BUSINESS & LABOR
EXHIBIT NO. 9 ~~42.13.101~~
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Subchapter 1

General Regulations

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) All licensees, their agents, and employees must conduct the licensed premises in compliance with the rules of other state and local agencies and abide by all:

(a) provisions of the laws of Montana and the United States related to alcoholic beverages;

(b) county and city or town ordinances related to alcoholic beverages;

(c) Indian liquor laws applicable within the areas of Indian country, as defined by 18 USC 1151, provided a tribe having jurisdiction over such area of Indian country adopted an ordinance, certified by the Secretary of the Interior, and published in the Federal Register; and

(d) rules of the department relating to alcoholic beverages.

(2) Proof of violation by a licensee or the licensee's agent or employee of any of the provisions of the above laws, ordinances, or rules is sufficient grounds for revocation or suspension of the license, and licensees may be reprimanded or assessed a civil penalty in accordance with 16-4-406, MCA.

(3) The department will impose progressive penalties for multiple violations of any laws, ordinances and rules within any three-year period unless mitigating circumstances indicate the penalty should be reduced, or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of four of the violations listed below occurring within a three-year period could result in a license revocation action.

(8) Mitigating circumstances with regard to Title 16, ch. 4, part 10, MCA, are considered as follows:

(a) The mitigating circumstances provisions of 16-4-1008, MCA, apply only to violations of Title 16, ch. 4, part 10, MCA, and not to other violations.

(b) Neither cost nor convenience of training shall be considered by the department to excuse any licensee from compliance with the requirements of Title 16, ch. 4, part 10, MCA, and these rules.

(c) Any violation of 16-4-1005, MCA, occurring prior to April 1, 2012, will not be taken into account in determining the licensee's number of violations in a three-year period.

(d) In the department's discretion, a violation of 16-4-1005, MCA, occurring on or after April 1, 2012, may not be taken into account in determining the licensee's number of violations in a three-year period if:

(i) all managers and supervisors of persons who serve or sell alcoholic beverages meet the training requirements;

(ii) the licensee demonstrates to the department's satisfaction that its business policies and practices reflect substantial compliance with the server training requirements such that it is apparent the violation was the result of an oversight or mistake; and

(iii) the licensee has committed no previous violations of 16-4-1005, MCA.

(9) Mitigating circumstances in the case of sale to an underage person could result in a reprimand for the first offense under Title 16, MCA, within the most current three-year period if the licensee has provided alcoholic beverage service training acceptable to the department to all of its employees and reinforces that training with each employee at least every two years. The licensee must demonstrate that the person who made the sale to an underage person has completed alcoholic beverage service training prior to the department considering issuance of a reprimand. A written reprimand will be considered a first offense for the application of the progressive penalty schedule only if the licensee commits the same offense again within one year. The written reprimand in lieu of a violation shall be available only one time per licensee.

(10) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive penalty framework indicated in (3).

(11) Aggravating circumstances include, but are not limited to:

(a) no effort on the part of a licensee to prevent a violation from occurring;

(b) a licensee's failure to report a violation at the time of renewal;

(c) a licensee's ignoring warnings issued by a regulating authority about compliance problems;

(d) recurring sales to underage persons or sales to intoxicated persons;

(e) a licensee's failure to timely respond to requests during the investigation of a violation; and

(f) a violation's significant negative effect on the health and welfare of the community in which the licensee operates.