u>	<u>49%</u>	<u>1.291</u>	<u>63%</u>
<u>2002</u>	<u>35%</u>	<u>1.317</u>	<u>46%</u>
<u>2001</u>	<u>30%</u>	<u>1.324</u>	<u>40%</u>
<u>2000</u>	<u>24%</u>	<u>1.336</u>	<u>32%</u>
<u>1999 and older</u>	<u>20%</u>	<u>1.358</u>	<u>27%</u>

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~2007~~
2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.151 TELEVISION CABLE SYSTEMS (1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (2) and (3) are listed below and shall be in effect for tax year ~~2008~~ 2009.

TABLE 1: FIVE-YEAR "DISHES"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	85%	1.000	85%
2006	69%	1.049	72%
2005	52%	1.098	57%
2004	34%	1.181	40%
2003 and older	20%	1.222	24%
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>1.029</u>	<u>71%</u>

<u>2006</u>	<u>52%</u>	<u>1.085</u>	<u>56%</u>
<u>2005</u>	<u>34%</u>	<u>1.136</u>	<u>39%</u>
<u>2004 and older</u>	<u>20%</u>	<u>1.221</u>	<u>24%</u>

TABLE 2: TEN-YEAR "TOWERS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2007</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2006</u>	<u>84%</u>	<u>1.049</u>	<u>88%</u>
<u>2005</u>	<u>76%</u>	<u>1.098</u>	<u>83%</u>
<u>2004</u>	<u>67%</u>	<u>1.181</u>	<u>79%</u>
<u>2003</u>	<u>58%</u>	<u>1.222</u>	<u>71%</u>
<u>2002</u>	<u>49%</u>	<u>1.242</u>	<u>61%</u>
<u>2001</u>	<u>39%</u>	<u>1.250</u>	<u>49%</u>
<u>2000</u>	<u>30%</u>	<u>1.260</u>	<u>38%</u>
<u>1999</u>	<u>24%</u>	<u>1.283</u>	<u>31%</u>
<u>1998 and older</u>	<u>20%</u>	<u>1.287</u>	<u>26%</u>
<u>2008</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2007</u>	<u>84%</u>	<u>1.029</u>	<u>86%</u>
<u>2006</u>	<u>76%</u>	<u>1.085</u>	<u>82%</u>
<u>2005</u>	<u>67%</u>	<u>1.136</u>	<u>76%</u>
<u>2004</u>	<u>58%</u>	<u>1.221</u>	<u>71%</u>
<u>2003</u>	<u>49%</u>	<u>1.263</u>	<u>62%</u>
<u>2002</u>	<u>39%</u>	<u>1.285</u>	<u>50%</u>
<u>2001</u>	<u>30%</u>	<u>1.292</u>	<u>39%</u>
<u>2000</u>	<u>24%</u>	<u>1.303</u>	<u>31%</u>
<u>1999 and older</u>	<u>20%</u>	<u>1.327</u>	<u>27%</u>

(5) This rule is effective for tax years beginning after December 31, 2007
2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.153 SKI LIFT EQUIPMENT (1) and (2) remain the same.

(3) The depreciation schedules shall be determined by the life expectancy of the equipment and will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to the technological changes during the life expectancy period.

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	92%	1.000	92%
2006	84%	1.049	88%
2005	76%	1.098	83%
2004	67%	1.181	79%
2003	58%	1.222	71%
2002	49%	1.242	61%
2001	39%	1.250	49%
2000	30%	1.260	38%
1999	24%	1.283	31%
1998 and older	20%	1.287	26%
<u>2008</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2007</u>	<u>84%</u>	<u>1.029</u>	<u>86%</u>
<u>2006</u>	<u>76%</u>	<u>1.085</u>	<u>82%</u>
<u>2005</u>	<u>67%</u>	<u>1.136</u>	<u>76%</u>
<u>2004</u>	<u>58%</u>	<u>1.221</u>	<u>71%</u>
<u>2003</u>	<u>49%</u>	<u>1.263</u>	<u>62%</u>
<u>2002</u>	<u>39%</u>	<u>1.285</u>	<u>50%</u>
<u>2001</u>	<u>30%</u>	<u>1.292</u>	<u>39%</u>
<u>2000</u>	<u>24%</u>	<u>1.303</u>	<u>31%</u>
<u>1999 and older</u>	<u>20%</u>	<u>1.327</u>	<u>27%</u>

- (a) The taxpayer must initially list with the department:
- (i) all equipment by year of installation; and
 - (ii) installed costs of that equipment.
- (b) Each year thereafter, the taxpayer must list with the department:
- (i) all additions or deletions from the previous year's list, with installed cost.
- (4) This methodology is effective for tax years beginning after December 31, ~~2007~~ 2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year ~~2008~~ 2009 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	70%	1.000	70%
2006	45%	0.949	43%
2005	20%	0.906	18%
2004 and older	10%	0.879	9%
<u>2008</u>	<u>70%</u>	<u>1.000</u>	<u>70%</u>
<u>2007</u>	<u>45%</u>	<u>0.851</u>	<u>38%</u>
<u>2006</u>	<u>20%</u>	<u>0.810</u>	<u>16%</u>
<u>2005 and older</u>	<u>10%</u>	<u>0.773</u>	<u>8%</u>

CATEGORY 2

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	85%	1.000	85%
2006	69%	0.997	69%
2005	52%	1.003	52%
2004	34%	1.015	34%
2003 and older	20%	1.023	20%
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>1.022</u>	<u>71%</u>
<u>2006</u>	<u>52%</u>	<u>1.016</u>	<u>53%</u>
<u>2005</u>	<u>34%</u>	<u>1.022</u>	<u>35%</u>
<u>2004 and older</u>	<u>20%</u>	<u>1.034</u>	<u>21%</u>

CATEGORY 3

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	85%	1.000	85%
2006	69%	1.002	69%
2005	52%	0.990	51%
2004	34%	0.969	33%
2003 and older	20%	0.950	19%
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>0.905</u>	<u>62%</u>
<u>2006</u>	<u>52%</u>	<u>0.908</u>	<u>47%</u>
<u>2005</u>	<u>34%</u>	<u>0.897</u>	<u>30%</u>
<u>2004 and older</u>	<u>20%</u>	<u>0.878</u>	<u>18%</u>

CATEGORY 4

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	85%	1.000	85%
2006	69%	0.988	68%
2005	52%	0.975	51%
2004	34%	0.947	32%
2003 and older	20%	0.933	19%
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>0.977</u>	<u>67%</u>
<u>2006</u>	<u>52%</u>	<u>0.966</u>	<u>50%</u>
<u>2005</u>	<u>34%</u>	<u>0.953</u>	<u>32%</u>
<u>2004 and older</u>	<u>20%</u>	<u>0.925</u>	<u>19%</u>

CATEGORY 5

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	85%	1.000	85%
2006	69%	1.018	70%
2005	52%	1.047	54%
2004	34%	1.073	36%
2003 and older	20%	1.075	21%
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>1.014</u>	<u>70%</u>
<u>2006</u>	<u>52%</u>	<u>1.034</u>	<u>54%</u>
<u>2005</u>	<u>34%</u>	<u>1.062</u>	<u>36%</u>
<u>2004 and older</u>	<u>20%</u>	<u>1.088</u>	<u>22%</u>

CATEGORY 6

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	85%	1.000	85%
2006	69%	1.033	71%
2005	52%	1.104	57%
2004	34%	1.150	39%
2003 and older	20%	1.149	23%
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>1.022</u>	<u>71%</u>
<u>2006</u>	<u>52%</u>	<u>1.058</u>	<u>55%</u>
<u>2005</u>	<u>34%</u>	<u>1.129</u>	<u>38%</u>

<u>2004 and older</u>	<u>20%</u>	<u>1.177</u>	<u>24%</u>
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CATEGORY 7

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	92%	1.000	92%
2006	84%	1.022	86%
2005	76%	1.053	80%
2004	67%	1.081	72%
2003	58%	1.085	63%
2002	49%	1.084	53%
2001	39%	1.084	42%
2000	30%	1.095	33%
1999	24%	1.104	26%
1998 and older	20%	1.113	22%

2008	92%	1.000	92%
2007	84%	1.018	86%
2006	76%	1.040	79%
2005	67%	1.072	72%
2004	58%	1.100	64%
2003	49%	1.105	54%
2002	39%	1.103	43%
2001	30%	1.104	33%
2000	24%	1.115	27%
1999 and older	20%	1.124	22%

CATEGORY 8

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2007	92%	1.000	92%
2006	84%	1.028	86%
2005	76%	1.061	81%
2004	67%	1.101	74%
2003	58%	1.110	64%
2002	49%	1.120	55%
2001	39%	1.128	44%
2000	30%	1.140	34%
1999	24%	1.154	28%
1998 and older	20%	1.159	23%
2008	92%	1.000	92%
2007	84%	1.021	86%

<u>2006</u>	<u>76%</u>	<u>1.050</u>	<u>80%</u>
<u>2005</u>	<u>67%</u>	<u>1.084</u>	<u>73%</u>
<u>2004</u>	<u>58%</u>	<u>1.125</u>	<u>65%</u>
<u>2003</u>	<u>49%</u>	<u>1.134</u>	<u>56%</u>
<u>2002</u>	<u>39%</u>	<u>1.145</u>	<u>45%</u>
<u>2001</u>	<u>30%</u>	<u>1.152</u>	<u>35%</u>
<u>2000</u>	<u>24%</u>	<u>1.165</u>	<u>28%</u>
<u>1999 and older</u>	<u>20%</u>	<u>1.179</u>	<u>24%</u>

(3) This rule is effective for tax years beginning after December 31, ~~2007~~
2008.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the first paragraph of the reasonable necessity for ARM 42.21.113.

42.21.156 CATEGORIES (1) remains the same.

(2) Category 1 consists of computer systems, data processing equipment, ~~software~~, computerized medical equipment, and video games. The index used will be the "Producer Price Index for the 1972 Standard Industrial Classification Manual," Code #3674, "Semiconductors and Related Devices," published by the United States Department of Labor, Bureau of Labor Statistics. A four-year depreciation table will be used.

(3) through (9) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-138, MCA

REASONABLE NECESSITY: The department is striking software from the rule due to the fact that it is exempt according to 15-6-218(2), MCA.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) and (2) remain the same.

(3) Tables 1 through 32 represent the yearly trend factors for each of the categories.

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane Mfg.</u>	<u>TABLE 2</u> <u>Baking</u>	<u>TABLE 3</u> <u>Bottling</u>	<u>TABLE 4</u> <u>Brew/Dis.</u>	<u>TABLE 5</u> <u>Candy Confect.</u>
2007	1.000	1.000	1.000	1.000	1.000
2006	1.051	1.065	1.054	1.054	1.068
2005	1.105	1.115	1.108	1.107	1.117
2004	1.197	1.199	1.202	1.197	1.200
2003	1.242	1.244	1.246	1.238	1.243

2002	1.265	1.265	1.268	1.260	1.264
2001	1.269	1.273	1.274	1.268	1.272
2000	1.278	1.287	1.286	1.282	1.287
1999	1.301	1.313	1.310	1.306	1.313
1998	1.303	1.318	1.313	1.313	1.317
1997	1.313	1.331	1.323	1.326	1.331
1996	1.329	1.354	1.343	1.347	1.356
1995	1.347	1.374	1.364	1.373	1.377
1994	1.401	1.430	1.417	1.424	1.434
1993	1.437	1.475	1.455	1.458	1.478
1992	1.460	1.502	1.479	1.481	1.505
1991	1.470	1.522	1.494	1.497	1.526
1990	1.493	1.557	1.523	1.530	1.563
1989	1.526	1.599	1.561	1.574	1.609
1988	1.602	1.687	1.652	1.667	1.702

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane Mfg.</u>	<u>TABLE 2</u> <u>Baking</u>	<u>TABLE 3</u> <u>Bottling</u>	<u>TABLE 4</u> <u>Brew/Dis.</u>	<u>TABLE 5</u> <u>Candy Confect.</u>
<u>2008</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2007</u>	<u>1.029</u>	<u>1.031</u>	<u>1.032</u>	<u>1.033</u>	<u>1.031</u>
<u>2006</u>	<u>1.087</u>	<u>1.104</u>	<u>1.095</u>	<u>1.095</u>	<u>1.107</u>
<u>2005</u>	<u>1.143</u>	<u>1.155</u>	<u>1.151</u>	<u>1.151</u>	<u>1.158</u>
<u>2004</u>	<u>1.238</u>	<u>1.242</u>	<u>1.248</u>	<u>1.244</u>	<u>1.245</u>
<u>2003</u>	<u>1.285</u>	<u>1.289</u>	<u>1.294</u>	<u>1.286</u>	<u>1.290</u>
<u>2002</u>	<u>1.308</u>	<u>1.311</u>	<u>1.317</u>	<u>1.309</u>	<u>1.311</u>
<u>2001</u>	<u>1.313</u>	<u>1.319</u>	<u>1.323</u>	<u>1.318</u>	<u>1.319</u>
<u>2000</u>	<u>1.322</u>	<u>1.334</u>	<u>1.335</u>	<u>1.332</u>	<u>1.335</u>
<u>1999</u>	<u>1.346</u>	<u>1.360</u>	<u>1.360</u>	<u>1.357</u>	<u>1.361</u>
<u>1998</u>	<u>1.348</u>	<u>1.365</u>	<u>1.363</u>	<u>1.364</u>	<u>1.366</u>
<u>1997</u>	<u>1.358</u>	<u>1.379</u>	<u>1.373</u>	<u>1.378</u>	<u>1.381</u>
<u>1996</u>	<u>1.374</u>	<u>1.403</u>	<u>1.394</u>	<u>1.400</u>	<u>1.406</u>
<u>1995</u>	<u>1.393</u>	<u>1.423</u>	<u>1.416</u>	<u>1.426</u>	<u>1.428</u>
<u>1994</u>	<u>1.449</u>	<u>1.482</u>	<u>1.472</u>	<u>1.480</u>	<u>1.487</u>
<u>1993</u>	<u>1.486</u>	<u>1.528</u>	<u>1.511</u>	<u>1.515</u>	<u>1.532</u>
<u>1992</u>	<u>1.510</u>	<u>1.556</u>	<u>1.536</u>	<u>1.539</u>	<u>1.561</u>
<u>1991</u>	<u>1.520</u>	<u>1.577</u>	<u>1.551</u>	<u>1.555</u>	<u>1.582</u>
<u>1990</u>	<u>1.544</u>	<u>1.613</u>	<u>1.581</u>	<u>1.590</u>	<u>1.621</u>
<u>1989</u>	<u>1.578</u>	<u>1.657</u>	<u>1.620</u>	<u>1.635</u>	<u>1.669</u>

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement Mfg.</u>	<u>TABLE 7</u> <u>Chemical Mfg.</u>	<u>TABLE 8</u> <u>Clay Mfg.</u>	<u>TABLE 9</u> <u>Contractor Eq.</u>	<u>TABLE 10</u> <u>Creamery/Dairy</u>
<u>2007</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2006</u>	<u>1.047</u>	<u>1.053</u>	<u>1.049</u>	<u>1.032</u>	<u>1.064</u>
<u>2005</u>	<u>1.099</u>	<u>1.106</u>	<u>1.099</u>	<u>1.078</u>	<u>1.117</u>
<u>2004</u>	<u>1.195</u>	<u>1.200</u>	<u>1.186</u>	<u>1.152</u>	<u>1.202</u>
<u>2003</u>	<u>1.242</u>	<u>1.242</u>	<u>1.228</u>	<u>1.185</u>	<u>1.244</u>
<u>2002</u>	<u>1.268</u>	<u>1.267</u>	<u>1.252</u>	<u>1.203</u>	<u>1.264</u>

2001	1.276	1.274	1.262	1.213	1.273
2000	1.288	1.286	1.275	1.220	1.287
1999	1.310	1.307	1.296	1.241	1.313
1998	1.315	1.313	1.301	1.251	1.318
1997	1.329	1.327	1.315	1.265	1.332
1996	1.345	1.344	1.335	1.290	1.355
1995	1.370	1.370	1.361	1.311	1.378
1994	1.418	1.421	1.408	1.347	1.436
1993	1.450	1.450	1.441	1.381	1.475
1992	1.473	1.468	1.467	1.419	1.499
1991	1.485	1.479	1.481	1.445	1.517
1990	1.514	1.511	1.512	1.480	1.554
1989	1.555	1.551	1.557	1.528	1.599
1988	1.633	1.639	1.638	1.601	1.695

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement Mfg.</u>	<u>TABLE 7</u> <u>Chemical Mfg.</u>	<u>TABLE 8</u> <u>Clay Mfg.</u>	<u>TABLE 9</u> <u>Contractor Eq.</u>	<u>TABLE 10</u> <u>Creamery/Dairy</u>
<u>2008</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2007</u>	<u>1.032</u>	<u>1.033</u>	<u>1.032</u>	<u>1.024</u>	<u>1.032</u>
<u>2006</u>	<u>1.086</u>	<u>1.094</u>	<u>1.087</u>	<u>1.060</u>	<u>1.105</u>
<u>2005</u>	<u>1.140</u>	<u>1.149</u>	<u>1.139</u>	<u>1.108</u>	<u>1.160</u>
<u>2004</u>	<u>1.239</u>	<u>1.247</u>	<u>1.229</u>	<u>1.183</u>	<u>1.248</u>
<u>2003</u>	<u>1.288</u>	<u>1.291</u>	<u>1.273</u>	<u>1.218</u>	<u>1.291</u>
<u>2002</u>	<u>1.314</u>	<u>1.317</u>	<u>1.298</u>	<u>1.236</u>	<u>1.313</u>
<u>2001</u>	<u>1.323</u>	<u>1.324</u>	<u>1.308</u>	<u>1.246</u>	<u>1.321</u>
<u>2000</u>	<u>1.335</u>	<u>1.336</u>	<u>1.322</u>	<u>1.254</u>	<u>1.336</u>
<u>1999</u>	<u>1.358</u>	<u>1.358</u>	<u>1.344</u>	<u>1.275</u>	<u>1.363</u>
<u>1998</u>	<u>1.364</u>	<u>1.365</u>	<u>1.349</u>	<u>1.286</u>	<u>1.369</u>
<u>1997</u>	<u>1.378</u>	<u>1.379</u>	<u>1.363</u>	<u>1.300</u>	<u>1.383</u>
<u>1996</u>	<u>1.395</u>	<u>1.396</u>	<u>1.384</u>	<u>1.326</u>	<u>1.406</u>
<u>1995</u>	<u>1.421</u>	<u>1.424</u>	<u>1.410</u>	<u>1.348</u>	<u>1.431</u>
<u>1994</u>	<u>1.471</u>	<u>1.476</u>	<u>1.459</u>	<u>1.385</u>	<u>1.491</u>
<u>1993</u>	<u>1.504</u>	<u>1.507</u>	<u>1.493</u>	<u>1.419</u>	<u>1.531</u>
<u>1992</u>	<u>1.527</u>	<u>1.526</u>	<u>1.520</u>	<u>1.458</u>	<u>1.556</u>
<u>1991</u>	<u>1.540</u>	<u>1.537</u>	<u>1.536</u>	<u>1.485</u>	<u>1.575</u>
<u>1990</u>	<u>1.570</u>	<u>1.571</u>	<u>1.567</u>	<u>1.521</u>	<u>1.613</u>
<u>1989</u>	<u>1.612</u>	<u>1.611</u>	<u>1.614</u>	<u>1.570</u>	<u>1.660</u>

<u>YEAR</u>	<u>TABLE 11</u> <u>Elec. Pwr.</u> <u>Eq.</u>	<u>TABLE 12</u> <u>Elec. Eq.</u> <u>Mfg.</u>	<u>TABLE 13</u> <u>Cannery/Fish</u>	<u>TABLE 14</u> <u>Flour, Cer.</u> <u>Feed</u>	<u>TABLE 15</u> <u>Cannery/Fruit</u>
<u>2007</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2006</u>	<u>1.075</u>	<u>1.064</u>	<u>1.065</u>	<u>1.060</u>	<u>1.060</u>
<u>2005</u>	<u>1.153</u>	<u>1.130</u>	<u>1.114</u>	<u>1.113</u>	<u>1.106</u>
<u>2004</u>	<u>1.262</u>	<u>1.231</u>	<u>1.200</u>	<u>1.202</u>	<u>1.186</u>
<u>2003</u>	<u>1.320</u>	<u>1.283</u>	<u>1.246</u>	<u>1.246</u>	<u>1.230</u>
<u>2002</u>	<u>1.342</u>	<u>1.305</u>	<u>1.269</u>	<u>1.267</u>	<u>1.250</u>

2004	1.337	1.304	1.277	1.274	1.259
2000	1.346	1.313	1.291	1.288	1.271
1999	1.373	1.337	1.316	1.314	1.298
1998	1.367	1.332	1.320	1.319	1.302
1997	1.369	1.338	1.334	1.332	1.314
1996	1.376	1.350	1.358	1.352	1.341
1995	1.388	1.366	1.378	1.373	1.358
1994	1.461	1.431	1.435	1.429	1.410
1993	1.491	1.466	1.481	1.467	1.459
1992	1.501	1.481	1.510	1.490	1.493
1991	1.496	1.483	1.532	1.504	1.520
1990	1.505	1.500	1.568	1.536	1.555
1989	1.531	1.529	1.612	1.575	1.599
1988	1.624	1.617	1.703	1.662	1.689

<u>YEAR</u>	<u>TABLE 11</u> <u>Elec. Pwr.</u> <u>Eq.</u>	<u>TABLE 12</u> <u>Elec. Eq.</u> <u>Mfg.</u>	<u>TABLE 13</u> <u>Cannery/Fish</u>	<u>TABLE 14</u> <u>Flour, Cer.</u> <u>Feed</u>	<u>TABLE 15</u> <u>Cannery/Fruit</u>
2008	1.000	1.000	1.000	1.000	1.000
2007	1.043	1.037	1.031	1.032	1.029
2006	1.129	1.109	1.104	1.099	1.096
2005	1.211	1.178	1.154	1.155	1.144
2004	1.325	1.283	1.244	1.247	1.226
2003	1.386	1.338	1.291	1.293	1.272
2002	1.409	1.361	1.314	1.314	1.292
2001	1.403	1.359	1.323	1.322	1.301
2000	1.413	1.369	1.337	1.336	1.315
1999	1.441	1.394	1.364	1.363	1.342
1998	1.435	1.389	1.368	1.368	1.347
1997	1.437	1.395	1.382	1.382	1.359
1996	1.445	1.408	1.408	1.403	1.387
1995	1.457	1.424	1.428	1.425	1.405
1994	1.534	1.492	1.487	1.482	1.458
1993	1.566	1.528	1.535	1.522	1.509
1992	1.576	1.545	1.565	1.546	1.544
1991	1.570	1.546	1.587	1.561	1.572
1990	1.580	1.564	1.624	1.593	1.608
1989	1.607	1.595	1.670	1.634	1.654

<u>YEAR</u>	<u>TABLE 16</u> <u>Packing/</u> <u>Fruit</u>	<u>TABLE 17</u> <u>Laundry/</u> <u>Clean</u>	<u>TABLE 18</u> <u>Logging Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
2007	1.000	1.000	1.000	1.000	1.000
2006	1.042	1.049	1.038	1.060	1.051
2005	1.085	1.096	1.084	1.106	1.097
2004	1.159	1.182	1.165	1.185	1.184
2003	1.199	1.225	1.206	1.225	1.221

2002	1.217	1.248	1.225	1.246	1.242
2001	1.228	1.254	1.233	1.255	1.244
2000	1.237	1.265	1.240	1.269	1.252
1999	1.264	1.289	1.262	1.293	1.270
1998	1.270	1.291	1.267	1.299	1.269
1997	1.280	1.301	1.278	1.313	1.282
1996	1.310	1.322	1.298	1.337	1.298
1995	1.326	1.343	1.316	1.360	1.321
1994	1.368	1.391	1.358	1.411	1.372
1993	1.417	1.429	1.397	1.453	1.406
1992	1.460	1.456	1.427	1.481	1.427
1991	1.491	1.471	1.450	1.503	1.439
1990	1.525	1.501	1.480	1.541	1.470
1989	1.570	1.543	1.519	1.588	1.510
1988	1.655	1.625	1.589	1.676	1.585

<u>YEAR</u>	<u>TABLE 16</u> <u>Packing/</u> <u>Fruit</u>	<u>TABLE 17</u> <u>Laundry/</u> <u>Clean</u>	<u>TABLE 18</u> <u>Logging Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
<u>2008</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2007</u>	<u>1.026</u>	<u>1.030</u>	<u>1.025</u>	<u>1.030</u>	<u>1.028</u>
<u>2006</u>	<u>1.074</u>	<u>1.086</u>	<u>1.068</u>	<u>1.097</u>	<u>1.085</u>
<u>2005</u>	<u>1.118</u>	<u>1.135</u>	<u>1.116</u>	<u>1.145</u>	<u>1.132</u>
<u>2004</u>	<u>1.194</u>	<u>1.224</u>	<u>1.199</u>	<u>1.227</u>	<u>1.222</u>
<u>2003</u>	<u>1.235</u>	<u>1.268</u>	<u>1.242</u>	<u>1.268</u>	<u>1.261</u>
<u>2002</u>	<u>1.253</u>	<u>1.291</u>	<u>1.261</u>	<u>1.290</u>	<u>1.282</u>
<u>2001</u>	<u>1.265</u>	<u>1.299</u>	<u>1.269</u>	<u>1.300</u>	<u>1.284</u>
<u>2000</u>	<u>1.275</u>	<u>1.309</u>	<u>1.276</u>	<u>1.313</u>	<u>1.293</u>
<u>1999</u>	<u>1.302</u>	<u>1.334</u>	<u>1.299</u>	<u>1.338</u>	<u>1.311</u>
<u>1998</u>	<u>1.308</u>	<u>1.336</u>	<u>1.305</u>	<u>1.345</u>	<u>1.310</u>
<u>1997</u>	<u>1.318</u>	<u>1.347</u>	<u>1.315</u>	<u>1.360</u>	<u>1.323</u>
<u>1996</u>	<u>1.350</u>	<u>1.369</u>	<u>1.336</u>	<u>1.384</u>	<u>1.340</u>
<u>1995</u>	<u>1.366</u>	<u>1.390</u>	<u>1.355</u>	<u>1.408</u>	<u>1.363</u>
<u>1994</u>	<u>1.409</u>	<u>1.440</u>	<u>1.398</u>	<u>1.461</u>	<u>1.416</u>
<u>1993</u>	<u>1.460</u>	<u>1.479</u>	<u>1.438</u>	<u>1.505</u>	<u>1.452</u>
<u>1992</u>	<u>1.504</u>	<u>1.507</u>	<u>1.469</u>	<u>1.533</u>	<u>1.473</u>
<u>1991</u>	<u>1.536</u>	<u>1.522</u>	<u>1.493</u>	<u>1.556</u>	<u>1.486</u>
<u>1990</u>	<u>1.571</u>	<u>1.554</u>	<u>1.523</u>	<u>1.595</u>	<u>1.518</u>
<u>1989</u>	<u>1.618</u>	<u>1.597</u>	<u>1.564</u>	<u>1.644</u>	<u>1.559</u>

<u>YEAR</u>	<u>TABLE 21</u> <u>Mine</u> <u>Mill</u>	<u>TABLE 22</u> <u>Paint</u> <u>Mfg.</u>	<u>TABLE 23</u> <u>Petroleum</u>	<u>TABLE 24</u> <u>Printing</u>	<u>TABLE 25</u> <u>Paper</u> <u>Mfg.</u>
<u>2007</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2006</u>	<u>1.039</u>	<u>1.052</u>	<u>1.058</u>	<u>1.051</u>	<u>1.045</u>
<u>2005</u>	<u>1.090</u>	<u>1.105</u>	<u>1.120</u>	<u>1.092</u>	<u>1.093</u>
<u>2004</u>	<u>1.182</u>	<u>1.198</u>	<u>1.217</u>	<u>1.165</u>	<u>1.184</u>

2003	1.227	1.243	1.260	1.199	1.230
2002	1.250	1.269	1.285	1.218	1.254
2001	1.265	1.276	1.298	1.219	1.264
2000	1.274	1.288	1.314	1.230	1.272
1999	1.296	1.312	1.333	1.247	1.297
1998	1.301	1.316	1.339	1.248	1.301
1997	1.316	1.329	1.358	1.255	1.312
1996	1.337	1.349	1.380	1.275	1.338
1995	1.358	1.373	1.408	1.294	1.356
1994	1.400	1.426	1.460	1.342	1.402
1993	1.439	1.461	1.489	1.375	1.445
1992	1.469	1.485	1.504	1.396	1.478
1991	1.494	1.498	1.515	1.401	1.498
1990	1.529	1.528	1.555	1.421	1.527
1989	1.576	1.568	1.594	1.444	1.567
1988	1.661	1.657	1.676	1.523	1.653

<u>YEAR</u>	<u>TABLE 21</u> <u>Mine</u> <u>Mill</u>	<u>TABLE 22</u> <u>Paint</u> <u>Mfg.</u>	<u>TABLE 23</u> <u>Petroleum</u>	<u>TABLE 24</u> <u>Printing</u>	<u>TABLE 25</u> <u>Paper</u> <u>Mfg.</u>
<u>2008</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2007</u>	<u>1.030</u>	<u>1.032</u>	<u>1.036</u>	<u>1.025</u>	<u>1.029</u>
<u>2006</u>	<u>1.076</u>	<u>1.092</u>	<u>1.102</u>	<u>1.082</u>	<u>1.081</u>
<u>2005</u>	<u>1.128</u>	<u>1.146</u>	<u>1.167</u>	<u>1.125</u>	<u>1.130</u>
<u>2004</u>	<u>1.223</u>	<u>1.243</u>	<u>1.268</u>	<u>1.200</u>	<u>1.225</u>
<u>2003</u>	<u>1.269</u>	<u>1.290</u>	<u>1.313</u>	<u>1.235</u>	<u>1.272</u>
<u>2002</u>	<u>1.294</u>	<u>1.317</u>	<u>1.338</u>	<u>1.255</u>	<u>1.296</u>
<u>2001</u>	<u>1.309</u>	<u>1.325</u>	<u>1.352</u>	<u>1.256</u>	<u>1.307</u>
<u>2000</u>	<u>1.319</u>	<u>1.337</u>	<u>1.369</u>	<u>1.267</u>	<u>1.315</u>
<u>1999</u>	<u>1.341</u>	<u>1.362</u>	<u>1.389</u>	<u>1.284</u>	<u>1.342</u>
<u>1998</u>	<u>1.347</u>	<u>1.366</u>	<u>1.395</u>	<u>1.286</u>	<u>1.345</u>
<u>1997</u>	<u>1.361</u>	<u>1.379</u>	<u>1.414</u>	<u>1.293</u>	<u>1.357</u>
<u>1996</u>	<u>1.383</u>	<u>1.399</u>	<u>1.438</u>	<u>1.313</u>	<u>1.384</u>
<u>1995</u>	<u>1.406</u>	<u>1.424</u>	<u>1.467</u>	<u>1.333</u>	<u>1.403</u>
<u>1994</u>	<u>1.449</u>	<u>1.480</u>	<u>1.521</u>	<u>1.382</u>	<u>1.450</u>
<u>1993</u>	<u>1.489</u>	<u>1.516</u>	<u>1.552</u>	<u>1.416</u>	<u>1.494</u>
<u>1992</u>	<u>1.521</u>	<u>1.541</u>	<u>1.567</u>	<u>1.438</u>	<u>1.528</u>
<u>1991</u>	<u>1.546</u>	<u>1.554</u>	<u>1.579</u>	<u>1.443</u>	<u>1.549</u>
<u>1990</u>	<u>1.582</u>	<u>1.586</u>	<u>1.620</u>	<u>1.464</u>	<u>1.580</u>
<u>1989</u>	<u>1.631</u>	<u>1.627</u>	<u>1.661</u>	<u>1.488</u>	<u>1.620</u>

<u>YEAR</u>	<u>TABLE 26</u> <u>Refrigeration</u>	<u>TABLE 27</u> <u>Rubber</u>	<u>TABLE 28</u> <u>Steam</u> <u>Power</u>	<u>TABLE 29</u> <u>Textile</u>	<u>TABLE 30</u> <u>Warehousing</u>
2007	1.000	1.000	1.000	1.000	1.000
2006	1.053	1.049	1.061	1.039	1.033
2005	1.103	1.092	1.117	1.078	1.069

2004	1.190	1.174	1.218	1.154	1.144
2003	1.233	1.213	1.263	1.188	1.184
2002	1.257	1.237	1.288	1.205	1.198
2001	1.268	1.241	1.293	1.210	1.202
2000	1.280	1.254	1.303	1.220	1.209
1999	1.305	1.270	1.324	1.238	1.232
1998	1.310	1.275	1.325	1.240	1.233
1997	1.323	1.289	1.334	1.250	1.237
1996	1.344	1.307	1.348	1.271	1.258
1995	1.368	1.332	1.370	1.289	1.269
1994	1.420	1.379	1.425	1.328	1.305
1993	1.458	1.411	1.455	1.362	1.348
1992	1.486	1.439	1.472	1.389	1.379
1991	1.503	1.453	1.479	1.406	1.399
1990	1.536	1.486	1.503	1.437	1.424
1989	1.578	1.528	1.543	1.473	1.457
1988	1.665	1.607	1.634	1.547	1.522

<u>YEAR</u>	<u>TABLE 26</u>	<u>TABLE 27</u>	<u>TABLE 28</u>	<u>TABLE 29</u>	<u>TABLE 30</u>
	<u>Refrigeration</u>	<u>Rubber</u>	<u>Steam</u>		
			<u>Power</u>	<u>Textile</u>	<u>Warehousing</u>
<u>2008</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2007</u>	<u>1.032</u>	<u>1.029</u>	<u>1.036</u>	<u>1.025</u>	<u>1.026</u>
<u>2006</u>	<u>1.092</u>	<u>1.085</u>	<u>1.106</u>	<u>1.069</u>	<u>1.064</u>
<u>2005</u>	<u>1.145</u>	<u>1.129</u>	<u>1.164</u>	<u>1.109</u>	<u>1.101</u>
<u>2004</u>	<u>1.234</u>	<u>1.211</u>	<u>1.269</u>	<u>1.187</u>	<u>1.178</u>
<u>2003</u>	<u>1.279</u>	<u>1.254</u>	<u>1.316</u>	<u>1.222</u>	<u>1.219</u>
<u>2002</u>	<u>1.305</u>	<u>1.280</u>	<u>1.343</u>	<u>1.240</u>	<u>1.233</u>
<u>2001</u>	<u>1.315</u>	<u>1.283</u>	<u>1.347</u>	<u>1.245</u>	<u>1.238</u>
<u>2000</u>	<u>1.328</u>	<u>1.294</u>	<u>1.358</u>	<u>1.255</u>	<u>1.245</u>
<u>1999</u>	<u>1.354</u>	<u>1.314</u>	<u>1.379</u>	<u>1.274</u>	<u>1.268</u>
<u>1998</u>	<u>1.359</u>	<u>1.319</u>	<u>1.381</u>	<u>1.276</u>	<u>1.270</u>
<u>1997</u>	<u>1.373</u>	<u>1.333</u>	<u>1.391</u>	<u>1.286</u>	<u>1.274</u>
<u>1996</u>	<u>1.395</u>	<u>1.352</u>	<u>1.405</u>	<u>1.308</u>	<u>1.295</u>
<u>1995</u>	<u>1.420</u>	<u>1.377</u>	<u>1.428</u>	<u>1.326</u>	<u>1.306</u>
<u>1994</u>	<u>1.473</u>	<u>1.426</u>	<u>1.485</u>	<u>1.366</u>	<u>1.343</u>
<u>1993</u>	<u>1.512</u>	<u>1.460</u>	<u>1.516</u>	<u>1.401</u>	<u>1.388</u>
<u>1992</u>	<u>1.541</u>	<u>1.488</u>	<u>1.534</u>	<u>1.429</u>	<u>1.420</u>
<u>1991</u>	<u>1.559</u>	<u>1.503</u>	<u>1.541</u>	<u>1.446</u>	<u>1.440</u>
<u>1990</u>	<u>1.594</u>	<u>1.537</u>	<u>1.566</u>	<u>1.478</u>	<u>1.466</u>
<u>1989</u>	<u>1.637</u>	<u>1.580</u>	<u>1.608</u>	<u>1.516</u>	<u>1.500</u>

<u>YEAR</u>	<u>TABLE 31</u>	<u>TABLE 32</u>
	<u>Woodworking</u>	<u>Glass Mfg.</u>
2007	1.000	1.000
2006	1.037	1.054
2005	1.075	1.111

2004	1.149	1.209
2003	1.184	1.256
2002	1.201	1.281
2001	1.212	1.288
2000	1.213	1.300
1999	1.234	1.325
1998	1.236	1.328
1997	1.241	1.339
1996	1.272	1.356
1995	1.285	1.379
1994	1.322	1.436
1993	1.367	1.468
1992	1.414	1.490
1991	1.442	1.498
1990	1.466	1.524
1989	1.505	1.562
1988	1.588	1.649

<u>YEAR</u>	<u>TABLE 31</u> <u>Woodworking</u>	<u>TABLE 32</u> <u>Glass Mfg.</u>
<u>2008</u>	<u>1.000</u>	<u>1.000</u>
<u>2007</u>	<u>1.023</u>	<u>1.033</u>
<u>2006</u>	<u>1.064</u>	<u>1.095</u>
<u>2005</u>	<u>1.104</u>	<u>1.154</u>
<u>2004</u>	<u>1.179</u>	<u>1.256</u>
<u>2003</u>	<u>1.215</u>	<u>1.305</u>
<u>2002</u>	<u>1.234</u>	<u>1.331</u>
<u>2001</u>	<u>1.245</u>	<u>1.338</u>
<u>2000</u>	<u>1.246</u>	<u>1.351</u>
<u>1999</u>	<u>1.267</u>	<u>1.376</u>
<u>1998</u>	<u>1.269</u>	<u>1.380</u>
<u>1997</u>	<u>1.274</u>	<u>1.391</u>
<u>1996</u>	<u>1.306</u>	<u>1.409</u>
<u>1995</u>	<u>1.319</u>	<u>1.433</u>
<u>1994</u>	<u>1.357</u>	<u>1.491</u>
<u>1993</u>	<u>1.403</u>	<u>1.525</u>
<u>1992</u>	<u>1.452</u>	<u>1.548</u>
<u>1991</u>	<u>1.480</u>	<u>1.557</u>
<u>1990</u>	<u>1.505</u>	<u>1.583</u>
<u>1989</u>	<u>1.545</u>	<u>1.623</u>

AUTH: 15-1-201, MCA

IMP: 15-6-138, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.1311 to clarify through the trend tables how the department arrives at market value as required by 15-8-111, MCA. Annually, the department updates these

schedules to inform taxpayers of the current percentages used by the department when valuing and taxing their property. To determine the market value of centrally assessed property, the department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rule, and that method is not being changed. The First Judicial District Court indicated in 1986 that the department must publish these trend tables annually and these amendments are in compliance with that order.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 7, 2008.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State September 29, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of establishing a	)	NOTICE OF EXTENSION OF
negotiated rulemaking committee	)	APPLICATION PERIOD FOR THE
relating to prepaid wireless	)	PROPOSED NEGOTIATED
telecommunications providers	)	RULEMAKING COMMITTEE

TO: All Concerned Persons

1. On July 31, 2008, the department published MAR Notice No. 42-2-797 regarding the establishment of a negotiated rulemaking committee relating to prepaid wireless telecommunications providers at page 1559 of the Montana Administrative Register, issue no. 14.

2. Applications to participate in this rulemaking process were due by September 1, 2008. The department did not receive sufficient applications to represent a balanced representation of the subject matter so the application period is being extended to November 10, 2008.

3. Interests that are likely to be significantly affected by the proposed rules include but are not limited to the following entities: wireless telecommunications providers; landline providers; other taxpayers; agencies and members of the public affected by the services supported by the relevant funds collected by the state; other affected parties.

4. The individuals proposed to represent the department on the negotiated rulemaking committee are: Lee Baerlocher, Business and Income Taxes Division; and Joel Silverman, Legal Services Office. Cleo Anderson, Disclosure, Rules and Policy Officer, Legal Services Office, will serve as hearing examiner for the negotiated rulemaking process.

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

6. 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 7701, Helena, Montana 59604-7701, no later than November 10, 2008:

(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 prepaid wireless telecommunication providers, 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).

7. 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.

8. The Director of Revenue, Dan R. Bucks, will select the committee members from the timely submitted applications. One representative will be allowed from each area impacted by the rules, e.g., one from each agency and one from each area of the telecommunications industry. The selected committee members will represent all identified segments of the prepaid wireless telecommunications providers and state and local officials.

9. Members of the public and other interested parties not selected to serve on the committee are invited to attend the meetings and may consult with committee members regarding issues and make recommendations of information to be considered.

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

(a) On October 9, 2008, this notice will be published in the Montana Administrative Register (MAR), and in the five major newspapers in Montana. The notice will also be mailed to persons known to the department to have an interest in this matter. Applications for membership on the negotiated rulemaking committee must be received no later than November 10, 2008.

(b) After receipt and consideration of the comments and applications, the department will establish a negotiated rulemaking committee no later than November 21, 2008. 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 ten days from the notification of selection, the committee members will be sent an information packet.

(c) The negotiated rulemaking committee will convene its first organizational meeting on December 3, 2008, to begin the negotiation process. At this meeting, subsequent meeting dates will be established. Teleconferencing and e-mail correspondence will be utilized as much as possible for the meetings after the initial organizational meeting. The time and place of the first meeting will be provided to those selected to participate and posted on the department's web site at the time the appointees are notified.

(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 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 prepaid wireless telecommunications providers.

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

11. 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.

12. 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(s) (2-5-106(4), MCA).

13. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Cleo Anderson, Department of Revenue, P.O. Box 7701, Helena, Montana 59604-7701, no later than October 20, 2008.

14. The specific grant of rulemaking authority authorizing the department to adopt the proposed rules is found in 15-1-201, 15-30-305, and 15-32-407, MCA. The proposed rules will implement 10-4-201, MCA.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State September 29, 2008

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 1.2.419 regarding the) PROPOSED AMENDMENT
scheduled dates for the 2009)
Montana Administrative Register)

TO: All Concerned Persons

1. On October 29, 2008, a public hearing will be held at 11:30 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on October 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5596; fax (406) 444-4263; TDD (406) 444-9068; e-mail jbranscum@mt.gov.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

2008 Schedule

Filing	Publication
January 7	January 17
January 22	January 31
February 4	February 14
February 19	February 28
March 3	March 13
March 17	March 27
March 31	April 10
April 14	April 24
April 28	May 8
May 12	May 22
June 2	June 12
June 16	June 26
July 7	July 17

July 21	July 31
August 4	August 14
August 18	August 28
September 2	September 11
September 15	September 25
September 29	October 9
October 14	October 23
October 27	November 6
November 17	November 26
December 1	December 11
December 15	December 24

2009 Schedule

<u>Filing</u>	<u>Publication</u>
<u>January 5</u>	<u>January 15</u>
<u>January 20</u>	<u>January 29</u>
<u>February 2</u>	<u>February 12</u>
<u>February 17</u>	<u>February 26</u>
<u>March 2</u>	<u>March 12</u>
<u>March 16</u>	<u>March 26</u>
<u>April 6</u>	<u>April 16</u>
<u>April 20</u>	<u>April 30</u>
<u>May 4</u>	<u>May 14</u>
<u>May 18</u>	<u>May 28</u>
<u>June 1</u>	<u>June 11</u>
<u>June 15</u>	<u>June 25</u>
<u>July 6</u>	<u>July 16</u>
<u>July 20</u>	<u>July 30</u>
<u>August 3</u>	<u>August 13</u>
<u>August 17</u>	<u>August 27</u>
<u>August 31</u>	<u>September 10</u>
<u>September 14</u>	<u>September 24</u>
<u>October 5</u>	<u>October 15</u>
<u>October 19</u>	<u>October 29</u>
<u>November 2</u>	<u>November 12</u>
<u>November 16</u>	<u>November 25</u>
<u>November 30</u>	<u>December 10</u>
<u>December 14</u>	<u>December 24</u>

(2) remains the same.

AUTH: 2-4-312, MCA
IMP: 2-4-312, MCA

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2009. The schedule is proposed during the month of October in order that it may be adopted during November to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

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 Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jabranscum@mt.gov, and must be received no later than 5:00 p.m., November 6, 2008.

6. Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State 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, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Brad Johnson
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 29th day of September 2008.

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

In the matter of the amendment of)
ARM 12.2.501 and 12.5.201 and the) NOTICE OF AMENDMENT AND
adoption of New Rules I through V) ADOPTION
regarding gray wolf management in)
Montana)

TO: All Concerned Persons

1. On June 26, 2008, the Department of Fish, Wildlife and Parks (department) and the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-346 on the proposed amendment and adoption of the above-stated rules at page 1252 of the 2008 Montana Administrative Register, Issue No. 12.

2. The department and commission have amended ARM 12.2.501 and 12.5.201 and NEW RULES I through V (12.9.1301 through 12.9.1305) to provide a date the rules will be applied. On July 18, 2008, the United States District Court for the District of Montana, Missoula Division, issued a preliminary injunction reinstating the Endangered Species Act protection for the northern Rocky Mountain gray wolf. *Defenders of Wildlife v. Hall*, No. CV-08-56-M-DVM (D. Mont. July 18, 2008) (order granting preliminary injunction). This means that the management of the wolf in Montana is presently under the jurisdiction of the United States Fish and Wildlife Service pursuant to the Endangered Species Act. It is therefore uncertain when the northern Rocky Mountain gray wolf population will be effectively delisted and under state management. The rules for state management adopted by the department and commission, including removing the wolf from the state endangered species list and designating the gray wolf as a state nongame species in need of management, are only needed and can only be applied when the wolf is no longer subject to federal jurisdiction under the federal Endangered Species Act. For these reasons, the department and commission added language that provides the adopted amendments and adopted new rules are applied when the wolf is no longer subject to the federal Endangered Species Act and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

3. The department and commission have amended the following rules as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

12.2.501 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) through (1)(g) remain as proposed.

(i) The amendment adding (1)(g) will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species

Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

(2) remains as proposed.

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

12.5.201 ENDANGERED SPECIES LIST (1) The following endangered species list is established in accordance with Title 87, chapter 5, MCA. Except as otherwise provided, it is unlawful for any person to take, possess, transport, export, sell or offer for sale, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the following list:

(a) whooping crane (*grus americana*); ~~and~~

(b) Northern Rocky Mountain wolf (*canis lupus irremotus*); and

(i) Subsection (1)(b) will be applied until the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

~~(b)(c)~~ black-footed ferret (*mustela nigripes*).

AUTH: 87-5-107, 87-5-131, MCA

IMP: 87-5-107, 87-5-131, MCA

4. The department and commission have adopted the following rules as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE I (12.9.1301) COMMITMENT TO PRESERVATION OF THE GRAY WOLF AS RESIDENT WILDLIFE IN NEED OF MANAGEMENT (1) The department has management authority of the gray wolf, a resident native wildlife species, and is dedicated to the conservation of wolf populations within the state of Montana. Pursuant to the definition of management under the Nongame and Endangered Species Conservation Act, 87-5-102, MCA, the department will implement conservation and management strategies to make sure that wolves continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department will manage wolves to assure that recovery criteria are met or exceeded. Montana will ensure maintenance of at least 15 breeding pairs and assist natural dispersal and connectivity between gray wolf populations in Canada, Montana, Idaho, and Wyoming. The department uses an adaptive management framework for the gray wolf, meaning that if the statewide number of wolves exceeds 15 breeding pairs, the department may, as outlined in these rules, approve lethal control of wolves. If there are fewer than 15 breeding pair, the department will allow only conservative management of the wolf populations so that the number of breeding pair does not go below 10 but may still approve lethal control. These rules set out the comprehensive structure governing control of the gray wolf so that all control actions fall within the department's adaptive

management considerations. The commission has authority, when the statewide number of wolves exceeds 15 breeding pairs, to adopt a hunting season with quotas for wolves and will exercise that authority as part of the adaptive management framework for the gray wolf. The department's management decisions will be guided by the principles of maintaining and enhancing Montana's contribution to the overall northern Rocky Mountain gray wolf population and the gray wolf's connectivity between contiguous populations in Canada, Idaho, Montana, and Wyoming.

(2) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE II (12.9.1302) DEFINITIONS The following definitions apply to this subchapter:

(1) ~~"Adaptive management" means a model for wolf conservation and management strategies; changes in the number of packs determined through a monitoring program directs selection of more conservative or liberal management strategies; model incorporates resource objectives, monitoring protocols, evaluation of predicted outcomes, and a decision process.~~ means wolf conservation and management strategies that will maintain a recovered population and assure natural connectivity and genetic exchange among the wolf populations in Canada, Montana, Idaho, and Wyoming. It establishes resource objectives such as maintenance of a recovered population; it monitors progress towards meeting those objectives through wolf numbers, distribution, dispersal, genetic diversity, and consideration of disease; and it adjusts management decisions to meet these resource objectives. Adaptive management directs selection of more conservative or liberal management tools, accordingly. If wolf numbers, natural connectivity, or genetic exchange ever become conservation concerns, adaptive management allows the department a full range of tools to ensure a recovered and connected population, including more conservative lethal control, smaller regulated harvest quotas, and human assisted genetic exchange.

(2) "Agency" means the Department of Fish, Wildlife and Parks or another agency of the government authorized by the Department of Fish, Wildlife and Parks through an interagency cooperative agreement.

(3) ~~"Attacking or killing"~~ means the actual biting, wounding, or grasping, ~~or~~ killing of livestock or domestic dogs.

(4) remains as proposed.

(5) ~~"Confirms", "confirmed", or "confirmation" that a wolf killed the livestock"~~ means an incident where USDA Wildlife Services ~~conducts~~ determines through a

field investigation of dead or injured livestock, ~~at the request of the producer;~~
~~depredation is confirmed in cases where that~~ there is reasonable physical evidence
that ~~an~~ the animal was actually attacked and/or killed by a wolf. The primary
confirmation would ordinarily be the presence of bite marks and associated
subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred
while the victim was alive, as opposed to simply feeding on an already dead animal.
Spacing between canine tooth punctures, feeding pattern on the carcass, fresh
tracks, scat, hairs rubbed off on fences or brush, and/or eye witness accounts of the
attack may help identify the specific species or individual responsible for the
depredation. Predation might also be confirmed in the absence of bite marks and
associated hemorrhaging (i.e., if much of the carcass has already been consumed
by the predator or scavengers) if there is other physical evidence to confirm
predation on the live animal. This might include blood spilled or sprayed at a nearby
attack site or other evidence of an attack or struggle. There may also be nearby
remains of other victims for which there is still sufficient evidence to confirm
predation, allowing reasonable inference of confirmed predation on the animal that
has been largely consumed.

(6) remains as proposed.

(7) "Intentional harassment" means the deliberate and preplanned
harassment of a wolf, ~~including~~ by less than lethal munitions, ~~such as~~ including but
not limited to, 12 gauge shot gun rubber bullets and bean bag shells, that are
designed to cause physical discomfort and temporary physical injury but not death.
Intentional harassment may also include other devices intended to make noise such
as 12 gauge shot gun cracker shells, RAGG boxes, propane cannons, or sirens.

(8) "Lethal control" means killing a wolf except for hunting or trapping by the
public as authorized by the commission as part of a regulated public harvest.

~~(8)~~ (9) "Livestock" means cattle, calf, hog, pig, horse, mule, sheep, lamb,
llama, goat, herding/ or guarding animals, rhea, emu, and ostrich, donkey, and
certain breeds of dogs commonly used for herding or guarding livestock.

(10) "Nonlethal control" means actions intended to decrease the risk of
conflict that does not injure or kill a wolf.

~~(9)~~ (11) "Opportunistic hazing in a noninjurious manner" means harassment,
without the conduct of prior purposeful actions, such as yelling and radio activated
noise makers, or use of firearms to scare or discourage a wolf in a way that does not
injure or kill the wolf.

(12) "Problem wolf" means a wolf that has been confirmed by the department
or USDA Wildlife Services to have attacked or been in the act of attacking livestock
within the past 45 days.

(10) remains as proposed but is renumbered (13).

~~(11)~~ (14) "USDA Wildlife Services" means the Wildlife Services Division of
the United States Department of Agriculture, Animal and Plant Health Inspection
Service.

(15) This rule will be applied on the date the gray wolf in Montana is no
longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C.
1531, et seq., and the department and commission have sole jurisdiction over the
management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE III (12.9.1303) CONTROL METHODS OF THE GRAY WOLF INCLUDES NONLETHAL AND LETHAL MEANS (1) remains as proposed.

(2) The department may take control actions; pursuant to an interagency cooperative agreement, may authorize USDA Wildlife Services to undertake control actions; or pursuant to an interagency cooperative ~~future~~ agreement, may authorize the Department of Livestock to undertake control actions that are consistent with this rule and the Montana Gray Wolf Conservation and Management Plan. The department is responsible for any lethal control decision and ~~ultimately~~ ultimately for the status, conservation, and management of the gray wolf population as a state species in need of management, game animal, or a furbearer as guided by the Montana Gray Wolf Management Plan, administrative rules, and statutes.

(3) Control of the gray wolf by an agency or by an individual may includes nonlethal and lethal actions. The department shall address wolf conflicts on a case-by-case basis, connecting response to the conflict in both time and location to direct nonlethal and lethal actions to a wolf or wolves with the highest likelihood of having injured or killed the livestock.

(4) remains as proposed.

(5) Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to 87-1-102, 87-1-125, 87-5-106, and 87-5-111, MCA, as applicable.

(6) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE IV (12.9.1304) ALLOWABLE NONLETHAL CONTROL OF THE GRAY WOLF (1) Control of the gray wolf includes a variety of nonlethal management activities intended to decrease risk of, prevent, or resolve a conflict without killing the wolf in question. Allowable nonlethal control activities include, but are not limited to:

(a) husbandry practices including, but not limited to, electric fencing, increased human presence, fladry, herding or guarding animals, night pens, shed

lambling, carcass removal, alternative pastures, amended pasture or grazing rotations, or supplemental feed;

(b) placement of a radio collar to facilitate increased monitoring of the pack;

(c) opportunistic hazing in a noninjurious manner; ~~and~~

(d) intentional harassment;

(e) department discouraging wolves from denning in a particular location;

(f) carcass removal or electric fencing of bone yards (e.g., localized livestock disposal sites which attract a variety of scavengers); and

(g) working with interested individual livestock owners and private landowners, watershed groups, interested groups, state and federal land managing agencies, USDA Wildlife Services, and the Montana Livestock Loss Reduction and Mitigation Board and its coordinator to provide technical assistance and to assist with selection and implementation of proactive nonlethal controls on both public and private lands when and where livestock are present, either seasonally or yearlong. Examples include: allotment management or annual operating plans; Wildlife Management Area or other state land grazing leases; and, predator deterrent programs offered through the United States Department of Agriculture Natural Resource and Conservation Service Environmental Quality Incentive Program.

(2) The department will also work with others to better understand the effectiveness of nonlethal activities to prevent or decrease the likelihood of wolf-livestock conflicts.

(3) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE V (12.9.1305) ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF (1) On a case-by-case basis, the department ~~may~~ allows authorize only the following lethal control of ~~the gray wolf~~ problem wolves:

(a) agency control by the department, USDA Wildlife Services, or the Department of Livestock pursuant to an interagency cooperative agreement and as part of a coordinated agency response;

(b) control by a livestock owner, immediate family members, or employees with a permit issued by the department under the conditions authorized and specified on the permit; and

~~(c) killing of a wolf that is attacking, killing, or threatening to kill a person or livestock; and~~

~~(d)~~(c) control to protect human safety.

(2) The department may authorize lethal control of a problem wolfes, after considering the number of breeding pairs within the state and other factors in these rules.

~~(3) Before authorizing lethal control of a gray wolf for livestock conflict:~~

~~(a) the department or USDA Wildlife Services shall conduct the following investigation:~~

(3) Before considering lethal control of a problem wolf for livestock conflict, the department or USDA Wildlife Services shall conduct the following investigation:

~~(i) A livestock owner may call the department or USDA Wildlife Services to conduct an investigation of injured or dead livestock.~~

~~(ii)(a) The department or USDA Wildlife Services will conduct a field investigation to determine if the death of the livestock was due to natural causes or a predator; and~~

~~(iii)(b) If a predator killed the livestock, the department or USDA Wildlife Services will examine the evidence at the scene to determine if a wolf was responsible.~~

~~(b)(4)~~ If the department or USDA Wildlife Services confirms that a wolf killed the livestock, the department seeks will consider input from USDA Wildlife Services and the livestock owner to and decide the best course of action. The department may authorize incremental lethal control for problem wolves for up to 45 days from the date of confirmation by USDA Wildlife Services, assessing each conflict on a case-by-case basis and after considering the following factors:

(i) through (vi) remain the same but are renumbered (a) through (f).

~~(vii)(g)~~ season; and

~~(viii)(h)~~ number of breeding pair within the state;

(i) effectiveness and prior use of nonlethal control; and

(j) verification that wolves are not intentionally baited or drawn to the area, wolves are routinely present, and that nonlethal tools are unlikely to prevent further incidents of injured or dead livestock.

~~(4)(5)~~ The department has the discretion to lethally remove a gray wolf if the department determines that the wolf is bold, food conditioned, habituated to humans or livestock, demonstrates abnormal behavior patterns or physical characteristics indicative of a wolf-dog hybrid or of captive origin, or if it poses an immediate or ongoing threat to human safety.

(5) remains as proposed but is renumbered (6).

~~(6)(7)~~ The department may kill or remove a sick, injured, or diseased wolf.

(8) To further conservation of the species, the department may capture and translocate a wolf or use other human assisted techniques.

~~(7)(9)~~ The department may authorize a livestock owner, immediate family members, or employees by a permit to take a problem wolf under the following circumstances and conditions as part of a coordinated agency response to confirmed livestock damage due to wolves:

(a) when the department or USDA Wildlife Services confirms that a wolf killed the livestock; ~~or and~~ when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock;

(b) and (c) remain as proposed.

(d) the permit may last for a maximum of 45 days from the date the department or USDA Wildlife Services confirms the wolf caused damage ~~or wolves are a significant risk to livestock~~;

(e) the permit expires when the total desired number of wolves are removed by the combined action of the department, USDA Wildlife Services, and individuals named on the permit, or at the end of the 45 days, whichever is first; ~~and~~

(f) within 24 hours, a person must report to the department killing or injuring a wolf under a permit;

(g) to preserve the physical evidence, the permittee shall leave the carcass of any wolf killed where it lay, and shall not disturb the area surrounding the carcass; and

(h) surrender the carcass to the department.

(10) The permit must specify:

(a) its duration and expiration date;

(b) total number of wolves that may be lawfully killed through the combined actions of the individuals named on the permit and the department or USDA Wildlife Services;

(c) the geographic area where the permit is valid; and

(d) that wolves may be killed from the ground and in a manner that does not entail the use of intentional live or dead baits, scents, or attractants or deliberate use of traps or snares, or poisons; or use of radio telemetry equipment.

~~(8)~~(11) As allowed by 87-3-130, MCA, a person may kill a wolf that is attacking, killing, or threatening to kill a person or livestock, or that is in the act of attacking or killing a domestic dog. A person may not intentionally bait a wolf with domestic dogs or livestock for the purpose of killing the wolf.

(a) This person shall notify the department within 72 hours, preserve the scene, and leave the carcass where it was killed until the department or USDA Wildlife Services investigates the scene, and surrender the carcass to the department. USDA Wildlife Services will investigate and determine the cause of any injured or dead livestock.

(12) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

5. Three hearings were conducted and comments were received. The following comments were received and appear with the department's and commission's responses:

Comment 1: Many comments support the reclassification of the wolf as a species in need of management.

Response 1: The department and commission affirm the commitment to the maintenance of a secure, recovered wolf population and Montana's unique role in maintaining connectivity with other contiguous populations in Canada, Idaho, and Wyoming. The department and commission understand Montana's unique role in maintaining adequate number of wolves and encouraging connectivity to maintain adequate genetic diversity.

Comment 2: Several comments did not support delisting of the wolf from the federal Endangered Species Act, stating that the federal recovery criteria were too low, or otherwise pertained to federal decisions outside the scope of state rulemaking.

Response 2: The department and commission appreciate these comments and perspectives though they are outside the scope of the state's jurisdiction and this rulemaking.

Comment 3: Several comments indicated that the department and commission need to do more to assure connectivity and the ability of wolves to move about the landscape safely, to disperse to other areas, and form new packs. Related comments suggested the department and commission take genetic diversity into account more explicitly when making adaptive management decisions and in its monitoring efforts.

Response 3: The department and commission are aware of the department and commission's unique role in assuring, through adequate regulation of human caused mortality, that wolves can disperse and freely move about the landscape. Regulating human caused mortality adequately allows natural connectivity and genetic exchange among wolf packs within Montana and with wolf populations in Canada, Wyoming, and Idaho. The department and commission are also participating in several efforts to identify habitat linkages and corridors for a variety of species, including the gray wolf. The department collects a variety of data during its monitoring efforts, including DNA, to address questions about dispersal and connectivity. Efforts are ongoing and will continue into the future.

The department and commission have amended the language of NEW RULE I to make more explicit Montana's commitment to enhance and aid natural dispersal and connectivity among the wolf populations in northwest Montana, central Idaho, the Greater Yellowstone Area, and Canada. The definition of adoptive management in NEW RULE II (12.9.1302) (1) was amended to emphasize connectivity and dispersal as management goals.

Comment 4: The department and commission received several comments that certain definitions were vague or incomplete.

Response 4: The department and commission have revised the definitions to clarify or make the definitions more complete. Definitions for terms that were used

elsewhere in the rule, but had not been previously defined, have been added. The definitions are consistent with the federally-approved state wolf plan and final environmental impact statement or consistent with definitions in a common dictionary.

Comment 5: The department and commission received several comments that the Montana Department of Livestock should either be deleted from (2) and therefore not authorized to undertake control actions. Alternatively, if reference to Montana Department of Livestock was not stricken from the final rule, its role and responsibilities should be clearly identified within the final rule prior to its adoption.

Response 5: Language has been inserted to clarify that the department can establish an interagency cooperative agreement with the Montana Department of Livestock to undertake control actions that are consistent with this rule and the state's federally-approved wolf plan. The interagency agreement will dictate activities undertaken by the Montana Department of Livestock. The inserted language clarifies that the department and commission are responsible for the decisions about the status, conservation, and management of the gray wolf population as a state species in need of management, game animal, or fur bearer as guided by Montana's wolf plan, statutes, and rules. The department and commission recognize that the Montana Department of Livestock has an interest in how wolf-livestock conflicts are addressed through its relationship with USDA Wildlife Services.

Comment 6: Several comments indicated a better explanation of "connecting the response to the conflict in both time and location" in (3) is needed.

Response 6: Language to better describe that lethal control is intended to be directed toward a wolf or wolves with the highest likelihood of having already injured or killed livestock in a specific area has been added. Lethal control actions in particular should be implemented and carried out in such a way as to maximize the likelihood that the offending problem wolves are killed, as it seems individual wolves experiment and "learn" that livestock can be a food source and teach that behavior to other wolves. Killing problem wolves, when necessary and as opposed to indiscriminant killing of wolves far away from where the damage occurred, offers the greatest probability that depredations will stop. This approach is consistent with the department's and commission's approach when responding to mountain lion and black bear damage to private property. Nonlethal control is intended to decrease the risk of wolf caused livestock losses, though may not fully prevent wolf caused losses.

Comment 7: Several comments at the hearings addressed aspects of wolf biology and potential outcomes of management decisions, such as breeder loss, trophic cascades, and compensatory mortality.

Response 7: The department and commission acknowledge these comments and questions about wolf biology and the potential outcomes of management decisions.

The department's monitoring of individual packs, total wolf numbers, distribution, dispersal, diseases, connectivity, and other things through an adaptive management framework assures that lethal control or other management prescriptions will not jeopardize maintenance of adequate numbers of breeding pairs, connectivity, and genetic exchange. Additionally, the department is involved with various applied research and field projects aimed at decreasing uncertainty about wolf biology and the outcomes of management prescriptions.

Comment 8: A comment at a hearing expressed concern that the broad language of Montana's defense of property statute could be interpreted to mean that it would be legal to bait wolves with domestic dogs or livestock for the purposes of intentionally killing wolves lawfully under the statute.

Response 8: It is unlawful for a person to intentionally bait wolves with domestic dogs or livestock for the purposes of killing wolves as per the defense of property statute and NEW RULE V(9). The statute requires that all incidents in which wolves are injured or killed in defense of property be reported to the department and the department will investigate them. If an investigation determines that intentional baiting or unusual attractants were used with the intent of killing wolves, the department will seek prosecution.

Comment 9: Several comments supported inclusion of allowable nonlethal control.

Response 9: The department and commission appreciate the support.

Comment 10: Several comments suggested that nonlethal control strategies should be required prior to application of lethal control. Related comments suggested that the department and commission have not demonstrated a strong enough commitment to use of nonlethal control measures. A few other related comments suggested that department should work harder and put more effort into development and requiring "best management" practices of public land grazing permittees.

Response 10: The department and commission believe that an integrated approach to addressing wolf-livestock conflicts requires the combination of both nonlethal tools to decrease the risk of livestock loss and lethal tools when wolves repeatedly kill livestock. Many livestock owners already implement several nonlethal proactive tools. The department and commission do not have jurisdiction over lands managed by other state or federal agencies for livestock grazing but the department has been involved with several cooperative range rider projects and works directly with individual livestock owners, watershed groups, grazing associations, and land management agencies. The department has learned that a combination of strategies are required for livestock and wolves to share the Montana landscape. Tolerance of wildlife use of private lands, and by species that can injure or kill livestock, is critical to their long term conservation success. Therefore, the department and commission take a balanced, adaptive, and flexible approach to preventing and resolving wolf-livestock conflicts. The department and commission

have added additional language to NEW RULE IV to more specifically state the commitment to use and evaluate nonlethal methods of control.

Comment 11: Several comments suggested additional proactive nonlethal strategies that were not included in the list.

Response 11: Several additional nonlethal activities that could be considered have been added to NEW RULE IV. The list is not exhaustive, nor exclusive as new techniques are developed. A reference to the need to work with all other interested parties and in a variety of settings in which wolves and livestock could be in close proximity has also been added. Further, a reference was added that technical assistance will be provided to the Montana Livestock Loss Reduction and Mitigation Board and its coordinator to help with selection, implementation, and evaluation of proactive nonlethal tools.

Comment 12: Several comments suggested more effort into nonlethal control activities and less into lethal control activities on public lands.

Response 12: NEW RULE I states the department will implement conservation and management strategies to make sure that wolves continue to thrive. The department has supported and participated in a number of programs with proactive, nonlethal strategies aimed at preventing livestock loss on both public and private lands. Although nonlethal control methods are preferred on public land, the department's adaptive management plan approaches wolf-livestock conflicts within the context of an adaptive management framework that generally discerns between settings of public lands, primarily backcountry areas and near national parks, and areas of mixed land ownerships. The plan also recognized that livestock are considered private property and that conflicts needed to be addressed and resolved wherever they occur, using a combination of nonlethal and lethal control activities.

Approximately 65% of all lethal control occurs on private lands. The department and USDA Wildlife Services completed a summary of damage and damage management for the period 1987-2006 (Sime et al. 2007). The summary shows that the majority of livestock are confirmed as being injured or killed on private land in Montana. The majority of lethal control is carried out by both private citizens, as authorized by applicable state or federal regulations, and by USDA Wildlife Services, as authorized by the department.

Comment 13: Several comments supported the allowable lethal control, the need to address and resolve conflicts, and that lethal removal was an important tool. Comments also generally supported an incremental approach.

Response 13: The department and commission agree that lethal control of problem wolves has helped resolve wolf-livestock conflicts. Further, the department and commission believe that strategic, targeted removal of problem wolves should be carried out in combination with proactive, nonlethal efforts to decrease the risk that livestock would be injured or killed by wolves. Based on nineteen years of experience with wolf-livestock conflicts in Montana, the department and USDA

Wildlife Services concluded the combination will be required to maintain local public tolerance of wolves where the two overlap. (Sime et al. 2007)

Comment 14: Several questions and comments were received about how the department and commission establish wolf hunting quotas in light of lethal control to address wolf-livestock conflicts.

Response 14: The department considered and modeled previous data about wolf death, birth, immigration, and emigration from all causes prior to making a tentative recommendation of a hunting quota to the commission on June 12, 2008. The department took into account livestock-related lethal control and made a conservative recommendation to the commission. By managing future public harvest on a quota-based system, when the total number of breeding pairs is greater than 15, many safeguards are in place to prevent excessive total mortality. Population monitoring also includes efforts to monitor wolf numbers, distribution, dispersal, birth, death, disease, and other things pertinent to maintaining a recovered, "connected" wolf population. The department provided supporting information about the modeling exercise and safeguards against excessive mortality to the commission and the public previously.

Comment 15: Many comments were received specific to the hunting quotas and generally stated that the hunting quotas were either too high or that wolves should not be hunted at all. Many of these comments also registered a concern about lethal control in such a way that could have either applied to the wolf quota or the proposed ARM rules.

Response 15: Although these rules do not directly address quotas or wolf hunting, NEW RULE I establishes the department's commitment to the preservation of the gray wolf. Language was added to NEW RULE I stating the department will manage wolves to assure that recovery criteria are met or exceeded and the commission has authority to adopt a hunting season when the statewide number of breeding pair exceeds 15.

Comment 16: Several comments stated the rule proposal did not adequately explain the permit process and details related to that aspect of lethal control. One comment also suggested language that discouraged flagrant abuse of a kill permit.

Response 16: The department's experience is that private citizens in Montana have not abused the flexibility afforded to them under the federal regulations or the state's guidelines, as applicable, over the last several years. Nonetheless, additional clarifying language was added to NEW RULE V.

/s/ Steve Doherty
Steve Doherty
Chairman
Fish, Wildlife and Parks Commission

/s/ Martha Williams
Martha Williams
Rule Reviewer
Department of Fish, Wildlife and Parks

/s/ M. Jeff Hagener

M. Jeff Hagener

Director

Department of Fish, Wildlife and Parks

Secretary

Fish, Wildlife and Parks Commission

Certified to the Secretary of State September 29, 2008

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.6.2208, 12.6.2215, and)
12.6.2220 regarding exotic species)

TO: All Concerned Persons

1. On July 31, 2008, the Fish, Wildlife and Parks Commission published MAR Notice No. 12-345 regarding the above-stated rules at page 1527 of the Montana Administrative Register, Issue Number 14.

2. The commission has amended ARM 12.6.2208, 12.6.2215, and 12.6.2220 exactly as proposed.

3. No comments or testimony were received.

/s/ Steve Doherty

Steve Doherty

Chairman

Fish, Wildlife and Parks Commission

/s/ Bill Schenk

Bill Schenk

Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State September 29, 2008

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) CORRECTED NOTICE OF
ARM 24.159.1010 standards related) AMENDMENT
to the practical nurse)

TO: All Concerned Persons

1. On February 14, 2008, the Board of Nursing published MAR Notice No. 24-159-70 regarding the proposed amendment of the above-stated rule at page 279 of the 2008 Montana Administrative Register, issue no. 3. On August 14, 2008, the board published the notice of amendment at page 1709 of the 2008 Montana Administrative Register, issue no. 15.

2. In preparing replacement pages for the third quarter of 2008, it was discovered that the word "of" was inadvertently left out of the original proposal and should have been inserted at that time. The rule, as amended, reads as follows, deleted matter interlined, new matter underlined:

24.159.1010 STANDARDS RELATED TO INTRAVENOUS (IV) THERAPY

(1) through (2)(m) remain as amended.

(n) discontinue the infusion of blood, blood components, or plasma volume expanders.

(3) remains as amended.

3. The corrected replacement page was submitted to the Secretary of State's office on September 30, 2008.

BOARD OF NURSING
KATHY HAYDEN, LPN, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

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

Certified to the Secretary of State September 29, 2008

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.168.401 fees, 24.168.402)
and 24.168.408 licensure, 24.168.411)
general practice requirements, and)
24.168.2301 unprofessional conduct)

TO: All Concerned Persons

1. On June 12, 2008, the Board of Optometry (board) published MAR Notice No. 24-168-38 regarding the amendment of the above-stated rules, at page 1111 of the 2008 Montana Administrative Register, issue no. 11.

2. On July 10, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.168.401, 24.168.402, 24.168.408, 24.168.411, and 24.168.2301 exactly as proposed.

BOARD OF OPTOMETRY
ROCK SVENNUNGSEN, O.D., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

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

Certified to the Secretary of State September 29, 2008

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

In the matter of the amendment of	)	CORRECTED NOTICE OF
ARM 37.86.2402 pertaining to	)	AMENDMENT
preferred hospital transportation)	
reimbursement)	

TO: All Concerned Persons

1. On July 17, 2008, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 1417 of the 2008 Montana Administrative Register, issue number 13. On August 14, 2008, the department published notice of the amended notice of proposed amendment of the above-stated rule at page 1685 of the 2008 Montana Administrative Register, issue number 15. On September 11, 2008, the department published the notice of amendment at page 1982 of the 2008 Montana Administrative Register, issue number 17.

2. This corrected notice is being filed to correct an error in the application date of the proposed rules. The rules were proposed to be applied effective October 1, 2008 in the proposal notice but the application date paragraph was inadvertently left out of the notice of adoption. The department intends the rule changes to be applied effective October 1, 2008.

3. All other rule changes adopted and amended remain the same.

4. The replacement pages for this corrected notice were submitted to the Secretary of State for the September 30, 2008 deadline.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 29, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I (42.13.702) and II (42.13.404)	)	AMENDMENT
and amendment of ARM 42.13.107,)	
42.13.109, 42.13.222, 42.13.601, and)	
42.13.701 relating to liquor licensing)	
rules)	

TO: All Concerned Persons

1. On July 17, 2008, the department published MAR Notice No. 42-2-795 regarding the proposed adoption and amendment of the above-stated rules at page 1450 of the 2008 Montana Administrative Register, issue no. 13. On August 28, 2008, the department published a notice of decision on proposed rule action regarding ARM 42.13.601 at page 1821 of the 2008 Montana Administrative Register, issue no. 16.

2. A public hearing was held on August 7, 2008, to consider the proposed adoption and amendment. Written comments are summarized as follows along with the response of the department:

COMMENT NO. 1: Lee Heiman, Staff Attorney for the Montana Legislative Services Division stated that the implementing authority in the notice is the same as in the current rules, which doesn't really address the common carrier aspect of the amendments. There are several parts of Title 16 that deal with common carrier delivery, but none specifically address carriage between beer wholesalers or table wine distributors and retail licensees. The most applicable sections appear to be 16-3-106 and 16-3-411, MCA.

RESPONSE NO. 1: The department concurs with Mr. Heiman and has amended the rule as shown below to include both statutes provided in his comments.

COMMENT NO. 2: Lee Heiman also stated that he thought the implementing statute for ARM 42.13.701 should be 16-1-409, MCA rather than 16-1-406, MCA. Section 16-1-406, MCA, says that the tax is payable by a wholesaler, but the rule would require the tax be paid by a brewer if there is no wholesaler. He said he thought that is possible under 16-1-409, MCA, which does address brewers. He also stated that he thought the inconsistency should be fixed by a bill in the 2009 Legislative Session.

RESPONSE NO. 2: The department believes that both statutes apply to the intent of this rule and have added 16-1-409, MCA, as shown below. The department will review the statutes and determine whether to propose legislative changes in 2009.

3. The department adopts New Rule I (42.13.702) and New Rule II (42.13.404) and amends ARM 42.13.107 and 42.13.109 as proposed. The department will be addressing the proposed amendments to ARM 42.13.601 through negotiated rulemaking. Based on the comments received, the department amends ARM 42.13.222 and 42.13.701 as follows, stricken matter interlined, new matter underlined:

42.13.222 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS (1) through (4)(a) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-3-106, 16-3-220, 16-3-243, 16-3-404, 16-3-406, 16-3-411, MCA

42.13.701 PRODUCTION THRESHOLD (1) through (5) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-4-406, 16-1-409, MCA

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State September 29, 2008

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.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government 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 and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration 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 P.O. 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 or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|---|
| Known
Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 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 that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2008. This table includes those rules adopted during the period July 1, 2008, through September 30, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2008, 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 2007 and 2008 Montana Administrative Register.

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

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