

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of ARM	)	AMENDMENT
6.6.507, 6.6.508 and 6.6.509)	
pertaining to minimum	)	NO PUBLIC HEARING
benefit standards	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 21, 2000, the state auditor and commissioner of insurance proposes to amend ARM 6.6.507, 6.6.508 and 6.6.509 pertaining to minimum benefit standards.

2. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the State Auditor's Office no later than 5:00 p.m., November 20, 2000, to advise us of the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, P.O. Box 4009, Helena, MT 59604; telephone (406) 444-2726; fax (406) 444-3497; e-mail dsautter@state.mt.us.

3. The proposed amendments provide as follows:

6.6.507 MINIMUM BENEFIT STANDARDS (1) through (1)(b)(iv) remain the same.

(v) Coverage for the coinsurance amount (or in the case of hospital outpatient department services under a prospective payment system, the co-payment amount) of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible.

(c) through (c)(ix)(E) remain the same.

AUTH: Sec. 33-1-313, 33-22-901, MCA

IMP: Sec. 33-15-303, 33-22-901 through 33-22-924,

MCA

6.6.508 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM (1) through (2) remain the same.

(3) For purposes of this rule applying ARM 6.6.508A and 6.6.510 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print, and broadcast, and electronic advertising) must be regarded the same as group policies.

(4) through (10) remain the same.

AUTH: Sec. 33-1-313, 33-22-901, 33-22-906, MCA

IMP: Sec. 33-15-303, 33-22-901 through 33-22-904,

MCA

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) through (8)(b) remain the same.

(c) The following items must be included in the outline of coverage in the order prescribed below:

[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plan(s)____[insert letter(s) of plan(s) being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

Basic Benefits: Included in All Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses)- , or, in the case of hospital outpatient department services under a prospective payment system, applicable co-payments.

Blood: First three pints of blood each year.

A	B	C	D	E
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible		
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery	
				Preventive Care

F	F*	G	H	I	J	J*
Basic Benefits		Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
Skilled Nursing Co-Insurance		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
Part A Deductible		Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
Part B Deductible					Part B Deductible	Part B Deductible
Part B		Part B		Part B	Part B	Part B

Excess (100%)	Excess (100%)		Excess (100%)	Excess (100%)
Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
	At-Home Recovery		At-Home Recovery	At-Home Recovery
		Basic Drugs (\$1,250 Limit)	Basic Drugs (\$1,250 Limit)	Extended Drugs (\$3,000 Limit)
				Preventive Care

*Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same or offer the same benefits as plans F and J after one has paid a calendar year \$1500 deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are \$1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in plan J, the plan's separate prescription drug deductible or, in Pplans F and J, the plan's separate foreign travel emergency deductible.

(9) and (10) remain the same.

AUTH: Sec. 33-1-313, 33-22-904, 33-22-907, MCA

IMP: Sec. 33-15-303, 33-22-901 through 33-22-924,

MCA

4. REASON: ARM 6.6.507, 6.6.508 and 6.6.509 are being amended because current state Medigap regulatory programs, which include only the provisions contained in the model regulation, are not in compliance with federal standards and are in danger of having certification of their regulatory programs revoked by the Secretary of the Department of Health and Human Services.

5. Concerned persons may present their data, views, or arguments concerning the proposed amendments in writing to Roberta Cross Guns, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, or by e-mail to rocrossguns@state.mt.us, and must be received no later than December 7, 2000.

6. If persons who are directly affected by the proposed amendments wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Roberta Cross Guns, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, or by e-mail to rocrossguns@state.mt.us. A written

request for hearing must be received no later than December 7, 2000.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less of the persons who are directly affected by the proposed action; from the administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 22 persons based on the 220 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

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

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

MARK O'KEEFE, State Auditor
and Commissioner of Securities

By: /s/ Peter Funk
Peter Funk
Deputy Insurance Commissioner

By: /s/ Janice VanRiper
Janice VanRiper
Rules Reviewer

Certified to the Secretary of State October 30, 2000.

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

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of ARM	)	AMENDMENT
6.6.4001 pertaining to the)	
valuation of securities	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 21, 2000, the state auditor and commissioner of insurance proposes to amend ARM 6.6.4001 pertaining to the valuation of securities other than those specifically referred to in statutes.

2. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the State Auditor's Office no later than 5:00 p.m., November 20, 2000, to advise us of the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, P.O. Box 4009, Helena, MT 59604; telephone (406) 444-2726; fax (406) 444-3497; e-mail dsautter@state.mt.us.

3. The proposed amendment provides as follows (new material is underlined; material to be deleted is interlined):

6.6.4001 VALUATION OF SECURITIES OTHER THAN THOSE SPECIFICALLY REFERRED TO IN STATUTES (1) Securities and assets must be valued in accordance with valuation standards of the NAIC published in its 1998 1999 Accounting Practices and Procedures manual and its December 31, 1998 1999 Valuation of Securities manual.

(2) The department hereby adopts and incorporates herein by reference the standards adopted by the NAIC for valuation of securities and other investments appearing in its 1998 1999 Accounting Practices and Procedures manual and its December 31, 1998 1999 Valuation of Securities manual. These are nationally-recognized models for such standards. Copies of the manuals are available for inspection at the office of the Commissioner of Insurance, ~~Room 270, Sam W. Mitchell Building,~~ 840 Helena Ave., Helena, Montana 59601. Copies of the Accounting Practices and Procedures manual and the Valuation of Securities manual may be obtained by writing to the National Association of Insurance Commissioners, 120 West 12th Street, Suite 1100, Kansas City, MO 64105-1925. Persons obtaining copies of such manuals may be required to pay the NAIC's costs of providing such copies.

AUTH: Sec. 33-1-313, 33-2-533, 33-2-1517, MCA
IMP: Sec. 33-2-533, 33-2-1517, MCA

4. ARM 6.6.4001 is being amended because the manuals referenced are updated on an annual basis. The amendment incorporates the most current manual.

5. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Jim Borchardt, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, or by e-mail to jborchardt@state.mt.us, and must be received no later than December 7, 2000.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Jim Borchardt, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, or by e-mail to jborchardt@state.mt.us. A written request for hearing must be received no later than December 7, 2000.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less of the persons who are directly affected by the proposed action; from the administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 22 persons based on the 220 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

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

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

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: /s/ Peter Funk
Peter Funk
Deputy Insurance Commissioner

By: /s/ Janice VanRiper
Janice VanRiper
Rules Reviewer

Certified to the Secretary of State October 30, 2000.

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

In the matter of the proposed amendment of rules pertaining to definitions and the transfer of rules pertaining to medical student's permitted activities, intern's scope of practice, resident's scope of practice and approved residency) NOTICE OF THE PROPOSED AMENDMENT OF ARM 8.28.402 DEFINITIONS AND 8.28.1501 DEFINITIONS AND THE TRANSFER OF 8.28.1507 MEDICAL STUDENT'S PERMITTED ACTIVITIES, 8.28.1508 INTERN'S SCOPE OF PRACTICE, 8.28.1509 RESIDENT'S SCOPE OF PRACTICE AND 8.28.1510 APPROVED RESIDENCY

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 9, 2000, the Board of Medical Examiners proposes to amend the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on November 29, 2000, to advise us of the nature of the accommodation that you need. Please contact Charlene Norris, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2363; e-mail cnorris@state.mt.us.

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

8.28.402 DEFINITIONS For the purpose of these rules, the following definitions shall apply:

~~(1) (2)~~ The term "aAct" means the Medical Practice Act of the state of Montana, ~~being~~ 37-3-101 through 37-3-405, MCA, ~~inclusive,~~ as amended from time to time.

~~(2) (8)~~ The term "pProceeding" shall include:

(a) a formal complaint alleging violation of any provision of the act or any regulation or requirement made pursuant to a power granted by such act;

(b) a hearing before the board pursuant to the provisions of 37-3-321 through 37-3-324, MCA.

~~(3) (10)~~ The term "sSecretary" ~~used herein~~ means the executive secretary of the Montana state board of medical examiners.

(4) The term "eComplainant" means a person filing a complaint.

(5) will remain the same but be renumbered (3).

(6) "Intern" means a person who has graduated from an approved medical school, and is enrolled in a program of training approved for first year post-graduates. The intern may also be referred to as "in post-graduate year 1" (PGY-1), or "first year resident."

(a) An intern has passed USMLE Steps 1 and 2, and is preparing for, or awaiting the results of, USMLE Step 3, or the American osteopathic equivalent;

(b) An intern is not:

(i) yet eligible for licensure;

(ii) required to obtain a license for medical practice performed while in Montana; and

(iii) monitored by the board.

(c) The board may extend the time of internship beyond one year for good cause shown.

(7) "Medical student" means a person currently enrolled in a school of allopathic or osteopathic medicine approved by the council on medical education of the American medical association, the bureau of professional education of the American osteopathic association, or the board.

(a) A medical student is not:

(i) yet eligible for licensure;

(ii) required to obtain a license for medical practice performed while in Montana; and

(iii) monitored by the board.

(b) A person is not a medical student if the person:

(i) has been awarded a doctorate degree and successfully completed the United States medical licensing examination (USMLE) Steps 1 and 2, or the equivalent level of testing by the American osteopathic association; or

(ii) has passed USMLE Step 3, or the equivalent level of testing by the American osteopathic association.

(6) will remain the same and be renumbered (1).

(7) will remain the same and be renumbered (11).

(8) will remain the same and be renumbered (5).

(9) "Resident" means a person who is educationally eligible for licensure as a physician, that is:

(a) has the degree of medical doctor, doctor of osteopathy or an equivalent degree;

(b) for purposes of licensure only:

(i) prior to October 1, 2001, has completed post-graduate year 1; or

(ii) on or after October 1, 2001, has completed post-graduate year 2;

(c) holds a certificate from the educational commission for foreign medical graduates (ECFMG) where applicable; and

(d) is enrolled in a residency training program approved by the accreditation council for graduate medical education (ACGME) or the equivalent American osteopathic association credentialing body;

(e) A resident may apply for licensure:

(i) if the resident is enrolled in an ACGME-approved residency or a residency approved by the American osteopathic association, the resident need not have an existing, active

license to practice as a physician in a state or territory of the United States;

(ii) if the resident is not enrolled in an ACGME-approved residency, the resident must have an existing, active license to practice as a physician in a state or territory of the United States in order to obtain resident registration.

Auth: Sec. 37-1-131, 37-3-203, MCA

IMP: Sec. 37-3-102, 37-3-203, MCA

REASON: The Board is proposing the amendment to this rule to move the definitions of "intern", "medical student" and "residency" from the sub-chapter relating to physician's assistants to the sub-chapter relating to medical examiners and to reorganize the terms in alphabetical order.

8.28.1501 DEFINITIONS As used in this subchapter the following definitions apply:

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

~~(3) "Intern" means a person who has graduated from an approved medical school, and is enrolled in a program of training approved for first year post-graduates. The intern may also be referred to as "in post-graduate year 1" (PGY-1), or "first year resident."~~

~~(a) An intern has passed USMLE Steps 1 and 2, and is preparing for, or awaiting the results of, USMLE Step 3, or the American osteopathic equivalent;~~

~~(b) An intern is:~~

~~(i) not yet eligible for licensure;~~

~~(ii) not required to obtain a license for medical practice performed while in Montana; and~~

~~(iii) not monitored by the board.~~

~~(c) The board may extend the time of internship beyond one year for good cause shown.~~

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

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

~~(6) "Medical student" means a person currently enrolled in a school of allopathic or osteopathic medicine approved by the council on medical education of the American medical association, the bureau of professional education of the American osteopathic association, or the board.~~

~~(a) A medical student is:~~

~~(i) not yet eligible for licensure;~~

~~(ii) not required to obtain a license for medical practice performed while in Montana; and~~

~~(iii) not monitored by the board.~~

~~(b) A person is not a medical student if the person:~~

~~(i) has been awarded a doctorate degree and successfully completed the United States medical licensing examination (USMLE) Steps 1 and 2, or the equivalent level of testing by the American osteopathic association; or~~

~~(ii) has passed USMLE Step 3, or the equivalent level of testing by the American osteopathic association.~~

(7) will remain the same but be renumbered (5).

- ~~(8) "Resident" means a person who is educationally eligible for licensure as a physician, that is:~~
- ~~(a) has the degree of medical doctor, doctor of osteopathy or an equivalent degree;~~
 - ~~(b) for purposes of licensure only:~~
 - ~~(i) prior to October 1, 2001, has completed post-graduate year 1; or~~
 - ~~(ii) on or after October 1, 2001, has completed post-graduate year 2;~~
 - ~~(c) holds a certificate from the educational commission for foreign medical graduates (ECFMG) where applicable; and~~
 - ~~(d) is enrolled in a residency training program approved by the accreditation council for graduate medical education (ACGME) or the equivalent American osteopathic association credentialing body.~~
 - ~~(e) A resident may apply for licensure:~~
 - ~~(i) if the resident is enrolled in an ACGME-approved residency or a residency approved by the American osteopathic association, the resident need not have an existing, active license to practice as a physician in a state or territory of the United States;~~
 - ~~(ii) if the resident is not enrolled in an ACGME-approved residency, the resident must have an existing, active license to practice as a physician in a state or territory of the United States in order to obtain resident registration.~~
- ~~(9) through (11) will remain the same but be renumbered (6) through (8).~~

Auth: Sec. 37-1-131, 37-3-203, MCA
IMP: Sec. 37-3-102, 37-3-203, MCA

REASON: The Board is proposing that this rule be amended to move the definitions of "intern", "medical student" and "resident" from the sub-chapter relating to physician's assistants to the sub-chapter relating to medical examiners.

4. The Board is proposing to transfer ARM 8.28.1507 MEDICAL STUDENT'S PERMITTED ACTIVITIES to the sub-chapter relating to medical examiners and renumbering it 8.28.403B. The Board is proposing to transfer ARM 8.28.1508 INTERN'S SCOPE OF PRACTICE to the sub-chapter relating to medical examiners and renumbering it 8.28.404A. The Board is proposing to transfer ARM 8.28.1509 RESIDENT'S SCOPE OF PRACTICE to the sub-chapter relating to medical examiners and renumbering it 8.28.405A. The Board is proposing to transfer ARM 8.28.1510 APPROVED RESIDENCY to the sub-chapter relating to medical examiners and renumbering it 8.28.405B.

5. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to cnorris@state.mt.us to be received no later than 5:00 p.m., December 7, 2000.

6. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to cnorris@state.mt.us to be received no later than 5:00 p.m., December 7, 2000.

7. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 based on an estimate that 100 persons will be affected by this amendment.

8. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to cnorris@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, M.D.
PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 2000.

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

In the matter of the	)	NOTICE OF PROPOSED REPEAL,
repeal of 12.6.801 and	)	ADOPTION, AND TRANSFER OF
12.6.901, the adoption of	)	RULES RELATING TO WATER
rules I-XCVIII relating to	)	SAFETY
water safety, and the transfer))	
of rules 12.6.701, 12.6.702,)	
12.6.703, 12.6.704, 12.6.705,	)	NO PUBLIC HEARING
12.6.706, 12.6.707, 12.6.802,	)	CONTEMPLATED
12.6.902, 12.6.903, and)	
12.6.904)	

TO: All Concerned Persons

1. On December 30, 2000, the Fish, Wildlife and Parks Commission (commission) proposes to repeal ARM 12.6.801 and 12.6.901; adopt new rules I-XCVIII; and transfer rules 12.6.701, 12.6.702, 12.6.703, 12.6.704, 12.6.705, 12.6.706, 12.6.707, 12.6.802, 12.6.902, 12.6.903, and 12.6.904.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks no later than 5:00 p.m. on November 24, 2000, to advise us of the nature of the accommodation that you need. Please contact Brandi Fisher, 1420 East 6th Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456.

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

12.6.801 is on page 12-237 of the Administrative Rules of Montana.

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

12.6.901 is on page 12-237.1 of the Administrative Rules of Montana.

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

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

RULE I LIST OF WATER BODIES (1) The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:

(a) Alva Lake	RULE IV
(b) Arapooish Fishing Access (Pond)	RULE V
(c) Banana Lake	RULE VI
(d) Bear Mouth Rest Area Pond	RULE VII
(e) Bearpaw Lake	RULE VIII
(f) Beaver Creek Reservoir	RULE IX
(g) Beaver Lake	RULE X
(h) Beavertail Pond	RULE XI
(i) Big Hole River	RULE XII
(j) Bighorn River	RULE XIII
(k) Bitterroot River	RULE XIV
(l) Blackfoot River	RULE XV
(m) Blanchard Lake	RULE XVI
(n) Bootjack Lake	RULE XVII
(o) Bozeman Ponds	RULE XVIII
(p) Branum Pond	RULE XIX
(q) Brown's Lake	RULE XX
(r) Cad Lake	RULE XXI
(s) Canyon Ferry Reservoir	RULE XXII and XCIX
(t) Carpenter Lake	RULE XXIII
(u) Castle Rock Reservoir	TRANS 12.11.5101
(v) Cibid Lake	RULE XXIV
(w) Clark Fork River	RULE XXV
(x) Clearwater Lake	RULE XXVI
(y) Clearwater River	RULE XXVII
(z) Colt Lake	RULE XXVIII
(aa) Cooney Reservoir	RULE XXIX
(ab) Cottonwood Lake	RULE XXX
(ac) Crystal Lake	RULE XXXI
(ad) East Gallatin Pond	RULE XXXII
(ae) Elsin Lake	RULE XXXIII
(af) Fitzpatrick Lake	RULE XXXIV
(ag) Flathead Lake	RULE XXXV
(ah) Forest Lake	RULE XXXVI
(ai) Fort Peck Dredge Cut Trout Pond	RULE XXXVII
(aj) Fort Peck Reservoir	RULE XXXVIII
(ak) Fenchtown Pond	RULE XXXIX
(al) Fresno Reservoir	RULE XL
(am) Gartside Reservoir	RULE XLI
(an) Harpers Lake	RULE XLII
(ao) Harrison Lake (Willow Creek Res.)	RULE XLIII
(ap) Hauser Reservoir	RULE XLIV
(aq) Helena Valley Equalizing Reservoir	TRANS 12.11.3210
(ar) Henry Reservoir	RULE XLV
(as) Hidden Lake	RULE XLVI
(at) Holland Lake	RULE XLVII
(au) Holter Lake	RULE XLVIII
(av) Hyalite Reservoir	RULE XLIX
(aw) Inez Lake	RULE L
(ax) Johnson Reservoir	RULE LI
(ay) Kerr Dam	RULE LII
(az) Lake Dinah	RULE LIII
(ba) Lake Elmo	RULE LIV
(bb) Lake Helena	RULE LV

(bc) Lake Koochanusa	RULE LVI
(bd) Lavon Lake	RULE LVII
(be) Leon Lake	RULE LVIII
(bf) Lilly Pad Lake	RULE LIX
(bg) Little Loon Lake	RULE LX
(bh) Little McGregor Lake	RULE LXI
(bi) Little Rainbow Lake	RULE LXII
(bj) Lost Lake	RULE LXIII
(bk) Lower Carter Pond	RULE LXIV
(bl) Middle Thompson Lake	RULE LXV
(bm) Missouri River	RULE LXVI
(bn) Morrell Lake	RULE LXVII
(bo) Myron Lake	RULE LXVIII
(bp) Park Lake	RULE LXIX
(bq) Pelican Point Fishing Access Ponds	RULE LXX
(br) Placid Creek	RULE LXXI
(bs) Rainbow Lake	RULE LXXII
(bt) Rainy Lake	RULE LXXIII
(bu) Salmon Lake	RULE LXXIV
(bv) Savage Lake	RULE LXXV
(bw) Seeley Lake	RULE LXXVI
(bx) Smith River	RULE LXXVII
(by) South Sandstone Reservoir	RULE LXXVIII
(bz) Spook Lake	RULE LXXIX
(ca) Spring Meadow Lake	RULE LXXX
(cb) Summit Lake	RULE LXXXI
(cc) Swan River	RULE LXXXII
(cd) Tongue River Reservoir	RULE LXXXIII
(ce) Topless Lake	RULE LXXXIV
(cf) Upper Carter Pond	RULE LXXXV
(cg) Upper Thompson Lake	RULE LXXXVI
(ch) Upsata Lake	RULE LXXXVII
(ci) Whitefish River	RULE LXXXVIII
(cj) Whitetail Reservoir	RULE LXXXIX
(ck) Willow Creek Res. (Harrison Lake)	RULE XLIII
(cl) Wood Lake	RULE XC

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

RULE II LIST OF COUNTIES WITH EXCEPTIONS (1) The following is a list of counties wherein rivers and streams are regulated and the rules which explain those regulations and the exceptions:

(a) Beaverhead County	RULE XCI
(b) Broadwater County	RULE XCII
(c) Butte Silver Bow County	RULE XCIII
(d) Gallatin County	RULE XCIV
(e) Jefferson county	RULE XCV
(f) Madison County	RULE XCVI
(g) Park County	RULE XCVII

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

RULE III EXCEPTIONS TO RESTRICTIONS (1) The following exceptions apply to the restrictions placed on waters in this subchapter:

- (a) official patrol;
- (b) search and rescue operations;
- (c) maintenance of hydroelectric projects with prior notification by the utility;
- (d) scientific studies, including sampling fish populations, by department personnel;
- (e) for other than department personnel, scientific purposes with the director's prior written approval and any required permits; and
- (f) special events such as testing of motorized water craft with the director's prior written approval.

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

RULE IV ALVA LAKE (1) Alva Lake is located in Missoula County.

(2) All watercraft on Alva Lake pulling, taking off with, and landing water skiers will travel in a general, consistent, counterclockwise direction.

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

RULE V ARAPOOISH FISHING ACCESS (1) Arapooish Fishing Access is located in Big Horn County.

(2) Arapooish Fishing Access is closed to use for any motor-propelled watercraft.

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

RULE VI BANANA LAKE (1) Banana Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Banana Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE VII BEAR MOUTH REST AREA POND (1) Bear Mouth Rest Area Pond is located in Granite County.

(2) Bear Mouth Rest Area Pond is closed to use for any motor-propelled watercraft.

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

RULE VIII BEARPAW LAKE (1) Bearpaw Lake is located in Hill County.

(2) Bearpaw Lake is closed to use for any motor-propelled

watercraft.

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

RULE IX BEAVER CREEK RESERVOIR (1) Beaver Creek Reservoir is located in Hill County.

(2) Beaver Creek Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

(3) Beaver Creek Reservoir is closed to the use of all watercraft propelled by machinery of over 10 horsepower.

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

RULE X BEAVER LAKE (1) Beaver Lake (near Whitefish) is located in Flathead County.

(2) Beaver Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1) during the following times:

(a) 5 a.m. to 10 a.m. and 7 p.m. to 11 p.m. each day.

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

RULE XI BEAVERTAIL POND (1) Beavertail Pond is located in Missoula County.

(2) Beavertail Pond is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE XII BIG HOLE RIVER (1) The Big Hole River is closed to use for any motor-propelled watercraft in the following counties:

- (a) Beaverhead County;
- (b) Butte Silver Bow County;
- (c) Deer Lodge County; and
- (d) Madison County.

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

RULE XIII BIGHORN RIVER (1) Bighorn River is located in Big Horn County.

(2) That portion of the Bighorn River from Afterbay Dam to the Bighorn access area is closed to use for any motor-propelled watercraft.

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

RULE XIV BITTERROOT RIVER (1) Bitterroot River is closed to use for any motor-propelled watercraft in the following

areas:

(a) Missoula County from the Ravalli County line to its confluence with the Clark Fork River with the following exceptions:

(i) any motorized watercraft may be used from May 1 through June 30 on the portion of the Bitterroot River from the Florence Bridge in Ravalli County downstream to the Clark Fork River;

(b) in Ravalli County from the Bitterroot River headwaters to the Missoula County line with the following exceptions:

(i) any motorized watercraft may be used from May 1 through June 30 on the portion of the Bitterroot River from the Florence Bridge in Ravalli County downstream to the Clark Fork River;

(2) Motorized watercraft powered by 15 horsepower or less may operate anywhere on the Bitterroot River from October 1 through January 31.

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

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

RULE XV BLACKFOOT RIVER (1) The Blackfoot River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1) in the following areas:

(a) in Missoula County downstream from the Stimson Lumber Company chainlink fence, as posted, to and including the Milltown Reservoir, then upstream on the Clark Fork River to the old Milwaukee Railroad Bridge pilings.

(2) The Blackfoot River is closed to use for any motor-propelled watercraft in the following areas:

(a) in Lewis and Clark County, the Blackfoot River and tributaries from their headwaters to the Powell County line;

(b) in Missoula County, the Blackfoot River and its tributaries from Missoula County line to the Stimson Lumber Mill Dam at Bonner; and

(c) in Powell County, the Blackfoot River and tributaries from the Lewis and Clark County line to the Missoula County line.

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

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

RULE XVI BLANCHARD LAKE (1) Blanchard Lake (on the Clearwater River) is located in Missoula County.

(2) Blanchard Lake is closed to the use of all watercraft propelled by machinery of over 10 horsepower.

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

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

RULE XVII BOOTJACK LAKE (1) Bootjack Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Bootjack Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE XVIII BOZEMAN PONDS (1) Bozeman Ponds are located in Gallatin County.

(2) Bozeman Ponds are closed to use for any motor-propelled watercraft.

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

RULE XIX BRANUM POND (1) Branum Pond is located in Custer County.

(2) Branum Pond is closed to use for any motor-propelled watercraft.

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

RULE XX BROWN'S LAKE (1) Brown's Lake is located in Powell County.

(2) A portion of Brown's Lake near Ovando is either closed as posted or marked by barrel booms to the use of all watercraft, during the time period beginning April 1 and ending July 15.

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

RULE XXI CAD LAKE (1) Cad Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Cad Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE XXII CANYON FERRY RESERVOIR - LEWIS AND CLARK COUNTY

(1) In Lewis and Clark County, Canyon Ferry Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), within 300 feet of docks or as buoyed in the following areas:

- (a) Yacht Basin;
- (b) Cave Bay;
- (c) Little Hellgate;
- (d) Magpie Bay;
- (e) Carp Bay; and
- (f) Canyon Ferry dam to Riverside boatramp.

(2) In Broadwater County, Canyon Ferry Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), within 300 feet of docks or as buoyed in the following areas:

- (a) White Earth; and
- (b) Goose Bay.

(3) The area immediately above and below Canyon Ferry Dam is either closed as posted or marked by barrel booms to the use of all watercraft.

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

RULE XXIII CARPENTER LAKE (1) Carpenter Lake is located in Lincoln County.

(2) Carpenter Lake is closed to the use of all watercraft propelled by machinery of over 10 horsepower.

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

RULE XXIV CIBID LAKE (1) Cibid Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Cibid Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE XXV CLARK FORK RIVER (1) The Clark Fork River is closed to use for any motor-propelled watercraft in the following areas:

- (a) in Deer Lodge County;
 - (i) the Clark Fork River and tributaries from their headwaters to the Powell County line;
- (b) in Granite County;
 - (i) the Clark Fork River and tributaries from Powell County line to Missoula County line;
- (c) in Mineral County;
 - (i) the Clark Fork River from St. John's fishing access site to the mouth of Fish Creek, also known as the Alberton Gorge Whitewater section;
- (d) in Missoula County;
 - (i) the Clark Fork River and tributaries from the Granite County line to the Milwaukee Bridge abutments on Milltown Reservoir;
 - (ii) the Clark Fork River from the north side of the Interstate Bridge nearest East Missoula to the Fish, Wildlife and Parks fishing access site and boat ramp located off Spurgin Road and Kelly Island, from July 1 through September 30; and
- (e) in Powell County;
 - (i) the Clark Fork River and tributaries from Deer Lodge County line to the Granite County line.

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

RULE XXVI CLEARWATER LAKE (1) Clearwater Lake is located in Missoula County.

(2) Clearwater Lake is limited to manually operated

watercraft and watercraft powered by electric motors.

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

RULE XXVII CLEARWATER RIVER (1) In Missoula County the Clearwater River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

- (a) from the outlet of Seeley Lake to the first bridge downstream from Camp Paxon swim dock; and
- (b) the portion of the river from Boy Scout Road Bridge north of Seeley Lake to the mouth of the river at the north end of Seeley Lake.

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

RULE XXVIII COLT LAKE (1) Colt Lake is located in Missoula County.

(2) Colt Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE XXIX COONEY RESERVOIR (1) Cooney Reservoir is located in Carbon County.

(2) Cooney Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

- (a) all of Willow Creek Arm as buoyed; and
- (b) North Shore and Marshall Cove within 300 feet of dock or as buoyed.

(3) All watercraft on Cooney Reservoir pulling, taking off with, and landing water skiers will travel in a general, consistent, counterclockwise direction.

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

RULE XXX COTTONWOOD LAKE (1) Cottonwood Lake is located in Missoula County.

(2) Cottonwood Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE XXXI CRYSTAL LAKE (1) Crystal Lake is located in Fergus County.

(2) Crystal Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE XXXII EAST GALLATIN POND (1) East Gallatin Pond is located in Gallatin County.

(2) East Gallatin Pond is closed to use for any motor-propelled watercraft.

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

RULE XXXIII ELSINA LAKE (1) Elsin Lake is located in Missoula County.

(2) Elsin Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE XXXIV FITZPATRICK LAKE (1) Fitzpatrick Lake is located in Toole County.

(2) Fitzpatrick Lake is closed to use for any motor-propelled watercraft.

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

RULE XXXV FLATHEAD LAKE (1) Flathead Lake is located in Flathead County.

(2) Flathead Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Bigfork Bay to a point approximately 100 yards west of the Highway 35 bridge as marked by signed buoys.

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

RULE XXXVI FOREST LAKE (1) Forest Lake is located in Meagher County.

(2) Forest Lake is closed to use for any motor-propelled watercraft.

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

RULE XXXVII FORT PECK DREDGE CUT TROUT POND (1) Fort Peck Dredge Cut Trout Pond is located in Valley County.

(2) Fort Peck Dredge Cut Trout Pond is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE XXXVIII FORT PECK RESERVOIR (1) Fort Peck Reservoir is located in McCone County.

(2) Fort Peck Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Rock Creek marina as marked by signed buoys.

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

RULE XXXIX FRENCHTOWN POND (1) Frenchtown Pond is located in Missoula County.

(2) Frenchtown Pond is closed to use for any motor-propelled watercraft.

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

RULE XL FRESNO RESERVOIR (1) Fresno Reservoir is located in Hill County.

(2) Fresno Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

- (a) the area around the Fresno boat club docks;
- (b) public boat ramp areas; and
- (c) swimming and beach area as buoyed and signed.

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

RULE XLI GARTSIDE RESERVOIR (1) Gartside Reservoir is located in Richland County.

(2) Gartside Reservoir is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE XLII HARPERS LAKE (1) Harpers Lake is located in Missoula County.

(2) Harpers Lake is closed to use for any motor-propelled watercraft.

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

RULE XLIII HARRISON LAKE (1) Harrison Lake (Willow Creek Reservoir) is located in Madison County.

(2) Harrison Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

- (a) all of Willow Creek Arm and Norwegian Arm as buoyed 6 p.m. to 11 a.m.

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

RULE XLIV HAUSER RESERVOIR (1) Hauser Reservoir is located in Lewis and Clark County.

(2) Hauser Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Lakeside marina within 300 feet of the docks or as buoyed;

(b) Black Sandy beach within 300 feet of the docks or as buoyed; and

(c) Spokane Creek Bay within 500 feet from the mouth of the bay or as buoyed.

(3) The upper end of Hauser Reservoir from Canyon Ferry Dam to below Brown's gulch is either closed as posted or marked by barrel booms to the use of all watercraft, during the time period beginning October 15 and ending December 15 of each year.

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

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

RULE XLV HENRY RESERVOIR (1) Henry Reservoir is located in Toole County.

(2) Henry Reservoir is closed to use for any motor-propelled watercraft.

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

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

RULE XLVI HIDDEN LAKE (1) Hidden Lake is located in Missoula County.

(2) Hidden Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

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

RULE XLVII HOLLAND LAKE (1) Holland Lake is located in Missoula County.

(2) Holland Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Holland Lake Lodge within 300 feet or as buoyed; and

(b) Bay Loop campground within 300 feet or as buoyed.

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

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

RULE XLVIII HOLTER LAKE (1) Holter Lake is located in Lewis and Clark County.

(2) Holter Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Gates of Mountains marina on (Upper Holter Lake) within 300 feet of docks or as buoyed;

(b) bureau of land management boat landing on Holter Lake as buoyed;

(c) Juniper Bay;

(d) Log Gulch;

(e) Departure Point;

(f) Merriweather Camp; and

(g) Holter Lake lodge docks.

(3) Holter Lake is closed to water skiing on Saturday and

Sunday of each week and on all legal holidays from the mouth of the canyon on upper Holter Lake to the Gates of the Mountains near Mann Gulch, as marked.

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

RULE XLIX HYALITE RESERVOIR (1) Hyalite Reservoir is located in Gallatin County.

(2) Hyalite Reservoir is limited to a controlled no wake speed as defined in ARM 12.11.101(1).

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

RULE L INEZ LAKE (1) Inez Lake is located in Missoula County.

(2) All watercraft on Inez Lake pulling, taking off with, and landing water skiers will travel in a general, consistent, counterclockwise direction.

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

RULE LI JOHNSON RESERVOIR (1) Johnson Reservoir is located in Dawson County.

(2) Johnson Reservoir is limited to manually operated watercraft and watercraft power by electric motors.

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

RULE LII KERR DAM (1) Kerr Dam is located in Lake County.

(2) The area immediately above Kerr Dam is either closed as posted or marked by barrel booms to the use of all watercraft.

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

RULE LIII LAKE DINAH (1) Lake Dinah is located in Missoula County.

(2) Lake Dinah is closed to use for any motor-propelled watercraft.

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

RULE LIV LAKE ELMO (1) Lake Elmo is located in Yellowstone County.

(2) Lake Elmo is limited to manually operated watercraft and watercraft power by electric motors.

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

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

RULE LV LAKE HELENA (1) Lake Helena is located in Lewis and Clark County.

(2) Lake Helena is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), during the following times:

(a) from April 1 to the opening of waterfowl season.

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

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

RULE LVI LAKE KOOCANUSA (1) Lake Kooconusa is located in Lincoln County.

(2) Lake Kooconusa is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Cripple Horse Bay, within 300 feet of dock or as buoyed.

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

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

RULE LVII LAVON LAKE (1) Lavon Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Lavon Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), including the channel between Lavon and Crystal Lakes.

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

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

RULE LVIII LEON LAKE (1) Leon Lake is located in Lincoln County.

(2) Leon Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

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

RULE LIX LILLY PAD LAKE (1) Lilly Pad Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Lilly Pad Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

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

RULE LX LITTLE LOON LAKE (1) Little Loon Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Little Loon Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

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

RULE LXI LITTLE MCGREGOR LAKE (1) Little McGregor Lake is located in Flathead County within the Thompson Chain of Lakes.

(2) Little McGregor Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE LXII LITTLE RAINBOW LAKE (1) Little Rainbow Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Little Rainbow Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE LXIII LOST LAKE (1) Lost Lake is located in Lincoln County.

(2) Lost Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE LXIV LOWER CARTER POND (1) Lower Carter Pond is located in Fergus County.

(2) Lower Carter Pond is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE LXV MIDDLE THOMPSON LAKE (1) Middle Thompson Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Middle Thompson Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE LXVI MISSOURI RIVER (1) In Broadwater County the Missouri River is closed to all swimming, boating, sailing and floating in the following areas:

(a) between Toston dam and 300 feet downstream of the dam; and

(b) the reservoir between the Toston dam and the boat barrier.

(2) The following areas of the Missouri River are closed to use of any motor-propelled watercraft:

(a) in Cascade County;

(i) that portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle; and

(ii) that portion of the Missouri River from the Warden

Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.

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

RULE LXVII MORRELL LAKE (1) Morrell Lake is located in Missoula County.

(2) Morrell Lake is closed to use for any motor-propelled watercraft.

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

RULE LXVIII MYRON LAKE (1) Myron Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Myron Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE LXIX PARK LAKE (1) Park Lake is located in Jefferson County.

(2) Park Lake is closed to use for any motor-propelled watercraft.

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

RULE LXX PELICAN POINT FISHING ACCESS PONDS (1) Pelican Point Fishing Access Ponds are located in Cascade County.

(2) Pelican Point Fishing Access Ponds are closed to use for any motor-propelled watercraft.

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

RULE LXXI PLACID CREEK (1) Placid Creek is located in Missoula County.

(2) Placid Creek is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) from its headwaters to the confluence with Placid Lake.

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

RULE LXXII RAINBOW LAKE (1) Rainbow Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Rainbow Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

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

RULE LXXIII RAINY LAKE (1) Rainy Lake is located in Missoula County.

(2) Rainy Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

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

RULE LXXIV SALMON LAKE (1) Salmon Lake is located in Missoula County.

(2) Salmon Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) the Clearwater River from the Placid Lake Road Bridge to Salmon Lake;

(b) that portion known as Legendary Lodge Narrows near the south end of the lake; and

(c) the area south of Salmon Cove Point (Eagle's Nest) to the lake's outlet.

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

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

RULE LXXV SAVAGE LAKE (1) Savage Lake is located in Lincoln County.

(2) Savage Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), during the following hours:

(a) 5 a.m. to 10 a.m. and from 7 p.m. to 11 p.m. each day.

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

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

RULE LXXVI SEELEY LAKE (1) Seeley Lake is located in Missoula County.

(2) All watercraft on Seeley Lake pulling, taking off with, and landing water skiers on Seeley Lake will travel in a general, consistent, counterclockwise direction.

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

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

RULE LXXVII SMITH RIVER (1) Smith River is closed to use for any motor-propelled watercraft in the following counties:

(a) Cascade County; and

(b) Meagher County.

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

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

RULE LXXVIII SOUTH SANDSTONE RESERVOIR (1) South Sandstone Reservoir is located in Fallon County.

(2) South Sandstone Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.102(1).

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

RULE LXXIX SPOOK LAKE (1) Spook Lake is located in Missoula County.

(2) Spook Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE LXXX SPRING MEADOW LAKE (1) Spring Meadow Lake is located in Lewis and Clark County.

(2) Spring Meadow Lake is closed to use for any motor-propelled watercraft.

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

RULE LXXXI SUMMIT LAKE (1) Summit Lake is located in Missoula County.

(2) Summit Lake is limited to manually operated watercraft and watercraft powered by electric motors.

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

RULE LXXXII SWAN RIVER (1) Swan River is located in Lake County.

(2) Swan River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) from the mouth of Swan Lake to Porcupine Bridge approximately 4 1/2 miles.

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

RULE LXXXIII TONGUE RIVER RESERVOIR (1) Tongue River Reservoir is located in Big Horn County.

(2) Tongue River Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Tongue River Reservoir as buoyed in the marina area at Campers Point;

(b) the entire Tongue River Reservoir from shoreline to 300 feet from shoreline from the south point that forms Corral Creek Bay (DNRC cabin site), north to the face of the dam, west along the dam face, and south along the west shore of the reservoir to the point where the Tongue River enters the reservoir;

- (c) Rattlesnake Bay;
- (d) Campers Point Bay;
- (e) Pee Wee Point Bay;
- (f) Cormorant Bay;

(g) Corral Creek Bay (DNRC cabin site bay); and
(h) Tongue River from the Wyoming border to the Tongue River Reservoir;

(3) The following are exceptions to (2):

(a) personal watercraft which must maintain a certain minimum operating speed to remain upright and maneuver in the water may travel at that minimum operating speed following the most direct route through the no wake zone to and from shore; and

(b) motorized watercraft towing a skier from a dock or the shore.

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

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

RULE LXXXIV TOPLESS LAKE (1) Topless Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Topless Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

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

RULE LXXXV UPPER CARTER POND (1) Upper Carter Pond is located in Fergus County.

(2) Upper Carter Pond is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

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

RULE LXXXVI UPPER THOMPSON LAKE (1) Upper Thompson Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Upper Thompson Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Middle and Lower lobe.

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

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

RULE LXXXVII UPSATA LAKE (1) Upsata Lake is located in Missoula County.

(2) Upsata Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

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

RULE LXXXVIII WHITEFISH RIVER (1) Whitefish River is located in Flathead County.

(2) Whitefish River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road.

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

RULE LXXXIX WHITETAIL RESERVOIR (1) Whitetail Reservoir is located in Daniels County.

(2) Whitetail Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

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

RULE XC WOOD LAKE (1) Wood Lake is located in Lewis and Clark County.

(2) Wood Lake is closed to use for any motor-propelled watercraft.

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

RULE XCI BEAVERHEAD COUNTY (1) All rivers and streams in Beaverhead County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower.

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

RULE XCII BROADWATER COUNTY (1) All rivers and streams in Broadwater County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower with the following exceptions:

(a) on the Missouri River, downriver from the Broadwater-Gallatin County line.

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

RULE XCIII BUTTE SILVER BOW COUNTY (1) All rivers and streams in Butte Silver Bow County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower.

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

RULE XCIV GALLATIN COUNTY (1) All rivers and streams in Gallatin County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower with the following exceptions:

(a) On the Missouri River, downriver from Headwaters State Park.

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

RULE XCV JEFFERSON COUNTY (1) All rivers and streams in Jefferson County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower.

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

RULE XCVI MADISON COUNTY (1) All rivers and streams in Madison County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower.

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

RULE XCVII PARK COUNTY (1) All rivers and streams in Park County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower with the following exceptions:

(a) on the Yellowstone River, downriver from Highway 89 bridge (near mouth of Shields River).

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

RULE XCVIII CANYON FERRY RESERVOIR - BROADWATER COUNTY

(1) In Broadwater County, Canyon Ferry Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), within 300 feet of docks or as buoyed in the following areas:

- (a) White Earth; and
- (b) Goose Bay.

(2) In Lewis and Clark County, Canyon Ferry Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), within 300 feet of docks or as buoyed in the following areas:

- (a) Yacht Basin;
- (b) Cave Bay;
- (c) Little Hellgate;
- (d) Magpie Bay;
- (e) Carp Bay; and
- (f) Canyon Ferry dam to Riverside boatramp.

(3) The area immediately above and below Canyon Ferry Dam is either closed as posted or marked by barrel booms to the use of all watercraft.

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

5. The rules as proposed to be transferred will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
12.6.701	12.11.301	Personal Floatation Devices and Life Preservers
12.6.702	12.11.305	Ventilation Systems
12.6.703	12.11.310	Fire Extinguishers
12.6.704	12.11.315	Lights
12.6.705	12.11.320	Sound Producing Device on Motorboats
12.6.706	12.11.325	Measuring Length of Boat
12.6.707	12.11.330	Definition of "Vessel"
12.6.802	12.11.340	Enforcement Authority
12.6.904	12.11.345	Use Restrictions at Montana Power Company Dams
12.6.902	12.11.5101	Castle Rock Reservoir Regulations
12.6.903	12.11.3210	Helena Valley Equalizing Reservoir Regulations

6. The intent of this rulemaking is to recodify existing rules to make them easier to use as described below. The proposed rules are not new rules but are existing rules written into a new format. A few minor substantive changes were made to correct inconsistencies in existing rules.

This rulemaking will assist the department and the public by eliminating confusion inherent in the rule, assisting the public and the department in locating the rules, and improving consistency in the water safety regulations.

This proposal incorporates two minor substantive changes to improve the consistency of these water rules. The first change pertains to the exceptions listed under ARM 12.6.901(1)(a). Instead of listing and applying the exceptions sporadically throughout the rule as ARM 12.6.901 currently does, this proposal lists all the exceptions in one place and applies them uniformly.

The second substantive change requires the director's prior written approval for individuals not subject to the rules under the "scientific purposes" exception. The commission believes that the scientific purposes, without requiring prior approval, could serve as a loophole for individuals other than those engaged in scientific research.

The most comprehensive change taking place in this rulemaking is the change in the way the water safety regulations are formatted. Since its adoption in 1972, ARM 12.6.901 has been amended 38 times. Because of the many amendments the rule is confusing and difficult to use. The format requires the user to know more than just the name of the body of water to find regulations on that body of water. After the user has located a regulation on a given body of water in one place in the rule, he/she must search through all eight pages of the rule to be assured no other regulations exist on that body of water. This proposal changes the format to remedy that situation by listing all regulations applicable to a given body of water in one place.

ARM 12.6.801 is being repealed and rewritten for consistency. The boating closures in this rule are being

incorporated into the rules pertaining to the individual bodies of water. This change allows the goal of regulations concerning a body of water being located in one place to be achieved.

Another reason for this proposal is that the public is very confused by ARM 12.6.901. Whenever the commission amends this rule, some of the public comment is often centered around the confusing nature of this rule.

Finally, the commission is proposing this rulemaking because the formatting of ARM 12.6.901 does not adhere to Secretary of State rule format guidelines. The new rules correct these problems. The drafters considered other alternatives for formatting but, in consultation with the Secretary of State ARM bureau, chose the proposed format as the most clear, and the most consistent with Secretary of State format guidelines.

7. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to Robert N. Lane, 1420 6th Ave., P.O. Box 200701, Helena, MT 59620-0701, or e-mail to brfisher@state.mt.us to be received no later than December 8, 2000.

8. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Brandi Fisher, 1420 6th Ave., P.O. Box 200701, Helena, MT 59620-0701, to be received no later than December 8, 2000.

9. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4664 persons based on the 46,634 watercraft registered with the State of Montana as of July 17, 2000.

10. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East 6th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

BY:

/s/ S.F. Meyer

/s/ Robert N. Lane

S.F. Meyer
Commission Chairman

Robert N. Lane
Rule Reviewer

Certified to the Secretary of State October 30, 2000.

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

In the matter of the)	
adoption of new rules	)	NOTICE OF PUBLIC HEARING
regarding a definition	)	ON PROPOSED ADOPTION AND
of department, and	)	AMENDMENT
clarification of game)	
bird permits and field)	
trial permits and the)	
amendment of ARM)	
12.6.1602)	

TO: All Concerned Persons

1. On November 30, 2000, at 7 p.m., a public hearing will be held in the commission room of the Department of Fish, Wildlife and Parks, 1420 East 6th Avenue, at Helena, Montana, to consider the adoption of new Rules I and II and the amendment of ARM 12.6.1602.

2. The Department of Fish, Wildlife and Parks (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 of Fish, Wildlife and Parks no later than 5:00 p.m. November 17, 2000, to advise us of the nature of the accommodation that you need. Please contact Debbie Bingham, Fish, Wildlife and Parks, 1420 East 6th ave., P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2452; fax (406) 444-7456.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS The following definition applies to this subchapter:

(1) "Department" means the department of fish, wildlife and parks and includes the director as used in this subchapter and Title 87, chapter 4, part 9, MCA.

AUTH: 87-4-913, MCA
IMP: 87-4-915, MCA

RULE II FIELD TRIAL PERMITS (1) A person interested in obtaining a field trial permit shall file at the nearest regional office a completed application on a form provided by the department.

(2) The application must provide sufficient information for the department to determine the eligibility for a field trial permit as set forth in 87-4-915, MCA.

AUTH: 87-4-913, MCA
IMP: 87-4-915, MCA

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

12.6.1602 PURCHASE AND SALE OF GAME BIRDS (1) No person may purchase live game birds from within the state except from the holder of a current game bird farm license. Licensees may sell live game birds only if the prospective purchaser is legally entitled to possess live game birds as evidenced by any of the following:

(a) a permit to possess live game birds for non-commercial use;

(b) a permit to release live game birds;

(c) a shooting preserve license;

(d) a zoo or menagerie permit; or

(e) a permit to conduct a field trial.

~~(2) This rule does not prohibit the~~ An authorized purchaser may also purchase of live game birds delivered from outside the state, under import permits issued by the department of livestock.

AUTH: 87-4-913, MCA

IMP: 87-4-915, MCA

5. The proposal is to generally revise chapter 6, subchapter 16 of the enforcement division rules relating to game bird farms and field trail permits and to clarify exactly what is necessary for a person to be able to buy game birds from a game bird farm licensee. New Rule I clarifies the authority of the department to act for the director in case of statutory references to the director, i.e., 87-4-912(2), MCA, filing annual reports with the director. New Rule II sets forth the exact procedure which must be followed for the filing of a field trial permit application. The amendments to ARM 12.6.1602 set forth the exact qualifications that a person must have in order to be eligible for the sale of live game birds from a game bird farm licensee.

6. 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 Tim Feldner, P.O. Box 200701, Helena, MT 59620-0701, or email to tfeldner@state.mt.us no later than December 8, 2000.

7. John F. Lynch has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written requests may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, 1420 East 6th

Ave., P.O. Box 200701, Helena, Montana 59620-0701; faxed to the office at (406) 444-7456, or may be made by completing a request form at any rules hearing held by the department.

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

By: /s/ Patrick J. Graham
Patrick J. Graham
Director

By: /s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State October 30, 2000

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING
amendment of Montana's) ON PROPOSED AMENDMENT OF
prevailing wage rates,) PREVAILING WAGE RATES -
pursuant to ARM 24.16.9007) FRINGE BENEFITS FOR
) IRONWORKERS AND IRONWORKER
) FOREPERSONS ONLY

TO: All Concerned Persons

1. On December 4, 2000, at 10:00 a.m., a public hearing will be held in Room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider a proposed amendment of fringe benefit rates for two occupational classifications that are set pursuant to the prevailing wage rate rule, ARM 24.16.9007. The Department proposes to adjust the fringe benefit rates for ironworkers and ironworker forepersons.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., November 27, 2000, to advise us of the nature of the accommodation that you need. Please contact the Office of Research and Analysis, Job Service Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2992; TTY (406) 444-0532; fax (406) 444-2638.

3. The Department of Labor and Industry does not propose to amend the text of ARM 24.16.9007, but proposes only to amend certain fringe benefit rates that are incorporated by reference in ARM 24.16.9007(1)(e) to the 2000 edition of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication. The occupations and districts in which the fringe benefits are proposed to be changed are as follows: (new matter underlined, deleted matter interlined)

IRONWORKER-STRUCTURAL STEEL, REBAR PLACER

District	Pension amount/hr		Vacation amount/hr	
1	\$3.30	<u>\$5.83</u>	\$0.00	<u>\$1.50</u>
2	\$3.30	<u>\$5.83</u>	\$0.00	<u>\$1.50</u>
3	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>
4	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>
5	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>
6	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>
7	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>
8	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>
9	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>
10	\$3.30	<u>\$6.50</u>	\$3.00	<u>\$0.00</u>

IRONWORKER FOREPERSON

District	Pension amount/hr	Vacation amount/hr
1	\$3.30 <u>\$5.83</u>	\$0.00 <u>\$1.50</u>
2	(Remains the same)	\$0.00 <u>\$1.50</u>
3	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>
4	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>
5	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>
6	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>
7	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>
8	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>
9	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>
10	\$3.30 <u>\$6.50</u>	\$3.00 <u>\$0.00</u>

AUTH: 18-2-431 and 2-4-307 MCA

IMP: Title 18, chapter 2, part 4 MCA

REASON: The Department has recently been made aware that certain fringe benefit rates for ironworkers and ironworker forepersons were inadvertently omitted from a collective bargaining agreement that had been submitted to the Department during the period in which the Department was gathering wage data. The Department was not aware of the collective bargaining agreement rates at the time the Department originally proposed and set the fringe benefit rates. There is reasonable necessity to amend the fringe benefit rates for ironworkers and ironworker forepersons to accurately identify the fringe benefit rates to be paid to such workers when the employer is a signatory to a collective bargaining agreement, as provided by the Department's rules regarding calculation of the standard prevailing rate of wages paid in Montana.

4. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Bob Schleicher
Office of Research and Analysis
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., December 12, 2000.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., December 12, 2000. 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

6. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

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

8. The Department proposes to make the amendments effective as soon as feasible.

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFHEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 30, 2000.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.21.411,) THE PROPOSED AMENDMENT OF AN
and the proposed adoption of) EXISTING RULE AND THE PROPOSED
three new rules all relating) ADOPTION OF NEW RULES
to apprenticeship standards)

TO: All Concerned Persons

1. On December 1, 2000, at 10:00 a.m. a public hearing will be held at the first floor auditorium of the Scott Hart building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of an existing rule and the adoption of new rules, all related to apprenticeship standards.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., November 24, 2000, to advise us of the nature of the accommodation that you need. Please contact the Apprenticeship and Training Program, Attn: Mr. Mark Maki, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3556; TTY (406) 444-0532; fax (406) 444-3037; or e-mail at mmaki@state.mt.us.

3. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter stricken)

24.21.411 MINIMUM GUIDELINES FOR REGISTRATION OF PROGRAMS

(1) Programs submitted for approval and/or registration by the apprenticeship and training program (registration agency), department of labor and industry, must contain the following:

(a) Provision that the starting age of an apprentice may not be less than ~~16~~;

(b) Statement of basic qualifications for apprenticeship ~~that is~~ specific and applying ~~applies~~ equally to all applicants;

(c) Provision for compliance with 29 CFR part 30, which includes the Montana state plan for equal employment opportunity in apprenticeship;

(d) Provision that the term of apprenticeship is consistent with industry practice, but in no case less than 2,000 hours of reasonably continuous employment, which must include supplementary instruction except as otherwise provided by Montana state law;

(e) A schedule of work processes in which the apprentice will receive work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process or division of the trade. Apprentice work

experience gained outside the scope of the required trade experience on a regular basis will not count toward the term of the apprenticeship. A sponsor of a registered apprenticeship consistently working an apprentice outside the scope of work specified in the work process schedule stated in the registered standards is out of compliance with the standards and subject to investigation and appropriate remedy;

(f) Provision for proper supervision of on-the-job training;

(g) A progressively increasing schedule of wages for apprentices. The entry wage must equal or exceed the Montana Minimum Wage Law or Fair Labor Standards Act minimum where applicable;

(h) Provision for the payment of wages that are consistent with the requirements of ARM 24.21.414, if the apprenticeship is in a building construction occupation;

(i) Provision for organized related and supplemental instruction. This may include supervised correspondence or self-study courses as approved by state law. A minimum of 144 hours each year of apprenticeship is recommended;

(j) A statement of the ratio of apprentices to journeymen. The registration agency will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice; ~~The registration agency may waive ratio standards for apprenticeship sponsors who can demonstrate the need for a waiver due to labor shortages or other reasons deemed sufficient by the registration agency.~~

(k) Provision for periodic evaluation of the apprentice's progress, both in job performance and related instruction, and the maintenance of appropriate progress records;

(l) Provision for evaluation of and granting credit for previous experience;

(m) Provision for safety training for apprentices, both on the job and in related instruction;

(n) Provision that apprentices will be under a written agreement with their employer, or with an employers association, or a joint apprenticeship committee pursuant to state apprenticeship laws and regulations;

(o) Identification of the registration agency by whom apprentices, apprenticeship programs and subsequent amendments thereto will be approved and recorded;

(p) Provisions for notifying the registration agency of all actions affecting apprenticeship, such as new hires, completions, suspensions, and cancellations;

(q) Provision for employer-employee cooperation where a bargaining agreement exists, except where no participation has been evidenced or practiced by the bargaining agent. Where there is employer and employee participation it may be demonstrated by one or more of the following:

(i) Appropriate provisions in the bargaining agreement;

(ii) Signature to the standards;

(iii) Letter from each indicating agreement to the programs;

(iv) Establishment of a joint apprenticeship committee; and

(r) Provision for recognition of successful completion. Recognition is acknowledged by a Certificate of Completion of Apprenticeship.

AUTH: 39-6-101 MCA

IMP: 39-6-102 and 39-6-106 MCA

REASON: There is reasonable necessity to amend ARM 24.21.411(1)(e) to further clarify the circumstances in which work experience gained outside the required trade experience will not count toward the apprenticeship term.

There is reasonable necessity to amend ARM 24.21.411(1)(j) to avoid duplication and confusion with proposed new rule I, which further clarifies and explains apprenticeship ratio waivers.

4. The Department proposes to adopt new rules as follows:

NEW RULE I RATIOS--QUALIFICATIONS--ALLOWANCE OF WAIVERS

(1) For the purpose of establishing journeyman-apprentice ratios, a journeyman is an individual employed by the sponsor that works directly and daily in the occupation for which the sponsor has a registered apprenticeship, and is recognized by one or more of the following:

- (a) licensure as required by state or federal law;
- (b) a verifiable apprenticeship completion certificate;
- (c) skill standards recognized by the representing industry and the employer; or
- (d) a verifiable journeyman card for that occupation.

(2) In establishing journeyman-apprentice ratios, only workers recognized at a journeyman level, as stated in (1) above, working directly at the job site and providing on-the-job apprenticeship instruction a minimum of 30 hours a week, will be considered. Personnel not considered in the ratio may include office managers, estimators, owners, purchasing agents, safety directors and personnel officers employed by the sponsor, if the above qualifications are not being met.

(3) The journeyman-apprentice ratio applies to individual work sites as well as the entire firm or operation of the sponsor.

(4) The registration agency will consider waiver of ratio standards only if the apprenticeship program of the sponsor is in full compliance with registered standards and there are no outstanding complaints or investigations either directly or indirectly related to the specific registered apprenticeship program.

(5) The registration agency may waive ratio standards for an apprenticeship sponsor who demonstrates the need for a waiver by documented proof of all of the following:

- (a) a state-wide job order seeking qualified journeymen through a local job service office or private employment agency;
- (b) advertising for qualified journeymen in local or regional newspapers; and

(c) advertising for qualified journeymen in local parts/supply houses, trade associations, and/or by contacting area employers in like occupations.

(6) Following grant of a waiver, the sponsor must show proof of a continuous search for qualified journeymen throughout the waiver period.

AUTH: 39-6-101 MCA

IMP: 39-6-106 MCA

NEW RULE II APPRENTICE SUPERVISION (1) The level of required journeyman supervision varies with the work experience of the apprentice.

(a) A qualified journeyman will immediately supervise the work of a first, second, and third year apprentice, and a fourth year apprentice in the plumbing and pipe trades, in the proper ratio prescribed in the registered apprenticeship standards. Immediate supervision means the journeyman remains on the job site continuously, except for brief absences as required in the scope of business. Such an apprentice must not work unsupervised, either locally or out of town, in areas of work covered by the apprenticeship agreement or the registered apprenticeship standards of the sponsor.

(b) An apprentice may work under limited supervision during any period that falls entirely within the last year of apprenticeship for fourth or fifth year apprentices. Limited supervision means the journeyman must observe or physically check on the apprentice at the work site on a daily basis.

AUTH: 39-6-101 MCA

IMP: 39-6-106 MCA

NEW RULE III PROCEDURE FOR COMPLAINT AND INVESTIGATION

(1) The apprenticeship and training program will initiate a complaint procedure to resolve allegations of improper conduct by program participants.

(a) Upon receipt of a complaint or discovery of a violation by a program participant, the apprenticeship and training program will:

(i) investigate the matter;

(ii) give notice of the alleged violation to the program participant; and

(iii) solicit a response from the participant within a prescribed time period.

(b) Upon completion of the investigation, the apprenticeship and training program will issue a written determination and impose an appropriate remedy, if needed.

(2) A party disagreeing with a determination may appeal the determination to a hearings officer for a contested case hearing, pursuant to the Montana Administrative Procedure Act (MAPA). Any further appeal will follow MAPA procedures.

AUTH: 39-6-101 MCA

IMP: 39-6-102 and 39-6-106 MCA

REASON: There is reasonable necessity to adopt NEW RULE I to further clarify the journeyman-apprentice ratio requirements and

waiver procedures that are currently accepted and used in the apprenticeship community. The Department believes that since ratio waivers are allowed as an exception to apprenticeship standards, this policy should be incorporated into the apprenticeship rules.

There is reasonable necessity to adopt NEW RULE II to clarify levels of journeyman supervision necessary to maintain proper training and safe working conditions for apprentices and consumer protection for the public. This proposed rule is reflective of current industry and national practices.

There is reasonable necessity to adopt NEW RULE III to provide clarification as to the procedure for addressing and resolving complaints or alleged violations of apprenticeship standards.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Mark Maki
Apprenticeship and Training Program
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., December 8, 2000. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., December 8, 2000. 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the

name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

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

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFHEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 30, 2000.

BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 36.25.102 and)
36.25.110 to set rental rates)
for cabin site leases on state)
trust lands and associated)
improvements)
)
)

TO: All Interested Persons

1. On November 29, 30 and December 4, 2000, at 7:00 p.m., public hearings will be held to consider the amendment of ARM 36.25.102 and 36.25.110. The hearings will be conducted on the following dates and at the following locations:

November 29 Seeley Lake High School Cafeteria
456 Airport Road
Seeley Lake, MT

November 30 Department of Fish, Wildlife and Parks
Conference Room
490 North Meridian Road
Kalispell, MT

December 4 Department of Natural Resources and
Conservation Southern Land Office
Airport Industrial Park
1371 Rintop Drive
Billings, MT

2. The Department of Natural Resources and Conservation and the Board of Land Commissioners 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 agency no later than 5:00 p.m. on November 27, 2000, to advise us of the nature of the accommodation that you need. Please contact Jeanne Fairbanks, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59801; telephone (406) 542-4346; FAX (406) 542-4217.

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

36.25.102 DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context:

(1) through (15) remain the same.

(16) "Lease fee adjustment" means the process by which the department applies the rental rate contracted in the lease to

the most recent appraised market value to determine if it is necessary to alter the annual rental payment. The adjustment will occur at the review period defined in the lease and at the time of renewal.

(16) through (30) remain the same, but are renumbered (17) through (31).

AUTH: 77-1-202, MCA

IMP: 77-1-209, MCA

36.25.110 MINIMUM RENTAL RATES (1) through (5) remain the same.

(6)(a) Effective March January 1, 1996 2001 and retroactive to those cabinsite leases issued between January 1, 1999 and December 31, 2000, and except as provided in (b)(6)(a), the minimum rental rate for a cabinsite lease or license is the greater of 3.5% 5% of the appraised market value of the land, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, or \$250. This rate takes into account all those factors in 77-1-106, MCA, reflecting the costs to the lessee of leasing state land.

(b)(a) For cabinsite leases or licenses issued prior to July 1, 1993, the minimum rental rate in (a) is effective on the later of the following dates:

(i) the first date after July 1, 1993, that the lease is subjected to readjustment pursuant to the terms of the lease, or the first date after July 1, 1993, of lease renewal, whichever date is earlier; or

(ii) March 1, 1996. expiring after January 1, 2001, and for those leases and licenses whose rates are reviewed from 2003 through 2007, the department shall, when issuing a new lease or license at a rental rate greater than \$250 for the same cabinsite, or in reviewing an existing lease or license, calculate the minimum rental rate as 5% of the appraised market value of the land; and:

(i) in the first year of the new lease or license, or of the lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, plus 20% of the difference between:

(A) the rental rate paid in the last year of the expired lease or license or lease review; and

(B) the calculated rental rate of 5% of the appraised market value of the land.

(ii) in the second year of the lease or license, or of the lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 40% of the difference between:

(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and

(B) the calculated rental rate of 5% of the appraised market value of the land.

(iii) in the third year of the lease or license, or lease

or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 60% of the difference between:

(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and

(B) the calculated rental rate of 5% of the appraised market value of the land.

(iv) in the fourth year of the lease or license, or lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 80% of the difference between:

(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and

(B) the calculated rental rate of 5% of the appraised market value of the land.

(v) in each subsequent year for the remaining term of the lease or license, the department shall collect a rental rate equivalent to 5% of the appraised market value of the land.

(c) Until the minimum rate in (a) becomes applicable, the minimum rate is the greater of 3.5% of the appraised market value of the land, excluding improvements as determined by the department of revenue pursuant to 15-1-208, MCA, or \$150.

(d) Access roads shall must be included in the lease and in the appraised value of the leased land.

(b) For cabinsites only:

(i) Any lessee or licensee has 60 days from the expiration or cancelation of the lease or license to remove all improvements from the leased or licensed premises. The removal of improvements must be conducted within the terms of a new land use license, for a fixed sum of 1/6 of the most recent year's lease or license fee or \$50, whichever is the greater.

(ii) If the lessee or licensee does not wish to remove the improvements, but rather chooses to be compensated for the improvements, the lessee or licensee shall be responsible for any applicable tax assessments.

(iii) If, after two years of the expiration or cancelation of the lease or license, no new lessee or licensee is found, the department shall provide written notice to the former lessee or licensee that unless the improvements are removed within 60 days, the improvements will become the property of the state.

(iv) If a new lessee or licensee is found within two years of the expiration or cancelation of the lease or license, during the pendency of the improvement valuation process, including arbitration and appeal, the new lessee shall place in escrow an amount equal to the assessed value of the improvements as per department of revenue assessment, plus any applicable tax assessment. Nothing herein will prevent the department from issuing a lease or license to the new lessee or licensee during the pendency of the valuation process.

(v) If, during the two-year period described above, the prior lessee or licensee wishes to remove the improvements, the removal can occur only during those times when the leased or

licensed property is not being offered for competitive bid.

(vi) Determination of compensation for improvements through the arbitration process shall utilize standard appraisal procedures giving full consideration to the improvement's condition, its contribution to the value of the property for residential purposes, remaining economic life, and shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.

(7) remains the same.

AUTH: 77-1-202, MCA

IMP: 77-1-208, MCA

4. These rule amendments are necessary to revise the Board of Land Commissioners' rental rates for cabinsite leases and licenses to be consistent with the pronouncements of the Montana Supreme Court in Montanans for Responsible Use of the School Trust v. State ex rel. Board of Land Commissioners and Department of Natural Resrouces and Conservation, 989 P.2d 800, 1999 MT 263 (Nov. 2, 1999). The intent is to phase in over a five-year period for each lease the increases resulting from both new appraisals and the rental rate from 3.5 to 5.0% of the appraised market value.

This rule change will affect approximately 773 lessees. It is expected that the proposed increase in rental rates will generate additional revenues of approximately \$61,500 the first year and approximately \$308,000 by the fifth year.

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 Jeanne Fairbanks, DNRC, 2705 Spurgin Road, Missoula, MT 59801, faxed to (406)542-4217 or e-mailed to jefairbanks@state.mt.us and must be received no later than 5:00 p.m. on December 7, 2000.

6. Clive Rooney, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601 and/or Jeanne Fairbanks, 2705 Spurgin Road, Missoula, MT 59804 have been designated to preside over and conduct the hearings.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Emily Cooper, Department of Natural Resources and Conservation, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a

request form at any rules hearing held by the agency.

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

BOARD OF LAND COMMISSIONERS DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: /s/ Marc Racicot
MARC RACICOT
CHAIR

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
DIRECTOR

By: /s/ Donald D. MacIntyre
DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State October 30, 2000.

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

In the matter of the)
amendment of ARM 46.18.122)
pertaining to FAIM financial)
assistance standards)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On November 30, 2000, at 1:30, p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 20, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.18.122 FAIM FINANCIAL ASSISTANCE: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) Income standards as set forth in this rule are used to determine whether need exists with respect to income for any person who applies for or receives FAIM financial assistance but not food stamp benefits and to determine the benefit amount the assistance unit will receive if eligible. Three sets of assistance standards are used which are as follows:

(a) The gross monthly income (GMI) standard sets the level of gross monthly income for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible for FAIM financial assistance.

(b) The net monthly income (NMI) standard, also known as the need standard sets the level of net monthly income for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible. It represents the minimum dollar amount required for basic needs such as food, clothing, shelter, personal care items, and household supplies for a household of the assistance unit's size.

(c) The benefit standard sets the level of net countable income which cannot be exceeded if the assistance unit is to be eligible for assistance. It is also used to determine the amount

of the monthly cash payment in the pathways and community services programs and is based on the size of the assistance unit. This amount is prorated for the month of application if eligibility is for less than a full month. If this amount is less than \$10, no payment check will be issued.

(2) The income standards vary depending on the number of persons in the assistance unit, and whether the assistance unit has a shelter obligation, ~~and whether the assistance unit includes adults.~~

(a) An assistance unit is considered to have a shelter obligation if a member of the filing unit is obligated to meet any portion of the expenses for the assistance unit's place of residence, such as rent, a house payment, mortgage payment, real property taxes or homeowner's insurance, mobile home lot rent or utilities such as heating fuel, water or lights. An assistance unit receiving a government rent or housing subsidy is considered to have a shelter obligation even if the assistance unit's share of the rent or housing payment is zero.

(3) The income standards used to determine an assistance unit's eligibility and amount of cash assistance are determined as follows:

(a) The standards designated "with shelter obligation" are used if the assistance unit has a shelter obligation as defined in (2)(a).

(b) The standards designated "without shelter obligation" are used if the assistance unit does not have a shelter obligation as defined in (2)(a).

(4) The assistance unit's gross monthly income as defined in ARM 46.18.103 is compared to the applicable GMI standard, and after specified disregards, to the NMI standard. If the assistance unit's gross monthly income exceeds the GMI standard or their net monthly income as defined in ARM ~~46.10.505~~ 46.18.103 exceeds the NMI standard or the benefit standard, the assistance unit is ineligible for assistance. Monthly income is compared to the full standard even if the eligibility is being determined for only part of the month.

(a) Eligibility for assistance and the amount of the monthly benefit payment which a pathways or CSP assistance unit will receive is determined prospectively, that is, based on the department's best estimate of income and other circumstances which will exist in the benefit month.

(b) When comparing income to the income standards, income anticipated to be received in the benefit month is used.

(5) The GMI standards, NMI standards and benefits standards used to determine eligibility and amount of cash assistance are as follows:

(a) ~~Gross monthly income standards to be used when adults are included in the assistance unit~~ are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.

~~GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT~~

Number of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	\$ 655	\$ 237
2	881	385
3	1,104	529
4	1,328	673
5	1,552	805
6	1,776	931
7	2,002	1,056
8	2,226	1,173
9	2,335	1,282
10	2,442	1,389
11	2,536	1,484
12	2,631	1,576
13	2,714	1,661
14	2,794	1,741
15	2,871	1,819
16	2,940	1,885

<u>Number of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
<u>1</u>	<u>\$ 664</u>	<u>\$ 242</u>
<u>2</u>	<u>895</u>	<u>390</u>
<u>3</u>	<u>1,125</u>	<u>540</u>
<u>4</u>	<u>1,356</u>	<u>688</u>
<u>5</u>	<u>1,587</u>	<u>823</u>
<u>6</u>	<u>1,817</u>	<u>949</u>
<u>7</u>	<u>2,048</u>	<u>1,079</u>
<u>8</u>	<u>2,279</u>	<u>1,227</u>
<u>9</u>	<u>2,509</u>	<u>1,378</u>
<u>10</u>	<u>2,740</u>	<u>1,556</u>
<u>11</u>	<u>2,971</u>	<u>1,735</u>
<u>12</u>	<u>3,201</u>	<u>1,918</u>
<u>13</u>	<u>3,432</u>	<u>2,100</u>
<u>14</u>	<u>3,663</u>	<u>2,281</u>
<u>15</u>	<u>3,894</u>	<u>2,465</u>
<u>16</u>	<u>4,124</u>	<u>2,644</u>

~~(b) Gross monthly income standards to be used for child only assistance units are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.~~

~~GROSS MONTHLY INCOME STANDARDS TO BE USED
FOR CHILD ONLY ASSISTANCE UNITS~~

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH
1	\$ 237
2	470
3	707
4	944
5	1,177
6	1,412
7	1,652
8	1,883
9	1,996
10	2,103
11	2,211
12	2,311
13	2,507
14	2,601
15	2,684
16	2,658

(c) (b) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.

~~NET MONTHLY INCOME STANDARDS WHEN ADULTS
ARE INCLUDED IN THE ASSISTANCE UNIT~~

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH	WITHOUT SHELTER OBLIGATION PER MONTH
1	\$ 354	\$ 128
2	476	208
3	597	286
4	718	364
5	839	435
6	960	503
7	1,082	571
8	1,203	634
9	1,262	693
10	1,320	751
11	1,371	802
12	1,422	852
13	1,467	898
14	1,510	941
15	1,552	983
16	1,589	1,019

<u>Number of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
<u>1</u>	<u>\$ 359</u>	<u>\$ 131</u>
<u>2</u>	<u>484</u>	<u>211</u>
<u>3</u>	<u>608</u>	<u>292</u>
<u>4</u>	<u>733</u>	<u>372</u>
<u>5</u>	<u>858</u>	<u>445</u>
<u>6</u>	<u>982</u>	<u>513</u>
<u>7</u>	<u>1,107</u>	<u>583</u>
<u>8</u>	<u>1,232</u>	<u>663</u>
<u>9</u>	<u>1,356</u>	<u>745</u>
<u>10</u>	<u>1,481</u>	<u>841</u>
<u>11</u>	<u>1,606</u>	<u>938</u>
<u>12</u>	<u>1,730</u>	<u>1,037</u>
<u>13</u>	<u>1,855</u>	<u>1,135</u>
<u>14</u>	<u>1,980</u>	<u>1,233</u>
<u>15</u>	<u>2,105</u>	<u>1,332</u>
<u>16</u>	<u>2,229</u>	<u>1,429</u>

~~(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.~~

~~NET MONTHLY INCOME STANDARDS TO BE USED FOR
CHILD ONLY ASSISTANCE UNITS~~

NUMBER OF CHILDREN IN HOUSEHOLD	PER MONTH
1	\$ 128
2	254
3	382
4	510
5	636
6	763
7	893
8	1,018
9	1,079
10	1,137
11	1,195
12	1,249
13	1,304
14	1,355
15	1,406
16	1,451

~~(e) (c) Benefit income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net countable income as defined in ARM 46.18.103.~~

~~BENEFITS STANDARDS TO BE USED WHEN ADULTS
ARE INCLUDED IN THE ASSISTANCE UNIT~~

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH	WITHOUT SHELTER OBLIGATION PER MONTH
1	\$ 278	\$ 100
2	374	163
3	469	225
4	564	286
5	659	341
6	754	395
7	849	448
8	944	498
9	991	544
10	1,036	591
11	1,076	630
12	1,116	669
13	1,152	705
14	1,185	739
15	1,218	772
16	1,247	800

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH	WITHOUT SHELTER OBLIGATION PER MONTH
1	\$ 282	\$ 103
2	380	166
3	477	229
4	575	292
5	674	349
6	771	403
7	869	458
8	967	520
9	1,064	585
10	1,163	660
11	1,261	736
12	1,358	814
13	1,456	891
14	1,554	968
15	1,652	1,046
16	1,750	1,122

~~(f) Benefit income standards to be used when no adults are included in the assistance unit are compared to the assistance unit's net countable monthly income as defined in ARM 46.18.103.~~

~~BENEFIT STANDARDS TO BE USED FOR
CHILD ONLY ASSISTANCE UNITS~~

NUMBER OF PERSONS IN HOUSEHOLD	PER MONTH
1	\$ 100
2	199
3	300
4	400
5	499
6	599
7	701
8	791
9	847
10	893
11	938
12	980
13	1,024
14	1,064
15	1,104
16	1,139

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-241 and 53-4-601, MCA

3. The Families Achieving Independence in Montana (FAIM) program provides cash assistance and supportive services to eligible low income Montanans.

ARM 46.18.122 explains the budgeting methodology for determining eligibility for and the amount of FAIM assistance, as well as listing the Gross Monthly Income, Net Monthly Income and Benefit Standard of assistance units from one to sixteen household members. Currently, income and benefit standards are based on whether or not the assistance unit has a shelter expense or if the assistance unit includes an adult. Two changes are being proposed to ARM 46.18.122.

The first change is to increase the benefit standard to 40.5% of the current federal poverty level as was intended by the legislative appropriation provided in House Bill No. 2 passed by the 1999 Legislature. This change also increases the Gross Monthly Income Standard and the Net Monthly Income Standard.

The legislature sets the amount of benefits to be provided to eligible assistance units through the FAIM program. The individual benefit amounts are given as a percentage of the current federal poverty level, i.e. 40.5% of poverty level. Since the federal poverty level is adjusted each year in order to take into consideration variables such as the cost of living, the program's benefit standards must be adjusted each year as well. ARM 46.18.122 lists the benefit standards. The proposed amendment to ARM 46.18.122 is necessary to adjust the benefit standards in order to account for the increase in the federal poverty level and still be in compliance with the legislature's mandate.

The second change is to eliminate the child only benefit and income standards. This change would mean that the household size will now reflect the true number of people in the assistance unit, with no regard to whether they are adults or children. Examples include, a household with a parent and two children would be an assistance unit of three and a household that contains a grandparent (not on assistance) and two children would be an assistance unit of two instead of a child only assistance unit of two.

The elimination of the child only standard is necessary to provide consistent levels of assistance to units of similar size. Presently, if a filing unit contains two parents and one parent is ineligible, the grant for the assistance unit decreases by an amount equal to the benefits of an individual. But, if a filing unit contains one parent and that parent is ineligible, the grant drops to a much lower level for the child only grant. In order to provide consistent levels of service to assistance units of the same size and to establish parity in benefit standards, it is necessary to eliminate the current distinction created by child only grants. While the Department could retain the current benefit standards, the Department has determined that consistent benefits and a parity in level of services is more just and desirable. Thus, the Department proposes to change ARM 46.18.122 accordingly.

Because the federal poverty level has increased and because eliminating child only grants results in increased benefits, the benefit standards are increased along with the costs of the FAIM program. The Department of Public Health and Human Services estimates that the increase in the benefit standards, as proposed in this rule amendment, will add an additional cost of approximately \$500,000 to the FAIM Program for fiscal year 2001. The elimination of the child only standards as proposed in this rule amendment, will add an additional cost of approximately \$1.2 million to the FAIM Program for fiscal year 2001. The Department estimates that the proposed increase in benefits will impact approximately 16,000 people.

4. This rule amendment will be applied effective February 1, 2001, in order to accommodate the required computer programming of the change in eligibility and benefit standards.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 12, 2000. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State October 30, 2000.

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

In the matter of the)
amendment of ARM 37.70.601)
pertaining to the low income)
energy assistance program)
(LIEAP))

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On November 29, 2000 at 10:00 a.m., a public hearing will be held in Room 306 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 20, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.601 BENEFIT AWARD MATRICES (1) The benefit matrices in (1)(d) and (1)(e) are used to establish the benefit payable to an eligible household for a full winter heating season (October thru April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) through (c) remain the same.

(d) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 321	\$ 421	\$ 512	\$ 457	\$275	\$251
	<u>368</u>	<u>436</u>	<u>603</u>	<u>531</u>	<u>306</u>	<u>242</u>
TWO	467	612	745	665	400	365
	<u>536</u>	<u>634</u>	<u>877</u>	<u>772</u>	<u>444</u>	<u>352</u>
THREE	636	834	1,015	906	545	498
	<u>730</u>	<u>864</u>	<u>1,195</u>	<u>1,052</u>	<u>605</u>	<u>479</u>
FOUR	876	1,147	1,396	1,247	750	685
	<u>1,004</u>	<u>1,188</u>	<u>1,644</u>	<u>1,447</u>	<u>833</u>	<u>659</u>

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$272	\$356	\$ 433	\$ 486	\$232	\$212
	<u>312</u>	<u>369</u>	<u>510</u>	<u>564</u>	<u>258</u>	<u>204</u>
TWO	409	536	653	732	350	320
	<u>469</u>	<u>555</u>	<u>768</u>	<u>850</u>	<u>389</u>	<u>308</u>
THREE	600	787	958	1,074	514	469
	<u>689</u>	<u>815</u>	<u>1,127</u>	<u>1,247</u>	<u>570</u>	<u>451</u>
FOUR	701	919	1,119	1,255	600	548
	<u>805</u>	<u>952</u>	<u>1,317</u>	<u>1,457</u>	<u>666</u>	<u>527</u>

(iii) MOBILE HOME

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$271	\$355	\$ 432	\$ 404	\$232	\$212
	<u>311</u>	<u>367</u>	<u>508</u>	<u>469</u>	<u>258</u>	<u>204</u>
TWO	396	518	631	591	339	310
	<u>454</u>	<u>537</u>	<u>743</u>	<u>686</u>	<u>377</u>	<u>298</u>
THREE	525	687	837	783	449	410
	<u>602</u>	<u>712</u>	<u>985</u>	<u>909</u>	<u>499</u>	<u>395</u>
FOUR	586	767	934	874	502	458
	<u>672</u>	<u>795</u>	<u>1,100</u>	<u>1,014</u>	<u>557</u>	<u>441</u>

(e) remains the same.

AUTH: Sec. 53-2-201, MCA
 IMP: Sec. 53-2-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) helps families, whose income is at or below 150% of the federal poverty level, pay the costs of heating their homes. ARM 37.70.601 contains tables showing the amount of benefits to

which qualifying families are entitled. The benefit amount for a family is based on a number of factors, including the type of dwelling in which the family resides, the size of the dwelling, and the method of heating the dwelling, such as natural gas, electricity, propane, fuel oil, wood, or coal.

Benefit amount also is related to the amount of federal money appropriated to fund LIEAP each year. The Administration for Children and Families of the U.S. Department of Health and Human Services (HHS) recently notified the Montana Department of Public Health and Human Services (the Department), which administers LIEAP, that it would receive additional funds for LIEAP due to recent sharp increases in heating fuel costs. The Department will receive an energy contingency fund award in excess of \$2,000,000 in addition to the sum of approximately \$6,200,000 already awarded for LIEAP benefits for the current heating season. This energy contingency fund award must be used by September 30, 2001.

As a result of the additional appropriation, the Department will be able to pay higher LIEAP benefits for the 2000/2001 heating season to all families. The amendment of ARM 37.70.601 is therefore necessary to specify the increased benefit amounts which will be paid for the 2000/2001 heating season. The Department proposes to apply the amended benefit amounts retroactive to October 1, 2000, which is the beginning of the current heating season, because this will be most advantageous to LIEAP recipients and will be easier to administer.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on December 7, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State October 30, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of ARM 42.22.1311, 42.22.1313,))
and 42.22.1401 relating to))
Centrally Assessed Property) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 22, 2000, the Department proposes to amend ARM 42.22.1311, 42.22.1313 and 42.22.1401 relating to centrally assessed property.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on November 20, 2000, 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 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax number (406) 444-3696; e-mail address canderson@state.mt.us.

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

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) ~~The department will utilize the machinery and equipment trend factors which are set forth on the following tables.~~ The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Each major industry has its own trend table. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment. The department will utilize the machinery and equipment trend factors that are set forth in the following tables:

(a) Life expectancies for industrial machinery and equipment are shown in the trend table below; and

2000 2001 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

The life expectancy trend table found on pages 42-2260 and 42-2260.1 of the Administrative Rules of Montana remains the same.

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

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane</u> <u>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</u> <u>Confect</u>
1999	1.000	1.000	1.000	1.000	1.000
1998	1.000	1.002	1.001	1.004	1.002
1997	1.008	1.012	1.008	1.014	1.013
1996	1.020	1.030	1.024	1.030	1.031
1995	1.034	1.045	1.039	1.049	1.047
1994	1.075	1.088	1.080	1.089	1.091
1993	1.103	1.121	1.109	1.115	1.124
1992	1.120	1.142	1.127	1.132	1.145
1991	1.128	1.158	1.139	1.144	1.161
1990	1.146	1.184	1.161	1.170	1.189
1989	1.171	1.216	1.189	1.203	1.224
1988	1.230	1.283	1.259	1.274	1.294
1987	1.286	1.341	1.319	1.331	1.353
1986	1.301	1.363	1.337	1.348	1.377
1985	1.307	1.387	1.345	1.360	1.402
1984	1.324	1.414	1.363	1.380	1.431
1983	1.360	1.447	1.398	1.414	1.464
1982	1.385	1.468	1.419	1.434	1.482
1981	1.446	1.538	1.480	1.501	1.555
1980	1.593	1.702	1.631	1.660	1.723

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement</u> <u>Mfg.</u>	<u>TABLE 7</u> <u>Chemical</u>	<u>TABLE 8</u> <u>Clay</u> <u>Products</u>	<u>TABLE 9</u> <u>Contractor</u> <u>Eq.</u>	<u>TABLE 10</u> <u>Creamer/</u> <u>Dairy</u>
1999	1.000	1.000	1.000	1.000	1.000
1998	1.003	1.004	1.002	1.006	1.002
1997	1.013	1.014	1.013	1.017	1.012
1996	1.026	1.027	1.029	1.037	1.030
1995	1.045	1.047	1.048	1.055	1.048
1994	1.082	1.086	1.084	1.083	1.091
1993	1.106	1.108	1.110	1.111	1.121
1992	1.123	1.122	1.130	1.141	1.139
1991	1.133	1.131	1.141	1.162	1.154
1990	1.155	1.155	1.165	1.190	1.182
1989	1.186	1.185	1.200	1.228	1.215
1988	1.246	1.252	1.262	1.287	1.289
1987	1.290	1.306	1.308	1.330	1.349
1986	1.302	1.321	1.324	1.348	1.371
1985	1.311	1.327	1.334	1.359	1.392
1984	1.330	1.345	1.356	1.376	1.417
1983	1.362	1.381	1.397	1.404	1.450
1982	1.385	1.401	1.423	1.434	1.469
1981	1.460	1.475	1.503	1.516	1.539
1980	1.622	1.640	1.667	1.690	1.703

<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/</u> <u>Fish</u>	<u>TABLE 14</u> <u>Flour,</u> <u>Cer. Feed</u>	<u>TABLE 15</u> <u>Cannery/</u> <u>Fruit</u>
1999	1.000	1.000	1.000	1.000	1.000
1998	0.996	0.996	1.001	1.003	1.001
1997	0.998	1.001	1.012	1.012	1.010

1996	1.003	1.010	1.030	1.028	1.031
1995	1.011	1.021	1.045	1.044	1.044
1994	1.065	1.070	1.088	1.086	1.084
1993	1.087	1.096	1.123	1.115	1.122
1992	1.094	1.108	1.145	1.133	1.148
1991	1.090	1.109	1.162	1.144	1.169
1990	1.097	1.122	1.189	1.167	1.196
1989	1.116	1.144	1.222	1.198	1.230
1988	1.184	1.209	1.292	1.264	1.299
1987	1.260	1.279	1.351	1.319	1.357
1986	1.269	1.293	1.374	1.336	1.381
1985	1.276	1.298	1.396	1.351	1.404
1984	1.289	1.314	1.423	1.373	1.429
1983	1.322	1.351	1.458	1.404	1.464
1982	1.337	1.372	1.480	1.420	1.489
1981	1.382	1.420	1.551	1.485	1.555
1980	1.511	1.557	1.713	1.643	1.714

<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</u> <u>Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
1999	1.000	1.000	1.000	1.000	1.000
1998	1.002	1.000	1.003	1.003	0.999
1997	1.010	1.008	1.011	1.014	1.009
1996	1.034	1.024	1.027	1.033	1.022
1995	1.046	1.040	1.041	1.051	1.040
1994	1.079	1.078	1.074	1.090	1.080
1993	1.118	1.107	1.105	1.122	1.107
1992	1.152	1.128	1.129	1.144	1.123
1991	1.177	1.139	1.147	1.161	1.133
1990	1.203	1.163	1.171	1.190	1.157
1989	1.239	1.195	1.202	1.226	1.189
1988	1.306	1.259	1.257	1.294	1.248
1987	1.357	1.310	1.303	1.346	1.302
1986	1.380	1.330	1.319	1.368	1.318
1985	1.397	1.342	1.329	1.390	1.327
1984	1.417	1.362	1.346	1.418	1.351
1983	1.455	1.401	1.380	1.455	1.388
1982	1.484	1.425	1.408	1.477	1.420
1981	1.547	1.492	1.485	1.553	1.484
1980	1.703	1.643	1.651	1.721	1.645

<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>Mfg.</u>	<u>TABLE 24</u> <u>Printing</u>	<u>TABLE 25</u> <u>Paper</u> <u>Mfg.</u>
1999	1.000	1.000	1.000	1.000	1.000
1998	1.002	1.001	1.004	1.001	1.001
1997	1.013	1.011	1.018	1.006	1.009
1996	1.029	1.026	1.034	1.022	1.029
1995	1.046	1.044	1.056	1.037	1.043
1994	1.078	1.085	1.094	1.076	1.079
1993	1.108	1.111	1.116	1.102	1.111
1992	1.131	1.130	1.127	1.119	1.137
1991	1.151	1.139	1.136	1.123	1.152

1990	1.177	1.163	1.165	1.139	1.175
1989	1.214	1.193	1.195	1.158	1.205
1988	1.279	1.260	1.257	1.221	1.271
1987	1.320	1.315	1.308	1.279	1.323
1986	1.331	1.332	1.313	1.300	1.341
1985	1.338	1.340	1.314	1.313	1.350
1984	1.354	1.359	1.328	1.331	1.365
1983	1.381	1.397	1.352	1.375	1.404
1982	1.413	1.420	1.365	1.400	1.428
1981	1.491	1.489	1.456	1.454	1.495
1980	1.656	1.645	1.631	1.596	1.650

<u>YEAR</u>	<u>TABLE 26</u> <u>Refriger-</u> <u>ation</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>Ware-</u> <u>Housing</u>
1999	1.000	1.000	1.000	1.000	1.000
1998	1.002	1.003	1.000	1.001	1.000
1997	1.012	1.014	1.008	1.009	1.004
1996	1.029	1.028	1.018	1.026	1.020
1995	1.047	1.047	1.035	1.040	1.029
1994	1.086	1.084	1.076	1.072	1.058
1993	1.115	1.110	1.099	1.099	1.093
1992	1.137	1.132	1.111	1.121	1.119
1991	1.150	1.143	1.117	1.134	1.134
1990	1.175	1.169	1.135	1.160	1.155
1989	1.207	1.201	1.165	1.189	1.182
1988	1.274	1.264	1.234	1.249	1.235
1987	1.326	1.313	1.292	1.301	1.274
1986	1.345	1.334	1.307	1.323	1.292
1985	1.355	1.345	1.313	1.338	1.301
1984	1.376	1.369	1.333	1.357	1.316
1983	1.417	1.412	1.377	1.397	1.346
1982	1.443	1.440	1.396	1.421	1.362
1981	1.517	1.521	1.458	1.487	1.423
1980	1.678	1.693	1.612	1.641	1.574

<u>YEAR</u>	<u>TABLE 31</u> <u>Wood</u> <u>Working</u>	<u>TABLE 32</u> <u>Glass</u> <u>Mfg.</u>
1999	1.000	1.000
1998	0.999	1.001
1997	1.004	1.009
1996	1.028	1.022
1995	1.039	1.040
1994	1.069	1.082
1993	1.105	1.107
1992	1.143	1.123
1991	1.166	1.129
1990	1.185	1.149
1989	1.217	1.177
1988	1.284	1.243
1987	1.336	1.299
1986	1.354	1.314
1985	1.362	1.321

1984	1.381	1.337
1983	1.419	1.373
1982	1.451	1.393
1981	1.514	1.456
1980	1.660	1.604

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane</u> <u>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</u> <u>Confect.</u>
2000	1.000	1.000	1.000	1.000	1.000
1999	1.016	1.018	1.017	1.016	1.017
1998	1.017	1.021	1.019	1.021	1.021
1997	1.025	1.032	1.026	1.031	1.032
1996	1.037	1.049	1.042	1.048	1.050
1995	1.051	1.065	1.058	1.068	1.067
1994	1.093	1.108	1.100	1.108	1.111
1993	1.122	1.143	1.129	1.134	1.145
1992	1.139	1.164	1.148	1.152	1.166
1991	1.147	1.180	1.159	1.164	1.182
1990	1.165	1.206	1.181	1.191	1.211
1989	1.191	1.239	1.211	1.224	1.247
1988	1.250	1.308	1.281	1.297	1.318
1987	1.308	1.366	1.343	1.355	1.379
1986	1.322	1.389	1.361	1.372	1.402
1985	1.328	1.413	1.370	1.384	1.428
1984	1.346	1.441	1.387	1.404	1.458
1983	1.382	1.475	1.423	1.439	1.491
1982	1.409	1.496	1.444	1.459	1.510
1981	1.470	1.567	1.507	1.528	1.584

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement</u> <u>Mfg.</u>	<u>TABLE 7</u> <u>Chemical</u> <u>Mfg.</u>	<u>TABLE 8</u> <u>Clay</u> <u>Mfg.</u>	<u>TABLE 9</u> <u>Contractor</u> <u>Eq.</u>	<u>TABLE 10</u> <u>Creamery/</u> <u>Dairy</u>
2000	1.000	1.000	1.000	1.000	1.000
1999	1.015	1.013	1.014	1.016	1.018
1998	1.019	1.018	1.018	1.024	1.022
1997	1.030	1.029	1.029	1.036	1.032
1996	1.042	1.042	1.045	1.056	1.050
1995	1.062	1.062	1.064	1.073	1.068
1994	1.099	1.102	1.101	1.103	1.113
1993	1.124	1.124	1.127	1.131	1.143
1992	1.141	1.139	1.147	1.161	1.162
1991	1.150	1.147	1.159	1.183	1.176
1990	1.173	1.172	1.183	1.211	1.205
1989	1.205	1.203	1.218	1.250	1.239
1988	1.266	1.271	1.281	1.310	1.314
1987	1.310	1.325	1.328	1.353	1.375
1986	1.323	1.340	1.344	1.372	1.398
1985	1.332	1.346	1.355	1.384	1.419
1984	1.351	1.365	1.377	1.400	1.445
1983	1.384	1.401	1.418	1.429	1.478
1982	1.406	1.422	1.445	1.460	1.498
1981	1.483	1.496	1.526	1.543	1.570

<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/</u> <u>Fish</u>	<u>TABLE 14</u> <u>Flour,</u> <u>Cer. Feed</u>	<u>TABLE 15</u> <u>Cannery/</u> <u>Fruit</u>
2000	1.000	1.000	1.000	1.000	1.000
1999	1.017	1.016	1.017	1.017	1.018
1998	1.013	1.012	1.020	1.021	1.022
1997	1.014	1.017	1.031	1.031	1.031
1996	1.020	1.026	1.050	1.047	1.052
1995	1.028	1.037	1.065	1.064	1.066
1994	1.083	1.087	1.109	1.106	1.106
1993	1.105	1.113	1.145	1.136	1.145
1992	1.112	1.126	1.167	1.154	1.172
1991	1.108	1.127	1.184	1.165	1.193
1990	1.115	1.140	1.211	1.189	1.220
1989	1.134	1.162	1.245	1.220	1.255
1988	1.203	1.228	1.316	1.287	1.325
1987	1.281	1.299	1.376	1.344	1.385
1986	1.290	1.313	1.400	1.361	1.409
1985	1.297	1.319	1.422	1.377	1.433
1984	1.310	1.335	1.450	1.398	1.458
1983	1.344	1.373	1.485	1.430	1.494
1982	1.359	1.394	1.508	1.446	1.519
1981	1.405	1.442	1.580	1.513	1.587
1980	1.536				
1979	1.724				
1978	1.897				
1977	2.010				
1976	2.108				
1975	2.236				
1974	2.503				
1973	2.997				
1972	3.099				
1971	3.189				
1970	3.378				
1969	3.568				
1968	3.702				
1967	3.811				
1966	3.976				
1965	4.096				
1964	4.141				
1963	4.178				
1962	4.162				
1961	4.150				

<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</u> <u>Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
2000	1.000	1.000	1.000	1.000	1.000
1999	1.019	1.016	1.016	1.016	1.011
1998	1.024	1.018	1.020	1.021	1.011
1997	1.032	1.026	1.029	1.033	1.021
1996	1.056	1.042	1.045	1.051	1.034
1995	1.069	1.058	1.059	1.070	1.052
1994	1.103	1.097	1.093	1.110	1.092

1993	1.143	1.126	1.124	1.143	1.120
1992	1.177	1.148	1.149	1.164	1.136
1991	1.202	1.159	1.167	1.181	1.146
1990	1.230	1.184	1.191	1.211	1.171
1989	1.266	1.216	1.223	1.248	1.203
1988	1.335	1.281	1.279	1.317	1.262
1987	1.387	1.334	1.326	1.370	1.317
1986	1.410	1.354	1.343	1.393	1.334
1985	1.427	1.366	1.353	1.415	1.343
1984	1.448	1.386	1.370	1.444	1.367
1983	1.487	1.426	1.404	1.481	1.404
1982	1.517	1.451	1.433	1.504	1.436
1981	1.581	1.518	1.511	1.581	1.501

<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>
2000	1.000	1.000	1.000	1.000	1.000
1999	1.015	1.016	1.012	1.012	1.018
1998	1.019	1.019	1.017	1.013	1.020
1997	1.030	1.029	1.031	1.018	1.029
1996	1.047	1.044	1.047	1.034	1.050
1995	1.064	1.063	1.069	1.050	1.064
1994	1.097	1.104	1.108	1.089	1.100
1993	1.127	1.131	1.131	1.116	1.133
1992	1.151	1.150	1.142	1.133	1.159
1991	1.170	1.160	1.151	1.137	1.175
1990	1.197	1.183	1.180	1.153	1.198
1989	1.235	1.214	1.210	1.172	1.229
1988	1.301	1.282	1.273	1.236	1.296
1987	1.343	1.338	1.325	1.294	1.349
1986	1.354	1.355	1.329	1.315	1.367
1985	1.361	1.363	1.330	1.328	1.376
1984	1.377	1.383	1.345	1.347	1.392
1983	1.405	1.422	1.370	1.391	1.431
1982	1.438	1.445	1.383	1.417	1.456
1981	1.517	1.515	1.474	1.471	1.525

<u>YEAR</u>	<u>TABLE 26</u> <u>Refriger-</u> <u>ation</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>Ware-</u> <u>Housing</u>
2000	1.000	1.000	1.000	1.000	1.000
1999	1.017	1.013	1.013	1.012	1.017
1998	1.021	1.017	1.014	1.014	1.018
1997	1.031	1.028	1.021	1.022	1.022
1996	1.048	1.042	1.032	1.040	1.039
1995	1.066	1.062	1.049	1.054	1.048
1994	1.106	1.099	1.090	1.086	1.077
1993	1.136	1.125	1.113	1.114	1.113
1992	1.158	1.147	1.126	1.136	1.139
1991	1.171	1.159	1.131	1.149	1.155
1990	1.197	1.185	1.150	1.175	1.176
1989	1.229	1.218	1.181	1.205	1.203
1988	1.297	1.281	1.250	1.265	1.257

1987	1.351	1.331	1.310	1.319	1.297
1986	1.370	1.353	1.324	1.341	1.315
1985	1.381	1.363	1.330	1.356	1.325
1984	1.401	1.388	1.351	1.375	1.340
1983	1.443	1.431	1.395	1.415	1.370
1982	1.470	1.460	1.414	1.439	1.387
1981	1.545	1.542	1.477	1.506	1.448

<u>YEAR</u>	<u>TABLE 31</u> <u>Wood</u> <u>Working</u>	<u>TABLE 32</u> <u>Glass</u> <u>Mfg.</u>
2000	1.000	1.000
1999	1.016	1.016
1998	1.017	1.019
1997	1.022	1.027
1996	1.047	1.040
1995	1.058	1.058
1994	1.088	1.101
1993	1.125	1.126
1992	1.164	1.143
1991	1.187	1.149
1990	1.206	1.169
1989	1.239	1.198
1988	1.307	1.265
1987	1.360	1.322
1986	1.379	1.337
1985	1.387	1.344
1984	1.406	1.361
1983	1.444	1.398
1982	1.478	1.417
1981	1.541	1.482

AUTH: 15-1-201, MCA

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

42.22.1313 ASSESSMENT OF GRAIN, SEED, AND FERTILIZER STORAGE FACILITIES (1) through (4) remain the same.

(5) All property described in paragraphs (1) and (2) above shall be valued according to the reappraisal cycle established for other class 4 property in 15-7-103, MCA. The department will determine market value considering the cost approach, sales comparison approach, and income approach. When using the cost approach, a separate age/life schedule will be applied to the product handling portion of the facility to reflect physical depreciation and functional obsolescence. Economic obsolescence will be addressed on a case by case basis. Cost data used in developing the cost approach for property included in this rule is found in the Marshall Valuation Service and/or Montana Appraisal Manual.

(6) remains the same.

(7) Other equipment not meeting the requirements of paragraph (2) above shall be valued and assessed in accordance with ARM 42.22.1306.

AUTH: 15-1-201, MCA

IMP: 15-6-134, 15-7-103, and 15-8-111, MCA

42.22.1401 TAX BENEFITS FOR CLASS FOUR NONPRODUCTIVE PROPERTY

(1) remains the same.

(2) The property owner of record or his agent must make application to the department of revenue, ~~property assessment division~~ for the classification of nonproductive property as class 4. An application must be filed on a form available from the department of revenue, ~~property assessment division~~ before March 1 of each tax year for which the property owner seeks the classification of property as class 4 nonproductive property. The application must be accompanied by the approving resolution of the governing body for the taxing jurisdiction.

(3) through (6) remain the same.

(7) When a plant or an operating unit is classified as class 4 nonproductive property, the ~~property assessment division~~ department shall not further reduce value based upon economic or functional obsolescence.

AUTH: 15-1-201, MCA

IMP: 15-6-101, 15-6-150, 15-6-155, and 15-8-111, MCA

4. The Department is proposing the amendments to ARM 42.22.1311 to update the annual trend tables. The amendments to ARM 42.22.1313 and 42.22.1401 are housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than December 7, 2000.

6. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than December 7, 2000.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. 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 mailing address of the person to receive

notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 5 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State October 30, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMENDMENT
of ARM 42.21.113; 42.21.123;)	
42.21.131; 42.21.132; 42.21.137;))	
42.21.138; 42.21.139; 42.21.140;))	
42.21.151; 42.21.153; 42.21.155;))	
42.21.156; 42.21.158; 42.21.159;))	
42.21.161; and 42.21.162)	NO PUBLIC HEARING
relating to property taxes)	CONTEMPLATED

TO: All Concerned Persons

1. On December 22, 2000, the Department proposes to amend ARM 42.21.113, 42.21.123, 42.21.131, 42.21.132, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, 42.21.158, 42.21.159, 42.21.161, and 42.21.162 relating to personal property taxes.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on November 20, 2000, 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 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax number (406) 444-3696; e-mail address canderson@state.mt.us.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) Leased or rental equipment which meets the criteria of 15-6-136, 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>
1999	70%
1998	43%
1997	17%
1996 or older	8%
<u>2000</u>	<u>70%</u>
<u>1999</u>	<u>43%</u>
<u>1998</u>	<u>18%</u>
<u>1997 or 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>
1999	85%
1998	69%
1997	52%
1996	34%
1995 or older	20%
<u>2000</u>	<u>85%</u>
<u>1999</u>	<u>69%</u>
<u>1998</u>	<u>52%</u>
<u>1997</u>	<u>34%</u>
<u>1996 or older</u>	<u>20%</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>
1999	92%
1998	84%
1997	77%
1996	69%
1995	62%
1994	54%
1993	44%
1992	34%
1991	28%
1990 or older	24%
<u>2000</u>	<u>92%</u>
<u>1999</u>	<u>85%</u>
<u>1998</u>	<u>77%</u>
<u>1997</u>	<u>69%</u>
<u>1996</u>	<u>61%</u>
<u>1995</u>	<u>53%</u>
<u>1994</u>	<u>43%</u>
<u>1993</u>	<u>34%</u>
<u>1992</u>	<u>28%</u>
<u>1991 or older</u>	<u>23%</u>

(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>
<u>2000</u>	<u>80%</u>
<u>1999</u>	<u>65%</u>

1998	54%
1997	52%
1996	47%
1995	44%
1994	43%
1993	39%
1992	35%
1991	33%
1990	31%
1989	29%
1988	28%
1987	27%
1986	25%
1985	24%
1984	22%
1983	20%
1982	20%
1981 or older	20%
2001	80%
2000	65%
1999	58%
1998	53%
1997	50%
1996	46%
1995	44%
1994	43%
1993	38%
1992	36%
1991	33%
1990	30%
1989	28%
1988	27%
1987	25%
1986	24%
1985	22%
1984	21%
1983	20%
1982 or older	20%

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

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
1999	25%
1998	15%
1997 or older	10%
2000	25%
1999	15%
1998 or older	10%

(2) remains the same.

(3) When a special mobile permit (SM plate), as defined in 61-1-104, MCA, is purchased for lease and or rental equipment, ~~this the~~ equipment will be classified and valued the same as other SM equipment in class 8.

(4) This rule is effective for tax years beginning after December 31, ~~1999~~ 2000.

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

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.123 FARM MACHINERY AND EQUIPMENT (1) remains the same.

(2) For all farm machinery and equipment that cannot be valued under (1) above, the department has developed a manual to value the equipment. This manual will be used in conjunction with the depreciation schedule in (5) below when valuing farm equipment and machinery. The purpose of the manual developed by the department ~~developed manual will be~~ is to arrive at values which approximate average wholesale value. The department's farm machinery manual is hereby incorporated by reference. Customers can contact the department to obtain copies.

(3) For all farm machinery and equipment which cannot be valued under (1) and (2) above, the department shall try to ascertain the original FOB through old farm machinery and equipment valuation guidebooks. If an original FOB cannot be ascertained, the department may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in (5) below to arrive at a value that approximates average wholesale value.

(4) If the methods mentioned in (1) through (3) above cannot be used to ascertain average wholesale value for farm machinery and equipment, the owner or applicant must certify to the department the year acquired and the acquired price before that value can be applied to the schedule in (5) below.

(5) The trended depreciation schedule referred to in (2) through (4) above is listed below and shall be used for tax year 2000. The schedule is derived by using the guidebook listed in (1) above as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale value.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD AVERAGE WHOLESALE</u>
2000	80%
1999	65%
1998	65%
1997	59%
1996	55%
1995	53%
1994	45%
1993	39%
1992	38%

1991	37%
1990	35%
1989	35%
1988	28%
1987	26%
1986	25%
1985	22%
1984	21%
1983	21%
1982	20%
1981 & Older	20%
<u>2001</u>	<u>80%</u>
<u>2000</u>	<u>65%</u>
<u>1999</u>	<u>61%</u>
<u>1998</u>	<u>58%</u>
<u>1997</u>	<u>53%</u>
<u>1996</u>	<u>48%</u>
<u>1995</u>	<u>46%</u>
<u>1994</u>	<u>40%</u>
<u>1993</u>	<u>37%</u>
<u>1992</u>	<u>37%</u>
<u>1991</u>	<u>35%</u>
<u>1990</u>	<u>32%</u>
<u>1989</u>	<u>32%</u>
<u>1988</u>	<u>26%</u>
<u>1987</u>	<u>24%</u>
<u>1986</u>	<u>22%</u>
<u>1985 & Older</u>	<u>20%</u>

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~1999~~ 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.131 HEAVY EQUIPMENT (1) remains the same.

(2) For all heavy equipment which cannot be valued under (1) above, the department shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in (5) below to arrive at a value which approximates wholesale value. The trend factors are the most recent available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by Marshall and Swift Publication Company, 911 Wilshire Boulevard, 16th Floor, P.O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(3) For equipment that cannot be valued under (1) and (2) above, the value for heavy equipment shall be ascertained by trending the quick sale as found in the guide in (1) above,

for the same make and model. The trend factors are the same as those mentioned in (2) above.

(4) The wholesale market value of heavy equipment that cannot be valued under (1), (2) or (3) above shall be the acquired cost, as certified by the owner or applicant to the department as applied to the depreciation schedule in (5) below. The department may require proof from the taxpayer to certify the accuracy of the acquired cost.

(5) The trended depreciation schedule referred to in (2), (3) and (4) above is listed below and shall be used for tax year ~~2000~~ 2001. The values derived through use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1) above.

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
2000	80%
1999	65%
1998	54%
1997	52%
1996	47%
1995	44%
1994	43%
1993	39%
1992	35%
1991	33%
1990	31%
1989	29%
1988	28%
1987	27%
1986	25%
1985	24%
1984	22%
1983	20%
1982	20%
1981 and before	20%
2001	80%
2000	65%
1999	58%
1998	53%
1997	50%
1996	46%
1995	44%
1994	43%
1993	38%
1992	36%
1991	33%
1990	30%

<u>1989</u>	<u>28%</u>
<u>1988</u>	<u>27%</u>
<u>1987</u>	<u>25%</u>
<u>1986</u>	<u>24%</u>
<u>1985</u>	<u>22%</u>
<u>1984</u>	<u>21%</u>
<u>1983</u>	<u>20%</u>
<u>1982 and before</u>	<u>20%</u>

(6) This rule is effective for tax years beginning after December 31, ~~1999~~ 2000, applies to all heavy equipment.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.132 MINING EQUIPMENT (1)(a) All machinery and equipment used in the mining process is classified ~~in taxable classification 8~~ as class 8 property, 15-6-138, MCA.

(a) Mining machinery and equipment included in ~~taxable classification 8~~ class 8 property shall be that equipment engaged in the extraction, excavation, burrowing or otherwise freeing raw material from the earth.

(b) Mining machinery and equipment ~~is~~ shall be valued by trending the original installed cost to a current replacement cost, ~~then and~~ and depreciating on an age/life basis to compensate for ordinary physical wear and tear and obsolescence.

(2) Mobile equipment used in the mining operation for extraction ~~will~~ shall be valued by using the procedures established for heavy equipment ~~in~~ (ARM 42.21.131).

(3) Mobile mining equipment is equipment that moves ~~freely about~~ under its own power and/or on its own wheels and chassis, including any attachments used with or attached to such equipment. Mobile equipment does not include equipment that requires a foundation for the performance of the function for which it was designed and built.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, and 15-6-140, MCA

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) Seismograph units and allied equipment shall be valued using the cost approach to market value. The taxpayer must provide to the department the acquired cost, the year acquired, and an itemized description of each piece of equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedules mentioned in (2) below.

(2) and (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) above are listed below and shall be used for tax year ~~2000~~ 2001.

SEISMOGRAPH UNIT

<u>TRENDED</u> <u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>WHOLESALE</u> <u>% GOOD</u>
2000	100%	1.000	100%	80%	80%
1999	85%	1.000	85%	80%	68%
1998	69%	0.997	69%	80%	55%
1997	52%	1.007	52%	80%	42%
1996	34%	1.020	35%	80%	28%
1995	20%	1.039	21%	80%	17%
1994 & older	5%	1.075	5%	80%	4%
2001	100%	1.000	100%	80%	80%
2000	85%	1.000	85%	80%	68%
1999	69%	0.013	70%	80%	56%
1998	52%	1.018	53%	80%	42%
1997	34%	1.029	35%	80%	28%
1996	20%	1.042	21%	80%	17%
1995 & older	5%	1.062	5%	80%	4%

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
2000	100%	1.000	100%
1999	85%	1.000	85%
1998	69%	0.997	69%
1997	52%	1.007	52%
1996	34%	1.020	35%
1995	20%	1.039	21%
1994 & older	5%	1.075	5%
2001	100%	1.000	100%
2000	85%	1.000	85%
1999	69%	0.013	70%
1998	52%	1.018	53%
1997	34%	1.029	35%
1996	20%	1.042	21%
1995 & older	5%	1.062	5%

(5) This rule is effective for tax years beginning after December 31, 1999 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) Oil and gas field machinery and equipment shall be valued using the cost approach to market value. The taxpayer must provide to the department the acquired cost, the year acquired, and an itemized description of each piece of

machinery and equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedule mentioned in (2) below.

(2) remains the same.

(3) The trended depreciation schedule referred to in (1) and (2) above is listed below and shall be used for tax year ~~2000~~ 2001.

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>
2000	100%	1.000	100%
1999	95%	1.000	95%
1998	90%	0.997	90%
1997	85%	1.007	86%
1996	79%	1.020	81%
1995	73%	1.039	76%
1994	68%	1.075	73%
1993	62%	1.116	69%
1992	55%	1.126	62%
1991	49%	1.148	56%
1990	43%	1.179	51%
1989	37%	1.238	46%
1988	31%	1.282	40%
1987	26%	1.294	34%
1986	23%	1.303	30%
1985 & older	20%	1.322	26%
2001	100%	1.000	100%
2000	95%	1.000	95%
1999	90%	1.013	91%
1998	85%	1.018	87%
1997	79%	1.029	81%
1996	73%	1.042	76%
1995	68%	1.062	72%
1994	62%	1.102	68%
1993	55%	1.124	62%
1992	49%	1.139	56%
1991	43%	1.147	49%
1990	37%	1.172	43%
1989	31%	1.202	37%
1988	26%	1.271	33%
1987	23%	1.325	30%
1986 & older	20%	1.340	27%

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, ~~1999~~ 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.139 WORKOVER AND SERVICE RIGS (1) Bids for new rigs will be solicited from manufacturers of workover and service rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below of workover and service rigs, there will be two replacement cost categories. One category will represent current replacement cost of a service rig and the second category will represent current replacement cost of a workover rig. Each rig, as it is assessed, will be placed in one category or another based on its depth.

DEPTH CATEGORIES

<u>Class</u>	<u>Depth Capacity</u>
1	0 to 3,000 ft.
2	3,001 ft. to 5,000 ft.
3	5,001 ft. to 8,000 ft.
4	8,001 ft. to 10,000 ft.
5	10,001 ft. to 14,000 ft.
6	14,001 ft. and over

DEPTH CATEGORIES AND REPLACEMENT COST NEW

<u>MANUFACTURER'S DEPTH RATING</u>	<u>SERVICE RIG R.C.N.</u>	<u>WORKOVER RIG R.C.N.</u>
0 - 3,000 ft.	\$146,788	\$186,788
3,001 ft. - 5,000 ft.	187,336	227,336
5,001 ft. - 8,000 ft.	245,572	305,572
8,001 ft. - 10,000 ft.	293,325	393,325
10,001 ft. - 14,000 ft.	322,918	472,918
14,001 ft. and over	405,426	555,426

Pole rigs and cable tool rigs, regardless of depth, are \$60,000 R.C.N. These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in (2) below.

(2) remains the same.

(3) In any year that the information required in (1) above is not available for use by the department, workover and service rigs shall be valued by using the schedule from the previous year.

(4) For self-propelled wheeled workover and service rigs, an additional 80% wholesale factor shall be used in determining market value in conjunction with the schedules mentioned in (2) above.

(5) The trended depreciation schedule referred to in (2) and (4) above is listed below and shall be used for tax year ~~2000~~ 2001.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TRENDED FACTOR</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
2000	100%	1.000	80%	80%
1999	92%	1.000	80%	74%
1998	84%	0.997	80%	67%
1997	76%	1.007	80%	61%
1996	67%	1.020	80%	55%
1995	58%	1.039	80%	48%
1994	49%	1.075	80%	42%
1993	39%	1.116	80%	35%
1992	30%	1.126	80%	27%
1991	24%	1.148	80%	22%
1990 & older	20%	1.179	80%	19%
2001	100%	1.000	80%	80%
2000	92%	1.000	80%	74%
1999	84%	1.013	80%	68%
1998	76%	1.018	80%	62%
1997	67%	1.029	80%	55%
1996	58%	1.042	80%	48%
1995	49%	1.062	80%	42%
1994	39%	1.102	80%	34%
1993	30%	1.124	80%	27%
1992	24%	1.139	80%	22%
1991 & older	20%	1.147	80%	18%

(6) This rule is effective for tax years beginning after December 31, 1999 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.140 OIL DRILLING RIGS (1) Bids for new rigs will be solicited from manufacturers of oil drilling rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below for oil drilling rigs, there will be two replacement cost categories. One category will represent current replacement cost of a mechanical rig and the second category will represent current replacement cost of an electric rig. Each rig as it is assessed will be placed in a value category based on its depth.

DEPTH CATEGORIES

<u>Class</u>	<u>Depth Capacity</u>
1	0 to 3,000 ft.
2	3,001 ft. to 5,000 ft.
3	5,001 ft. to 7,500 ft.
4	7,501 ft. to 10,000 ft.
5	10,001 ft. to 12,500 ft.
6	12,501 ft. to 15,000 ft.

- 7 15,001 ft. to 20,000 ft.
- 8 20,001 ft. and over

<u>MANUFACTURER'S</u> <u>DEPTH RATING</u>	<u>ELECTRICAL</u> <u>RIG R.C.N.</u>	<u>MECHANICAL</u> <u>RIG R.C.N.</u>
0 - 3,000 ft.	\$	\$ 285,209
3,001 ft. - 5,000 ft.		432,135
5,001 ft. - 7,500 ft.	868,250	654,750
7,501 ft. - 10,000 ft.	1,167,210	998,750
10,001 ft. - 12,500 ft.	1,265,500	1,130,600
12,501 ft. - 15,000 ft.	1,720,400	1,538,500
15,001 ft. - 20,000 ft.	1,990,100	
20,001 ft. and over ft.	2,036,047	

The depth capacity for drilling rigs will be based on the "Manufacturers Depth Rating". These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in (2) below.

(2) The department shall prepare a 10-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 2000 2001 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2000	100%	1.000	100%
1999	92%	1.000	92%
1998	84%	0.997	84%
1997	76%	1.007	76%
1996	67%	1.020	68%
1995	58%	1.039	60%
1994	49%	1.075	53%
1993	35%	1.116	39%
1992	30%	1.126	34%
1991	24%	1.148	28%
1990 & older	20%	1.179	24%
2001	100%	1.000	100%
2000	92%	1.000	92%
1999	84%	1.013	85%
1998	76%	1.018	77%
1997	67%	1.029	69%
1996	58%	1.042	60%
1995	49%	1.062	52%
1994	35%	1.102	39%
1993	30%	1.124	34%
1992	24%	1.139	27%
1991 & older	20%	1.147	23%

(3) In any year that the information required in (1) above is not available for use by the department, oil drilling rigs shall be valued by using the previous year's schedule.

(4) This rule is effective for tax years beginning after December 31, ~~1999~~ 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.151 TELEVISION CABLE SYSTEMS (1) The average market value of for television cable systems is \$2,000 per mile of coaxial cable (transmission line) and \$25 per service drop.

(2) and (3) remain the same.

(4) The trended depreciation schedules referred to in (2) and (3) above are listed below and shall be in effect for tax year ~~2000~~ 2001.

TABLE 1: FIVE-YEAR "DISHES"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	85%	1.000	85%
1998	69%	1.001	69%
1997	52%	1.010	53%
1996	34%	1.026	35%
1995 & older	20%	1.042	21%
2000	85%	1.000	85%
1999	69%	1.016	70%
1998	52%	1.019	53%
1997	34%	1.028	35%
1996 & older	20%	1.044	21%

TABLE 2: 10-YEAR "TOWERS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	92%	1.000	92%
1998	84%	1.001	84%
1997	76%	1.010	77%
1996	67%	1.026	69%
1995	58%	1.042	60%
1994	49%	1.079	53%
1993	39%	1.110	43%
1992	30%	1.131	34%
1991	24%	1.145	27%
1990 & older	20%	1.168	23%
2000	92%	1.000	92%
1999	84%	1.016	85%
1998	76%	1.019	77%
1997	67%	1.028	69%

1996	58%	1.044	61%
1995	49%	1.060	52%
1994	39%	1.098	43%
1993	30%	1.129	34%
1992	24%	1.151	28%
1991 & older	20%	1.165	23%

(5) This rule is effective for tax years beginning after December 31, ~~1999~~ 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.153 SKI LIFT EQUIPMENT (1) through (3)(b)(i) remain the same except for the schedule in (3) which is amended as shown below.

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

Installed Cost X Trended Percent Good = Average Market Value

<u>YEAR</u>	<u>TREND FACTOR</u>	<u>PERCENT GOOD</u>	<u>TRENDED % GOOD</u>
1999	1.000	92%	92%
1998	1.001	84%	84%
1997	1.010	76%	77%
1996	1.026	67%	69%
1995	1.042	58%	60%
1994	1.079	49%	53%
1993	1.110	39%	43%
1992	1.131	30%	34%
1991	1.145	24%	27%
1990 & older	1.168	20%	23%

<u>YEAR</u>	<u>TREND FACTOR</u>	<u>PERCENT GOOD</u>	<u>TRENDED % GOOD</u>
2000	1.000	92%	92%
1999	1.016	84%	85%
1998	1.019	76%	77%
1997	1.028	67%	69%
1996	1.044	58%	61%
1995	1.060	49%	52%
1994	1.098	39%	43%
1993	1.129	30%	34%
1992	1.151	24%	28%
1991 & older	1.165	20%	23%

(4) This methodology is effective for tax years beginning after December 31, ~~1999~~ 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year ~~2000~~ 2001 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>
1999	70%	1.000	70%
1998	45%	0.948	43%
1997	20%	0.853	17%
1996 and older	10%	0.783	8%
2000	70%	1.000	70%
1999	45%	0.947	43%
1998	20%	0.897	18%
1997 and older	10%	0.807	8%

CATEGORY 2

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	85%	1.000	85%
1998	69%	0.998	69%
1997	52%	1.002	52%
1996	34%	1.003	34%
1995 and older	20%	1.009	20%
2000	85%	1.000	85%
1999	69%	1.003	69%
1998	52%	1.001	52%
1997	34%	1.005	34%
1996 and older	20%	1.006	20%

CATEGORY 3

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	85%	1.000	85%
1998	69%	0.975	67%
1997	52%	0.929	48%
1996	34%	0.887	30%
1995 and older	20%	0.861	17%
2000	85%	1.000	85%
1999	69%	0.987	68%
1998	52%	0.962	50%
1997	34%	0.916	31%
1996 and older	20%	0.875	18%

CATEGORY 4

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	85%	1.000	85%

1998	69%	0.990	68%
1997	52%	0.979	51%
1996	34%	0.953	32%
1995 and older	20%	0.946	19%
2000	85%	1.000	85%
1999	69%	0.970	67%
1998	52%	0.959	50%
1997	34%	0.947	32%
1996 and older	20%	0.923	18%

CATEGORY 5

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	85%	1.000	85%
1998	69%	1.003	69%
1997	52%	1.005	52%
1996	34%	1.016	35%
1995 and older	20%	1.034	21%
2000	85%	1.000	85%
1999	69%	1.005	69%
1998	52%	1.009	52%
1997	34%	1.010	34%
1996 and older	20%	1.021	20%

CATEGORY 6

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	85%	1.000	85%
1998	69%	1.057	73%
1997	52%	1.085	56%
1996	34%	1.101	37%
1995 and older	20%	1.130	23%
2000	85%	1.000	85%
1999	69%	1.044	72%
1998	52%	1.103	57%
1997	34%	1.132	38%
1996 and older	20%	1.149	23%

CATEGORY 7

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	92%	1.000	92%
1998	84%	1.008	85%
1997	76%	1.023	78%
1996	67%	1.042	70%
1995	58%	1.070	62%
1994	49%	1.094	54%
1993	39%	1.117	44%

1992	30%	1.142	34%
1991	24%	1.176	28%
1990 and older	20%	1.224	24%
2000	92%	1.000	92%
1999	84%	1.008	85%
1998	76%	1.016	77%
1997	67%	1.031	69%
1996	58%	1.051	61%
1995	49%	1.078	53%
1994	39%	1.102	43%
1993	30%	1.126	34%
1992	24%	1.151	28%
1991 and older	20%	1.186	24%

CATEGORY 8

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1999	92%	1.000	92%
1998	84%	1.005	84%
1997	76%	1.017	77%
1996	67%	1.037	69%
1995	58%	1.066	62%
1994	49%	1.092	54%
1993	39%	1.119	44%
1992	30%	1.137	34%
1991	24%	1.153	28%
1990 and older	20%	1.184	24%
2000	92%	1.000	92%
1999	84%	1.012	85%
1998	76%	1.017	77%
1997	67%	1.029	69%
1996	58%	1.049	61%
1995	49%	1.078	53%
1994	39%	1.105	43%
1993	30%	1.131	34%
1992	24%	1.150	28%
1991 and older	20%	1.166	23%

(3) This rule is effective for tax years beginning after December 31, 1999 2000.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-136, 15-6-138, 15-6-139, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

42.21.156 CATEGORIES (1) The specific categories of property for determination of trend factors and depreciation are contained in (2)- through (9) below. The listings of property in the several categories is for purpose of illustration of type provide representative examples of property in that group and is are not meant to be an exhaustive list.

(2) through (9) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-139, MCA

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) through (4) remain the same.

(5) If the taxpayer ~~shall~~ fails to respond to the department request for information during the time frames set forth in (3) and (4) above, the department shall assess the property under the provisions of 15-1-303, 15-8-309, and 15-24-904, MCA, or any other applicable statute.

(6) and (7) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-1-303, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-24-902, 15-24-903, 15-24-904, 15-24-905, and 15-24-920, MCA

42.21.159 PROPERTY AUDITS AND REVIEWS (1) The department may conduct audits and reviews of commercial property. These audits and reviews will be performed in order to implement 15-8-104, MCA.

(2) For purposes of ~~this~~ audits and reviews, the department may utilize information supplied by the secretary of state, department of livestock, department of revenue, department of agriculture, department of commerce, federal agricultural stabilization and conservation service offices, department developed models or comparative studies and local government entities to determine the taxable value of the property subject to taxation.

(3) through (4)(d) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-8-104, MCA

42.21.161 PERSONAL PROPERTY TAXABLE SITUS (1) The taxable situs for personal property shall be the levy district in which it is located on January 1 of the year of assessment. ~~This includes both commercial and privately owned personal property.~~

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

AUTH: 15-1-201, MCA

IMP: 15-8-402, 15-8-404, 15-8-408, and 15-8-409, MCA

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) remains the same.

(2) In order to obtain an exemption for personal property, other than class eight property that is exempt pursuant ~~to~~ under 15-6-138, MCA, or intangible personal property that is exempt pursuant ~~to~~ under 15-6-218, MCA, an application for exemption must be filed before March 1 of the year for which the exemption is sought, ~~except if~~ If the applicant acquires the personal property after January 1, they must submit an application for exemption:

(a) by March 1;

(b) within 30 days of acquisition of the property; or

- (c) within 30 days of receipt of an assessment list, whichever is later.
 - (3) remains the same.
 - (4) The deadline may be extended by the local ~~assessment or appraisal~~ department field office for good cause.
 - (5) through (6)(a) remain the same.
 - (b) If the taxes are not paid, the assessment ~~will be adjusted to prorate the taxes and taxes will be prorated.~~
 - (c) through (7)(b) remain the same.
- AUTH: 15-1-201, MCA
IMP: 15-8-201, 15-16-613, 15-24-301, and 15-24-303, MCA

4. The Department is proposing the amendments to provide the annual updates to the trend schedules for centrally assessed property. The other amendments are housekeeping changes identified by the Department while conducting a biennial review of the Department rules in compliance with 2-4-314, MCA.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than December 7, 2000.

6. If persons who are directly affected by the proposed amendment wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than December 7, 2000.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. 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 mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 5 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State October 30, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 42.4.103,	)	ON THE PROPOSED AMENDMENT
42.4.104, 42.4.105, 42.4.106,	)	AND REPEAL
and repeal of ARM 42.4.101 and)	
42.4.102 relating to tax)	
incentives and credits for)	
alternative energy systems)	

TO: All Concerned Persons

1. On November 30, 2000, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.4.103, 42.4.104, 42.4.105, and 42.4.106, and repeal of ARM 42.4.101 and 42.4.102 relating to tax incentives and credits for alternative energy systems.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, 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 not later than 5:00 p.m., November 20, 2000, 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 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.4.103 PROPERTY TAX EXEMPTION FOR NONFOSSIL ENERGY SYSTEM (1) The property owner of record, or his the property owner's agent, must make application to the Property Assessment Division, Department of Revenue, Capitol Station, P.O. Box 5805, Helena, Montana 59620 59604-5805, for classification as a nonfossil form of energy generation. Application will be made on a form available from the local county appraisal department field office before April 1 March 1 or within 30 days of receipt of an assessment notice, which ever is later, to be considered for exemption for the current tax year.

(2) When a completed application is received by a county appraisal the local department field office, the appraiser department staff will adhere to the following procedures:

(a) The application will be placed in the appropriate parcel file and a copy of the application will be sent to the property assessment division. (If the property assessment division first receives the application, it will be filed and a copy sent to the appropriate county.)

(b)(a) The system will be inspected and the application

considered in time to assure that any exemption will affect the property's value in the earliest possible tax year following the date of application.

~~(e)~~(b) If the system is completed prior to ~~April 1~~ March 1 of a year, the application must be filed by ~~April 1~~ March 1 or within 30 days of receipt of an assessment notice, which ever is later, of that year in order for an exemption to apply for the full ten-year period.

~~(d)~~(c) If the system is completed after ~~April 1~~ March 1 of a year, the application must be filed by ~~April 1~~ March 1 or within 30 days of receipt of an assessment notice, which ever is later, of the next year in order for an exemption to apply for the full ten-year period.

~~(e)~~(d) If an applicant misses the deadlines outlined above, he will lose one year of exemption potential for every deadline date that passes. For example:

(i) If an individual completes installation of ~~his an~~ energy system in February, ~~1980~~ 2001, but does not apply for exemption until ~~May, 1980~~ July 2001 (which is more than 30 days after receiving the assessment notice), ~~he the individual~~ has a total exemption potential of only nine years (the property tax exemption would be allowed for nine years - 2002 through 2010).

(ii) If the individual completes installation of ~~his an~~ energy system in July, ~~1980~~ 2001, but does not apply for exemption until ~~May, 1982~~ April 2003, ~~he the individual~~ has a total exemption potential of only eight years (the property tax exemption would be allowed for eight years - 2003 through 2010).

~~(f)~~(e) The maximum exemption for residential property is \$20,000 and for nonresidential property, it is \$100,000. If the value of the energy system appears to exceed those amounts, the property data and exemption application ~~should be forwarded by the appraiser to the property assessment division~~ will be reviewed for consideration by the department.

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

AUTH: 15-1-201 and 15-32-203, MCA

IMP: 15-6-201 and 15-32-102, MCA

42.4.104 ENERGY GENERATING SYSTEMS INSTALLED TO EXISTING STRUCTURES

(1) For energy generating systems installed to existing structures and not integral to the structure's original construction, the energy generating system must be one that fits the description in ~~15-32-102(4), (5), and (6)~~, MCA, and one that is either generally recognized as a nonfossil energy generating system (recognized by the ~~energy division of the department of natural resources and conservation~~ department of environmental quality or the alternative energy industry) or one that the applicant can demonstrate is energy generating.

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

(c) Components of a structure that have been altered for energy collection, storage, and/or distribution to benefit the rest of the structure. ~~(Example: An example would be enclosed porches with the addition of triple glazed windows, the extra~~ The value added by the triple glazed windows is exempt.

(d) remains the same.

(3) through (5)(a) remain the same.

(b) The system description should be recorded on the property diagram located on the appraisal record card.

(c) remains the same

(6) The exemption will apply by excluding the energy system from valuation for a period as determined in ~~(2)(b) of this rule~~ ARM 42.4.103.

AUTH: 15-1-201 and 15-32-203, MCA

IMP: 15-6-201~~(3)~~, 15-32-201, and 15-32-202, MCA

42.4.105 ENERGY GENERATING SYSTEMS INTEGRAL TO A STRUCTURE'S ORIGINAL CONSTRUCTION (1) For energy generating systems that are integral to a structure's original construction, the energy generating system must be one that fits the description in 15-32-102~~(4), (5), and (6)~~, MCA, and one that is either generally recognized as a nonfossil energy generating system (recognized by the ~~energy division of the department of natural resources and conservation~~ department of environmental quality or the alternative energy industry) or one that the applicant can demonstrate is energy generating.

(2) Systems that have been determined to be acceptable are ~~those in:~~

(a) remains the same.

(b) Structures with energy systems qualifying under ARM 42.4.104 which have been installed as part of the original construction. ~~(Example: , such as solar greenhouses.)~~

(3) remains the same.

(4) Components ~~which have been~~ recognized as nonstandard are:

(a) The components necessary for energy generation and distribution in an "envelope house", ~~(Example: The such as the "envelope" area devoted solely to energy collection, storage, and distribution.)~~

(b) remains the same.

(5) through (7) remain the same.

AUTH: 15-1-201 and 15-32-203, MCA

IMP: 15-6-201~~(3)~~, 15-32-201, and 15-32-202, MCA

42.4.106 OTHER ENERGY GENERATING SYSTEMS (1) Some systems will not be specifically suited to the language requirements found in ARM 42.4.104. In such cases, the three general criteria outlined in ARM 42.4.104, and any other language specifications in ARM 42.4.104 and 42.4.105 that ~~is~~ are relevant, should be applied. The department will provide additional assistance on specific problems.

AUTH: 15-1-201 and 15-32-203, MCA

IMP: 15-6-201~~(3)~~, 15-32-201, and 15-32-202, MCA

4. The department proposes to repeal the following rules:

42.4.101 DETERMINATION OF APPROPRIATE SYSTEMS which can be found on page 42-411 of the Administrative Rules of Montana.

AUTH: 15-1-201 and 15-32-203, MCA

IMP: 15-6-201~~(3)~~, 15-32-201, and 15-32-202, MCA

42.4.102 INCOME TAX CREDIT FOR NONFOSSIL ENERGY GENERATION SYSTEM which can be found on page 42-411 of the Administrative Rules of Montana.

AUTH: 15-32-203, MCA

IMP: 15-32-201 and 15-32-202, MCA

5. The Department is proposing the amendments to ARM 42.4.103, 42.4.104, 42.4.105, and 42.4.106 to comply with the biennial review requirements of 2-4-314, MCA. These amendments are all housekeeping changes.

The Department is proposing to repeal ARM 42.4.101 and 42.4.102 because there is a sunset provision in 15-32-202, MCA, and the tax credit provided in these rules expired in 1999.

6. 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 5805
Helena, Montana 59604-5805

and must be received no later than December 7, 2000.

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

8. 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 mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 5 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Jeff Miller for
MARY BRYSON
Director of Revenue

Certified to Secretary of State October 30, 2000

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

In the matter of the adoption) NOTICE OF ADOPTION
of ARM 6.6.8501, 6.6.8502,)
6.6.8503, 6.6.8504, 6.6.8505,)
6.6.8506, 6.6.8507, 6.6.8508,)
and 6.6.8509 pertaining to)
Viatical Settlement Agreements)

TO: All Concerned Persons

1. On August 10, 2000, the State Auditor and Commissioner of Insurance published notice of the proposed adoption of new rules pertaining to viatical settlements at page 2095 of the 2000 Montana Administrative Register, issue number 15.

2. The State Auditor has adopted new rules II (6.6.8502), III (6.6.8503), VI (6.6.8506), and IX (6.6.8509) exactly as proposed. The State Auditor has adopted the following rules as proposed, but with the following changes (new text is underlined; text to be deleted is interlined):

RULE I (6.6.8501) DEFINITIONS In addition to the definitions in 33-20-1302, MCA, the following definitions apply to these rules:

(1) will remain the same.

(2) "Identifying information" means the same as "personal information" as defined in Title 33, chapter 19, MCA ~~a name, address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to identification.~~

(3) through (8) will remain the same.

(9) "Viator" means an individual who:

(a) ~~is the holder of a group or individual life insurance policy, or a certificate holder of a life insurance policy~~ owner of a life insurance policy or is the certificate holder under a group policy, insuring the life of an individual with a terminal illness; and

(b) will remain the same.

AUTH: Sec. 33-1-313, 33-20-1315, MCA

IMP: Sec. 33-20-1302, MCA

RULE IV (6.6.8504) FORMS AND MATERIALS FILINGS, APPROVALS AND REVISIONS (1) through (3)(c) will remain the same.

(d) the deviations from a standard viatical contract: and

~~(e) the date a settlement occurred; and~~

~~(e)(f)~~ that the payment was reasonable under ARM 6.6.8507.

(4) The provider may not execute a revised viatical settlement contract with a viator until the commissioner has reviewed the revisions and approved the form pursuant to 33-1-501, MCA.

AUTH: Sec. 33-20-1315, MCA

IMP: Sec. 33-1-501, 33-20-1308, 33-20-1311, MCA

RULE V (6.6.8505) DISCLOSURE OF INFORMATION BROCHURE

(1) will remain the same.

(2) A brochure must contain:

~~(a) a provider's full name and home address;~~

~~(b)(a)~~ the following language: "All medical, financial and identifying information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured's family is confidential.";

~~(e)(b)~~ the following language: "After a viator enters into a viatical settlement contract, a provider may only check on the health of the insured, who has a life expectancy of more than one year, once every three months, and with an insured who has a life expectancy of less than one year, once every month.";

~~(d)(c)~~ language advising that a viatical settlement provider may provide information obtained from a policyholder or certificate holder to a financing entity but must follow the provisions in Title 33, chapter 19, MCA; ~~that a financing entity may not further disclose the information;~~ and

~~(e)(d)~~ language advising a viator and insured that a viatical settlement provider could sell or otherwise transfer a policy that is the subject of a viatical settlement to a financing entity unknown to a viator and insured, without a viator's consent.

(3) through (5) will remain the same.

(a) how viatical settlements operate; and

(b) a viator's right to rescind a viatical settlement not later than the 15th day after the date a viator receives viatical settlement proceeds or not later than 30 days after a provider and viator sign a viatical settlement contract, whichever is the longer period; and

(c) that if a viator elects to rescind the contract, that the viator must repay to the viatical settlement provider all paid settlement proceeds.

AUTH: Sec. 33-20-1315, MCA

IMP: Sec. 33-20-1311, MCA

RULE VII (6.6.8507) STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

(1) In order to assure that viatical settlement providers pay viators a reasonable amount for a policy, the following table shows the minimum percentages that must be paid on the face value of a policy:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loan Received by a Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
<u>At least 18 but no greater than 24 months</u>	<u>60%</u>

AUTH: Sec. 33-20-1315, MCA
 IMP: Sec. 33-20-1315, MCA

RULE VIII (6.6.8508) GENERAL RULES (1) and (2) will remain the same.

~~(3) A broker may not be an agent for both a viator and a viatical settlement provider on a viatical settlement transaction.~~

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

~~(7) (6) A viatical settlement provider may provide personal information about a policyholder or certificate holder to a financing entity, but must comply with Title 33, part 19, MCA. a financing entity may not further disclose the information. Prior to disclosing personal information, a provider must have a signed agreement from the financing entity that it will not further disclose the information.~~

(7) If a viator rescinds a viatical settlement contract, the viator must repay to the viatical settlement provider or financing entity all paid settlement proceeds.

AUTH: Sec. 33-20-1315, MCA
 IMP: Sec. 33-20-1313, 33-20-1314, MCA

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

Comment 1: A commentor noted that the definition of "identifying information" as provided in RULE I (6.6.8501(2)) is too broad and should be narrowed.

Response: The commissioner agrees that the definition is inconsistent with the definition of "personal information" contained in Title 33, Chapter 19, MCA. Therefore, the commissioner changes the definition of "identifying information" to conform.

Comment 2: A commentor stated that the definition of "financing entity" as provided in RULE I (6.6.8501(6)) is too narrow in that it is limited to a purchaser.

Response: The commissioner agrees that the definition is narrow, but notes that conceptually it is envisioned that broker matches a viator with a viatical settlement provider.

The provider then buys the viatical settlement contract outright or acts as a conduit to a financing entity.

Comment 3: A commentor stated that definition of "viator" as provided in RULE I (6.6.8501(9)) is not clear and provided alternative language.

Response: The commissioner agrees and partially incorporates the language proposed.

Comment 4: Two commentators stated that the provider application fee of \$1,900 in RULE II (6.6.8502) is excessive.

Response: The commissioner rejects this suggestion and notes that the legislature mandated this fee pursuant to 33-20-1315(3)(b), MCA.

Comment 5: One commentor stated that errors and omissions insurance or bond requirements for providers or brokers may serve as a barrier to providers and brokers to providing the service of viatical settlement contracts.

Response: The commissioner rejects this comment because the legislature mandated that both brokers and providers have a bond and errors and omissions policy pursuant to section 33-20-1315(2), MCA.

Comment 6: Two commentators stated that the renewal fee of \$1,900 a year is excessive.

Response: The commissioner rejects the suggestion and notes that the legislature mandated this fee pursuant to 33-20-1315(3)(b), MCA.

Comment 7: One commentor desired that specific language from 33-1-501, MCA, be inserted in RULE IV (6.6.8504(1)) so that it is absolutely clear what parts of 33-1-501, MCA, apply.

Response: The commissioner disagrees with this suggestion in that it violates section 2-4-305(2), MCA, providing that rules may not unnecessarily repeat statutory language.

Comment 8: One commentor wanted to abolish the requirement of filing and getting approval of viatical settlement contracts.

Response: The commissioner rejects this suggestion because the legislature mandated filing and approval in 33-20-1308, MCA.

Comment 9: One commentor is distressed that the commissioner could possibly disapprove a revised settlement contract after the contract has been executed pursuant to Rule IV (6.6.8504). The commentor desires a form with commonly changed language in brackets. The language in brackets could be changed without approval of the commissioner.

Response: The commissioner agrees that there could be a problem in rejecting a revised viatical settlement contract after it has been entered into. However, the commissioner rejects the solution offered. Instead, the commissioner will change the rule so that approval of the revised contract must occur before the contract is executed.

Comment 10: One commentor noted that a broker may not know beforehand what provider will act as a purchaser or act

as a conduit for a financing entity, therefore RULE V (6.6.8505(2)(a)) would be impossible to comply with.

Response: The commissioner agrees with this assessment of industry practice and deletes the requirement.

Comment 11: One commentor has concerns that the confidentiality of insured's family information conflicts with the privacy provisions in the federal Gramm-Leach-Bliley law, therefore the language in RULE V (6.6.8505(2)(b)) should be stricken.

Response: The commissioner modifies the rule to comport with Title 33, Chapter 19, MCA.

Comment 12: One commentator desires that the references to "brochure" in RULE V (6.6.8505(3), (4), and (5)) be replaced with "notice form."

Response: The commissioner rejects this suggestion as the intent is that specific information is to be contained in the brochure that is given to the viator.

Comment 13: One commentor made the suggestion that RULE V (6.6.8505(5)) should clarify that if a viator rescinds a viatical settlement contract, the viator must repay to the viatical settlement provider all paid settlement proceeds.

Response: The commissioner agrees with this suggestion and adds appropriate language in Rule V (6.6.8505) accordingly.

Comment 14: A commentor writes that RULE VI (6.6.8506(2)) goes beyond the scope of authority provided by the Montana statute.

Response: The commissioner rejects this argument. Section 33-20-1312, MCA, requires that the viator acknowledge in writing that the insured has an illness that is terminal and furthermore, the same statute states that a viatical settlement provider may only enter into a viatical settlement contract if the attending physician determines that the insured has a terminal illness.

Comment 15: Two commentors argue that the commissioner should not mandate a predetermined percentage payable, or at the very least, allow for a reduction in required payment based on the amount of premium due to keep the policy in force to the viator's life expectancy.

Response: The commissioner rejects this argument. The commissioner has followed the direction of the legislature pursuant to 33-20-1315(1), MCA, in that the life and health actuary considered payments made in regional and national viatical settlement markets to the extent that the information was available to her and that this information did not differ greatly from the payment model as derived from the National Association of Insurance Commissioners.

Comment 16: One commentor notes that the following language in RULE VII (6.6.8507) "At least 18 but less than 25 months" does not exactly fit the definition of "terminal illness."

Response: The commissioner agrees and changes the language to better comport with the definition of terminal illness.

Comment 17: One commentor wanted the elimination or reduction of the provision in RULE VIII (6.6.8508(1)) that riders be paid to the viator.

Response: The commissioner rejects this argument. The viator, not the provider or financing entity, should benefit under a double or additional indemnity rider.

Comment 18: One commentor supported a broker having a fiduciary duty but questioned whether there was legislative foundation for the RULE VIII (6.6.8508(3)).

Response: The commissioner agrees with the comment and deletes RULE VIII (6.6.8508(3)).

Comment 19: Two commentors challenge RULE VIII (6.6.8508(5)) and question whether there is legislative foundation to support restricting viatical settlement contracts to those insureds with a terminal illness.

Response: The commissioner rejects this argument. Section 33-20-1312, MCA requires that the viator acknowledge in writing that the insured has an illness that is terminal and furthermore, the same statute states that a viatical settlement provider may only enter into a viatical settlement contract if the attending physician determines that the insured has a terminal illness.

Comment 20: One commentor seeks clarification of whether sales can occur beyond 24 month life expectancy, i.e., the person is not terminally ill.

Response: The commissioner's clarification is that if the person is not terminally ill, then no viatical settlement can occur.

Comment 21: Two commentors disapproved of the language in RULE VIII (6.6.8508(8)) in that it would prohibit the common practice of the original financing entity selling the contract to another financing entity because of the rule disallowing the disclosure of information. A viatical settlement contract is routinely sold multiple times after being sold from the viator to a provider or financing entity. By enforcing the rule, it would make the viatical settlement contracts illiquid.

Response: The commissioner agrees and changes the rule to allow disclosure of information from one financing entity to another provided that they are in compliance with Title 33, Chapter 19, MCA.

Comment 22: One commentor requested that the provider and broker forms be formally incorporated into the rules.

Response: The commissioner rejects this suggestion. Incorporation of the form into the rules would require formal rulemaking every time a form needed to be changed, such as dates or the commissioner's name changing. An interested party may obtain the forms from the Montana State Auditor, specifically, the licensing bureau.

Comment 23: One commentor wrote that RULE IX (6.6.8509) creates uncertainty as to whether a viatical settlement contract is a security and therefore the rule should be deleted.

Response: The purpose of the rule is to require the brokers and providers to determine if the financing of the purchase of the viatical settlement agreement is a security, which must be determined on a case by case basis, based on the financing mechanism. Therefore, it is impossible to determine in advance which financing arrangements involve securities and which don't involve securities.

Comment 24: One commentor wrote that SEC v. Life Partners, Inc., 87 F. 3d 536 (D.D.C. 1995) holds that viatical settlement contracts are not securities, therefore Rule IX (6.6.8509) is not needed.

Response: The commissioner rejects this suggestion because SEC v. Life Partners, Inc., is not the law of the Ninth Circuit or the state of Montana.

Comment 25: One commentor argues that 30-10-103(22)(b), MCA. shows that viatical settlement contracts would not be deemed a security by virtue of being an insurance product, therefore RULE IX needs to be clarified to reflect this.

Response: The commissioner rejects this argument as the financing of a viatical settlement contract may be a security.

3. These rules will become effective November 10, 2000.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: /s/ Peter Funk
Peter Funk
Deputy Insurance Commissioner

By: /s/ Janice VanRiper
Janice VanRiper
Rules Reviewer

Certified to the Secretary of State October 30, 2000.

BEFORE THE BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

TO: All Concerned Persons

1. On September 7, 2000, the Board of Private Security Patrol Officers and Investigators published a notice of the proposed amendment of the above-stated rule at page 2351, 2000 Montana Administrative Register, issue number 17. The hearing was held October 6, 2000.

2. The Board has amended ARM 8.50.437 exactly as proposed.

3. The Board received 12 comments. The comments received and the Board's response are as follows:

COMMENTS NO. 1-6: Six comments were received expressing opposition to the proposed fee increase. The commentors expressed concern that there was very little correlation between the income of private investigators and the security firms and that fees should be more in line with the size of the business.

RESPONSE: The Board takes the comments into consideration, however, the Board is required to set fees commensurate with costs. The Board is willing to further consider the option of a sliding fee scale based on the number of licensed employees. Because of the current board deficit the Board voted to adopt the fee schedule exactly as proposed.

COMMENTS NO. 7-10: Four comments were received expressing opposition to the proposed fee increase and suggesting that security companies pay the fees for their security people.

RESPONSE: The Board reviewed the comments and stated that requiring security companies to pay the fees for their security people is clearly beyond the scope of the Board's authority.

COMMENT NO. 11: One commentor thought that with the projected budget surplus funds should be available without increasing fees, that legal costs should be handled by the department or other entity already funded. The commentor did not understand the move to the federal building and stated that one time costs should not be utilized for the purpose of permanent fee increases.

RESPONSE: The Board reviewed the comment and stated that legal costs for hearings were directly billed to the Board and that the Board was required to pay its share of recharges

attributable to the professional and occupational licensing division legal unit. The move to the federal building was a decision made by the Governor and costs for the move were divided between all boards in the professional and occupational licensing division. The Board also stated that it will continue to evaluate its fee schedule and reduce Board expenditures where possible.

COMMENT NO. 12: One commentor stated that the fees were excessive and unjustified.

RESPONSE: The Board reviewed all comments received and after a thorough discussion about recent board expenses (i.e. moving costs to the federal building, upgrading the licensee database, purchasing an ID card printer for licenses and increased legal costs) the Board voted to amend the rule as proposed.

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
GARY GRAY, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 2000.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to) AND ADOPTION
licensure of out-of-state)
applicants, reactivation of)
inactive and revoked status,)
commissions and contingent)
fees and the adoption of a new)
rule regarding definitions)

TO: All Concerned Persons

1. On July 13, 2000, the Board of Public Accountants published a notice of the proposed amendment and adoption of the above-stated rules at page 1718, 2000 Montana Administrative Register, issue number 13. The hearing was held August 17, 2000.

2. The Board has amended ARM 8.54.415, 8.54.418, 8.54.605, and 8.54.606 exactly as proposed.

3. The Board adopted NEW RULE I (ARM 8.54.602A) DEFINITIONS exactly as proposed.

4. The Board has thoroughly considered all commentary received. The comments received and the Board's response are as follows:

COMMENT NO. 1: The Board received 42 comments in support of the proposed amendments and new rule.

RESPONSE: The Board acknowledges receipt of the comments in support.

COMMENT NO. 2: The Board received seven comments in support of the proposed amendments. These comments also stated objections to ARM 8.54.605(2)'s requirement that any firm or permit holder who is paid or expects to be paid a commission obtain written acknowledgement from their client that the firm or permit holder will be receiving a commission for making the recommendation or referral.

RESPONSE: The Board notes that this requirement may create more paperwork for firms and permit holders. However, it is the Board's position that full disclosure to the client that a firm or permit holder will receive a commission for making a particular recommendation or referral, and written acknowledgement of the same by the client, will protect both the client and the licensee. It will protect the client by fully informing him of the fact that the permit holder may make a commission based on the recommendation or referral, and ensures that the client understands this fact. It will protect the firm or permit holder from unfounded allegations of non-disclosure or unprofessional conduct by ensuring that

they have written proof the disclosure was made and accepted by the client. The result will be that the integrity of the profession will be better protected and maintained.

COMMENT NO. 3: The Board received one comment requesting clarification of the terms "commission" and "referral fees".

RESPONSE: The Board notes that New Rule I, ARM 8.54.602A defines "commission" to include any compensation for recommending or referring any product or services to be supplied by another person or entity. This would include a referral fee. Accordingly, under the scenario described in the comment, a firm or permit holder could not receive a referral fee for referral of a client whom the firm or permit holder also performs attest services for, or services that require independence. The Board will, however, consider including further clarification in a future rule notice if confusion persists.

COMMENT NO. 4: The Board received two comments in opposition to both the new rule and proposed amendments.

RESPONSE: The Board acknowledges the comments, but takes the position that adoption of the proposed rule and amendments are appropriate given the safeguards contained in the rules. These include the prohibition against receiving a commission from clients who require independence, written disclosure and acknowledgment of commissions and referral fees, and the fact that statutory and regulatory standards of professional conduct continue to apply to these types of arrangements and will operate as an appropriate safeguard against conduct unbecoming of the profession.

BOARD OF PUBLIC ACCOUNTANTS
BERYL STOVER, BOARD CHAIR

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 2000.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to)
fees, renewal and property)
management fees)

TO: All Concerned Persons

1. On September 7, 2000, the Board of Realty Regulation published a notice of the proposed amendment of the above-stated rules at page 2354, 2000 Montana Administrative Register, issue number 17. The hearing was held October 26, 2000.

2. The Board has amended ARM 8.58.411, 8.58.426 and 8.58.713 exactly as proposed.

3. The Board received seven comments. The comments received and the Board's response are as follows:

COMMENT NO. 1: Two commentators testified and two written comments were received stating that they could not see where solid justification exists for such a large increase.

RESPONSE: The Board stated that the budget projections indicate that a shortfall will occur and the increase in fees is not only justified but necessary as the Board is required by statute to set fees commensurate with costs.

COMMENT NO. 2: Two commentators testified that the budget is confusing and the overhead is too high.

RESPONSE: The Board stated that it does not set the overhead and again, is required to set fees commensurate with costs.

COMMENT NO. 3: One written comment was received stating that there seems to be a problem with lowering broker fees and raising salesperson fees.

RESPONSE: The Board stated that both the broker fees and salesperson fees are being increased and that the renewal period is being decreased from four years to two years.

BOARD OF REALTY REGULATION
JOHN BEAGLE, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 2000.

BEFORE THE BUILDING CODES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to the) RULES PERTAINING TO THE
Building Codes Division) BUILDING CODES DIVISION

TO: All Concerned Persons

1. On September 7, 2000, the Building Codes Division published a notice of the proposed amendment of rules pertaining to the Building Codes Division at page 2358, 2000 Montana Administrative Register, issue number 17.

2. The Building Codes Division has amended ARM 8.70.101, 8.70.208, 8.70.214 and 8.70.302 exactly as proposed.

3. A public hearing was held on October 13, 2000. Oral and written testimony was received. Written comments were also accepted through 5:00 p.m. October 13, 2000. Not all proposals received comment. The Department has thoroughly considered all comments received. Those comments and the Department's responses are as follows:

COMMENT NO. 1: Regarding ARM 8.70.302(1), the State Farm Insurance Company expressed concern that because the 1997 Uniform Building Code references the International Plumbing Code, by adopting the 2000 Uniform Plumbing Code potential conflicts are created and the latest model codes are not to be utilized.

RESPONSE: The 2000 Uniform Plumbing Code is an up-to-date widely recognized plumbing code. It has been amended by the Building Codes Division to address affordable housing issues and Montana conditions. It is widely supported by the Montana plumbing industry. The coordination between the Uniform Building Code and the Uniform Plumbing Code has not created any problems for the Montana building industry in the past. No coordination problem is expected in the future.

COMMENT NO. 2: Regarding ARM 8.70.302(1)(i), the City of Billings commented that the removal of language amending the Uniform Plumbing Code definition of plumbing system, so that it is not consistent with the definition of plumbing system found in section 37-69-101, MCA, will expand the extent of the plumbing system which will require a permit.

RESPONSE: The term "plumbing system" found in Title 37, chapter 69, MCA, is a limited use term which establishes distance limitations around a building where plumbing licensure is required. Through cross-reference in section 50-60-506(2), MCA, it also establishes a distance limitation around a building where a plumbing permit is required. A different use of the term in the administratively adopted Uniform Plumbing Code does not modify the specific and limited

use of the term as found in the Montana Code Annotated. Although licensure and permit requirements may be limited to a specific distance around a building, the standards established by the Uniform Plumbing Code are not. The definition of the term "plumbing system" in the Uniform Plumbing Code has only been modified since 1998. There was no confusion between the two uses of the term prior to 1998.

COMMENT NO. 3: Regarding ARM 8.70.302(1)(k), several plumbers, the Department of Environmental Quality, the Associated Plumbing and Heating Contractors of Montana and a member of the Board of Plumbers objected to the continued deletion of the requirement for testing of back flow prevention devices at the time of installation and annually thereafter. The expressed reasons include the potential risk of contamination to public and private water systems, the Uniform Plumbing Code is the only code which can require testing of back flow prevention devices and it is unreasonable that the Building Codes Division could require the installation of back flow prevention devices and not provide for their continued testing and maintenance.

RESPONSE: This proposal is not a substantive change from the current rule. Rather it is a reference change, necessitated by the renumbering of subsections in the 2000 Edition of the Uniform Plumbing Code from the 1997 Edition. The existing administrative rule deleting this requirement has been in effect since May 19, 1992, when this back flow prevention device maintenance requirement first appeared in Section 1003 of the 1991 Edition of the Uniform Plumbing Code. This subsection requires the administrative authority to enforce mandatory testing of all back flow prevention devices at the time of installation and on an annual basis thereafter. There are tens of thousands of back flow prevention devices currently in place throughout Montana. The initiation of a mandatory testing program for back flow prevention devices would be a substantial new regulatory program by the Building Codes Division. The Division estimates up to five additional full time employees would be required to administer such a program. The Division cannot create such a program without clear legislative authorization. Such a program would require legislative authority to hire additional staff, establish a fee schedule and spend those fees on the program. The Division's statutory authority to inspect plumbing systems is tied to installation permits. The Division would need expanded statutory authority to enter onto private property for the purposes of a continuing annual inspection program.

BUILDING CODES DIVISION
JAMES BROWN, BUREAU CHIEF

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

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 30, 2000

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

In the matter of the ARM) NOTICE OF AMENDMENT
37.34.1801 and 37.34.1802)
pertaining to accreditation)
standards for provider)
programs of community-based)
developmental disabilities)
services)

TO: All Interested Persons

1. On June 15, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1483 of the 2000 Montana Administrative Register, issue number 11.

2. The Department has amended rule 37.34.1802 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.34.1801 ACCREDITATION STANDARDS FOR PROVIDER PROGRAMS OF SERVICES: ADOPTION AND APPLICABILITY (1) through (3) remain as proposed.

(4) The department may permit an entity to deliver developmental disabilities services without being accredited in accordance with the specific sets of standards adopted in (3), if the department determines that the entity is otherwise accountable to a set of standards of a recognized accrediting organization, that the standards are applicable to the delivery of the particular developmental disabilities services to be provided by the entity and that the standards are appropriate for the purposes of this rule.

(4) through (9)(d)(xx) remain as proposed but are renumbered (5) through (10)(d)(xx).

(e) construction, maintenance, repair, sales services and equipment and supplies inclusive of any required tangible services that are new or used, and can be purchased from a contractor or vendor that meets the most appropriate performance standards; or

(f) services which are not covered by either the council or CARF accreditation standards; or

(g) temporary or short term services that are of no more than 4 months duration per year.

AUTH: Sec. 53-20-204, MCA

IMP: Sec. 53-20-203 and 53-20-205, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Concern was expressed about the Department allowing accreditation by only two specific accrediting entities. The field of accreditation is evolving and within the last year has seen information on a new body that is developing accreditation standards for child and family services. The proposed rule should be changed to indicate allowance of other accreditation bodies.

RESPONSE: The Department agrees that there may be other accrediting entities whose standards may give an effective indication of the quality of developmental disabilities services that are offered by a service provider. Any such accrediting entity may submit their standards to the Department for review, and, if those standards are consistent with the Department's goals for quality assurance, then those standards would be amended into this rule to be generally applicable.

A new provision, subsection (4) of ARM 37.34.1801 allows the Department within its discretion to accept accreditation standards of other organizations on a limited basis where a provider is subject to those standards and the Department determines that the standards are indicative of the quality of developmental disabilities services that are to be delivered by the provider.

COMMENT #2: The Department received several comments expressing concern that the proposed rule change leaves no room for flexibility and doesn't allow for exceptions to the accreditation requirement. The number of persons a provider could serve without being accredited should be set at more than two.

RESPONSE: The Department is clearly directed by its governing legal authorities to assure the qualifications of the providers of developmental disabilities services. Accreditation is an important aspect of that obligation. The Department, acting to protect the best interests of recipients of services, has determined that a provider of services to more than two persons must be subject to the accreditation requirement.

Furthermore, the Department believes that the established accreditation organizations are showing more flexibility in accreditation. The differing scope and scale of smaller providers is being recognized in the accreditation processes.

In this final adoption of the rule, the Department has added two additional criteria to the rule for the purpose of providing more flexibility. As previously noted, subsection (4) of ARM 37.34.1801 allows for the possibility of other accreditation standards being determined to be acceptable on a limited basis.

Subsection (g) of ARM 37.34.1801(9) excludes temporary or short term services from the accreditation process.

COMMENT #3: A provider expressed concern about requiring accreditation for the following reasons: 1) the provider's earlier difficulty with the accrediting entity's undeveloped child and family services standards; 2) the increasing cost of accreditation surveys; and 3) the perception that the Department's program requirements are in conflict with accreditation requirements.

RESPONSE: The Department recognizes that accreditation standards had some applicability issues when first mandated by this rule. For that reason, the providers were given until July 1, 1994 to gain accreditation. The accreditation processes and standards have developed to the degree that those earlier issues of applicability are no longer present.

Accreditation is important in assuring both the developmental disabilities program and the consumers of the basic quality of the services that are made available by a provider. Consequently, the cost of accreditation must be viewed as an important aspect of doing business.

The Department does not agree that there are conflicts between the program requirements and the accreditation requirements. The Department continues to review any specific provisions of program requirements that may be duplicative of accreditation requirements. The Department appreciates specific information as to possible duplication.

COMMENT #4: Consumers of services should be guaranteed the right to choose which qualified provider delivers their services.

RESPONSE: The Department agrees that the consumer's right to choose services and qualified providers is a fundamental aspect of further development in service delivery. Consumer choice is one of the vision statements for the developmental disabilities services program. The Department is committed to working toward the total individualization of developmental disabilities services. Recent innovations in services have been based on providing more consumer choice.

The Department, while seeking to further develop consumer choice in the service system, is also committed, based on its legal and moral obligations, to assuring that the performance and quality of services are in the best interest of consumers.

COMMENT #5: A family member of a consumer expressed concern over the Department's proposed elimination of the exemption from accreditation for small service providers. The person struggles constantly to find good service providers. Currently, day care programs, both during the school year and the summer, as well as

the habilitation trainer and PCA that the person relies upon for services are exempt from accreditation under the current rules. Requiring them to obtain accreditation will force them into no longer providing services. These service providers are not being paid a great deal of money. The Department should be looking at how to help these providers to keep providing services, not to require more paperwork. The wages paid to direct care staff are about \$6.50 an hour. If the services they provide are lost, the person will be forced to quit her job and stay at home to care for her child. The person requests the Department leave in the exemption from accreditation and help those small service providers.

RESPONSE: As noted in response to other comments, the Department is required to assure that quality services are provided. Accreditation is an important aspect of quality assurance. The Department has determined that providers delivering developmental disabilities services to more than two persons must be subject to accreditation.

It is difficult to determine whether any of the services that the consumer is receiving will be affected by the proposed rule change. The developmental disabilities program does not contract with day care providers or personal care assistants. The rule, therefore, does not encompass those providers. The rule effects only those providers that contract with the Department to provide developmental disabilities services. The only provider that may be affected by the accreditation requirement is the provider that employs the habilitation trainer. Whether that provider would be subject to the requirement depends upon the particular circumstances of the employer, particularly the number of persons with developmental disabilities that the business serves with funding from the Department.

All of the Department's programs that fund services with direct care staff are concerned about the low wages these staff receive. The Department is seeking additional funding for direct care staff from the upcoming legislature.

COMMENT #6: The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) is interested in being specified in proposed ARM 37.34.1801 as an accrediting entity for developmental disabilities services. The accreditation that JCAHO would provide would be the set of criteria for JCAHO's Behavioral Health program.

RESPONSE: The quality assurance specialist for the developmental disabilities program has reviewed the standards that accompanied this comment, specifically JCAHO's Behavioral Health program materials. He determined that these standards are not appropriate for inclusion into this rule. The standards are based on the medical treatment model. That model is too paternalistic for consumers of developmental disabilities

services. In addition those standards are not consistent with the current trend towards individualized services.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State October 30, 2000.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.86.1105)
pertaining to reimbursement)
to state institutions for)
outpatient drugs)

TO: All Interested Persons

1. On September 7, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 2388 of the 2000 Montana Administrative Register, issue number 17.

2. The Department has amended rule 37.86.1105 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State October 30, 2000.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 46.20.106)
pertaining to mental health)
services plan eligibility)

TO: All Interested Persons

1. On August 24, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 2202 of the 2000 Montana Administrative Register, issue number 16.

2. The Department has amended rule 46.20.106 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State October 30, 2000.

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

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

Business and Labor Interim Committee:

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

Education Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

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

Revenue and Taxation Interim Committee:

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

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

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2000. This table includes those rules adopted during the period July 1, 2000 through September 30, 2000 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2000, 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 1999 and 2000 Montana Administrative Registers.

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

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