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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment and adoption of)	AMENDMENT AND
rules pertaining to 9-1-1)	ADOPTION OF RULES
emergency telephone systems.)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons:

1. On November 5, 1997, the Department of Administration proposes to amend Rules 2.13.201, 2.13.202, 2.13.203, and 2.13.205 and adopt new rule I pertaining to 9-1-1 emergency telephone systems.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

2.13.201 PURPOSE (1) through (3) remain the same.

(4) It is the intent of these rules that all local emergency telephone systems provide at least minimum basic 9-1-1 service, and enhanced 9-1-1 features, such as selective routing, automatic number identification (ANI), and automatic location identification (ALI), as funding allows. AUTH: Sec. 10-4-102, MCA; IMP , 10-4-101 through 10-4-303, MCA.

2.13.202 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Automatic location identification (ALI)" means the automatic display at a public safety answering point of the subscriber telephone number, the service address for the telephone and supplementary information.

(2) "Automatic number identification (ANI)" means the automatic display at a public safety answering point of the subscriber telephone number.

(1) remains the same, but is renumbered (3).

(4) "Selective routing" is a standard service which allows an enhanced 9-1-1 call to be routed to the appropriate public safety answering point based on the calling party's telephone number. AUTH: Sec. 10-4-102, MCA; IMP , 10-4-101 MCA.

2.13.203 DEPARTMENT OF ADMINISTRATION DUTIES AND POWERS

(1) The department shall assist in the development of basic 9-1-1 and enhanced 9-1-1 systems in the state. The department shall:

(a) prescribe and publish preliminary and final planning forms with instructions to be filed by 9-1-1 jurisdictions with the department which will describe proposed basic or enhanced 9-1-1 systems, and plans for 9-1-1 dispatcher training, in a level of detail which will identify compliance with and variations from minimum basic or enhanced 9-1-1

service. The department will amend the planning forms at its discretion in order to ensure the filing by 9-1-1 jurisdictions of all needed information;

(b) upon request of the 9-1-1 jurisdiction, assist in planning ~~on a basic or enhanced~~ emergency 9-1-1 telephone system. The level and amount of assistance provided shall be based upon the department's staffing and scheduling availability, based upon the department's determination; ~~Requests for assistance are to be directed in writing to the Chief, Telecommunications Bureau, Information Services Division, Department of Administration, Capitol Station, Helena, MT 59620.~~

(c) establish criteria and procedures for evaluating plans to ensure 9-1-1 telephone systems will provide minimum basic 9-1-1 service at a minimum, and enhanced 9-1-1 service according to an approved schedule.

(d) through (2) remain the same. AUTH: Sec. 10-4-102, MCA; IMP, 10-4-103, 10-4-104, MCA.

2.13.205 DISTRIBUTION OF EMERGENCY TELECOMMUNICATIONS ACCOUNTS (1) An amount equal to 3.76% of the money received pursuant to 10-4-201, MCA, shall be transferred into the state general fund to cover administrative costs incurred by the department of revenue and the department of administration. The department of revenue shall submit an itemized statement of actual expenses incurred during each calendar quarter to the department within 30 days following the end of each calendar quarter. If such a statement is not received by the department within 30 days following the end of the quarter the department shall not distribute any of the account to the department of revenue for that calendar quarter.

(2) ~~Administrative costs incurred during the preceding calendar quarter by the department in carrying out its responsibilities. The amount paid may not exceed 7% of the account on the date of distribution or actual expenses incurred, whichever is less.~~ The department shall prepare an itemized statement of actual expenses incurred during each calendar quarter for carrying out its responsibilities within 30 days following the end of each calendar quarter. If such a statement is not prepared by the department within 30 days following the end of the quarter the department shall not receive any of the account for that calendar quarter.

(3) through (4) remain the same.

(5) The department shall, within 10 days, distribute the balance of the basic 9-1-1 account and enhanced 9-1-1 account into separate accounts for the cities and counties a special revenue account for each 9-1-1 jurisdiction utilizing the following information and in the following manner:

(a) the department shall obtain the most recent per capita census data for incorporated cities and counties in the state from the department of commerce, census and economic information center;

(b) the department shall compute the per capita percentage each county represents to the entire state

population based upon the census data. Any county whose per capita percentage is less than 1% of the entire state population shall automatically have its percentage increased to equal 1%. Each county's percentage shall then be recomputed to adjust for the counties whose per capita percentage was originally less than 1%. The county per capita percentages shall total 100%;

(c) for the basic 9-1-1 fund distribution, the department shall compute the quarterly allocation amount for each county based upon the percentages computed in (5) (b) applied against the balance of the basic 9-1-1 fund account;

(d) for the enhanced 9-1-1 fund distribution, the department shall compute the percentage for each county which is 84% of each county's share of the basic 9-1-1 fund distribution;

(e) the department shall compute the quarterly allocation amounts for each county based upon the percentages computed in (5) (d) applied against the enhanced 9-1-1 account;

(f) the balance (16%) of the enhanced 9-1-1 fund account shall be evenly divided among the counties that receive 1% of the basic 9-1-1 fund distribution;

(d) remains the same but is renumbered (g)

~~(e) (h)~~ the department shall compute the quarterly distribution amount for each ~~incorporated city and each county~~ 9-1-1 jurisdiction based upon the percentages computed in (5) (d), ~~(5) (e), and (5) (f)~~ applied against each county's quarterly allocation amount computed in (5) (c);

(f) remains the same but is renumbered (i)

~~(g) (j) each incorporated city with 9-1-1 jurisdictions with an approved final plan shall receive the quarterly distribution amount for each 9-1-1 jurisdiction. Each county with 9-1-1 jurisdictions with an approved final basic or enhanced 9-1-1 plan shall receive the quarterly distribution amount for each 9-1-1 jurisdiction. funds from the allocation for each city or county included in its approved final plan. The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction;~~

(k) quarterly distributions from the basic 9-1-1 fund account for each city and county without approved final plans shall be distributed into separate accounts within the state treasury for each city and county. Such amounts shall be retained in the separate accounts within the state treasury until a final basic or enhanced 9-1-1 plan is approved, at which time the accrued balance for a 9-1-1 jurisdiction, with interest, shall be distributed to the city or county 9-1-1 jurisdiction with the next quarterly distribution;

(l) beginning with the first quarterly distribution after July 1, 1998, all funds from the basic 9-1-1 account being held in separate accounts for cities and counties without approved final plans shall be removed from those accounts and shall be distributed with the balance of the quarterly basic 9-1-1 account distributions for all 9-1-1 jurisdictions with

approved final plans:

(m) funds from the enhanced 9-1-1 account shall be retained in the separate accounts within the state treasury for those cities and counties until a final enhanced 9-1-1 plan is approved, at which time the accrued balance for a 9-1-1 jurisdiction, with interest, shall be distributed to the 9-1-1 jurisdiction with the next quarterly distribution;

(h)(n) cities and counties shall distribute the amounts received under (5) (e) to 9-1-1 jurisdictions within their jurisdiction who have an approved final plan. The department shall provide a statement report with each city and county distribution 9-1-1 jurisdiction distribution indicating which 9-1-1 jurisdictions in their jurisdictions have an approved final plan the proportional share derived from the individual city's or county's allocation. A 9-1-1 jurisdiction with an approved final plan whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from each city or county involved. Cities and counties are to distribute monies to 9-1-1 jurisdictions with an approved final plan whose 9-1-1 service area includes multiple local jurisdictions on a per capita basis. AUTH: Sec. 10-4-102, MCA; IMP, 10-4-121, 10-4-301, 10-4-302, MCA.

REASONS: These rules are being amended because 10-4-101 through 10-4-303 MCA were amended to increase the monthly tax assessed against telephone access lines to include funding for enhanced 9-1-1 systems in addition to basic 9-1-1.

Rule 2.13.201 is being amended to include enhanced 9-1-1 features.

Rule 2.13.202 is being amended to include definitions related to enhanced 9-1-1 systems.

Rule 2.13.203 is being amended to include the planning process for enhanced 9-1-1 and the requirement that a final plan for enhanced 9-1-1 include a plan for 9-1-1 dispatcher training.

Rule 2.13.205 (1) and (2) are being amended because House Bill 166 removed the statutory appropriation for administrative costs for the department of administration and the department of revenue.

Rule 2.13.205 (5) (a) through (f) are being amended to explain the method for distribution of the enhanced 9-1-1 fund to 9-1-1 jurisdictions with approved final enhanced 9-1-1 plans. 84% of the enhanced 9-1-1 fund is distributed to all jurisdictions with approved final plans for enhanced 9-1-1 on the basis of population, with no county receiving less than 1% of this distribution. The remaining 16% of the enhanced 9-1-1 fund is divided equally among the counties that receive 1% of the basic 9-1-1 fund distribution.

Rule 2.13.205 (5) (h) and (j) are being amended to reflect the

change in statute which requires the quarterly distribution be sent to the 9-1-1 jurisdiction's designated accounting entity instead of to each city and county.

Rule 2.13.205 (5) (k) through (n) are being amended to include the enhanced 9-1-1 fund and to reflect the change in statute which requires the entire basic 9-1-1 fund be distributed to jurisdictions with approved 9-1-1 plans after July 1, 1998. After July 1, 1998, enhanced 9-1-1 funds only will be retained in separate accounts for jurisdictions until their final enhanced 9-1-1 plans are approved.

3. The proposed new rule provides as follows:

RULE 1 9-1-1 PROGRAM FUNDS HELD IN RESERVE BY 9-1-1 JURISDICTIONS (1) A 9-1-1 jurisdiction may maintain a balance in the basic 9-1-1 fund account and/or the enhanced 9-1-1 fund account if not needed for immediate use for installing, operating or improving a 9-1-1 emergency telephone system. The total amount held in these accounts may not exceed the following percentage of the jurisdiction's total operating budget unless an exception is granted by the department.

(a) If a jurisdiction's total operating budget is less than \$150,000 per year, the 9-1-1 fund account balance may not exceed 30% of the total operating budget.

(b) If a jurisdiction's total operating budget is between \$150,000 and \$300,000 per year, the 9-1-1 fund account balance may not exceed 25% of the total operating budget.

(c) If a jurisdiction's total operating budget is between \$300,000 and \$400,000 per year, the 9-1-1 fund account balance may not exceed 20% of the total operating budget.

(d) If a jurisdiction's total operating budget is more than \$400,000 per year, the 9-1-1 fund account balance may not exceed 15% of the total operating budget.

(e) The department may grant an exception to allow a jurisdiction to accumulate a larger fund balance if the jurisdiction can demonstrate a need to upgrade or improve the 9-1-1 system and the cost will exceed the allowable fund balance. AUTH: Sec. 10-4-102, MCA; IMP, 10-4-301, 10-4-302, 10-4-303, MCA.

REASON: The new rule is necessary to fulfill the intent of the legislature to ensure that state 9-1-1 program funds are used to maintain and improve the 9-1-1 system after it has been implemented. During the 1997 legislative session, legislators were concerned because some jurisdictions had a large cash balance in their 9-1-1 special revenue account. An exception may be granted if the jurisdiction can demonstrate the need to increase the fund for a larger expenditure.

4. Interested persons may submit their written data, views, or arguments concerning the proposed action(s) to Jeffrey E. Brandt, Chief, Policy, Development and Customer Relations Bureau, Information Services Division, Department of

Administration, P.O. Box 200113, Helena, MT 59620-0113, phone (406) 444-2700, FAX (406) 444-2701, no later than November 3, 1997.

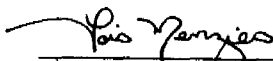
5. If a party who is directly affected by the proposed action(s) wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Jeffrey E. Brandt, Chief, Policy, Development and Customer Relations Bureau, Information Services Division, Department of Administration, P.O. Box 200113, Helena, MT 59620-0113, phone (406) 444-2700, FAX (406) 444-2701, no later than November 3, 1997.

6. If the department receives requests for a public hearing on the proposed action(s) from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action(s); from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 approximately 56 persons based on the number of 9-1-1 jurisdictions in Montana.

7. As required by HB 389, 1997 Montana legislative session, this notice advises that the department maintains an interested person list for purposes of providing notice on rule making matters. Any person wishing to be on that list must provide to the department, in writing, their name, mailing address and a brief description of the subject matter in which they are interested.



Rule Reviewer



Director, Department of
Administration

Certified to the Secretary of State September 22, 1997

BEFORE THE BOARD OF THE
STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of new Rule I on)	ON PROPOSED ADOPTION ON
employers' liability; and the)	EMPLOYERS' LIABILITY AND
amendment of rules 2.55.321;)	AMENDMENT OF RULES PERTAINING
2.55.322; 2.55.324; 2.55.325;)	TO PREMIUM RATES
2.55.327; and 2.55.402.	

TO: All Interested Persons:

1. On October, 27, 1997, the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., in Room 201 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the adoption of New Rule I and the amendment of rules 2.55.321; 2.55.322; 2.55.324; 2.55.325; 2.55.327; and 2.55.402.

2. The new rule proposed to be adopted provides as follows:

NEW RULE I. EMPLOYERS' LIABILITY -- LIMITS AND RATES

(1) The state fund may, upon approval of the board, provide employers' liability insurance as part of the workers' compensation policy for employers insured by the state fund. The board shall approve the terms and conditions of employers' liability coverage including, but not limited to, the limits of liability.

(2) In establishing rates the board shall, in consultation with the actuary, consider employers' liability basic limits coverage in establishing the overall rate level adjustment. Limits of liability above the basic limit, and related rates, may be established by the board in consultation with the actuary.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA;
IMP: Sec. 39-71-2316 and 39-71-2330 MCA.

RATIONALE:

The State Fund may offer employers' liability coverage to policyholders. The new rule sets forth the process and procedure in providing employers' liability coverage and in establishing related rates.

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

2.55.321. CALCULATION OF EXPERIENCE RATES (1) For each classification, the state fund staff shall calculate an experience rate based upon the experience of the class. The

experience rate must be based on a review of the total incurred losses and total payroll in the classification during up to 10 full fiscal years immediately preceding the date of review. "Fiscal year" means the year beginning July 1. The experience rate is derived by dividing the weighted selected liabilities by the weighted selected payroll. The experience rate shall be adjusted for current state fund expenses and the current state fund rate level, excluding construction credit program offsets. For each fiscal year, in consultation with the actuary, liabilities shall be adjusted for actuarially-determined differences in benefit levels, loss trends, reserve development, and other actuarially-predicted costs. For each fiscal year, in consultation with the actuary, payroll shall be adjusted for actuarially-determined differences in payroll trends. The number of selected payroll and liability years and the weight of each shall be approved by the board. The net result is a set of experience-based rates which, based on payroll of the last complete fiscal year would be expected to develop approximately the same level of revenue as the current set of rates in force, excluding construction credit program offsets after the application of credibility in ARM 2.55.322, and the exceptions provided in ARM 2.55.324. With approval of the Board, payroll of the last complete fiscal year may be adjusted for projected payroll distributions.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

RATIONALE:

The proposed changes to subsection (1) add the requirement for consultation with the state fund's independent actuary regarding actuarially-determined factors which modify past loss data for ratemaking purposes. These adjustments are commonly referred to as bringing past loss data "on-level" to the prospective rate year. Because the adjustments are primarily based on factors contained in the independent actuary's most recent rate and reserve reports, the independent actuary will be able to provide useful direction to the State Fund regarding how these factors should be applied.

2.55.322 CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and liabilities in a particular classification are not sufficient to provide a credible statistical basis for estimating an equitable distribution of costs, the state fund staff shall determine a credibility weighted rate for each classification. The credibility factors, approved by the board, may range from 0.0 through 1.00, and are based on expected liability. ~~The expected liability is weighted selected payroll times the current manual rate times an expected loss rate recommended by the actuary and approved by the board.~~ The experience rate times a credibility factor, plus the advisory or rating organization rate times one minus the credibility factor yields the credibility weighted rate for a class code. For example: ER means experience rate; CF means

credibility factor; and AR means advisory or rating organization rate less construction credit program offsets and adjusted for state fund expenses and current state fund rate level or other rating source rate similarly adjusted. Credibility weighted rate equals $[ER \times CF] + [AR \times (1 - CF)]$. The state fund staff with approval of the board may substitute for an advisory or rating organization rate if another source of rates in use in Montana is more appropriate.

(2) State fund staff may, with approval of the board apply a rate relativity stabilization factor ranging from 0.0 to 1.00. The stabilization factor shall be applied to each credibility weighted rate as follows: $(CWR \times SF) + (MR \times (1 - SF))$ where: CWR is the credibility weighted rate; SF is the stabilization factor; and MR is the current manual rate excluding any construction credit program offsets. The result is a stabilized credibility weighted rate.

~~(3) The credibility weighted rate is assigned to a classification in order to modify the experience rate. It is based on the actuary's recommendation of the reliability and predictability of the classification's statistical data. In determining the credibility weighted rates, the state fund actuary shall consider the experience rate, existing manual rate, advisory or rating organization rate or substitute rate, payroll, premium, and losses.~~

(4) The advisory or rating organization rates used shall be the latest filed or prior filed rates, as determined by the board, at the time the board determines the overall rate level adjustment.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330 MCA.

RATIONALE:

The proposed amendment to subsection (1) would eliminate the requirement of specific board approval of the expected loss rate ("ELR"). Board approval of the ELR is not necessary since it is a result of a mathematical operation, and involves no policy-level decisions. The State Fund ratemaking process is subject to independent audit to ensure technical accuracy. The rule retains the requirement of board approval of the credibility factors for each classification of which the ELR is a component.

The proposed amendment to subsection (1) would also eliminate the requirement that classification credibility be based solely on expected losses. The board approves credibility factors and will continue to be responsible for the methodology by which credibility factors are derived. Current rules require that the statistical reliability of State Fund classification code loss data be determined on the basis of the gross incidence and severity of losses for each classification. The amendments improve the ability to ensure credibility factors are derived based on the method or combination of methods which are actuarially indicated to result in the best overall prediction of future losses.

Subsection (3) is being proposed for elimination. Previous amendments to the rules fully and adequately define the calculation of credibility weighted rates in other subsections. This subsection is now superfluous and can be eliminated in the interests of making the rules more concise.

2.55.324 PREMIUM RATESETTING (1) remains the same.

(2)(a) ~~The state fund staff in consultation with the actuary and with approval of the board shall evaluate an individual classification to determine whether the process for setting the premium rate results in an equitable rate based on an analysis of the losses and the premium amount and, if the rate is not equitable, may adjust it so that it is equitable.~~

(b) Payrolls for horse racing activities conducted at licensed Montana race tracks and hauling of horses between those race tracks from March 1 through September 30 of each year have been determined not to be sufficiently verifiable and a fee basis shall be used. The fee for each March 1 through September 30 period shall be based on the aggregate revenue requirement of this classification and allocated among the projected number of industry participants. The percentage increase or decrease limits in subsection (4) apply to payroll-based rates and do not apply to fee-based coverage. However, the board may approve limits on the revenue requirement for fee-based coverage. This subsection will become effective October 1, 1994.

(3) ~~The state fund staff in consultation with the actuary and with approval of the board may set a classification's rate for all or a portion of the fiscal year at a percentage of the advisory or rating organization rate adjusted for state fund expenses. The percentage of the advisory or rating organization rate shall not be more than 150% of the advisory or rating organization rate adjusted for state fund expenses and the current state fund rate level for the fiscal year in which the rate shall be effective for such classification, or not less than 75% of the advisory or rating organization rate adjusted for state fund expenses and the current state fund rate level for the fiscal year in which the rate shall be effective for such classification or substitute rate or at the rate of an equivalent class code recommended by the advisory or rating organization or the state fund actuary. These situations include, but are not limited to:~~

(3) (a)-(d) remain the same.

(4)-(5) remain the same.

(6) For each construction class code defined in ARM 2.55.327, ~~the state fund staff in consultation with the actuary and with approval of the board will calculate and apply an additional factor to offset the anticipated credits in ARM 2.55.327. These factors will be applied to each construction class code after the stabilized credibility weighted rate, however, the premium rate limits in (4)(a) do not apply.~~

(7) The board may approve for each class code a minimum premium rate which is a percentage of ~~or more than~~ the advisory

or rating organization rate adjusted for state fund expenses and current state fund rate level or substitute rate similarly adjusted. The board may use these percentages based upon the credibility factor of each code, with all codes which have the same credibility factor treated alike. However, ~~no the minimum rate generated by application of this section this percentage and applied to a class code shall be less than the state fund's experience-based rate for that class code and shall also be subject to the limitations in (4).~~

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Secs. 39-71-2211, 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

RATIONALE:

The proposed amendment to subsection (2)(a) would eliminate the requirement for consultation with the independent actuary regarding exceptions to the classification code ratemaking process. Exceptions to the process are presented to the board on the basis of underwriting judgements unique to the circumstances of the State Fund.

The proposed amendment to subsection (3) would eliminate the requirement for consultation with the independent actuary regarding interim establishment of new classification code rates. The process of deriving the "on-level" State Fund rate based on advisory organization loss-costs is based on a mathematical operation. Management recommendations regarding the percentage of advisory organization "on-level" rates to be used (rules allow new rates to be set at between 75% and 150%) are presented to the board on the basis of documented underwriting considerations.

The proposed amendment of subsection (6) would eliminate the requirement for consultation with the independent actuary regarding calculation of construction credit rate load factors. Calculation of the construction credit rate loads is a mathematical operation subject to board approval.

The proposed amendment to subsection (7) more clearly describes the application of the minimum percent of advisory organization rate mechanism. There would be no change in the manner in which this rate mechanism is applied.

2.55.325 VARIABLE PRICING WITHIN A CLASSIFICATION

- (1) - (4) remain the same.
- (5)(a) - (i) remain the same.
- (j) an employer's history and experience with any other insurer;
- (k) new business without workers' compensation experience history;
- (l) the most recent complete fiscal year premium is below a threshold determined by the board of directors and the insured will not qualify for experience modification during the next fiscal year.

AUTH: Sec. ~~39-71-2315~~ and ~~39-71-2316~~ MCA; IMP: Secs. ~~39-71-2311~~, ~~39-71-2316~~ and ~~39-71-2330~~, and ~~39-71-2341~~ MCA.

RATIONALE:

The proposed amendment adding new subsection (5)(k) is necessary to permit the State Fund to place a new business employer in a variable pricing category that acknowledges the absence of loss history.

The proposed amendment to subsection (5)(1) would permit the State Fund to place an employer without experience rating and with premium below a threshold approved by the board in a variable pricing category based on considerations that are predictive of future average losses when the individual employer's loss history alone is not sufficiently reliable to predict future loss experience.

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1)-(3) remain the same.

(4) (a) The following credit percentages, are to be applied to the manual premium of the insured's construction class codes during the survey period to determine the premium credit factor for the fiscal year beginning July 1, 19967.

Average Hourly Wage	Credit Percentage
\$14.24 or less	0%
\$14.25 - \$14.74	8%
\$14.75 - \$15.24	10%
\$15.25 - \$15.74	12%
\$15.75 - \$16.24	14%
\$16.25 - \$16.74	15%
\$16.75 - \$17.24	16%
\$17.25 - \$17.74	17%
\$17.75 - \$18.24	18%
\$18.25 - \$19.24	19%
\$19.25 - \$20.24	20%
\$20.25 - \$21.24	21%
\$21.25 and above	22%

(b) ~~The following credit percentages in lieu of the table in (4)(a) will be used for the fiscal year beginning July 1, 1997.~~

Average Hourly Wage	Credit Percentage
\$14.39 or less	0%
\$14.40 - \$14.89	8%
\$14.90 - \$15.39	10%
\$15.40 - \$15.89	12%
\$15.90 - \$16.39	14%
\$16.40 - \$16.89	15%
\$16.90 - \$17.39	16%

\$17.40 - \$17.89	17%
\$17.90 - \$18.39	18%
\$18.40 - \$19.39	19%
\$19.40 - \$20.39	20%
\$20.40 - \$21.39	21%
\$21.40 and above	22%

(b) The following credit percentages in lieu of the table in (4)(a) will be used for the fiscal year beginning July 1, 1998.

<u>Average Hourly Wage</u>	<u>Credit Percentage</u>
<u>\$14.84 or less</u>	<u>0%</u>
<u>\$14.85 - \$15.34</u>	<u>8%</u>
<u>\$15.35 - \$15.84</u>	<u>10%</u>
<u>\$15.85 - \$16.34</u>	<u>12%</u>
<u>\$16.35 - \$16.84</u>	<u>14%</u>
<u>\$16.85 - \$17.34</u>	<u>15%</u>
<u>\$17.35 - \$17.84</u>	<u>16%</u>
<u>\$17.85 - \$18.34</u>	<u>17%</u>
<u>\$18.35 - \$18.84</u>	<u>18%</u>
<u>\$18.85 - \$19.84</u>	<u>19%</u>
<u>\$19.85 - \$20.84</u>	<u>20%</u>
<u>\$20.85 - \$21.84</u>	<u>21%</u>
<u>\$21.85 and above</u>	<u>22%</u>

(5)- (6) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Secs. 39-71-2211, 39-71-2311, 39-71-2316, and 39-71-2330 MCA.

RATIONALE:

Subsection (4)(a) is amended to delete the out-dated construction credit table for the fiscal year beginning July 1, 1996.

The proposed amendment to subsection (4) (b) updates the construction credit table to reflect changes in the state's average weekly wage as determined by the Department of Labor and Industry, effective July 1, 1997.

2.55.402 MEDICAL DEDUCTIBLE (1) The state fund offers an annual (fiscal year July 1 through June 30) medical deductible plan in increments of \$500, \$1,000, \$1,500, \$2,000 and \$2,500 per claim. This plan allows qualified employers to reimburse the state fund for a selected deductible amount of the medical costs of each claim in exchange for a premium discount.

(2) To qualify for the plan for the next fiscal year, an employer must:

(a) file an endorsement form, provided by the state fund prior to the beginning of the next fiscal year; and

(b) have estimated annual premium which equals or exceeds the

chosen deductible amount; and

(c) demonstrate the ability to promptly pay the deductible amounts by not having a poor premium payment history with the state fund.

~~(d) have a most recent policy effective date prior to the beginning of the most recent complete fiscal year.~~

(3) The state fund is responsible for initial payment of medical benefits; then bills the employer for reimbursement up to the chosen deductible amount. The state fund may cancel the employer's policy for failure to reimburse the state fund for expended medical deductible amounts.

AUTH: Sec. 39-71-2315, 39-71-2316, MCA; IMP: 39-71-434, 39-71-2311 and 39-71-2316 MCA.

RATIONALE:

The proposed amendments to subsection (2)(b) clarifies what premium will be used to evaluate qualification for a medical deductible plan.

The amendment to subsection (2)(d) deletes the requirement of a prior workers compensation policy with the State Fund prior to participation in a medical deductible plan.

4. The State Fund's Premium Rate Setting Rule Amendments above are reasonably necessary to keep the processes, procedures, formulas and factors for rate setting as required by statute to be set forth in administrative rules, reflect changes in business operations, to implement recommendations of the state fund's actuary, and to maintain their functionality.

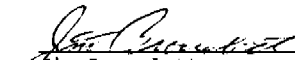
5. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Rita Bird, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-6480; fax (406) 444-6555, no later than 5:00 p.m., October 13, 1997, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

6. 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 state fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759, and must be received no later than 5:00 p.m. November 3, 1997. The State Fund maintains a list of interested persons which must include the subject or subjects in which each person on the list is interested. Any interested person may be placed on the list by providing the name, address, and subject matter of which the interested person desires notice to Ms. Rita Bird, P.O. Box 4759, Helena, MT 59601, telephone (406) 444-6480.

7. The State Fund Legal Department has been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel
Rule Reviewer


Jim Brouelette
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State September 22, 1997.

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

In the matter of the	)	NOTICE OF PROPOSED
proposed adoption of new	)	ADOPTION
rule I pertaining to)	
fidelity bonds.	)	NO PUBLIC HEARING
	)	CONTEMPLATED
)	

TO: All Interested Persons.

1. On November 5, 1997, the State Auditor and Commissioner of Insurance proposes to adopt new rule I pertaining to fidelity bonds.

2. The proposed rule provides as follows:

NEW RULE I FIDELITY BOND (1) The amount of fidelity bond coverage required by 33-3-307, MCA, for officers of a domestic insurer must be calculated as follows:

(a) The sum of the calculations in (i) and (ii) equals the amount of the insurer's exposure index:

(i) 5% of the insurer's admitted assets, as reported in the insurer's most recent annual statement; plus

(ii) 10% of the insurer's gross income. Gross income equals the total of direct and assumed premiums written plus investment income collected, as reported in the insurer's most recent annual statement.

(b) The amount of the exposure index, as calculated in (1)(a), determines the acceptable range of the amount of the required fidelity bond, according to the following table:

<u>Exposure Index</u>		<u>Amount of Bond</u>	
\$ 1,000 -	\$ 25,000	\$ 15,000 -	\$ 25,000
25,000 -	125,000	25,000 -	50,000
125,000 -	250,000	50,000 -	75,000
250,000 -	500,000	75,000 -	100,000
500,000 -	750,000	100,000 -	125,000
750,000 -	1,000,000	125,000 -	150,000
1,000,000 -	1,375,000	150,000 -	175,000
1,375,000 -	1,750,000	175,000 -	200,000
1,750,000 -	2,125,000	200,000 -	225,000
2,125,000 -	2,500,000	225,000 -	250,000
2,500,000 -	3,325,000	250,000 -	300,000
3,325,000 -	4,175,000	300,000 -	350,000
4,175,000 -	5,000,000	350,000 -	400,000
5,000,000 -	6,075,000	400,000 -	450,000
6,075,000 -	7,150,000	450,000 -	500,000
7,150,000 -	9,275,000	500,000 -	600,000

9,275,000 -	11,425,000	600,000 -	700,000
11,425,000 -	15,000,000	700,000 -	800,000
15,000,000 -	20,000,000	800,000 -	900,000
20,000,000 -	25,000,000	900,000 -	1,000,000
25,000,000 -	50,000,000	1,000,000 -	1,250,000
50,000,000 -	87,500,000	1,250,000 -	1,500,000
87,500,000 -	125,000,000	1,500,000 -	1,750,000
125,000,000 -	187,500,000	1,750,000 -	2,000,000
187,500,000 -	250,000,000	2,000,000 -	2,250,000
250,000,000 -	333,325,000	2,250,000 -	2,500,000
333,325,000 -	500,000,000	2,500,000 -	3,000,000
500,000,000 -	750,000,000	3,000,000 -	3,500,000
750,000,000 -	1,000,000,000	3,500,000 -	4,000,000
1,000,000,000 -	1,250,000,000	4,000,000 -	4,500,000
1,250,000,000 -	1,500,000,000	4,500,000 -	5,000,000

AUTH: 33-3-307, MCA
IMP: 33-3-307, MCA

3. This rule is necessary because 33-3-307, MCA, requires the insurance commissioner to set by rule the amount of fidelity bonds for officers of domestic insurers. The amount of the bond must accurately reflect the insurer's financial condition, including amount of assets and size of investment income, in order to provide adequate protection to the insurer.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Jim Borchardt, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009, to be received no later than November 3, 1997.


5. If a person who is directly affected by the proposed adoption wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to Jim Borchardt, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009. The request for hearing must be received no later than November 3, 1997.


6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative code 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 one person based

on nine domestic mutual or stock insurers directly affected by this rule.

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

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: 
Rusty Harper
Executive Assistant

By: 
Gary L. Spaeth for
Russell B. Hill, Rules Reviewer

Certified to the Secretary of State on September 22,
1997.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption	)	THE PROPOSED AMENDMENT,
of rules pertaining to the	)	REPEAL AND ADOPTION OF RULES
practice of cosmetology,	)	PERTAINING TO THE PRACTICE OF
electrology, manicuring and	)	COSMETOLOGY, ELECTROLOGY,
esthetics	)	MANICURING AND ESTHETICS

TO: All Interested Persons:

1. On October 27, 1997, at 1:00 p.m., a public hearing will be held in the Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to the practice of cosmetology, electrology, manicuring and esthetics.

2. The proposed amendment of ARM 8.14.401, 8.14.402, 8.14.601, 8.14.602, 8.14.603, 8.14.605, 8.14.606, 8.14.607, 8.14.608, 8.14.611, 8.14.801, 8.14.802, 8.14.803, 8.14.804, 8.14.805, 8.14.807, 8.14.813, 8.14.814, 8.14.815, 8.14.816, 8.14.819, 8.14.820, 8.14.1204 and 8.14.1215 will read as follows: (new matter underlined, deleted matter interlined)

"8.14.401 GENERAL REQUIREMENTS (1) All persons engaged in the practice or teaching of cosmetology, manicuring, electrology and esthetics must display their ~~cosmetology~~ license in a conspicuous place at their work station for members of the public to view. Booth rental licenses must be displayed in a conspicuous place for members of the public to view, at the licensee's work station. The address on the personal license may be covered.

(2) will remain the same.

~~(3) Any person doing manicuring must have a cosmetology license or manicurist license."~~

Auth: Sec. 37-31-203, 37-32-201, MCA; IMP, Sec. 37-31-101, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-311, 37-31-331, 37-32-201, 37-32-306, MCA

REASON: The amendment is necessary to add estheticians as a licensed profession mandated by the 1997 Legislature under House Bill 259. Moreover, the amendment deletes language which unnecessarily repeats statutory language.

"8.14.402 DISCIPLINARY ACTION UNPROFESSIONAL CONDUCT For purposes of implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as follows:

~~(1) The license of a cosmetologist, manicurist, electrologist, salon, booth, or school, licensed under the board's jurisdiction, may be denied or disciplined for any of the following:~~

~~(a) (1) failure of the licensee to comply with any statute or rule under the board of cosmetology's~~
~~cosmetologist's jurisdiction;~~

~~(b) (2) fraud or deception in attempting to procure a license under the board of cosmetology's~~
~~cosmetologist's jurisdiction;~~

~~(c) failure of a licensee to comply with safety standards of a branch of any state, local, or federal governmental agency, including, but not limited to, those standards specifically applicable to construction and maintenance of commercial structures, and standards applicable to sanitary conditions in commercial structures;~~

~~(d) conviction of a crime involving violence against a person, theft, deception, or violation of drug laws;~~

~~(e) through (h) will remain the same, but will be renumbered (3) through (6).~~

~~(2) The board of cosmetologists will take appropriate action against a licensee for any of the acts or failure to act, listed in subsection (1) above, based upon the seriousness of the infraction. Disciplinary action may entail any of the following:~~

~~(a) revocation of a license;~~

~~(b) suspension of the right to practice for a period not to exceed 1 year;~~

~~(c) probation on a license; or~~

~~(d) formal, reportable public reprimand or censure of a licensee.~~

~~(3) Upon disciplinary action against a licensee under any of the categories herein, the privilege of holding a license under any of the other categories herein shall be identically restricted.~~

(7) impersonating any licensee or representing oneself as a licensee for which one has no current license;

(8) filing a complaint with, or providing information to, the board which the licensee knows, or ought to know, is false or misleading (does not apply to any filing of complaint or providing information to the board when done in good faith);

(9) violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 31, MCA, or rule promulgated thereunder, or any order of the board;

(10) being convicted of a misdemeanor or any felony involving the use, consumption or self-administration of any dangerous drug, controlled substances or alcoholic beverage or any combination of such substances;

(11) using any dangerous drug or controlled substance illegally while providing professional services;

(12) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence or malpractice;

(13) maintaining an unsanitary or unsafe salon, booth or school or practicing under unsanitary or unsafe conditions;

(14) performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure;

(15) failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensees or students practicing under the licensee's supervision or control, according to generally-accepted standards of practice;

(16) removing a student from theory class to perform cosmetology, manicuring or esthetics work on the public; and

(17) allowing a patron to be released from the chair, after being served by a student, without inspection and approval by a licensed instructor."

Auth: Sec. 37-1-136, 37-1-137, MCA; IMP, Sec. 37-1-136, 37-1-137, MCA

REASON: The board, through the course of numerous disciplinary proceedings, became aware of many types of conduct which the board considers unprofessional. The language of the rule incorporates various types of conduct which were not explicitly set forth in the unprofessional conduct statute or adequately addressed in the board's rules.

"8.14.601 APPLICATION FOR SCHOOL LICENSE (1) A personal survey board-prescribed application form will be mailed to the applicant requesting detailed information as to the applicant's education and training, previous experience in conducting a school or former teaching employment, and the ability to conduct a school upon request.

(2) At the entrance of each school, a large legible sign with the words "School of Cosmetology" or "School of Manicuring" shall be displayed. Each classroom shall have similar signs with the words "Student Work Only" posted.

(3) The application shall include:

(a) the names and address of the proposed owners, address of the proposed location of school and name of proposed school;

(b) a detailed floor plan showing compliance with sanitary requirements;

(c) a list of equipment, which shall include, at a minimum, the equipment listed at ARM 8.14.602;

(d) names, addresses and license numbers of the proposed instructors;

(e) necessary fees for license;

(f) a bond in the amount of \$5,000 covering the school. This bond shall provide for a refund of all prepaid tuition in the case that the school goes out of business or otherwise ceases to operate.

(2) The applicant shall designate the type of school and which courses shall be offered according to the following options:

(a) school of cosmetology consisting of a:

(i) cosmetology course;

(ii) manicuring course; and/or

(iii) esthetics course;

(b) school of manicuring; or

(c) school of esthetics.

(3) The school shall present a bond in the amount of \$5,000. The bond shall provide a refund of all prepaid tuition to enrolled students in the event the school ceases to operate or otherwise is unable to complete the course of instruction. A cosmetology school offering courses in manicuring and/or esthetics shall be required to post one bond."

Auth: Sec. 37-1-134, 37-31-203, 37-31-204, MCA; IMP, Sec. 37-31-203, 37-31-204, MCA

REASON: The rule amendment is designed to better coincide with the bond requirements of the National Accrediting Commission of Cosmetology Arts and Sciences. The rule had required a separate bond for each school, whether cosmetology or manicuring and, under the terms of the NACCAS structure, required each school to be housed in a separate facility. The rule as amended protects pre-paid tuition while allowing the schools to comply with the NACCAS structure.

8.14.602. INSPECTION - SCHOOL LAYOUT (1) Proposed schools shall be inspected by a designated inspector before opening being issued a license.

(2) (a) ~~Cosmetology schools shall have floor space of at least 1,500 square feet for the first 25 students and 60 square feet for each additional student, which may include locker room and office space. Schools shall be inspected at least once a year for compliance with the statutes and rules enforced by the board. The inspection shall be conducted during the school's business hours as stated on the school application. In the board's discretion, the board administrator or board members may accompany inspectors on a school inspection.~~

(b) (3) ~~Manicuring schools shall have floor space of at least 450 square feet for the first 10 students and 45 square feet for each additional student, which may include locker room and office space of a sufficient amount to ensure a work area free of obstruction. For purposes of this rule, the minimum area for various types of students is as follows:~~

(a) a circle around the cosmetology student's chair encompassing an area of 17 1/2 square feet measured either by:

(i) a radius originating at the chair's pivot point and extending out for two feet, four and one-half inches; or

(ii) a rectangle having its center at the chair's pivot point and having dimensions of three and one-half feet wide and five feet long with the width being measured parallel to the student's work station;

(b) a rectangle centered around the manicure student's table having dimensions of two and one-half feet wide and five and one-quarter feet long with width measured parallel to the chairs;

(c) An area encompassed by a rectangle centered around the esthetic student's facial bed or chair having dimensions of

four and one-half feet wide and five and one-half feet long with width measured parallel to the foot or head of the chair or bed.

~~(3)~~ (4) A separate classroom must be provided, and The room must have sufficient be equipped with charts, blackboards, chairs and writing surfaces sufficient for the school's instruction needs. The school shall maintain a reference library which may be located in the classroom, containing up-to-date books on theory, medical dictionary, current beauty, manicure or esthetics magazines, as well as and a copy of the cosmetology laws and rules. This The classroom may be used as a recitation, demonstration, or study room and reference library.

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

~~(5) The floor plan of the school shall indicate the number of students the school plans to enroll. The equipment listed in subsections (a) through (p) below shall be required for a school with 1 to 15 students, unless otherwise specified below. For 16 to 30 students, the amount of equipment required below shall be doubled. For 31 to 45 students, the amount of equipment required below shall be tripled, and so on:~~

~~(a) 2 shampoo bowls;~~

~~(b) 2 stationary hair dryers;~~

~~(c) 1 manicure table;~~

~~(d) 4 wet sterilizers consisting of 1 covered cleanser and 1 covered disinfectant. Non covered cleansers and disinfectants may be used, provided that the cleansing and disinfecting solution is changed after each use;~~

~~(e) 4 dry cabinets for sterile instruments;~~

~~(f) 1 facial chair;~~

~~(g) 200 assorted size permanent rods;~~

~~(h) 1 mannequin per student;~~

~~(i) 1 covered soiled linen container;~~

~~(j) 2 covered garbage containers;~~

~~(k) 1 shampoo dispenser per shampoo bowl;~~

~~(l) 1 locker for each student;~~

~~(m) at least 10 hairbrushes, combs, capes, shears, razors, textbooks and manicuring kits.~~

(6) A practice workroom for manicuring students must be provided for each group of 7 students. The equipment listed in subsections (a) and (b) below shall be required for a school with 1 to 7 students. For 8 to 14 students, the amount of equipment required below shall be doubled. For 15 to 21 students, the amount of equipment required below shall be tripled, and so on:

~~(a) 1 cabinet for clean linens;~~

~~(b) 1 covered container for soiled linens;~~

~~(c) the following equipment must be provided for each manicuring student:~~

~~(i) 1 manicuring nipper;~~

~~(ii) 1 nail file;~~

~~(iii) 1 cuticle pusher;~~

~~(iv) 10 emery boards;~~

~~(v) 1 orangewood stick;~~

~~(vi) 1 manicuring sterilizer;~~
~~(vii) 1 manicure table;~~
~~(viii) 1 container for accessories;~~
~~(ix) 1 tray for manicuring supplies per student;~~
~~(x) 1 locker for each student;~~
~~(xi) 1 covered waste container for each station;~~
~~(xii) sufficient equipment, supplies, manicure textbooks~~
~~and manicuring kits for each student.~~

(6) The following equipment must be provided by a licensed school providing a cosmetology course of instruction:
(a) one hydraulic chair and work station with mirror; and
(b) the following equipment must be provided for schools enrolling one to 15 students. The equipment shall be doubled for 16 to 30 students and tripled for 31 to 45 students:

(i) two shampoo bowls; and
(ii) two stationary hair dryers;
(c) four manicure tables;
(d) four wet sterilizers consisting of one covered cleanser and one covered disinfectant. Non-covered cleansers and disinfectants may be used, provided that the cleansing and disinfecting solution is changed after each use;

(e) one closed cabinet for clean linens;
(f) one facial chair;
(g) one covered soiled linen container;
(h) two covered garbage containers (for each course offered);

(i) one locker for each student;
(j) one lab jacket for each student; and
(k) one cosmetology kit for each student consisting of the following:

(i) cosmetology textbook;
(ii) cosmetology workbook;
(iii) roller rack and rollers;
(iv) single and double prong clips;
(v) blow dryer;
(vi) marcel curling iron;
(vii) one dozen brushes;
(viii) one dozen wave combs;
(vix) one dozen tail combs;
(x) two capes;
(xi) water bottle;
(xii) shears;
(xiii) razor;
(xiv) cuticle pusher;
(xv) cuticle nipper;
(xvi) orange wood stick;
(xvii) tweezer;
(xviii) file or emery boards;
(xix) manicure bowl and brush;
(xx) acrylic nail brush;
(xxi) tint bottle;
(xxii) color bowl and brush;
(xxiii) duck bills;
(xxiv) mannequin and holder;

- (xxv) rubber gloves;
- (xxvi) color drape;
- (xxvii) 30 dozen permanent rods of assorted sizes.
- (7) Cosmetology schools offering a separate manicure course, or manicure schools, must provide the following equipment:
 - (a) one locker for each student;
 - (b) one manicure table with chairs for each student on the floor;
 - (c) one closed cabinet for clean linens;
 - (d) one covered container for soiled linens; and
 - (e) two covered waste containers.
- (8) In addition to the equipment specified in (6) above, each manicuring student shall receive a kit consisting of the following equipment:
 - (a) manicuring textbook;
 - (b) manicuring workbook;
 - (c) lab jacket;
 - (d) lap cover;
 - (e) rubber gloves;
 - (f) cuticle pusher;
 - (g) emery boards;
 - (h) manicure brush;
 - (i) manicure bowl;
 - (j) acrylic nail brush;
 - (k) toe nail and nail clippers;
 - (l) acrylic nail clippers;
 - (m) toe separators;
 - (n) orange wood stick;
 - (o) cuticle nipper;
 - (p) pumish stone/pedi-paddle;
 - (q) one two-ounce dispenser bottle and one four-ounce dispenser bottle;
 - (r) sterilizer;
 - (s) dappen dishes.
- (9) Cosmetology schools offering an esthetician course, or esthetician schools, must provide the following equipment:
 - (a) one locker for each student;
 - (b) one sink;
 - (c) one facial bed or chair;
 - (d) one adjustable stool; and
 - (e) one magnifying lamp for enrollment numbers between one and five students;
 - (f) The number of sinks, beds or chairs, stools and lamps must be increased by one for each additional five students (e.g. six to ten, 11-15, etc.).
- (10) In addition to the requirements specified in (8) above, the school must also provide:
 - (a) one autoclave;
 - (b) one liquid sterilizer;
 - (c) one dry storage container or cabinet for sterilized instruments for each student;
 - (d) one covered soiled linen container;
 - (e) one covered garbage container;

(f) one basic esthetician kit for each student; and
(g) one facial unit consisting of a vaporizer, high frequency unit, massage brush, vacuum spray, galvanic unit, magnifying lamp and woods lamp.

(11) The basic esthetician kit must include the following:

(a) esthetician's textbook covering basic esthetics, health and nutrition and aromatherapy;

(b) esthetician's workbook;

(c) lab jacket;

(d) spatulas;

(e) hair cover (baggies);

(f) one client cape;

(g) rubber gloves;

(h) spray bottle;

(i) disposal facial sponges;

(j) tweezers;

(k) extractor;

(l) fan brush;

(m) cosmetic brushes;

(n) basic skin care kit;

(o) sterilizer.

~~(7)~~ (12) Separate rest rooms for male and female persons must be provided for the school and shall include hot and cold running water connected to sewer.

(13) Each school must have a mechanical ventilation system that provides the total cubic square feet of the school with at least four air exchanges per hour. The ventilation system must operate continuously during business hours of the school. Portable air purifiers are acceptable. Doors and windows are not acceptable for the ventilation requirement."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, 37-31-312, MCA

REASON: The board determined that the prior square footage requirement did not adequately protect the public as it was possible to circumvent the rule and, regardless of the square footage of the school, permit students to work so close together as to create a cluttered environment with many obstructions. The concern was that students would be so close that the students' bodies would be in contact raising the possibility of involuntary body movements while carrying sharp cosmetological instruments resulting in student and patron injuries. The amended rule creates a zone of free space around the patron which shall be free from obstruction.

The board has also become aware of schools which fail to provide students with the necessary equipment to successfully complete a cosmetological course of instruction. The amended rule requires schools to provide this equipment to students in a kit which then may be used by the student to begin practice after obtaining a license.

"8.14.603 SCHOOL OPERATING STANDARDS (1) Proposed schools of cosmetology and manicuring may not advertise in any

manner until they have received their license and registration certificate. ~~Schools shall advertise under designation of "School" only. A school may not advertise, enroll or admit students until the board has received the school's application for licensure and issued a license to the school.~~

(2) ~~Schools may not use deceptive statements or false promises to induce students to enroll. All advertising shall clearly disclose that the establishment is a school.~~

(3) ~~Students shall not be registered or admitted until such time as the school license and registration has been received by the school. Student registration must be submitted to the board office prior to the first day of instruction. The board will accept a facsimile copy of a registration provided that the original is received in the board office within five working days. A student who is not registered appropriately will receive no hours of credit from the board until such time as the student's registration is received and may begin accruing hours from the date the registration is received.~~

~~(4) Classes may start when at least 5 students have been enrolled and registered with the board.~~

~~(5) (4) Students shall be furnished with a statement showing completed contract setting forth the cost of tuition a current and complete tuition schedule, which shall include all charges, a deposit policy and a deposit refund policy. A copy of the contract shall be placed in the student's attendance record and the original provided to the student.~~

~~(6) (5) Daily attendance records shall must be submitted received to in the department board office on or before the 15th of each month. These records shall must be accurate, be made available on the request of the inspector or designee, and reflect attendance by all students.~~

~~(a) In the board's discretion, attendance records may be audited for compliance with statutes and rules. Such audit may include student and instructor interviews, records review and other information gathering processes the board deems appropriate.~~

~~(b) Student attendance policies must be applied fairly and uniformly. Clock hours must be verified by a time-keeping system sufficient to protect against tampering and capable of rounding attendance to the nearest quarter hour.~~

~~(7) (6) Records must be signed by both the student and the school owner, a qualified instructor or someone designated by the owner. The owner may designate an individual, who is not a student, to maintain attendance records and, after notifying the board in writing of the individual so appointed, authorize that individual to sign in the owner's absence.~~

~~(8) (7) There shall be a qualified licensed instructor directly supervising students on the school premises at all times. There may not be more than 25 cosmetology students to each teacher and there may not be more than 20 manieuring students to each teacher. In no event may an instructor supervise more than 20 students at any time.~~

~~(9) (8) The department shall be notified of all instructors, including substitutes, employed by the school~~

either full or part time, and The board must receive this information prior to the start of instruction and shall must be notified of any changes immediately. Instructors must possess teaching credentials and post a copy of the instructor license in a central location where it may be inspected by members of the public.

(10) (9) Written and practical and oral tests examinations must be given at intervals throughout the training to determine the progress of the student. The school must provide, at a minimum, a written progress evaluation for cosmetology students at the completion of 750 and 1500 hours of instruction. Manicure students must receive written progress evaluations at the completion of 130 and 260 hours of instruction. Esthetician students must receive written progress evaluations at the completion of 240 and 490 hours of instruction. Copies of the progress evaluations, signed by the students and the school designee, must be maintained in the student's academic record. In the board's discretion, the student's academic records may be audited for compliance with statutes and rules. Such audits may include student and instructor interviews, record reviews and other information gathering processes the board deems appropriate.

(11) (10) Each cosmetology student shall complete 300 hours of basic training, and each manicuring student shall complete 80 hours of basic training and each esthetician must complete 150 hours of basic training before they shall be allowed prior to working on members of the public.

(12) (11) Students shall not be called out of class to do cosmetology perform work on members of the public.

(13) (12) Use by students of defective equipment in which there are known operating hazards is not permitted. All equipment used within the school must be in good repair and operate properly.

(14) (13) Discipline of any student for any violation of school or board rules shall be in writing. Students must be provided with a copy of the disciplinary action file signed by both the student and the instructor. A copy of each disciplinary action file must be sent to the board office within five days of final decision. Schools shall adopt written policies and procedures describing each area of responsibility, administrative lines of authority and operating procedures for the administration of the school. The policies shall include provisions guaranteeing students are provided access to records, written consent from the student for release of records to third parties unless required by law, written requests for all information and maintenance of records for no less than five years. All school records must be protected against loss or damage.

(a) (14) The prior successful completion of a course or hours therein may NOT be "doctored" by schools. Schools shall not deduct hours earned by a student as a form of disciplinary sanction.

(15) If for any reason a student discontinues his or her enrollment, the school shall within 14 days, send notification

~~to the office of the department to that effect together with a statement of the hours completed by the student. Upon re-enrollment in any school, the school shall, within 14 days, send notification to the office of the department to that effect.~~

~~(16) Schools shall not allow any transfer student from any school to practice on the public until a verified transcript of the student's hours has been received and verified by the department as complying with the training time required under subsection (11) above.~~

~~(17) Credit for hours will be given for field trips only if students are accompanied by an instructor.~~

~~(18) Students will be given credit of hours for the time spent when modeling without compensation or giving services whereby no compensation is received at charitable institutions if such students are under supervision of a licensed instructor or manager operator."~~

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA; IME, Sec. 37-31-301, 37-31-304, 37-31-311, 37-31-312, MCA

REASON: The board, under Title 37, chapter 31, MCA, is authorized to establish rules governing the conduct of the schools, including the reporting of student hours. In the past few years, the board experienced increasing difficulty in being able to verify the enrollment of a student, the accurate reporting of the student's training hours, as well as the academic progress of the student. Accordingly, the amended rule contains many provisions designed to assist the board in accurately documenting a student's training hours and providing for the evaluation of the student's academic progress.

"8.14.605 CURRICULUM - COSMETOLOGY, / MANICURING AND ESTHETICS STUDENTS (1) The hours for training courses for cosmetologists shall be distributed as follows:

(a) Manicuring (including artificial nails, pedicures)	200 hours
(b) Shampoo (scalp treatment)	125 75 hours
(c) Permanent Chemical waving	400 350 hours
(d) Chemical relaxing	50 hours
(e) Hair styling (pin curls, finger waving, thermal curling)	275 hours
(f) Facials, cosmetic chemistry, electricity, including waxing	75 125 hours
(g) Eyes, tints, and bleaches Hair coloring and hair lightening	300 hours
(h) Hair shaping cutting	225 275 hours
Ethics, sales, personal grooming	100 hours
(i) Shop Salon management, business methods, state law, and rules, appointment book and shop etiquette professional ethics	100 200 hours
Cosmetic chemistry, electricity	50 hours
(j) Instructor's discretion	150 hours

(2) When a student has completed 2,000 hours of training, the school shall must send his or her the student's final hours

records to the department within five days. All students must have completed the specified minimum required hours and operations upon completion of the 2,000 hour course.

(a) ~~Students who have completed 2,000 hours their course of training from a school, but have not passed failed the state board examination may, upon approval of the board, remain in a school of cosmetology for further study and practice, but shall not be permitted to work on members of the public.~~

(3) The hours for training courses for manicurists shall be 350 hours and distributed as follows:

<u>Subject</u>	<u>Minimum Hours of Technical Instruction</u>	<u>Minimum Practical Operations</u>
Shop management, business methods, laws, rules and shop etiquette.	5	
Cosmetology & chemistry related to manicuring practices. (Shall include the chemical composition and purpose of nail care preparations.)	20	
Bacteriology, sanitation and sterilization, safety precautions, anatomy and physiology.	20	
Water and oil manicures, including hand and arm massage.	20	40
Complete pedicure, including foot and ankle massage.	15	5
Application of artificial nails, liquid and powder brush-ons.	15	40 Nails
Nail tips.	15	20 Nails
Nail wraps and repairs.	10	15 Nails
Additional Training (May include professional ethics, personal hygiene, good grooming, salesmanship, normal cleanup duties, required keeping of student daily records, modeling, desk and reception.) May also include not more	<u>Maximum Hours of Additional Training</u>	

than 8 hours credit for field trips. ~~Such field trips must be under the direct supervision of a licensed cosmetology instructor. Date, time and description of field trip shall be recorded on student's daily record.~~

25 hours

(4) ~~When a student has completed 350 hours of training, the school must send the student's final hour records to the department within five days.~~ All students shall have completed the specified minimum required hours and operations upon completion of the 350-hour course.

~~(5) No credit of any type shall be given for time spent in washing or scrubbing floors, walls, woodwork, rest rooms or windows.~~

~~(6) (5)~~ Any applicant who has completed 350 hours of training ~~or more~~ for a manicurist license, and transfers to a school of cosmetology, will be granted ~~125~~ 200 hours of credit towards the required 2000 hour course for a cosmetologist license.

~~(6)~~ The hours for instruction in esthetics shall be distributed as follows:

(a) sanitation and sterilization	25 hours
(b) electricity, chemistry, light therapy	175 hours
(c) massage, skin care and makeup, cosmetics	250 hours
(d) skin peels	10 hours
(e) health, nutrition, aromatherapy and anatomy	35 hours
(f) Montana laws and rules, management	65 hours
(g) waxing	50 hours
(h) instructor's discretion	40 hours.

~~(7) When a student has completed 650 hours of training, the school must send the student's final hour records to the department within five days. All students shall have completed the specified minimum required hours and operations upon completion of the 650 hour course.~~

~~(8) Any applicant who has completed 650 hours of training or more for an esthetics license, and transfers to a school of cosmetology, will be granted 125 hours of credit towards the required 2000 hour course for a cosmetologist license.~~

~~(9) Although required as a condition of enrollment, no hours shall be given for time spent in general maintenance of the school including, but not limited to, washing or scrubbing floors, walls, woodwork, rest rooms or windows. Hours may be awarded for routine, daily cleaning.~~

~~(10) Students seeking licensure in a state other than Montana which requires additional hours of training, may remain enrolled in the school and be permitted to work on members of the public.~~

(11) Under no circumstances shall credit for hours be given to students of cosmetology, manicuring or esthetics for post-secondary education."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, 37-31-312, MCA

REASON: Under the provisions of Title 37, chapter 31, MCA, the board is authorized to regulate the instruction of cosmetology students within the state and, after the enactment of Senate Bill 259, the instruction of estheticians. The amended rule incorporates the new esthetician course of study into the cosmetology course of instruction as well as establishes the course of study for those individuals who desire to specialize in esthetics.

"8.14.606 STUDENT REGISTRATION (1) Upon enrollment of a student, the school shall submit student registration papers to the office of the department within 10 days prior to beginning the course of instruction.

(2) A student disenrolling from a school must obtain a statement of good standing from the school and provide a copy of the statement to the board. Such statement shall be issued after the student has complied with all exit standards imposed by the school from which the student is disenrolling, including processing of all necessary paperwork, time sheets and payment of fees. The board shall not issue an hour verification until such time as a copy of the statement is received in the board office.

(3) Upon the disenrollment of a student, the school must submit to the board office a statement of hours received by the student. The verification must set forth the hours of training received in the individual areas of instruction for the course in which the student was enrolled as provided in ARM 8.14.605. The board will not issue a verification until the statement provided by the school is reconciled against the board's records.

(4) A registered licensed school shall must accept the verified statement of the school from which the student has withdrawn, board indicating the number of training hours the student has had in received training when the student transfers to a different registered school. This verified statement must agree with the department records.

(5) If a student transfers from one registered licensed school to another different registered licensed school, and provides a statement of good standing and hour verification statement, the prior registered school must grant full credit for all hours and any minute thereof successfully completed by the transferring student within five years of the student's matriculation date.

(6) A student enrolling in a school, transferring between schools or re-enrolling shall pay the appropriate registration fee for each enrollment.

(7) Students must comply with the rules of the school and the state board of cosmetology cosmetologists. Any infraction which would

result in a complaint of unprofessional conduct if the student were licensed must be reported to the board.

~~45) (8) Any student in any school may file a complaint with the department concerning the school in which they are enrolled, provided the information follows the board rules and is clearly and concisely given in writing and signed by the complainant. The complaint shall be filed on the department's form and bear the signature of the student.~~

(9) Recruitment of students currently enrolled in a school by a person associated with another school is unprofessional conduct subject to discipline by the board pursuant to 37-1-316, MCA."

Auth: Sec. 37-1-131, 37-31-203, 37-31-311, MCA; IMP, Sec. 37-31-304, 37-31-311, 37-31-312, 37-31-323, MCA

REASON: The board, under Title 37, chapter 31, MCA, is authorized to establish rules governing the conduct of the schools, including the reporting of student hours. In the past few years, the board experienced increasing difficulty in being able to verify the enrollment of a student, the accurate reporting of the student's training hours, as well as the academic progress of the student. Accordingly, the amended rule contains many provisions designed to assist the board in accurately documenting a student's training hours and provides for the evaluation of the student's academic progress.

"8.14.607 APPLICATIONS FOR AUTHORITY TO OFFER TEACHER-TRAINING COURSES (1) The teacher-training unit application shall include the name and address of the school of cosmetology proposing to offer teacher training programs or courses, the identity of all licensees including registration certificate numbers of the school, owners, all instructors, their names, addresses and their license numbers, a detailed floor plan of the teacher training station, and a list of school equipment, visual aids and textbooks must be completed on a form prescribed by the board and submitted with appropriate fees for approval of the teacher-training unit.

~~(2) The necessary license fees shall be paid at time of application and before an inspection is made.~~

~~(3) (2) Cadet Student teachers shall must not be registered or admitted enrolled, until the teacher-training unit has been inspected by an inspector for the board and has received notice from the department approving the licensed school as an approved teacher-training unit."~~

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, 37-31-311, MCA

"8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) Each school, approved licensed by the board to offer a teacher-training program must have at least one full-time, licensed instructor per student teacher on the premises of the school at all times that the school is open.

(2) All instructors in the approved licensed school must wear an insignia or badge indicating that they are instructors

for the teacher-training program. Cadet Student teachers must wear badges or insignia indicating that they are cadet student teachers.

(3) Cadet Student teachers must be under the direct on-site supervision of a full-time licensed instructor while practice teaching and shall not be allowed to work on members of the public during their practice teacher-training course.

(4) Schools may, with prior approval of the board, establish courses of instruction whereby enrolled cadet student teachers may earn hours and credits for subjects in the curriculum for teacher training by studying in the Montana university system, community colleges or adult education classes taught in high schools. Upon application by the student teacher enrolled in a licensed school of cosmetology, manicuring or esthetics, the board may grant credit for hours toward the teacher-training curriculum when the student teacher has completed, with not less than a "C" grade, a teacher-training course offered by an accredited post-secondary educational institution.

(5) All cadet student teachers must register with the department board prior to enrollment and identify the school in which they are enrolling within 10 days of the date of enrollment.

(6) Daily records of all subjects and classes taught and practiced by the cadet student teacher shall be kept and such records shall be signed by the cadet student teacher and the supervising instructor. These records are to be maintained by the school on the school's premises, until the applicant has become a licensed instructor and are subject to inspections by the board.

(7) Upon completion of 650 hours of teacher-training, cadet student teachers may apply for a temporary permit and may continue to function as cadet student teachers until the examination results are available from the next regularly scheduled examination for instructors."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, 37-31-311, 37-31-312, MCA

REASON: The board has amended ARM 8.14.607 and 8.14.608 to add substantial clarity to the rules as well as provide greater guidance to the student instructors regarding licensure requirements. The amendments also remove language which unnecessarily repeats statutory language.

"8.14.611 CURRICULUM - TEACHER-TRAINING UNITS

<u>SUBJECT</u>	<u>Quarter hours</u>	<u>clock hours</u>
(1) Chemistry.....	4.....	40 hours
(a) General chemistry		
(b) Nail chemistry		
(i) Solutions on nails		
(c) Hair chemistry		
(i) Solutions on hair		
(d) Skin chemistry		

(i)	<u>Solutions on skin</u>	
(e)	<u>Chemistry of cosmetics chemistry</u>	
(1 a)	<u>Solutions on hair</u>	
(1 b)	<u>Solutions on skin</u>	
(2)	Education.....10.....	100 hours
(a)	<u>Method of teaching</u>	
(b)	<u>Vocation education Counseling</u>	
(c)	Visual aids and their construction	
(d)	Job analysis	
(e)	Preparation of instructive materials	
(f)	Lesson planning	
	<u>Basic art related to cosmetology</u>	
(g)	Fundamentals of speech:	
(i)	Techniques of public speaking	
(ii)	Voice	
(iii)	Speech Organization	
(h)	General psychology:	
(i)	General principles in relation to teaching and	
	<u>counseling</u>	
(3)	Small business management.....5.....	50 hours
(a)	Public relations	
(b)	Office behavior	
(c)	<u>Enrollment forms and hours (tracking)</u>	
(d)	Ethical employee and employer relationship	
(e)	Labor relations	
(f)	Contracts	
(g)	Tax forms	
(h)	Assistant placement	
(i)	Bookkeeping	
(4)	Communicable diseases.....1.....	10
	<u>hours</u>	
(a)	<u>Skin, hair, and scalp, nails</u>	
(b)	Public health	
(5)	Theory of cosmetology.....2.....	20
	<u>manicuring or esthetics</u>	
	<u>hours</u>	
(6)	Practice teaching.....200.....	380
	<u>hours</u>	
(a)	At least 3 one hourg classes per week for basic	
	students <u>uninterrupted.</u>	
(7)	<u>All remaining time to be used upon the Instructor's</u>	
	<u>discretion of the school.</u>	50
	<u>hours</u>	
(8)	<u>When a student instructor has completed 650 hours of</u>	
	<u>teacher training, the school must send his or her final hours</u>	
	<u>record to the department within five days. All student</u>	
	<u>instructors shall have completed the specified minimum required</u>	
	<u>hours and operations upon completion of the 650 hour course.</u>	
	(7) will remain the same, but will be renumbered (9)."	
	Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-305, 37-31-	
	311, 37-31-312, MCA	

REASON: The board is amending the curriculum requirements to more closely reflect the training necessary to adequately perform as a cosmetology instructor upon graduation.

"8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE

(1) Applications to take the examination for an instructor's license must be completed and received at least 20 days prior to the examination date and will not be accepted unless accompanied with proper fees and credentials the board may require within the designated deadline date.

(2) will remain the same.

(3) Applications received after the ~~closing of the registration deadline~~ date shall be held until scheduled for the following examination.

~~(4) Applicants shall not be given the instructor examination unless they have been notified to appear for examination.~~

~~(5) Examinations for instructor licenses shall be held at least once per year.~~

~~(a) Applicants must pass the written examination before the practical examination will be administered.~~

~~(b) The practical examination will be given three times a year at times and places specified by the board to applicants who have passed the written examination.~~

~~(c) Practical examinations may be given by any system or method the board may specify.~~

~~(6) (4) Instructor licenses will not be issued except to applicants who achieve a grade of at least 85% on the written and at least 85% on the practical examination. In order to pass the examination for a cosmetology, manicuring or esthetics instructor, an applicant must obtain a scaled score of not less than 85 on the written examination and a scaled score of not less than 85 on the practical examination.~~

~~(7) Examination papers are considered as board records.~~

~~(8) (5) Applicants will be notified by mail of their grade by mail by the board office a pass or fail for each examination.~~

~~(9) (6) Applicants who have taken the examination and failed any part thereof, must notify the board office of their desire to be apply to be re-examined at least 20 days before the next examination and pay the necessary examination fee.~~

~~(10) No temporary license shall be issued to instructors."~~

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-308, MCA

REASON: The board is amending the above rule to add clarity to the rule as well as provide greater guidance to the instructor applicant regarding licensure requirements. The amendments also remove language which unnecessarily repeats statutory language.

8.14.802 LICENSE EXAMINATIONS (1) Practical The examinations for cosmetologists are national and shall consist

of ~~actual two portions. A practical demonstrations in dressing the hair and other phases of basic~~ cosmetology, ~~manicuring or esthetics on manikins and a multiple choice written examination.~~

~~(a) Practical examinations for manicurists shall consist of actual demonstrations in nail care of the hands and feet and the application and maintenance of artificial nails.~~

~~(2) Written examinations shall include a national examination covering each of the branches of cosmetology or manicuring and cosmetology law and rules.~~

~~(3) The board may, from time to time, modify the written and practical exam.~~

~~(4) (2) Applicants must appear for examination in clean professional apparel and have with them all equipment necessary for performing the practical examination and admission letter and photo ID.~~

~~(5) (3) Any applicants who have failed any part of the practical or written examination and wish to retake the examination, must notify reapply the board office of their desire to be re-examined by the examination deadline at least 20 days before the next examination and pay the required re-examination fee.~~

~~(4) Any cosmetologist applicant, failing twice to pass the examination for license to practice, must take 200 hours of additional training at a licensed school of cosmetology.~~

~~(6) (5) Any manicurist applicant, failing twice to pass the examination for a license to practice, must take complete 35 hours of additional training at a registered licensed school of manicuring approved by the board or licensed manicuring course.~~

~~(6) Any esthetics applicant, failing twice to pass the examination for a license to practice, must complete 65 hours of additional training at a licensed school of esthetics or licensed esthetics course.~~

~~(7) In order to pass the national examination given by the board to practice cosmetology, manicuring, or esthetics an applicant must obtain a grade scaled score of not less than 75% in the practical examination and a scaled score of not less than 75% on the written examination.~~

~~(a) The written examination consists of a national theory examination and an examination over Montana laws and rules relating to cosmetology.~~

~~(b) The written score is obtained by taking 60% of one national theory examination and 20% of the laws and rules examination and adding the two scores together.~~

~~(8) Applicants will be notified of their pass or fail examination results in writing only. Actual scores will not be released. Upon request, unsuccessful applicants will be advised of those practical areas in which they were found deficient. Appointment must be made with the board office to review examinations."~~

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-303, 37-31-307, 37-31-308, 37-31-321, MCA

"8.14.803 APPLICATIONS FOR EXAMINATION - TEMPORARY LICENSES PERMITS (1) With respect to cosmetology students, no application for examination will be accepted unless accompanied by the proper fees, credentials, the student's hour records showing that the 2,000 hours have been completed, a cosmetology school diploma issued, proof of applicant's high school graduation or equivalency and a photostatic copy of birth certificate or other verifiable evidence of applicant's birth date.

(2) With respect to manicuring students, no application for examination will be accepted unless accompanied by the proper fees, credentials, the student's hour records showing that 350 hours have been completed and a school diploma issued, proof of applicant's high school graduation or equivalency, and a photostatic copy of applicant's birth certificate or other verifiable evidence of birth date.

(3) All applications must be received by the department at least 20 days prior to the examination date and incomplete applications will be returned to the applicant. With respect to esthetic students, no application for examination will be accepted unless accompanied by the proper fees, credentials, the student's hour records showing that the 650 hours have been completed and a school diploma issued, proof of applicant's high school graduation or equivalency and a photostatic copy of applicant's birth certificate or other verifiable evidence of birth date.

(4) Applications received after the closing date for registration will be held until the following examination. Applicants who register for the first available Montana examination are eligible for a temporary permit.

(5) Applicants may not appear for examination unless they have been notified. Out-of-state applicants who do not qualify for a license under 37-1-304, MCA, and who have chosen to take the license examination in lieu of additional education and training, may apply for a temporary practice permit. A temporary practice permit is not available for applicants taking additional training.

(6) A graduate of a cosmetology, manicuring or esthetics school may work under a temporary practice permit pursuant to 37-1-305, MCA.

(7) Any person holding a temporary practice permit must practice under the direct, on-premises supervision of a licensee in the scope of practice for the applicant. Supervision must be evidenced by the signature of the supervising licensee on the application for the temporary practice permit.

(8) A temporary practice permit will not be issued for more than 90 days. Only one temporary permit will be issued to an individual.

(9) If the applicant does not register for the first available examination, for any reason, the temporary practice permit will be void and must be returned to the board office immediately."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-1-304, 37-1-319, 37-31-304, ~~37-31-307~~, 37-31-308, 37-31-311, MCA

REASON: The board recently contracted for administration of the national cosmetological examination. The amendments to ARM 8.14.802 and 8.14.803 are designed to incorporate the policies and procedures necessary for the successful administration of that examination as well as a student's application for a temporary permit to practice while awaiting the opportunity to sit for the examination.

"8.14.804 EXAMINATION - OUT-OF-STATE STUDENTS

(1) Student applicants from out-of-state must meet the same requirements as Montana cosmetology, ~~or~~ manicuring or esthetic students.

(2) Temporary licenses may be issued to out-of-state cosmetology, manicuring or esthetic students, pending examination."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-1-304, 37-31-303, 37-31-304, ~~37-31-307~~, 37-31-308, MCA

REASON: The proposed amendment incorporates the new profession of esthetician into the rules as mandated by the 1997 Legislature under House Bill 259.

"8.14.805 APPLICATION - OUT-OF-STATE COSMETOLOGISTS/
MANICURISTS, ESTHETICS (1) Cosmetologists- For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" for cosmetologists as 2,000 hours of formal training and successful completion of a written and practical examination by a passing score set forth by board rule. Applicants who do not possess 2,000 hours of formal training shall either take and successfully pass the written and practical examinations, or obtain additional hours as may be directed by the board to achieve the total 2,000 hours. Work experience obtained in the profession may not be considered as part of a cosmetologist applicant's qualifications.

(a) To qualify for a license licensure by examination endorsement, an out-of-state cosmetologist ~~must~~ shall submit an application ~~supplied by the department, prescribed by the board with the appropriate fees and proof of completion of 2,000 hours of training in an approved school of cosmetology, a certified true copy of applicant's birth certificate or other verifiable proof of birth date, a certified true copy proof of applicant's high school graduation or equivalency, a certified true copy of a current out-of-state license and an original board transcript from each state in which you hold a license.~~ The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.

~~(b) Cosmetologists with 2,000 hours of training are eligible for examination with the above credentials plus the required fees.~~

~~(c) Cosmetologists with 1,500 hours of training, plus the above credentials must also furnish a notarized statement from a former employer showing credit for at least 1 year experience as a cosmetologist, as approved by the board.~~

~~(d) Cosmetologists with 1,000 hours of training, plus the above credentials must furnish a notarized statement from a former employer showing credit of at least 2 years experience, as a cosmetologist, as approved by the board.~~

~~(e) A temporary license may be issued to out of state cosmetologists pending the next scheduled examination.~~

(2) Manicurists: For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" for manicurists as 350 hours of formal training and successful completion of a written and practical examination by a passing score set forth by board rule. Applicants who do not possess 350 hours of formal training shall either take and successfully pass the written and practical examinations, or obtain additional hours as may be directed by the board to achieve the total 350 hours. Work experience obtained in the profession may not be considered as part of a manicurist applicant's qualifications.

(a) To qualify for a license licensure by examination endorsement, an out-of-state manicurist must shall submit an application supplied by the department, prescribed by the board with the appropriate fees and proof of completion of 350 hours of training in an approved school of manicuring or manicuring course, a certified true copy of applicant's birth certificate or other verifiable proof of birth date, a certified true copy proof of applicant's high school graduation or equivalency, a certified true copy of a current out-of-state license and an original board transcript from each state in which you hold a license. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.

~~(b) Manicurists with 350 hours of training or more, are eligible for examination with the above credentials plus the required fees.~~

~~(c) Manicurists with less than 350 hours of training shall furnish a notarized statement from a former employer showing proof of 6 months of continuous experience as a manicurist. The board has the right to give final approval to such experience.~~

(3) For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" for estheticians as 650 hours of formal training and successful completion of a written and practical examination by a passing score set forth by board rule. Applicants who do not possess 650 hours of formal training shall either take and successfully pass the written and practical examinations, or obtain additional hours as may be directed by the board to achieve the total 650 hours. Work experience obtained in the profession may not be considered as part of an esthetician applicant's qualifications.

(a) To qualify for licensure by endorsement, an out-of-state esthetician must submit an application prescribed by the board with the appropriate fees and proof of completion of 650

hours of training in an approved school of esthetics or esthetics course, a certified true copy of applicant's birth certificate or other verifiable proof of birth date, a certified true copy of applicant's high school graduation or equivalency, a certified true copy of a current out-of-state license and an original board transcript from each state in which applicant holds a license. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.

(3) (4) Out-of-state cosmetology Applicants shall with less than the 2,000 hours of training must take the national practical and written examinations for cosmetology, and/or manicuring and also the law and rules examination, administered by the department or obtain additional hours as may be directed by the board to achieve the total of 2,000 hours.

(5) Out-of-state manicuring applicants with less than the 350 hours of training must take the national practical and written examinations for cosmetology or obtain additional hours as may be directed by the board to achieve the total of 350 hours.

(6) Out-of-state esthetic applicants with less than the 650 hours of training must take the national practical and written examinations for cosmetology or obtain additional hours as may be directed by the board to achieve the total of 650 hours.

(4) (7) Applicants tested and licensed in a state which administers the practical and written examination provided by the national-interstate council of state boards of cosmetology, inc., and the applicant received a scaled score which was in excess of the minimum score required for licensure in Montana, the applicant need not take the written examination but shall take the cosmetology law and rules portion of the written examination and the practical examination may qualify for licensure by endorsement.

(5) (8) Any out-of-state applicant from out of state whose license has lapsed, and is not currently licensed in another state, must meet the requirements of the state of Montana and satisfy the rules of the board. They must apply and take pass the written and practical examinations.

(6) will remain the same, but will be renumbered (9)."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-1-304, 37-31-303, 37-31-304, 37-31-306, 37-31-307, 37-31-308, MCA

"8.14.807 TRANSFER STUDENTS - OUT-OF-STATE - COSMETOLOGY, MANICURING, ESTHETICS (1) Students from out-of-state must furnish the school board with an original transcript of hours at the time of enrolling in the school.

(2) Out-of-state students will be considered as being on probationary training entry level students needing theory instruction until the department board office has received and reviewed their transcript of hours, registration card enrollment form, and/or any other papers or documents which the board may deem necessary.

~~(3) Only those applicants that have applied to take the Montana state boards are eligible for a temporary permit."~~

Auth: Sec. 37-31-203, MCA; ~~IMP, Sec. 37-31-307, 37-31-311, MCA~~

REASON: The board is amending ARM 8.14.805 and 8.14.807 to add clarity to the rules as well as provide greater guidance to the out-of-state applicant regarding licensure requirements. The amendments also remove language which unnecessarily repeats statutory language.

"8.14.813 LAPSED LICENSE (1) Pursuant to 37-1-141, MCA, if a license has lapsed for a period of up to 3 ~~three~~ years, but no longer than 3 ~~three~~ years, the license may be renewed upon payment of license fees plus penalty fees for ~~each~~ years due.

~~(a) In the event that a manicurist license has lapsed for over 3 years, for any reason, the licensee must take a course of 60 hours of training in a properly licensed school of his or her profession, provide certification thereof, make application, pay proper fees and take and pass the written and practical licensing examination.~~

~~(2) If a license has lapsed for a period of up to 4 years, but no longer than 4 years, the license may be renewed upon payment of the reinstatement fee.~~

~~(3) If a license has lapsed for a period of 4 years to 6 years, but no longer than 6 years, it is required that in addition to payment of reinstatement fee an applicant must take a course of 80 hours of training in a properly licensed school of cosmetology, providing certification thereof.~~

~~(4) If a license has lapsed for a period of 6 to 8 years, but no longer than 8 years, it is required that in addition to payment of the reinstatement fee an applicant must take a course of 160 hours of training in a properly licensed school of cosmetology, providing certification thereof.~~

~~(5) If a license has lapsed for a period of 8 to 10 years, but no longer than 10 years, it is required that in addition to payment of the reinstatement fee an applicant must take a course of 300 hours training in a properly licensed school of cosmetology, providing certification thereof.~~

~~(6) Individuals obtaining training under subsections (3) through (5) of this rule shall be registered as students in a licensed school of cosmetology and with the board office, and shall be permitted to practice on the public during such training."~~

Auth: Sec. 37-1-131, 37-31-203, ~~37-31-322, MCA; IMP, Sec. 37-31-322, 37-1-141, MCA~~

REASON: The board has chosen to adopt the simple reinstatement and termination structure provided in the statute and, therefore, has amended the rule to reflect the three-year period and set forth the requirements for reinstatement of a license during the three-year term.

"8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND

~~FEES (1) Student registration fees shall be \$10 for initial enrollment plus \$10 for each re-enrollment following each withdrawal.~~

~~(a) Applications are not considered complete until all information, including fees, has been received by the department.~~

~~(b) Applications not completed within 90 days will be considered withdrawn and a new application and fee will be required.~~

~~(2) Temporary license fee for cosmetologists shall be \$10.~~

~~(3) The cosmetology examination fee shall be \$50, plus \$15 manager/operator license fee.~~

~~(4) Examination to teach shall be \$100, plus \$20 instructor license fee.~~

~~(5) Reciprocal license shall be \$75, plus \$15 manager operator or manicurist license fee.~~

~~(6) Duplicate license fee shall be \$10.~~

~~(7) Initial inspection fee for all salons shall be \$60.~~

~~(8) Transcripts certification of training and licensing shall be \$20.~~

~~(9) Manager operator and manicurist license fee shall be \$15.~~

~~(10) All salon license fees shall be \$20.~~

~~(a) All booth rental license fees shall be \$20.~~

~~(11) Basic school license fee shall be \$65.~~

~~(a) Manicuring school license fee shall be \$65.~~

~~(12) Teacher training unit school license fee shall be \$25, plus basic school license fee.~~

~~(13) All manager/operator and school licenses will expire on December 31 of each year. All salon and booth rental licenses will expire on July 1 of each year.~~

~~(14) All licenses will be renewed for one year.~~

~~(15) Renewal fees shall be the same as initial license fees.~~

~~(16) A penalty fee for late renewal shall be \$50 for each year a license has lapsed in addition to the regular annual license fee. Any portion of a year is considered to be a full year.~~

~~(17) When a license, examination, or inspection application, registration or renewal has been withdrawn or denied, the department shall retain the fees.~~

~~(18) Refunds for errors in payment of fees will be made only if in excess of \$5.~~

~~(19) Manicurists examination fee shall be \$50, plus \$15 license fee.~~

~~(20) Electrology examination fee shall be \$100, plus \$15 license fee.~~

~~(21) The reinstatement fee shall be the total of the license fees and the penalty fees for each year that the license has lapsed.~~

(1) Original license application fees

(a) Cosmetologist license

\$45

<u>(b) Manicurist license</u>	<u>\$45</u>
<u>(c) Esthetician license</u>	<u>45</u>
<u>(d) Electrologist license</u>	<u>45</u>
<u>(e) Active instructor license</u>	<u>60</u>
<u>(f) Inactive instructor license</u>	<u>50</u>
<u>(2) Original school license fees</u>	
<u>(a) Cosmetology school license</u>	<u>150</u>
<u>(b) Manicure school license</u>	<u>150</u>
<u>(c) Esthetics school license</u>	<u>150</u>
<u>(d) Electrology school license</u>	<u>150</u>
<u>(e) Manicure course within a school</u>	<u>50</u>
<u>(f) Esthetic course within a school</u>	<u>50</u>
<u>(g) Teacher training unit within a school</u>	<u>50</u>
<u>(h) School inspection fee</u>	<u>150</u>
<u>(3) Salon license fees</u>	
<u>(a) Cosmetology salon license</u>	<u>50</u>
<u>(b) Manicure salon license</u>	<u>50</u>
<u>(c) Esthetic salon license</u>	<u>50</u>
<u>(d) Electrology salon license</u>	<u>50</u>
<u>(4) Salon inspection fee</u>	<u>100</u>
<u>(5) Booth rental license</u>	<u>40</u>
<u>(6) Late renewal fee</u>	<u>75</u>
<u>(7) 90-day temporary practice permit fee</u>	<u>20</u>
<u>(8) Out-of-state license by endorsement fee</u>	<u>125</u>
<u>(9) Duplicate license fee</u>	<u>30</u>
<u>(10) Student enrollment/re-enrollment fee</u>	<u>25</u>
<u>(11) Document fee</u>	<u>20</u>
<u>(12) Transcript/certification fee</u>	<u>20</u>
<u>(13) Renewal license fees</u>	
<u>(a) Cosmetologist license</u>	<u>45</u>
<u>(b) Manicurist license</u>	<u>45</u>
<u>(c) Esthetician license</u>	<u>45</u>
<u>(d) Electrologist license</u>	<u>45</u>
<u>(e) Salon license</u>	<u>50</u>
<u>(f) Booth rental license</u>	<u>40</u>
<u>(g) Cosmetology school license</u>	<u>150</u>
<u>(h) Manicure school license</u>	<u>150</u>
<u>(i) Esthetics school license</u>	<u>150</u>
<u>(j) Electrology school license</u>	<u>150</u>
<u>(k) Manicure course within a school</u>	<u>50</u>
<u>(l) Esthetic course within a school</u>	<u>50</u>
<u>(m) Teacher training unit within a school</u>	<u>50</u>
<u>(14) Examination fees will be paid to the examination service contracted by the board.</u>	
<u>(15) All cosmetologist, manicurist, esthetician and electrologist licenses will be renewed on a bi-annual basis and will expire on December 31 of that year.</u>	
<u>(16) All school licenses will be renewed on an annual basis and will expire on December 31 of each year.</u>	
<u>(17) All salon and booth rental licenses will be renewed on an annual basis and will expire on July 1 of each year.</u>	
<u>(18) Any portion of the year is to be considered a full year. Fees will not be prorated.</u>	
<u>(19) All fees are non-refundable."</u>	

Auth: Sec. 37-1-134, 37-31-203, 37-31-323, 37-32-201, MCA; IME, Sec. 37-31-302, 37-31-303, 37-31-304, 37-31-305, ~~37-31-306, 37-31-307~~, 37-31-309, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, MCA

REASON: The Board is amending the fee schedule for clarity purposes, to make the rule consistent with other Department fee schedules and to make the fees commensurate with program area costs. The revenue collected during the past biennium was not sufficient to cover the expenditures for the Board's operations.

"8.14.815 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) In order to obtain continuing education credits, the continuing education course instructors must obtain be approval approved from by the board before continuing education credit will be granted to the licensee.

(2) The request for approval of continuing education must contain the following information:

(a) course dates;

(b) course location;

(c) course instructor and credentials of the instructor;

(d) a detailed course syllabus/outline;

(e) number of credits requested; and

(f) board request form.

~~(2)~~ (3) No more than 5 five hours credits out of the 15 ~~hours credits~~ per year required for continuing education may be obtained at trade shows or courses in which a particular product is being promoted. Credit will be allowed for education at trade shows or courses in which a particular product is being promoted only if the course has been approved by the board as a school of continuing education. Such approval shall require a method of verifying attendance, submitted by the individuals putting on the show.

~~(3)~~ (4) On a form provided by the board, ~~certified~~ statements, certificates, or affidavits showing dates and hours must be submitted to the board office as proof of attendance prior to or upon license renewal.

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

(6) An inactive instructor licensee desiring to activate a license must submit evidence of completion of 15 credits of approved continuing education obtained within the twelve month period prior to activating the license. The licensee must then complete an additional 15 credits of continuing education before the December 31 renewal date."

Auth: Sec. 37-1-131, 37-1-306, 37-1-319, 37-31-203, MCA; IME, Sec. 37-1-306, 37-31-322, MCA

REASON: The proposed amendments are necessary to provide clarification to the licensees regarding continuing education course requirements and the amount of continuing education credits necessary for an inactive status licensee to become active.

"8.14.816 SALONS - COSMETOLOGICAL, ~~MANICURING OR ESTHETICS~~ (1) A licensed manicurist or esthetician may work in a cosmetological establishment without a manicure or esthetics salon license, if such service by the licensee is limited to manicuring or esthetics only.

(2) Salons and booths shall be subject to inspection and acceptance by the ~~state~~ board.

(3) In order to guarantee adequate service to members of the public, space in a salon shall be allocated in the following manner:

(a) there shall be in every cosmetology salon a minimum of 120 square feet per operator or booth renter and there shall be in every manicuring salon a minimum of 30 square feet per manicurist or booth renter a zone of free space encompassed by a circle having a radius of three feet originating at the pivot point of the cosmetologist's chair.

(b) Each manicurist shall have a zone of free space encompassed by a rectangle measuring three feet wide and five feet long with the measurement of width being made parallel to the back of the manicurist's chair or stool.

(c) Estheticians shall have a free zone of space encompassed by a rectangle measuring six feet in width and nine feet in length with the measurement of width being made parallel to the foot or head of the esthetician's bed. The esthetician's area must also be equipped with a privacy screen or "draw drapes" which are no less than five and one-half feet in height and no more than two feet above the floor.

(d) The applicant must furnish the board with a blueprint or scale drawing of the floor plan, when filing a salon or booth rental application.

(4) Minimum requirements for a licensed cosmetology, ~~salon or a licensed manicuring or esthetic~~ salon are as follows:

(a) through (d) will remain the same.

(e) ± one enclosed dust free cabinet for the storage of clean towels. Towels to be used in the course of the day may be removed from the cabinet at the beginning of the business day and stored on a shelf no less than three feet above the floor. Any towels not used during the course of the business day must be removed, laundered and placed in the dust free cabinet;

(f) will remain the same.

(g) Each salon must have a mechanical ventilation to include a general, fresh air exhaust system that provides the total cubic square feet of the salon with ~~for~~ at least 4 four air changes per hour. The ventilation system must operate continuously during business hours of the salon. Portable air purifiers are acceptable. Doors and windows are not acceptable for the ventilation requirement.

(5) All residential cosmetology, ~~or manicuring or esthetic~~ salons shall have outside entrances. Any entrances into the residence shall have a self-closing door. This door must be latched during business hours. Residential salons

shall have their own separate rest rooms that are not available for the personal use of the residence.

(6) A salon or booth rental license permits the operation of a cosmetological, ~~or manicurist or esthetic~~ salon or booth rental only in the premises or location which has been described on the salon or booth rental application required by the department.

(7) and (8) will remain the same.

~~(9) Every cosmetology salon must have at least 1 licensed cosmetologist in attendance at all times that it is open for the business of cosmetology.~~

~~(10) Every manicuring salon must have at least 1 licensed manicurist in attendance at all times that it is open for the business of manicuring.~~

~~(11) (9)~~ It is the responsibility of the cosmetologist, ~~or manicurist or esthetician in charge~~ to see that all rules are complied with by all personnel.

(12) will remain the same, but will be renumbered (10)."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-301, 37-31-302, 37-31-312, MCA

REASON: The board determined that the prior salon square footage requirement did not adequately protect the public as it was possible to circumvent the rule and, regardless of the square footage of the salon, permit licensees to work so close together as to create an cluttered environment with many obstructions. The concern was that licensees would be so close that the students' bodies would be in contact raising the possibility of involuntary body movements while carrying sharp instruments resulting in licensee and patron injuries. The amended rule creates a zone of free space around the patron which shall be free from obstruction.

The rule further provides guidance on a subject which has been of some concern to licensees with respect to towel storage. The amendment still requires towel to be stored in a dust free cabinet but allows salons to remove the towels for display provided the towels so removed are laundered at the end of the business day in which the towels were originally removed.

Additionally, the rule has been amended to permit the use of portable air purifiers.

"8.14.819 RESTRICTIONS OF TEMPORARY LICENSES PERMITS

(1) Holders of temporary ~~manager/operator license permits~~ cannot have secondary booth rental licenses."

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-1-306, 37-1-319, 37-31-203, 37-31-302, MCA

"8.14.820 RESPONSIBILITY OF SALON OWNER (1) will remain the same.

~~(2) Toward this purpose, the salon owner must post in a conspicuous place in the salon a diagram or floor plan of his/her entire salon premises showing all booth rental areas therein shaded in and numbered."~~

Auth: Sec. 37-1-131, 37-31-203, MCA; IMP, Sec. 37-31-203, 37-31-302, MCA

"8.14.1204 LIGHTING (1) will remain the same.

(2) All toilet rooms shall be adequately lighted ~~with at least 10 foot candles or artificial light 30 inches from the floor."~~

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-204, 37-31-331, MCA

"8.14.1215 PERSONAL HYGIENE OF PERSONNEL (1) All persons working in schools, salons and booths shall keep their hands and fingernails clean, and wear clean, professional attire. Shoes ~~and socks/nylons~~ shall be worn at all times.

(2) will remain the same."

Auth: Sec. 37-1-131, 37-31-203, 37-31-204, MCA; IMP, Sec. 37-31-204, 37-31-311, MCA

REASON: The amendments to ARM 8.14.819 through 8.14.1215 are designed to reflect current practice.

3. The Board is proposing to repeal ARM 8.14.806 (authority section 37-1-131, 37-31-203, MCA; implementing section 37-31-304, 37-31-306, MCA) located at pages 8-431 and 8-432, Administrative Rules of Montana and is proposing to repeal ARM 8.14.1010 (authority section 37-1-134, 37-32-201, MCA; implementing section 37-1-134, 37-32-304, 37-32-305, MCA) located at page 8-461, Administrative Rules of Montana. These rules are being repealed to implement changes made during the 1995 Legislature mandated by House Bill 518.

4. The proposed new rules will read as follows:

"I TRANSFER POLICIES - RECRUITMENT - FIELD TRIPS (1) If for any reason a student disenrolls, the school shall notify the board office within three days and provide a current statement of the student's hour records.

(2) A student wishing to re-enroll may not do so until the school receives a verified statement of the student's hours from the board office.

(3) Schools shall not allow a student who re-enrolls to practice on members of the public until the school receives a verified transcript of the student's hours demonstrating compliance within the training time set forth in ARM 8.14.603 above.

(4) The school shall establish policies regulating a temporary leave of absence. Such policy may not allow a leave of absence to extend beyond a 60-day period and must include board notification within three days.

(5) A school may not recruit students already enrolled in another school offering a similar program of study. Violation of this subsection is unprofessional conduct subject to disciplinary action by the board.

(6) Credit for hours spent in alternative educational offerings is available if students are accompanied by an instructor from the school in which the student is enrolled. Names of attendees must be supplied on a form provided by the board and submitted prior to the program. Attendance must be taken at the beginning and ending of each program segment and provided to the board."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, 37-31-312, MCA

REASON: The board, under Title 37, chapter 31, MCA, is authorized to establish rules governing the conduct of the schools. In the past few years, the board experienced increasing difficulty in being able to verify student transfers and hours credited for field trips. Accordingly, the new rule contains many provisions designed to assist the board in accurately documenting a student's training hours and student transfers between schools.

"II INSTRUCTIONAL SPACE AND FACILITIES (1) When a professional salon and a school are under the same ownership or otherwise associated, separate operation of the salon and the school shall be maintained. In particular:

(a) if the salon and the school are located in the same building, separate entrances and visitor reception areas are maintained; and

(b) the salon and the school use separate public information releases, advertisements, names and advertising signs.

(2) In instances where the name of the school appears on exterior signs, the sign must clearly identify the school as an educational institution."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-311, 37-31-312, MCA

REASON: The board has recently received a request for greater clarification of 37-31-311(8) MCA, which provides that "[a] professional cosmetology salon or manicuring salon may not be operated in connection with a school of cosmetology or school of manicuring." This rule allows the school and salon to operate within the same building with the caveat that there must be a clear and distinct separation between the two operations.

"III RENEWAL (1) Beginning with the renewal of December 31, 1997, one-half of the licensees will renew for a period of one year with an expiration date of December 31, 1998. One-half of the licensees will renew for a period of two years with an expiration date of December 31, 1999. Following this initial renewal period, each licensee will renew for a period of two years by December 31 of their expiration year."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-101, 37-31-302, 37-31-304, 37-31-305, 37-31-311, MCA

REASON: Under the provisions of House Bill 598, passed during the 1997 legislative session, the board received the option of having a licensure period greater than one year. The board has determined that it is appropriate for a licensure period of two years and, accordingly, has proposed a rule to provide for such a licensure term.

"IV FIVE-YEAR COMPLETION REQUIREMENT (1) The cosmetology, manicuring, esthetic and instructor student must complete his or her course of study within five years of the student's matriculation date."

Auth: Sec. 37-31-203, MCA; **IMP**, Sec. 37-31-304, 37-31-305, 37-31-311, MCA

REASON: The board, under Title 37, chapter 31, MCA, is authorized to establish rules governing the conduct of the schools and cosmetology students. The board recognizes that the changes in the cosmetology field are increasingly rapid and that, in order to provide the public with appropriate levels of service, it is important that students complete the course of instruction in a timely manner. Upon completion of the course of instruction and licensure, the licensee is then allowed to practice and remains abreast of current developments through continuing professional education. Students who are allowed to languish for a substantial period of time before completing a course of instruction, however, are unable to establish a solid foundation of knowledge upon which to adequately apply advances in the profession.

"V VARIANCES (1) Upon application, the board may grant a variance from requirements of its safety and sanitation rules as follows:

(a) where it is demonstrated to the satisfaction of the board that strict compliance with the rules would be highly burdensome or impractical due to special conditions or cause;

(b) where the board finds that the public or private interest in the granting of a variance clearly outweighs the interest of the application of uniform rules; and

(c) where, in the opinion of the board, alternative measures will provide adequate public health and safety protection."

Auth: Sec. 37-31-203, 37-31-204, MCA; **IMP**, Sec. 37-31-204, 37-31-311, 37-31-312, MCA

REASON: The board recognizes that, while the rules are designed to apply in a majority of situations and circumstances, there inevitably arises situations which do not lend themselves well to the operation of administrative rules. Therefore, the board has determined that it is appropriate to provide licensees with the opportunity to obtain a variance from the operation of a rule, but only upon being supplied sufficient information to warrant such extraordinary action.

"VI EDUCATION EXCEPTION (1) In lieu of a high school diploma or equivalency the applicant may petition the board for an exception providing the following information:

(a) the applicant must submit certified true copies of applicant's high school transcripts, lists of educational courses completed, adult education courses completed, post-secondary education courses completed and any experiences that may give evidence to equivalency of a high school diploma; and/or

(b) successful passage of the TABY examination or pre-GED examination."

Auth: Sec. 37-31-203, MCA; IMP, Sec. 37-31-304, MCA

REASON: Under the terms of 37-31-304(2)(a) MCA, the board is required to entertain applications for exceptions to the high school diploma requirement. The board interprets the intent of this statute as the legislature's desire to allow those persons currently referred to as "non-traditional" students to demonstrate sufficient instruction through educational offerings other than high school, life experience or some combination of the two. Therefore, the purpose of the rule is to provide the license applicant with guidance as to the additional information required by the board to grant such an extraordinary exception to the requirement that the applicant demonstrate the minimum of a high school education.

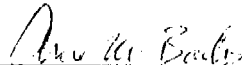
5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., October 17, 1997, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Cosmetologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4288; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Jeannie Worsech.

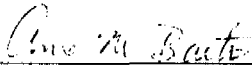
6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Cosmetologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., November 3, 1997.

7. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF COSMETOLOGISTS
VERNA DUPUIS, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 22, 1997.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to traineeship requirements) RULES PERTAINING TO THE
and standards, examinations,) PRACTICE OF HEARING AID
definitions, and transactional) DISPENSING
document requirements

TO: All Interested Persons:

1. On October 31, 1997, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of rules pertaining to the practice of hearing aid dispensing.
2. The proposed amendment of ARM 8.20.401, 8.20.403, 8.20.417 and 8.20.418 will read as follows: (new matter underlined, deleted matter interlined)

"8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS

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

(5) A daily log, provided by the board office, must be kept by the trainee, showing the date, description of job tasks and duties. Both the trainee and the supervisor must sign the log. The log must be submitted to the board office at the end of 90 days and again at the end of 180 days and must be approved by the board prior to the trainee being allowed to take the practical examination.

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

Auth: Sec. 37-1-319, 37-16-202, MCA; IMP, Sec. 37-1-305, 37-16-301, 37-16-405, MCA

REASON: This rule is being proposed to add the requirement that the trainee keep a daily log to show proof that the required 180 days of supervision has been met.

"8.20.403 EXAMINATION - PASS-FAIL POINT (1) All applications for examination must be received in the board office of the board 15 days prior to the examination date.

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

(5) For the purposes of 37-16-403(2), MCA, additional and educational training recognized by the board will be any educational or technical offering, but may not, under any circumstances, involve any services performed on an individual."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-403, 37-16-405, 37-16-406, MCA

REASON: These amendments are housekeeping in nature. Subsection (5) is being added to clarify the type of educational training the Board will approve.

"8.20.417 DEFINITIONS (1) through (5) will remain the same.

(6) "Dispensing fee" ~~includes, but is not limited to, hearing tests, means fitting, delivery, and counseling, travel, telephone, shipping and handling, postage, hearing aid options, materials, overhead costs, equipment maintenance and calibration.~~

(7) and (8) will remain the same."

Auth: Sec. 37-16-202, 37-16-303, MCA; IMP, Sec. 37-1-304, 37-16-301, 37-16-303, 37-16-304, 37-16-414, MCA

REASON: This amendment is being proposed to limit the components used to establish the amount of the dispensing fee charged by a hearing aid dispenser, in the event of the necessity of a refund for a defective aid.

"8.20.418 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) through (4) will remain the same.

(5) Notice of cancellation must be given to the seller in writing within 30 days of the date of delivery of the hearing aid or related device, ~~if the hearing aid or related device is defective in fit or function, or if the dispenser has failed to correct a problem in fit or function.~~ The notice of cancellation may be delivered by mail or in person, and must indicate the purchaser's intent not to be bound by the sale. The purchaser shall return the hearing aid or related device in substantially the same condition as it was received. Under this provision, the hearing aid dispenser shall refund to the purchaser the amount paid, minus a dispensing fee, within 30 days of receipt of the written notice of cancellation. The dispensing fee may not exceed ~~10~~ 15 percent of the total cost of the hearing aid or related device, ~~including services related to acquiring and ensuring the operation of the hearing aid. All fees to be retained by the dispenser, in the event the hearing aid(s) is returned, shall be prominently displayed in a dollar amount on all transactional documents.~~

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-303, MCA

REASON: This amendment is being proposed to make the percentage of the dispensing fee consistent with House Bill 164 mandated by the 1997 Legislature.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., October 21, 1997, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith of the Board of Hearing Aid Dispensers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5433;

19-10/6/97

MAR Notice No. 8-20-24

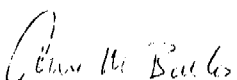
Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cheryl Smith.

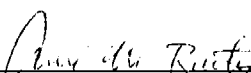
4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., November 3, 1997.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS
DUDLEY ANDERSON, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 22, 1997.

BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining	)	THE AMENDMENT OF RULES
to the physician temporary	)	PERTAINING TO THE PHYSICIAN
certificate and fee schedule,	)	TEMPORARY CERTIFICATE AND
acupuncture, podiatry and	)	FEE SCHEDULE, ACUPUNCTURE,
nutrition practice rules	)	PODIATRY AND NUTRITION
	)	PRACTICE RULES

TO: All Interested Persons:

1. On October 27, 1997, at 8:30 a.m., a public hearing will be held in the 4th Floor Nursing Board Conference Room at the Professional and Occupational Licensing Bureau of the Department of Commerce, 111 N. Jackson, Helena, Montana 59620, to consider the proposed amendment of rules pertaining to medical examiners temporary certificate and fee schedule, acupuncture, podiatry and nutrition practice rules.

2. The proposed amendment to ARM 8.28.414, 8.28.420, 8.28.503, 8.28.504, 8.28.1702, 8.28.1804 and 8.28.1806 will read as follows: (new matter underlined, deleted matter interlined)

"8.28.414 TEMPORARY CERTIFICATE (1) will remain the same.

(2) A temporary license must be reviewed and signed by one member of the board. ~~The applicant for a temporary license must be interviewed by one of the board members. The reviewing board member may require the applicant to attend an interview with the reviewing board member, the board or both, in the reviewing board member's discretion.~~ A temporary license is valid until the next board meeting, at which time the board may extend it for a period up to one year."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-301, 37-3-304, 37-3-307, MCA

REASON: A face-to-face interview provides the reviewing board member with an opportunity to obtain further information about the applicant than that which is contained in the application documents. It is particularly necessary and productive where the application discloses "red flags," for example, there is a history of prior license discipline, malpractice cases, chemical dependency, etc. Such adverse information occurs in only about one-third of applications submitted to the board for temporary licensure. In the remaining two-thirds, where the documents disclose no such red flags, the interview process is not usually productive of useful information; the interview requires both the reviewing board member and the applicant to take time away from their work, and costs both the travel and per diem expenses incurred in arranging and conducting the

interview. The proposed amendment to ARM 8.28.414 would eliminate the mandatory language requiring an interview in all cases, but retain the option for an interview in the reviewing board member's discretion should the application documents raise any question in the board member's mind.

"8.28.420 FEE SCHEDULE (1) and (1)(a) will remain the same.

(b) Temporary certificate fee \$250

(c) through (i) will remain the same."

Auth: 37-1-134, 37-1-319, 37-3-203, MCA; IMP, Sec. 37-1-134, 37-3-203, 37-3-301, 37-3-304, 37-3-307, 37-3-308, 37-3-309, 37-3-311, 37-3-313

REASON: Preparing an application file for a temporary license by an individual board member, between board meetings, requires board staff to perform a number of tasks which are not required for regular applications reviewed at the bi-monthly board meetings. Other daily tasks must be discontinued, copies made and mailed, multiple telephone calls and written correspondence with the board member and applicant are made, an additional certificate must be prepared, before the process is final. The current charge for a temporary license--\$50.00--does not realistically reflect the cost of arranging and issuing a temporary license, and then catching up on regularly scheduled daily work, contrary to the requirement of section 37-1-134, MCA. The increased fee will more accurately reflect the cost of providing the extra service of a temporary license.

"8.28.503 APPLICATION FOR LICENSURE (1) All applications shall be made on a printed form provided by the board and no application made otherwise will be accepted. Each applicant must provide the names of 3 ~~three~~ references who are knowledgeable as to the applicant's moral character and competence as an acupuncturist. Each application shall be accompanied by a recent photograph of the applicant which has been signed by the applicant and dated as to when taken. ~~All applicants shall submit two classifiable sets of fingerprints on cards provided by the department for investigation.~~ Each applicant shall submit a sworn affidavit that he is reasonably able to communicate verbally and in writing in the English language."

Auth: Sec. 37-13-201, MCA; IMP, Sec. 37-13-302, MCA

REASON: The Board of Medical Examiners recommends deletion of the fingerprint requirement in this rule. When the requirement for fingerprints of applicants for an acupuncture license was first adopted, the majority of applicants were from Asian countries and schools. Confirmation of the applicants' identity and legal entry into the country was deemed desirable, and implemented by the fingerprint requirement. Now, however, and for an extensive period of time, the majority of applicants are from United States schools approved by the National Accreditation Commission for Schools and Colleges of

Acupuncture and Oriental Medicine, and the need for fingerprint identity checks no longer exists. The fingerprint requirement costs unnecessary time and money during the application process, and no longer serves a useful purpose.

"8.28.504 FEES (1) will remain the same.

(2) The annual renewal fee to practice acupuncture will be \$25. An additional \$25 150 will be charged for late renewal.

(3) will remain the same."

Auth: Sec. 37-1-134, 37-13-201, 37-13-301, 37-13-302, 37-13-304, 37-13-305, MCA; IMP, Sec. 37-1-134, 37-3-203, 37-13-302, 37-13-304, 37-13-305, 37-13-306, MCA

REASON: Additional work is required by staff of the Department of Commerce to follow up on late renewals and process them. The additional work costs time and money. An increase in the penalty fee for late renewals will encourage timely renewals by the given deadline, and will tend to make fees commensurate with the costs of processing late renewals.

"8.28.1702 ANNUAL RENEWAL (1) will remain the same.

~~(2) During the year that (1) above takes effect, each podiatrist license otherwise expiring on July 31 shall be extended without fee to October 31 of that year."~~

Auth: Sec. 37-6-106, MCA; IMP, Sec. 37-6-304, MCA

REASON: The time period specified in subsection 8.28.1702(2) has passed and the language is now redundant. Deletion is therefore proper.

"8.28.1804 LICENSE RENEWAL (1) will remain the same.

(2) Completed applications for renewal, together with renewal fees and proof of current registration by the commission must be received no later than ~~30 days after expiration of the existing license October 31.~~

(3) License fees will be treated as delinquent and subject to a late charge or fee on all renewal applications postmarked ~~more than 30 days after expiration of existing license October 31.~~

(4) ~~Failure to renew within 30 days after expiration of the existing license by October 31~~ will be treated as a violation of a rule of the board and grounds for disciplinary action under ~~section~~ 37-25-308(4), MCA.

(5) will remain the same.

~~(6) During the year that (5) takes effect, the annual renewal fee will be waived for each licensee who has obtained initial licensure or has renewed within six months of the first October 31 annual renewal."~~

Auth: Sec. 37-1-131, 37-25-201, MCA; IMP, Sec. 37-25-307, MCA

REASON: Licensees are responsible for ensuring continuity of their licenses, and completing the renewal tasks in a timely

fashion. In 1992, the board established, by rule, October 31 as the annual renewal date for nutrition licenses. Licensees are now accustomed to that date as the deadline for annual renewals, and are capable of returning completed renewal forms and fees in the thirty-day period preceding October 31. A post-expiration "grace period" is not necessary; processing late renewals under a grace period costs extra work, time and money. Eliminating the "grace period" will improve efficiency in completing annual renewals.

The time period identified in (6) of this rule has passed, and the language is now redundant. Deletion is therefore proper.

"8.28.1806 FEES (1) through (1)(b) will remain the same.

(c) Late fee - 25 150

(d) will remain the same."

Auth: Sec. 37-1-134, 37-25-201, MCA; IMP, 37-1-134, 37-3-203, 37-25-201, 37-25-302, 37-25-307, MCA

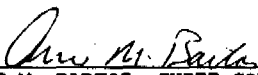
REASON: Additional work is required by staff of the Department of Commerce to follow up on late renewals and process them. The additional work costs time and money. An increase in the penalty fee for late renewals will encourage timely renewals by the given deadline, and will tend to make fees commensurate with the costs of processing late renewals.

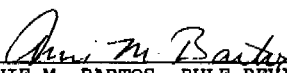
3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., October 13, 1997, to advise us of the nature of the accommodation that you need. Please contact the Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620; telephone (406) 444-4284, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-9396. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule making process should contact Patricia England at the above address.

4. 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 the Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620, no later than November 3, 1997.

5. Patricia England, Executive Secretary/Legal Counsel, has been designated to preside over and conduct the hearing.

BOARD OF MEDICAL EXAMINERS
DANIEL C. BROOKS, MD, PRESIDENT

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 22, 1997.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.44.402 DEFINITIONS AND
to definitions and fees) 8.44.412 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 5, 1997, the Board of Plumbers proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.44.402 DEFINITIONS (1) through (5) will remain the same.

(6) "Farm or ranch" means buildings located on and used in conjunction with agricultural parcels of land that total 160 or more contiguous acres under one ownership or are otherwise classified as agricultural and upon which agricultural products are produced and marketed.

(7) "Installation of water conditioner service" means installation of a device that requires connection to the water piping only and the installation of the drain to an acceptable indirect waste receptor as required by the plumbing code as adopted by the state of Montana, and as required by Title 37, chapter 69, MCA. This exemption does not apply to connections to any public water supply or to commercial installations.

(8) "Minor work" means installation of an appliance that requires connection to the water piping only and the installation of the drain to an acceptable indirect waste receptor as required by the plumbing code as adopted by the state of Montana, and as required by Title 37, chapter 69, MCA. The installation must be performed by an agent of or the dealer from whom the appliance was purchased.

(6) will remain the same, but will be renumbered (9)."

Auth: Sec. 37-69-202, 37-69-401, MCA; IMP, Sec. 37-69-102, 37-69-202, 37-69-401, MCA

REASON: The proposed amendments will clarify words and phrases used in the statute at section 37-69-102, MCA, so licensees and the public will be able to better determine when a licensed plumber is required to perform certain types of plumbing work and appliance installation.

"8.44.412 FEE SCHEDULE

(1) through (3) will remain the same.

(4) Administration of examination on alternate date

250

(4) through (11) will remain the same, but will be renumbered (5) through (12)."

Auth: Sec. 37-1-134, 37-69-202, 37-69-401, MCA; IMP, Sec. 37-1-134, 37-1-304, 37-1-305, 37-69-202, 37-69-307, 37-69-401, MCA


REASON: The proposed amendment will add a fee for administration of the examination on a day other than originally scheduled. The Board has received requests for alternate dates and has found there is considerable cost in arranging the facility, proctor, materials, staff, etc. The proposed fee is commensurate with the costs of the examination administration.

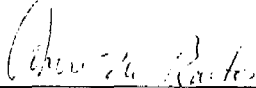
3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Plumbers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., November 3, 1997.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Plumbers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., November 3, 1997.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 110 based on the 1094 licensees in Montana.

BOARD OF PLUMBERS
RICHARD GROVER, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 22, 1997.

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

In the matter of a proposed	)	NOTICE OF PUBLIC
rule defining guiding services	)	HEARING ON PROPOSED
for use of Class B-10 and	)	NEW RULE
Class B-11 licenses which are)	
outfitter-sponsored nonresident)	
big game combination licenses.)	

To: All Interested Persons.

1. On November 12, 1997, at 7:00 p.m., a public hearing will be held in the Fish, Wildlife and Parks commission room, 1420 East Sixth Avenue, Helena, Montana, to consider the adoption of a new rule as proposed in this notice.

2. The proposed rule provides as follows:

"I CERTIFICATE FOR GUIDED NONRESIDENT (1) Each application for a nonresident outfitter-sponsored big game combination license, Class B-10 or Class B-11, must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will meet the requirements of 87-2-511(4), MCA, including providing guiding services for the species hunted by the applicant.

(2) For the purposes of this statutory requirement: "guiding services" are provided when an outfitter, or a guide or professional guide employed by the outfitter, has an actual physical presence in the field escorting and directing the clients a majority of the hunting day."

AUTH: 87-1-301, MCA IMP: 87-2-511(4), MCA

3. The Montana Outfitters and Guides Association (MOGA), through its board of directors, petitioned the commission in a September 2, 1997, letter to adopt a rule defining the use of "guiding services" for Class B-10 and Class B-11 licenses, which are outfitter-sponsored, nonresident, big game combination licenses.

The statutory term "guiding services" used in 87-2-511(4)(b), MCA, would be defined to mean only a fully guided hunt. Any type of "drop-camp" services, although constituting professional outfitter service, would not qualify as a legal use of an outfitter-sponsored license. Therefore, an outfitter-sponsored licensee could only hunt with the sponsoring outfitter, or the outfitter's guide, during fully guided hunts.

The rulemaking procedure must take place now for the rule to be considered for the 1998 hunting season. The commission recognizes that this fall is not a convenient time to hold a public hearing because most outfitters and guides will be in the field. However, written comments are given equal weight and are as effective as testimony at a public hearing. To facilitate comments by outfitters, the proposed rulemaking notice will be mailed to all licensed outfitters. Copies will also be provided to the Board of Outfitters. In addition, the executive director of MOGA has committed to notifying the member outfitters and guides.

The MOGA contends that the rule will implement legislative intent and is in the best interests of the outfitting industry. Without a clear definition of what constitutes "guiding services," the department is limited in the enforcement of the statutory requirement that the sponsoring outfitter "provide guiding services" to a hunter holding an outfitter-sponsored license. Presently, almost any services provided by an outfitter must be considered as guiding services.

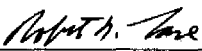
4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Robert N. Lane, Chief Legal Counsel, Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701 and must be received no later than November 21, 1997.

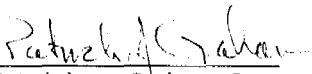
5. Any person may request to be put on the commission's list of interested persons for this rulemaking. A person on this list will receive copies of all notices regarding this rulemaking. Names and addresses may be sent to the address given in paragraph 4 or names and addresses may be given to the commission at the November 12, 1997, hearing.

6. Robert N. Lane or another hearing examiner designated by the department will preside over and conduct the hearing.

RULE REVIEWER

FISH, WILDLIFE AND PARKS
COMMISSION


Robert N. Lane


Patrick J. Graham, Secretary

Certified to the Secretary of State on September 22, 1997.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of new rule I interpreting)		ADOPTION OF
the provisions of 75-11-308(1)(e),)		NEW RULE I
MCA.)	

NO PUBLIC HEARING
CONTEMPLATED

(Petroleum Board)

To: All Interested Persons

1. On November 10, 1997, the board proposes to adopt the above-captioned rule which interprets 75-11-308(1)(e), MCA.
2. The rule, as proposed to be adopted, appears as follows:

RULE I APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF TANKS (INTERPRETIVE RULE) (1) As used in 75-11-308, MCA, the term "applicable state rules" is interpreted to mean:

(a) rules governing the installation and design standards for petroleum storage tanks (including but not limited to ARM 17.56.103, 17.56.104, 17.56.201, and 17.56.202);

(b) rules which govern release detection requirements for petroleum storage tanks (including but not limited to ARM 17.56.401, 17.56.402, 17.56.404, and 17.56.405);

(c) rules governing spill and overfill requirements for petroleum storage tanks and anti-corrosion protection (ARM 17.56.301), and for petroleum storage tanks (including but not limited to ARM 17.56.302);

(d) rules requiring the reporting of a release within 24 hours of detecting it and taking initial response and abatement measures (including but not limited to ARM 17.56.602); and

(e) any other rules which, after an inspection by either the department of environmental quality underground storage tank program or its agents, or the state fire marshal or its agents, has been brought to the operator's attention and the violation has not been remedied within a specified period of time.

AUTH: 75-11-319, MCA; IMP: 75-11-308, MCA

3. This interpretive rule is being proposed to provide clarification as to the Board's interpretation of the eligibility statute at 75-11-308, MCA. The rule is advisory only, but may be a correct interpretation of the law.

4. Interested persons may submit their data, views, or

arguments concerning the proposed amendment, in writing to Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, MT 59620-0902, no later than November 3, 1997.

5. If a person who is directly affected by the proposed rule wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, MT 59620-0902. A written request for hearing must be received no later than November 3, 1997.

6. If the Board receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code 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 300 based on 3000 owners of petroleum tanks in the state of Montana.

7. The Montana Petroleum Tank Release Compensation Board 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 included on the list shall make a written request which includes the name and mailing address of the person to receive notice. Such written request may be mailed or delivered to the Petroleum Tank Release Compensation Board offices at P.O. Box 200902, Helena, MT 59620-0902, or faxed to (406)444-1902, or may be made by completing a request form at any rules hearing held by the Board.

PETROLEUM TANK RELEASE COMPENSATION BOARD
MARK SIMONICH, PRESIDING OFFICER

BY:  JEAN A. RILEY, Executive Director

Reviewed by:

 JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State September 22, 1997.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
rule 17.58.342 pertaining to) OF RULE
eligible reimbursement for per)
diem expenses.)

NO PUBLIC HEARING
CONTEMPLATED

(Petroleum Board)

To: All Interested Persons

1. On November 10, 1997, the board proposes to amend the above-captioned rule pertaining to eligible reimbursement for per diem expenses.

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

17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED (1) The following types of charges are eligible for reimbursement, unless listed as disallowed under (2) of this rule. (Other types of charges may be reimbursed if shown to be actually, necessarily, and reasonably incurred in furtherance of the approved corrective action plan):

(a)-(f) Remain the same.

(g) ~~meals at \$20 per full day (\$4 for the morning meal, \$6 for the midday meal, and \$10 for the evening meal) or the appropriate portion of a full day at the rates set forth in 2-18-501(1)(b), MCA, for state employees traveling within Montana.~~ Computation of time for purposes of determining meal allowances must be made according to 2-18-502 ~~(1) and (2)~~, MCA. Exceptions for higher actual costs may be made by showing that seasonal or other factors make meals available at the above listed rates in certain limited areas (receipts will be required);

(h)-(j) Remain the same.

(2)-(3) Remain the same.

AUTH: 75-11-318, MCA; IMP: 75-11-318, MCA

3. The proposed amendment is necessary because the reimbursement rate set by the Legislature for state employees is an appropriate rate. The current rule reflects the rate that was in effect until the statute was amended by the 1997 Legislature. The Board therefore proposes that the per diem rule reference the state statute.

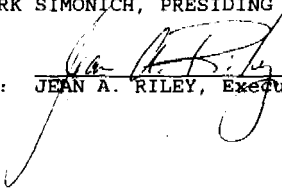
4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, in writing to Jean

Riley, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, MT 59620-0902, no later than November 3, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, MT 59620-0902. A written request for a hearing must be received no later than November 3, 1997.

6. 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 code 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 300 based on 3000 owners of petroleum tanks in the state of Montana.

PETROLEUM TANK RELEASE COMPENSATION BOARD
MARK SIMONICH, PRESIDING OFFICER

BY:  JEAN A. RILEY, Executive Director

Reviewed by:

 JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State September 22, 1997.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of Rules I through XXI and	)	ON PROPOSED ADOPTION AND
the amendment of 11.12.101	)	AMENDMENT
pertaining to youth care)	
facilities)	

TO: All Interested Persons

1. On October 28, 1997, at 2:00 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 adoption of Rules I through XXI and the amendment of 11.12.101 pertaining to youth care facilities.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on October 20, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406) 444-5622; FAX (406) 444-1970.

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

RULE I YOUTH SHELTER CARE: RELATIONSHIP TO YOUTH CARE FACILITY LICENSURE (1) A provider of substitute care in the form of shelter care may be licensed as a youth shelter care facility as defined in 11.12.101 and pursuant to the requirements of [Rules I through XXI]. Licensure as a youth shelter care facility may be in lieu of licensure as a youth foster care home, youth group home, or child care agency.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142, and 52-2-113, MCA

RULE II YOUTH SHELTER CARE: ADMINISTRATION (1) A youth shelter care facility shall be a nonprofit or for profit corporation registered under the laws of Montana or under direct administration of a unit of state, local or tribal government.

(2) The provider shall have established policy and sound plans of organization and administration clearly defining legal responsibility, administrative authority and responsibility for services to the residents and community.

(3) The provider shall have written policy for personnel,

admission, discharge, program and financial records. The policy shall be furnished to the department with the initial license application and annually thereafter.

(4) The provider shall have written position descriptions for all employees which include a description of duties, responsibilities, limitations of authority and principal measures of accountability and performances.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE III YOUTH SHELTER CARE: PROGRAM REQUIREMENTS, CARE AND GUIDANCE (1) The program of all youth shelter care facilities shall include the following:

(a) ongoing appropriate maintenance of the facility;
(b) appropriate personal care, supervision, and attention;
(c) provision of opportunities for educational, social and cultural growth through suitable reading materials, toys, activities and equipment; and

(d) provision of opportunities for associations with peer groups and for experiences in school and community.

(2) The facility shall ensure the following practices:

(a) cooperation with the placing agency and participation in case conferences; and

(b) cooperation with the placing agency in arranging for contact with each youth's own family when appropriate.

(3) The provider shall encourage youth to continue any socially appropriate activities, classes or participation in clubs or groups. Each youth shall be allowed to become voluntarily involved in community programs that meet his or her needs, interests and abilities.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE IV YOUTH SHELTER CARE: PROGRAM REQUIREMENTS, NUTRITION (1) The provider shall serve three regular, well balanced meals per day and snacks appropriate to the nutritional needs of the youth and shall include the four basic food group requirements.

(2) Special diets shall be provided for residents as ordered in writing by a physician. Such orders shall be kept on file at the facility.

(3) Copies of menus as served shall be kept on file for one month and shall be available for inspection.

(4) All food shall be transported, stored, covered, prepared and served in a sanitary manner.

(5) Use of home canned products, other than jams, jellies and fruits is prohibited unless the youth shelter care facility has been commercially approved.

(6) Hands shall be washed with warm water and soap before the handling of food.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE V YOUTH SHELTER CARE: PROGRAM REQUIREMENTS.
EDUCATION (1) The provider shall assure that each youth is offered an appropriate educational program and shall make a reasonable effort to comply with compulsory school attendance laws.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE VI YOUTH SHELTER CARE: PROGRAM REQUIREMENTS.
RELIGION AND CULTURE (1) All youth in the shelter care facility shall have reasonable opportunity to practice their respective religions. Youth shall be permitted to attend religious services of their choice in the community and to receive visits from representatives of their respective faiths.
(2) The provider shall give encouragement and opportunity to each youth to identify with his or her cultural heritage.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE VII YOUTH SHELTER CARE: PROGRAM REQUIREMENTS.
PERSONAL NEEDS (1) The provider shall provide each youth with his or her own clothing suitable to the youth's age and size and comparable to the clothing of other youth in the community.
(2) Youth shall have some choice in the selection of their clothing.
(3) The provider shall train youth in personal care, hygiene, and grooming and shall provide each youth with the necessary supplies.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE VIII YOUTH SHELTER CARE: PROGRAM REQUIREMENTS.
PRIVACY AND INDIVIDUALISM (1) The provider shall allow youth to have privacy.

(2) The provider shall provide a separate bed, separate storage space for clothing and personal articles, and a place for each youth to display his or her socially appropriate creative works and symbols of identity.

(3) Each youth shall be provided with access to a quiet area where he or she can be alone when appropriate.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE IX YOUTH SHELTER CARE: PROGRAM REQUIREMENTS. SEARCHES
(1) The provisions of this rule apply to all searches by

shelter care facilities of youth and their personal property, including searches of personal correspondence.

(2) There must be reasonable cause for any search.

(3) Any correspondence search shall be conducted in the presence of the youth.

(4) The shelter care facility shall adopt policy relating to searches, including pat down searches, personal property searches and correspondence searches. The policy must include protocol for conducting personal property searches when the youth is not available to be present for the search. The policy must also require that the events of each search are documented in writing.

(5) No youth shall be subjected to any of the following intrusive acts:

(a) strip searches;

(b) body cavity searches;

(c) video surveillance; or

(d) routine opening of personal correspondence.

(6) No youth shall be subject to urinalysis testing unless the testing has been ordered by a court or is required pursuant to a treatment plan for monitoring drug or alcohol use. The following requirements must also be met by shelter care facilities utilizing urinalysis testing:

(a) prior to any testing, the provider shall adopt policy which addresses, at a minimum, procedures for obtaining samples for urinalysis testing; and

(b) staff shall document compliance with facility policy in connection with each testing.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE X YOUTH SHELTER CARE: PROGRAM REQUIREMENTS, MONEY

(1) Money earned by a youth or received as a gift or allowance shall be his or her personal property and accounted for separately from youth shelter care facility funds.

(2) If the youth shelter care facility is partly supported by institutional production on a commercial basis, compliance with child labor laws and minimum wage laws must be assured.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XI YOUTH SHELTER CARE: PROGRAM REQUIREMENTS, TRAINING AND EMPLOYMENT (1) For youth age 16 and older:

(a) the provider shall assist in preparing youth for economic independence; and

(b) the provider shall assist youth in obtaining the skills necessary for employment as determined to be appropriate to meet the individual's needs (i.e., completing applications, personal appearance, attitude toward employment, interviewing for jobs).

(2) The provider must distinguish between tasks which youth are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training. Youth in care shall not be used as employees of the youth shelter care facility without prior approval of the department.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XII YOUTH SHELTER CARE: PROGRAM REQUIREMENTS.

DISCIPLINE (1) Each youth shelter care facility shall have a written policy for the discipline of youth. Copies shall be made available to all provider staff, referring parties, parents and the youth and shall include the philosophy of discipline, methods of discipline permitted, behavioral expectations of youth, and the purpose of discipline as it relates to the ongoing learning and developmental process.

(2) Discipline must not be physically or emotionally damaging.

(3) There must be no cruel, harsh, or unusual punishment.

(4) Verbal abuse of a youth is prohibited.

(5) No youth of any age shall be shaken or hit.

(6) Youth must not be denied meals, mail or contact with their families as punishment.

(7) No disciplinary practices of any sort shall be employed which are humiliating or degrading to the youth or which undermine the youth's self-respect.

(8) Medication shall never be used to discipline or threaten youth.

(9) Any staff person involved in or witnessing an infraction of this rule shall complete an incident report clearly detailing the events of the infraction. The report must be completed within 24 hours of the infraction.

(10) A copy of the incident report shall be placed in the youth's file and the incident shall be reported to the department for investigation within one working day of its occurrence.

(11) An investigation of the incident may be conducted by the department.

(12) A complete report of any investigation conducted by the youth shelter care facility shall be placed in the provider's records and shall be available for inspection by the department and the youth's placing agency.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XIII YOUTH SHELTER CARE: PROGRAM REQUIREMENTS. YOUTH ORIENTATION (1) Each youth shelter care facility shall have a written orientation policy for admission to the facility, including:

(a) a procedure for ensuring that each youth receives a personal orientation to the facility and program as soon as appropriate but not later than 12 hours after admission;

(b) inventory of each youth's belongings;

(c) behavioral expectations;

(d) privilege systems;

(e) health and safety procedures;

(f) house rules;

(g) intrusive measures;

(h) documentation that is signed by both the youth and the staff person(s) conducting the orientation and a copy placed in the youth's file; and

(i) emergency evacuation procedures, including escape routes.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XIV YOUTH SHELTER CARE: PHYSICAL CARE (1) Each youth shelter care facility shall have access to the services of at least one physician.

(2) Medical, dental, psychiatric, psychological care and counseling services shall be obtained for youth as needed.

(3) If a youth has not received a complete physical examination within 6 months prior to placement, the provider shall take steps to arrange for the youth to have a complete physical examination.

(4) If a youth has not had a dental examination within a year prior to placement, the provider shall take steps to arrange for the youth to have a dental examination. All necessary dental work shall be completed as needed.

(5) Provisions for treatment of diseases, remedial defects or deformities, and malnutrition shall be made by the provider immediately upon the physician's recommendation with notification to the placing agency.

(6) All medication shall be kept in their original containers in a locked place identified with the original prescription label.

(7) Administration of all medications per time of day, dosage, staff person administering the medication and recipient of the medication shall be logged in ink. These records shall be kept in or near the locked storage area.

(8) Providers shall promptly dispose of all non-administered prescription medications.

(9) The provider shall have written policy for the administration of both prescription and nonprescription medications. The policy shall include procedures for the disposal of non-administered, expired, or discontinued medications.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XV YOUTH SHELTER CARE: ENVIRONMENT (1) A youth shelter care facility shall comply with the following structural requirements:

- (a) all rooms and hallways shall have adequate lighting;
- (b) adequate space shall be provided for all phases of daily living, including recreation, privacy, group activities and visits from family, friends and community acquaintances;
- (c) indoor areas of at least 40 square feet of floor space per youth shall be provided for quiet, reading, study, relaxing, and recreation. Halls, kitchens, and any rooms not used by youth shall not be included in the minimum space requirement; and
- (d) a sleeping room shall contain at least 50 square feet of floor space per person. Bedrooms for single occupancy must have at least 80 square feet.
- (2) Bathrooms shall be cleaned thoroughly with a germicidal cleaner at least weekly and more often if needed.
- (3) Other areas shall be cleaned on a regular basis.
- (4) There shall be hot and cold water available in the youth shelter care facility. Water temperature for hot water must be limited to 120° or below.
- (5) There must be a washing machine and dryer available.
- (6) The youth shelter care facility must be equipped with a telephone. Telephone numbers of the hospital, police department, fire department, ambulance and poison control center must be posted by each telephone. Telephone numbers of the parent(s) and placing agency must be readily available.
- (7) Youth shelter care facilities must have reasonable access to schools, churches, job opportunities, shopping, health and recreational activities.

AUTH: Sec. 41-3-1101, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XVI YOUTH SHELTER CARE: FIRE SAFETY

- (1) Smoke detectors shall be located at stairways and adjacent to all sleeping areas.
- (2) A fire extinguisher approved by a recognized testing laboratory with a minimum rating of 2A10BC shall be readily accessible to the kitchen area.
- (3) The date and signature of the person checking both the batteries in the smoke detector and the fire extinguisher shall be documented and on file at the youth shelter care facility.
- (4) Smoke detector batteries shall be checked by the provider at least once each month and the batteries replaced at least once each year.
- (5) Fire extinguishers shall be checked by the provider at least quarterly.
- (6) The staff shall be trained in the proper use of the fire extinguisher and the training recorded in the provider's records.
- (7) Staff and residents shall be instructed in the

procedure for evacuation in case of fire as required in [Rule XIII and Rule XIX]. The procedure must be posted in a conspicuous place in the youth shelter care facility.

(8) All exits must be clear and unobstructed at all times.

(9) Paint, flammable liquids and other combustible material must be kept in locked storage away from heat sources or in locked outbuildings not used by youth.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XVII YOUTH SHELTER CARE: TRANSPORTATION (1) Staff and volunteers transporting youth shall be at least 18 years old and possess a valid Montana driver's license.

(2) All vehicles used by the facility to transport youth shall have proof of liability insurance.

(3) With the exception of public transportation or rented or leased buses which are not required by law to be equipped with safety restraints, no vehicle shall begin moving until all passengers are seated and secured in age appropriate safety restraints, which must remain fastened at all times the vehicle is in motion.

(4) The back of pickup trucks shall not be used to transport any youth.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XVIII YOUTH SHELTER CARE: GUNS AND AMMUNITION

(1) Guns, including air rifles and/or ammunition must not be kept in a youth shelter care facility.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XIX YOUTH SHELTER CARE: STAFF (1) Houseparents, relief houseparents and other child care staff must meet the general requirements for child care staff set out in ARM 11.12.115.

(2) The provider shall establish minimum qualifications for child care staff and adopt a procedure for screening applicants.

(3) The youth shelter care facility program must have a minimum of one designated staff person who shall be responsible for the administration and management of the facility, including the supervision of the services provided to youth in placement. Any staff person designated under this subsection hired after the effective date of this rule shall also have the following qualifications:

(a) a Bachelor's degree from an accredited college or university in behavioral or social services;

(b) at least 2 years of direct work experience in youth

services; and

(c) meet the general requirements for child care staff set out in ARM 11.12.115.

(4) Within the first 30 days of the date of hire, all child care staff must receive a minimum of 16 hours of orientation.

(5) The provider shall establish orientation policy with the following minimum requirements:

(a) prior to assuming any duties as a regular child care staff member, each new staff member shall receive training covering:

(i) the provider's policy, procedures and program;

(ii) mandatory child abuse reporting laws;

(iii) crisis intervention methodologies;

(iv) fire safety, including facility evacuation routes;

and

(v) confidentiality;

(b) within the first 7 days of the date of hire and prior to being the sole child care staff on duty with any youth, the employee shall receive training covering:

(i) the provider's response plan for critical behavioral and medical incidents;

(ii) suicide prevention; and

(iii) first aid;

(c) within the first 30 days of the date of hire child care staff shall receive training in CPR; and

(d) in their first year of employment, child care staff shall attend 14 hours of training in addition to their participation in employee orientation. All other child care staff shall attend a minimum of 20 hours of training per year. Training shall be relevant to the child care staff person's responsibilities in the youth shelter care facility.

(5) Participation in all orientation and training shall be documented in the employee's personnel file.

(6) The resident to staff ratio on the premises shall not be more than 8:1 throughout a 24-hour period. At least one child care staff person shall provide awake coverage during designated sleep hours.

(7) There shall be a minimum of one child care staff person present who is directly responsible for resident care and activities when any resident is in the home.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA

IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XX YOUTH SHELTER CARE: PLACEMENT AGREEMENTS

(1) The provider shall enter a placement agreement with the placing agency within 5 working days of the youth's admission.

(2) The placement agreement shall set forth the terms of the youth's placement and the responsibilities of the provider, the placing agency and, when appropriate, the parents.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

RULE XXI YOUTH SHELTER CARE: CASE RECORDS (1) The provider shall maintain a written case record for each youth which shall include, at a minimum, the following:

- (a) treatment, medical and dental records;
- (b) educational data from the time of admission until the time the youth leaves the youth shelter care facility;
- (c) date of admission and placing agency; and
- (d) date of discharge, reason for discharge and the name, telephone number and address of the person or agency to whom the youth was discharged.

- (2) If available, each youth's case record shall include:
 - (a) the name, sex, birthdate and birthplace of the youth;
 - (b) the name, address, and telephone number of the parent(s) or guardian of the youth;

- (c) if the youth was not living with his parents prior to admission, the name, address, telephone number and relationship to the youth of the person with whom the youth was living; and

- (d) the youth's social security number.

- (3) Within 72 hours of the youth's placement, the provider shall take steps to obtain the following:

- (a) all documents related to the referral of the youth to the facility as provided by the placing agency;

- (b) documentation of the current custody and legal guardianship as provided by the placing agency;

- (c) youth's court status, if applicable;

- (d) a copy of the youth's birth certificate or a written statement of the youth's birth date including the source of this information;

- (e) consent forms signed by the parents or guardian prior to the youth's admission to the youth shelter care facility allowing the provider to authorize all necessary medical care, routine tests, immunization and medical or surgical treatment;

- (f) cumulative health records including medical history and immunization records as provided by the placing agency;

- (g) education records and reports; and

- (h) treatment or clinical records and reports.

- (4) An initial assessment of the youth's emotional, medical, developmental, social and behavioral status shall be conducted within 8 hours of the youth's admission.

- (5) A case plan shall be initiated within 3 days for any youth whose projected stay is anticipated to be longer than one week. At a minimum the case plan shall include:

- (a) the projected length of the youth's stay;

- (b) a plan for assessing and addressing critical needs;

- (c) a day program plan for youth who will not be enrolled in the school system; and

- (d) a plan for the youth's transition out of placement.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA
IMP: Sec. 41-3-1142 and 52-2-113, MCA

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

11.12.101. YOUTH CARE FACILITY. DEFINITIONS (1) The following definitions apply to all youth care facility licensing rules:

(1)(a) and (1)(b) remain the same.

(c) "Youth care facility (YCF)" means a licensed facility in which substitute care is provided to youth and includes youth foster homes, youth group homes, youth shelter care facilities therapeutic youth group homes, and child care agencies.

(1)(d) through (1)(f) remain the same.

(g) ~~"Receiving home"~~ or "Youth shelter care program facility" means a YCF which regularly receives children under temporary conditions until the court, probation office, the department, or other appropriate social agency has made other provisions for their care.

(1)(h) through (3) remain the same.

(4) The following definitions apply only to youth shelter care facilities:

(a) "Pat down search" means a body search done outside of a youth's clothing with the intention of locating suspected contraband.

(b) "Personal property search" means a search which involves going through a youth's personal property and/or room including closet, bed, desk, dresser drawers, etc., with the intention of looking for contraband.

(c) "Correspondence search" means opening, inspecting and/or reading a youth's mail or inspecting the contents of a package.

AUTH: Sec. 41-3-1103, 41-3-1142, 52-2-111 and 53-4-111,
IMP: Sec. 41-3-1102, 41-3-1142, 52-2-113, and 53-4-113,
MCA

4. The department began the process of formulating the proposed changes by convening a work group in August of 1996. Participants in the work group included Department staff, representatives of providers and provider groups, and staff from the Department of Corrections. The proposed changes are based on the recommendations of the work group.

Currently, each Montana youth shelter care facility is licensed under rules governing licensure of youth group homes or child care agencies. If adopted, the proposed changes will establish rules for licensing youth shelter care facilities.

A category for youth shelter care is reasonably necessary to the

establishment of appropriate and quality substitute care services for children who must be placed outside the family home into youth shelter care. Youth shelter care facilities are frequently used for emergency or short-term placement of children. Specific rules covering only youth shelter care facilities are necessary to address the short-term and emergency nature of these placements.

Rule I is reasonably necessary to clarify that the proposed changes allow for licensure as a youth shelter care facility, and that additional licensure under some other category of youth care facility licensure is not required.

Rule II addresses needed requirements on organization of youth shelter care facilities, including a requirement that nongovernmental facilities be incorporated. A corporate organization provides the most appropriate structure for operation of youth shelter care facilities. For example, a corporate structure ensures uniform organization in terms of lines of authority, and provides certain minimum requirements for administration. It also provides for longevity by creating an entity whose existence does not depend on the participation of particular individuals. Further, Montana law requires establishment of substitute care through the use of nonprofit corporations. See, e.g., § 41-3-1101, MCA. However, as set out in Rule I, youth shelter care facilities may also be provided by counties and cities. See, e.g., § 41-5-1801, MCA. Tribal governments should also be included as governmental units that may organize shelter care facilities without the necessity of forming a corporation.

The proposed rule does not limit the structure to nonprofit corporations. While existing Montana statutes limit the Department's authority to contract for or establish facilities for substitute care to nonprofit corporations, (e.g., 41-3-1103(2)(a), MCA), the proposed rule covers licensing of shelter care facilities. Licensing may occur without Department involvement in establishing the facility or contracting with the facility.

Rule II's additional provisions on administration reasonably impose minimum operational requirements for these facilities. Written plans and policy, as well as facility practices under the plans and policy, must exist so that they may be reviewed by licensing staff to ensure that an appropriate overall plan for care of children is provided.

Rules III through VIII are reasonably necessary to establish and enforce basic requirements for care and treatment of youth placed in youth shelter care facilities. Specifically, the rules establish minimum requirements for the physical and social environment provided by youth shelter care facilities (Rule

III), for nutrition of youth (Rule IV), for education (Rule V), religion and culture (Rule VI), clothing and hygiene, (Rule VII), and privacy and individualism (Rule VIII). These requirements are needed to properly assure adequate and appropriate care of youth placed in youth shelter care facilities.

Rule IX provides necessary requirements preventing unreasonable intrusions into the privacy of youth through facility searches. The Department recognizes that facilities must control contraband through searches authorized by placing agencies, and that the need to control contraband must be balanced with the privacy interests of individual youth. Rule IX should be adopted as reasonably necessary to establish a balance between the competing interests.

Additional minimum requirements are proposed in Rules X through XIX. The fundamental requirements of these rules should be established and enforced for the well being of youth placed in youth shelter care facilities. Specifically, Rule X is intended to establish each youth's right to personal funds and to provide protection from facility exploitation. Rule XI is designed to ensure that the provider will be prepared to actively participate in an independent living plan for any youth age 16 or older. This proposed rule also provides youth further protection from provider exploitation. Rule XII is needed to create a prohibition against abusive discipline. Rule XIII assures that youth admitted to the facility will be informed of all facility rules and safety procedures and that each youth's personal effects will be accounted for at the time of his discharge.

Rules XIV through XVIII are reasonably necessary to establish and enforce basic requirements covering care of youth. Specifically, physical care of youth (Rule XIV), the environment provided by the facility (Rule XV), fire safety at the facility (Rule XVI), transportation practices at the facility (Rule XVII) and prohibition of guns and ammunition at facilities (Rule XVIII). These basic requirements should be established as licensing rules that may be enforced for the well being of youth placed in youth shelter care facilities.

Rule XIX sets out requirements for child care staff at youth shelter care facilities. The first subsection refers to the requirements of 11.12.115, which are the existing minimum qualifications covering health and character requirements for child care staff in all categories of youth care facility licensure. Application of the requirements from 11.12.115 will help to ensure that child care staff at the facilities pose no danger to the children. Further, as would be required under the proposed rule, each facility should be required to establish its own qualifications and procedure for screening applicants so

that there are some objective criteria for hiring child care staff. In the past, group homes have had difficulties where no internal policy addresses acceptable minimum requirements for hiring child care staff.

Rule XIX (3) sets out the necessary qualifications of the staff person in charge of management and administration of the program on a day to day basis. Licensing rules should be in place requiring specific criteria related to the educational and work experience of the staff person in charge of overall administration and management of the facility. Rule XIX (4) and (5) implement needed training requirements for staff which are designed to assure that youth are cared for by adults possessing a working knowledge of program practice and policy, safety precautions and procedure, and emergency first-aid techniques.

Rule XIX (6) would require at least one awake child care staff person on duty for every 8 youth throughout a 24 hour period. Currently, youth shelter care facilities licensed as youth group homes must provide one awake or sleeping staff person per eight youth. All youth shelter care facilities should be required to provide care under the same ratio, however, the staff person should be required to remain awake.

Youth shelter care facilities provide emergency placements at all hours; youth are often placed with no presentation of previous history or case plans, and frequently facilities receive no forewarning that placement will be made. Placements made under these circumstances heighten safety risks to both staff and residents. Therefore, the licensing rules on youth shelter care should include a requirement that on duty staff must be awake. In addition, this proposal is in accord with standards recommended by The Child Welfare League of America and the Montana Association of Homes and Services to Children.

Increasing the staff/youth ratio was considered by the work group, (e.g., 1:2 children under 2 years, 1:4 children under 10 years, 1:6 children over 10 years), however, due to budget constraints these ratios were determined to not be feasible, and would severely impede development of substitute care in the form of youth shelter care. Decreasing the staff/youth ratio was also considered (e.g., 1:12) however, this proposal was disregarded due to heightened safety risks.

Rule XIX (7) provides a needed licensing requirement mandating that no youth be left alone and unsupervised in the facility. Lack of supervision poses an unacceptable risk to children served in youth shelter care.

Rules XX and XXI address administrative requirements. Rule XX mandates a placement agreement because a mutual understanding of the expectations of both the provider and the facility on the

topics covered in Rule XX (2) should be addressed in writing within a short period of time from the first day of the placement. In the past, misunderstandings have resulted from the lack of specific terms in a written agreement. These misunderstandings have adversely affected youth.

Rule XXI (1), (2) and (3) address the need to obtain all pertinent existing records on each youth in order to facilitate a plan that serves the youth's best interests. Since placements are often made on an emergency basis, this rule allows for both specific and nonspecific time periods for the provider to attempt to obtain any records which were not available at the time of the youth's placement. Rule XXI (4) sets out the expectation that upon placement a youth will undergo a needs assessment in a timely manner as a means to establish an action plan for the youth and to prevent needless gaps from occurring in the youth's life. Rule XXI (5) provides a requirement for a case plan covering care of youth whose anticipated stay in youth shelter care exceeds one week. The essential and minimum requirements for the plan are also set out in Rule XXI (5). This needed requirement assures appropriate planning for the care of youth.

The proposed changes to ARM 11.12.101 are necessary to make this rule consistent with the adoption of Rules I through XXI. Specifically, if Rules I through XXI are adopted, ARM 11.12.101(1)(c) should be changed to add youth shelter care as a category of youth care facility. The deletion of the term "Receiving home" is necessary to remove this term from the definition which describes youth shelter care. The addition of "Youth shelter care facility," for the care defined in this subsection is necessary for providing a definition of the care licensed under Rules I through XXI. It is also necessary for updating this subsection because receiving homes do not currently provide care as defined in the rule. The definitions provided in the proposed new ARM 11.12.101 (4) are necessary to implement Rule IX's provisions on searches. (See rationale in regard to Rule IX, addressed above in this rationale section.)

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 3, 1997.

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

Dawn Sliva
Rule Reviewer

Dawn Sliva
Director, Public Health and
Human Services

Certified to the Secretary of State September 22, 1997.

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

In the matter of the	)	NOTICE OF NEGOTIATED
establishment of a	)	RULEMAKING
negotiated rulemaking)	
committee on bed and)	
breakfast establishments)	

TO: All Interested Persons

1. The Department of Public Health and Human Services intends to establish a negotiated rulemaking committee to negotiate and develop proposed rules regulating bed and breakfast establishments.

2. The proposed rules may relate to and are limited to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, fire and life safety, food service, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

3. Interests which are likely to be significantly affected by the proposed rules are establishments which meet the definition of "bed and breakfast" in 50-51-102(1), MCA. "Bed and breakfast" means a private, owner or manager occupied residence that is used as a private residence but in which: a) breakfast is served and is included in the charge for a guest room; and b) the number of daily guests served does not exceed 18.

4. The individuals proposed to represent the department on the negotiated rulemaking committee are Howard Reid, Food and Consumer Safety Section ("FCSS") Supervisor, and Mitzi Schwab, FCSS Public Health Sanitarian.

5. The department proposes the following persons to represent the interests which are likely to be significantly affected by the proposed rules. The interests to be represented by each person is noted in parens.

Pat Anderson (President, Montana Bed and Breakfast Association); Jean Johnson (Executive Director, Montana Outfitters and Guide Association); and Stuart Doggett (Executive Director, Montana Innkeepers Association).

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

a. On October 6, 1997, this notice will be published in the Montana Administrative Register (MAR), and as appropriate,

in trade publications, requesting comment and applications for memberships on the negotiated rulemaking committee no later than November 7, 1997. The notice will also be mailed to interested parties and groups (bed and breakfast establishments, trade groups, legislators, etc.).

b. After receipt and consideration of the comments and applications, the department will establish a negotiated rulemaking committee no later than December 31, 1997, if the department determines that such a committee can adequately represent the interests of the persons that will be significantly affected by the proposed rules. The members selected to serve on the committee will be notified in writing by the department. Within 30 days from the notification of selection, the committee members will be sent an information packet.

c. The negotiated rulemaking committee will convene at various times in January, February and March, 1998 to negotiate and develop proposed bed and breakfast rules. The committee will establish a date in March 1998 for conclusion of the rule negotiations with the goal of reaching a consensus on the proposed rules. Teleconferencing will be utilized for most meetings, with at least one meeting scheduled in Helena.

d. By April 30, 1998, and if the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit to the department a report containing the proposed rules. If a consensus cannot be reached on the proposed rules, the committee will transmit to the department a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

e. Thereafter, and in accordance with Title 2, chapter 4, part 3, MCA (Adoption and Publication of Rules), the department will initiate the formal rulemaking process and file with the secretary of state for publication in the Montana Administrative Register the proposed bed and breakfast rules.

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

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Howard Reid, Department of Public Health and Human Services, FCSS, P.O. Box 20291, Helena, MT 59620-2951, no later than November 7, 1997: (a) the person's name or the nominee's name, their address, and contact information including telephone or fax number or e-mail address; (b) a description of the interests the person or nominee represents; (c) evidence that the person or nominee is authorized to represent parties related to the interests the

person proposes to represent; (d) the relationship of the person or nominee to regulated bed and breakfast establishments (i.e. owner/operator) and the name of the establishment or trade association; (e) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration; and (f) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel and per diem expenses).

If the individual or nominee owns or operates a bed and breakfast establishment, the following information must be submitted in addition to the information required above: (a) the number of daily guests served and the number of operating days per year; (b) the type of water supply system used, whether public or private, and source of water; (c) the type of sewage system used, whether public or private; (d) whether meals, such as lunch or dinner, or food at special events are served in addition to breakfast; and (e) whether food or meals are offered to more than overnight guests.

8. Interested parties may submit their views or comments concerning the proposed negotiated rulemaking process to Howard Reid, Department of Public Health and Human Services, FCSS, P.O. Box 20291, Helena, MT 59620-2951, no later than November 7, 1997.

9. The Department of Public Health and Human Services proposes to limit the size of the negotiated rulemaking committee to no more than 15 persons if, after receipt of the comments and applications, the department determines that that number of persons (or fewer) can adequately represent the interests of the persons that will be significantly affected by the proposed rules. The selected committee members will represent all identified segments of the bed and breakfast industry and state and local public health officials. The selected committee members may represent other parties or agencies which have a significant relationship with regulated bed and breakfast establishments.

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

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

a. "Interest" for the purpose of this process means multiple parties that have a similar point of view or that are

likely to be affected in a similar manner in relation to matters affected by the rule. (2-5-103(5), MCA)

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

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

12. The specific grant of rulemaking authority authorizing the proposed rules is found in 50-51-103, MCA. The proposed rules will implement 50-51-103 and 50-51-108, MCA.

John Sleva
Rule Reviewer

Mike Chang
Director, Montana Dept. of
Public Health and Human Services

Certified to the Secretary of State September 22, 1997.

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

In the matter of the	)	NOTICE OF NEGOTIATED
establishment of a	)	RULEMAKING
negotiated rulemaking)	
committee on guest ranch and)	
outfitting and guide)	
facilities)	

TO: All Interested Persons

1. The Department of Public Health and Human Services intends to establish a negotiated rulemaking committee to negotiate and develop proposed rules regulating guest ranches and outfitting and guide facilities.

2. The proposed rules must take into consideration the size, type, location, and seasonal operations of an establishment and may include only rules to: (a) ensure that the establishment has safe drinking water and an adequate water supply; (b) ensure an adequate and sanitary sewage system and refuse disposal system; (c) address food safety concerns, such as adequate storage, refrigeration, and food handling; and (d) establish staggered license expiration dates by implementing an initial licensing period determined by the department.

3. Interests which are likely to be significantly affected by the proposed rules are:

a. establishments which meet the definition of "guest ranches" in 50-51-102(3), MCA. "Guest ranch" means a facility that: (a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen; (b) furnishes sleeping accommodations on advance reservations for a minimum stay; (c) provides hunting, horseback riding, fishing, or a working cattle ranch experience to its guests; and (d) is a small establishment or a seasonal establishment.

b. establishments which meet the definition of "outfitting and guide facility" in 50-51-102(5), MCA. "Outfitting and guide facility" means a facility that: (a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen; (b) furnishes sleeping accommodations to guests; (c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101, MCA; and (d) is a small establishment or a seasonal establishment.

The definitions of seasonal establishment in 50-51-102(8), MCA, and small establishment in 50-51-102(9), MCA, are applicable to guest ranches and outfitting and guide facilities.

"Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to at least 9 but no more than 40 people at one time.

"Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to at least 9 but not more than 24 people at one time.

4. The individuals proposed to represent the department on the negotiated rulemaking committee are Howard Reid, Food and Consumer Safety Section (FCSS) Supervisor, and Mitzi Schwab, FCSS Public Health Sanitarian.

5. The department proposes the following persons to represent the interests which are likely to be significantly affected by the proposed rules. The interest to be represented by each person is noted in parens.

Page Dringman (Montana Ranch Vacation Association); Jean Johnson (Executive Director, Montana Outfitters and Guide Association); and Stuart Doggett (Executive Director, Montana Innkeepers Association).

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

a. On October 6, 1997, this notice will be published in the Montana Administrative Register (MAR), and as appropriate, in trade publications, seeking comment and applications for memberships on the negotiated rulemaking committee no later than November 7, 1997. The notice will also be mailed to interested parties and groups (guest ranches and outfitting and guide facilities, trade groups, legislators, etc.).

b. After receipt and consideration of the comments and applications, the department will establish a negotiated rulemaking committee no later than December 31, 1997. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection. Within 30 days from the notification of selection, the committee members will be sent an information packet.

c. The negotiated rulemaking committee will convene at various times in January, February, and March, 1998 to negotiate and develop proposed rules. The committee will establish a date in March 1998 for conclusion of the rule negotiations with the goal of reaching a consensus on the proposed rules. Teleconferencing will be utilized for most meetings, with at least one meeting scheduled in Helena.

d. By April 30, 1998, and if the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit to the department a report containing the proposed rules. If a consensus cannot be reached on the proposed rules, the committee will transmit to the department a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

e. Thereafter, and in accordance with Title 2, chapter 4, part 3, MCA (Adoption and Publication of Rules), the department will file with the secretary of state for publication in the Montana Administrative Register the proposed rules for guest ranches and outfitting and guide facilities.

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

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Howard Reid, Department of Public Health and Human Services, FCSS, P.O. Box 20291, Helena, MT 59620-2951, no later than November 7, 1997: (a) the person's name or the nominee's name, their address, and contact information including telephone or fax number or e-mail address; (b) a description of the interests the person or nominee represents; (c) evidence that the person or nominee is authorized to represent parties related to the interests the person proposes to represent; (d) the relationship of the person or nominee to regulated guest ranches or outfitting and guide facilities (i.e. owner/operator) and the name of the establishment or trade association; (e) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration; and (f) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel and per diem expenses).

If the individual or nominee owns or operates a guest ranch or outfitting and guide facility, the following information must be submitted in addition to the information required above: (a) the number of daily guests served and the number of operating days per year; (b) the type of water supply system used, whether public or private, and source of water; (c) the type of sewage system used, whether public or private; (d) whether meals, such as breakfast, lunch or dinner, or food at special events or activities are served; and (e) whether food or meals are offered to more than overnight guests.

8. Interested parties may submit their views or comments concerning the proposed negotiated rulemaking process to Howard Reid, Department of Public Health and Human Services, FCSS, P.O.

Box 20291, Helena, MT 59620-2951, no later than November 7, 1997.

9. The Department of Public Health and Human Services proposes to limit the size of the negotiated rulemaking committee to no more than 15 persons if, after receipt of the comments and applications, the department determines that that number of persons (or fewer) can adequately represent the interests of the persons that will be significantly affected by the proposed rules. The selected committee members will represent all identified segments of guest ranch and outfitting and guide facilities and state and local public health officials. The selected committee members may represent other parties or agencies which have a significant relationship with regulated guest ranch and outfitting and guide facilities.

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

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

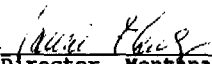
a. "Interest" for the purpose of this process means multiple parties that have a similar point of view or that are likely to be affected in a similar manner in relation to matters affected by the rule. (2-5-103(5), MCA).

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

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

12. The specific grant of rulemaking authority authorizing the proposed rules is found in 50-51-103, MCA. The proposed rules will implement 50-51-101 and 50-51-103, MCA.


Rule Reviewer


Director, Montana Dept. of
Public Health and Human Services

Certified to the Secretary of State September 22, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED) NOTICE OF PUBLIC HEARING ON THE
AMENDMENT, of ARM 42.19.1203) PROPOSED AMENDMENT AND REPEAL
42.19.1222, 42.19.1235, 42.)
21.113, 42.21.122, 42.21.123,)
42.21.124, 42.21.131, 42.21.)
137, 42.21.138, 42.21.139,)
42.21.140, 42.21.151, 42.21.)
153, 42.21.155, 42.21.156,)
42.22.1311, 42.22.1312, and)
the proposed REPEAL of ARM)
42.21.106, 42.21.107, 42.21.)
301, 42.21.302, 42.21.303,)
42.21.305, 42.21.307, 42.21.)
308, 42.21.310, and 42.21.314)
relating to Industrial Prop-)
erty Trend, New Industrial)
Property, and Personal Prop-)
erty Trended Depreciation)
Schedules)

TO: All Interested Persons:

1. On October 27, 1997, at 9:00 am, a public hearing will be held in room 465 of the Mitchell Building, at Helena, Montana, to consider the proposed amendments of ARM 42.19.1203, 42.19.1222, 42.19.1235, 42.21.113, 42.21.122, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, 42.22.1311, 42.22.1312, and the proposed repeal of 42.21.106, 42.21.107, 42.21.301, 42.21.302, 42.21.303, 42.21.305, 42.21.307, 42.21.308, 42.21.310, and 42.21.314 relating to Industrial Property Trend, New Industrial Property, and Personal Property Trended Depreciation Schedules.

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

42.19.1203. TREATMENT OF AIR AND WATER POLLUTION CONTROL EQUIPMENT (1) and (2) remain the same.

(3) To be eligible to receive pollution control status for the current tax year, the application must be received on or before January 1 of that year.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-135, MCA

42.19.1222 APPLICATION FOR SPECIAL CLASSIFICATION (1) A person or business desiring to have property classified as new industry property shall make written application for such classification to the department of revenue on or before May 1 January 1 of the year for which the classification is sought. The application is to contain a clear and concise statement of the facts that entitle the applicant's property to receive classification as new industrial property.

(2) through (5) remain the same.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-135, 15-6-152, 15-24-1401 and 15-24-1402, MCA

42.19.1235 TAX INCENTIVE FOR NEW AND EXPANDING INDUSTRY (1) remains the same.

(2) In order to be considered for the current tax year, an application must be filed on the form available from the department on or before the first Monday in March January 1 of the tax year.

(3) through (9) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-135, 15-24-1401 and 15-24-1402 MCA

42.21.113 LEASED AND RENTED 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 three-year 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>
<u>1997</u>	<u>70%</u>
<u>1996</u>	<u>41%</u>
<u>1995</u>	<u>17%</u>
<u>1994 or older</u>	<u>8%</u>

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

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>1997</u>	<u>85%</u>
<u>1996</u>	<u>69%</u>
<u>1995</u>	<u>52%</u>
<u>1994</u>	<u>34%</u>
<u>1993 or older</u>	<u>20%</u>

(c) For equipment that has an acquired cost of \$1501 to \$5,000 the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>1997</u>	<u>92%</u>
<u>1996</u>	<u>86%</u>
<u>1995</u>	<u>79%</u>
<u>1994</u>	<u>72%</u>
<u>1993</u>	<u>64%</u>
<u>1992</u>	<u>55%</u>
<u>1991</u>	<u>44%</u>
<u>1990</u>	<u>35%</u>
<u>1989</u>	<u>29%</u>

1988 or older 25%

(d) For equipment that has an acquired cost of \$5,001 to \$20,000 the department shall use the 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>1998</u>	<u>80%</u>
<u>1997</u>	<u>65%</u>
<u>1996</u>	<u>52%</u>
<u>1995</u>	<u>50%</u>
<u>1994</u>	<u>47%</u>
<u>1993</u>	<u>43%</u>
<u>1992</u>	<u>40%</u>
<u>1991</u>	<u>38%</u>
<u>1990</u>	<u>35%</u>
<u>1989</u>	<u>32%</u>
<u>1988</u>	<u>32%</u>
<u>1987</u>	<u>28%</u>
<u>1986</u>	<u>26%</u>
<u>1985</u>	<u>26%</u>
<u>1984</u>	<u>24%</u>
<u>1983</u>	<u>22%</u>
<u>1982</u>	<u>24%</u>
<u>1981</u>	<u>25%</u>
<u>1980</u>	<u>24%</u>
<u>1979 or older</u>	<u>25%</u>

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

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>1997</u>	<u>25%</u>
<u>1996</u>	<u>15%</u>
<u>1995 or older</u>	<u>10%</u>

~~(2) The trended schedules will be the same as ARM 42.21.155, categories 1, 2 and 6. The taxpayer must report the acquired cost, year acquired and an itemized description of each piece of equipment. The acquired cost will be applied to the schedule in (3) to arrive at market value.~~

~~(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year 1997.~~

<u>YEAR</u>	<u>TRENDED % GOOD</u>			
<u>NEW/ACQUIRED</u>	<u>\$0 - 500</u>	<u>\$501 - 1,500</u>	<u>\$1,501 OR GREATER</u>	
<u>1996</u>	<u>70%</u>	<u>85%</u>	<u>85%</u>	
<u>1995</u>	<u>43%</u>	<u>69%</u>	<u>71%</u>	
<u>1994</u>	<u>18%</u>	<u>52%</u>	<u>54%</u>	
<u>1993</u>	<u>9%</u>	<u>34%</u>	<u>34%</u>	
<u>1992 and older</u>	<u>9%</u>	<u>20%</u>	<u>21%</u>	

(2) For all other leased property not meeting the criteria

of 15-6-136, MCA, the valuation procedures shall be the same as other like personal property.

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

~~(4) For all other leased property not meeting the criteria of 15-6-136, MCA, the valuation procedures shall be the same as other like personal property.~~

~~(5) For rental video tapes the following schedule shall be used:~~

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>1996</u>	<u>25%</u>
<u>1995</u>	<u>15%</u>
<u>1994</u>	<u>10%</u>

~~(6) (4) This rule is effective for tax years beginning after December 31, 1996 1997.~~

AUTH: Sec. 15-1-201, 15-23-108, MCA; IMP, Sec. 15-6-136, MCA

42.21.122 LIVESTOCK (1) through (5) remain the same.

(6) Miscellaneous livestock shall be valued as follows:

(a) through (e) remain the same.

(f) ~~female llamas and miniature horses shall be valued the same as show, roping and race horses,~~ mules, shetland ponies, etc.

(g) through (h) remain the same.

(7) This rule is effective for tax years beginning after December 31, ~~1996 1997.~~

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-136, and 15-6-207, MCA

42.21.123 FARM MACHINERY AND EQUIPMENT (1) The market value for farm machinery and equipment shall be the "lean" "average wholesale" value as shown in the "Official Guide Tractors and Farm Equipment", Guides 2000, Northwest Region Official Guide, Fall Edition, for the year previous to the year of the assessment. ~~For purposes of 15-8-111, MCA, "lean" value is best represented by the "average wholesale value" listed in the above publication.~~ This guide may be reviewed in the department or purchased from the publisher: North American Equipment Dealers Association, 10877 Watson Road, St. Louis, Missouri 63127-1081.

(2) For all farm machinery and equipment which cannot be valued under (1), the department of ~~revenue~~ has developed a manual to value the equipment. This manual will be used in conjunction with the depreciation schedule in (5) in the valuation of farm equipment and machinery. The purpose of the department developed manual will be to arrive at values which approximate average ~~lean~~ wholesale value. The department of revenue's farm machinery manual is hereby incorporated by

reference. Copies are available to taxpayers at a reasonable cost for copying at the Department of Revenue, Property Assessment Division, Helena, Montana 59620.

(3) For all farm machinery and equipment which cannot be valued under (1) and (2), the department ~~of revenue~~ shall try to ascertain the original FOB through old farm machinery and equipment valuation guidebooks. If an original FOB cannot be ascertained, the department ~~of revenue~~ may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in (5) to arrive at a value which approximates average ~~loan~~ wholesale value. The trend factors shall be the same as those mentioned in ARM 42.21.106.

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

(5) The trended depreciation schedule referred to in (2) through (4) is listed below and shall be used for tax year ~~1997~~ 1998. The schedule is derived by using the guidebook listed in (1) ~~and the Western Official Guide, North American Equipment Dealers Association, 10077 Watson Road, St. Louis, Missouri 63127,~~ as the data base. The trended depreciation schedule will approximate average ~~loan~~ wholesale value.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD AVERAGE WHOLESALE</u>
1997	65%
1996	63%
1995	60%
1994	56%
1993	48%
1992	45%
1991	44%
1990	40%
1989	40%
1988	34%
1987	31%
1986	29%
1985	26%
1984	26%
1983	25%
1982	25%
1981	26%
1980	28%
1979	31%
1978	28%
1977	26%
<u>1998</u>	<u>65%</u>
<u>1997</u>	<u>64%</u>
<u>1996</u>	<u>61%</u>
<u>1995</u>	<u>53%</u>

<u>1994</u>	<u>47%</u>
<u>1993</u>	<u>44%</u>
<u>1992</u>	<u>43%</u>
<u>1991</u>	<u>38%</u>
<u>1990</u>	<u>39%</u>
<u>1989</u>	<u>32%</u>
<u>1988</u>	<u>30%</u>
<u>1987</u>	<u>28%</u>
<u>1986</u>	<u>26%</u>
<u>1985</u>	<u>24%</u>
<u>1984</u>	<u>24%</u>
<u>1983</u>	<u>24%</u>
<u>1982</u>	<u>26%</u>
<u>1981</u>	<u>29%</u>
<u>1980</u>	<u>31%</u>
<u>1979</u>	<u>28%</u>
<u>1978</u>	<u>26%</u>
<u>1977</u>	<u>25%</u>
<u>1976</u>	<u>23%</u>
<u>1975</u>	<u>22%</u>
<u>1974 and before</u>	<u>20%</u>

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~1996~~ 1997.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

(1) For purposes of assessing the per capita tax on livestock, poultry and bees to pay the expense of enforcing the livestock, poultry and bee laws, the following categories of livestock, poultry and bees shall be used by the producer to report the number of animals within each category. The established categories are:

- (a) remains the same.
- (b) All ~~bulls and~~ cattle - 9 months and older;
- (c) All ~~sheep and~~ goats - 9 months and older;
- (d) remains the same.
- (e) All ~~buffalo bison~~ - 9 months and older;
- (f) All ~~elk, llamas, deer and~~ other domestic ungulates - 9 months and older;
- (g) and (h) remain the same.
- (i) ~~All sheep - 9 months and older;~~ All llamas;
- (j) remains the same.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-136, 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), the department ~~of revenue or its agent~~ shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department ~~of revenue~~ may use trending to determine the FOB.

The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in (5) 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) and (4) remain the same.

(5) The trended depreciation schedule referred to in (2), (3) and (4) is listed below and shall be used for tax year 1997 1998.

The percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
<u>1997</u>	<u>80%</u>
<u>1996</u>	<u>65%</u>
<u>1995</u>	<u>49%</u>
<u>1994</u>	<u>50%</u>
<u>1993</u>	<u>45%</u>
<u>1992</u>	<u>42%</u>
<u>1991</u>	<u>39%</u>
<u>1990</u>	<u>33%</u>
<u>1989</u>	<u>32%</u>
<u>1988</u>	<u>31%</u>
<u>1987</u>	<u>30%</u>
<u>1986</u>	<u>26%</u>
<u>1985</u>	<u>27%</u>
<u>1984</u>	<u>25%</u>
<u>1983</u>	<u>24%</u>
<u>1982</u>	<u>25%</u>
<u>1981</u>	<u>25%</u>
<u>1980</u>	<u>24%</u>
<u>1979</u>	<u>25%</u>
<u>1978</u>	<u>25%</u>
<u>1977</u>	<u>26%</u>
<u>1976 and before</u>	<u>25%</u>
<u>1998</u>	<u>80%</u>
<u>1997</u>	<u>65%</u>
<u>1996</u>	<u>52%</u>
<u>1995</u>	<u>50%</u>
<u>1994</u>	<u>47%</u>
<u>1993</u>	<u>43%</u>
<u>1992</u>	<u>40%</u>
<u>1991</u>	<u>38%</u>
<u>1990</u>	<u>35%</u>
<u>1989</u>	<u>32%</u>
<u>1988</u>	<u>32%</u>

<u>1987</u>	<u>28%</u>
<u>1986</u>	<u>26%</u>
<u>1985</u>	<u>26%</u>
<u>1984</u>	<u>24%</u>
<u>1983</u>	<u>22%</u>
<u>1982</u>	<u>24%</u>
<u>1981</u>	<u>25%</u>
<u>1980</u>	<u>24%</u>
<u>1979 and before</u>	<u>25%</u>

(6) This rule is effective for tax years beginning after December 31, ~~1996~~ 1997, and applies to all heavy equipment.
AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-135, and 15-6-138,
MCA

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~1997~~ 1998.

SEISMOGRAPH UNITS

<u>% TRENDED</u>					
<u>YEAR/NEW</u>		<u>TREND</u>	<u>TRENDED</u>	<u>WHOLESALE</u>	<u>WHOLESALE</u>
<u>ACQUIRED</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>
1997	100%	1.000	100%	80%	80%
1997	85%	1.000	85%	80%	68%
1996	69%	1.018	70%	80%	56%
1995	52%	1.056	55%	80%	44%
1994	34%	1.077	37%	80%	29%
1993	20%	1.091	22%	80%	17%
1992 & older	5%	1.099	5%	80%	4%
1998	100%	1.000	100%	80%	80%
1997	85%	1.000	85%	80%	68%
1996	69%	1.010	70%	80%	56%
1995	52%	1.030	54%	80%	43%
1994	34%	1.068	36%	80%	29%
1993	20%	1.090	22%	80%	18%
1992 & older	5%	1.110	6%	80%	5%

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR/NEW</u>		<u>TREND</u>	<u>TRENDED</u>
<u>ACQUIRED</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>
1997	100%	1.000	100%
1996	85%	1.000	85%
1995	69%	1.018	70%
1994	52%	1.056	55%
1993	34%	1.077	37%
1992	20%	1.091	22%
1991 & older	5%	1.099	5%

1998	100%	1.000	100%
1997	85%	1.000	85%
1996	69%	1.010	70%
1995	52%	1.030	54%
1994	34%	1.068	36%
1993	20%	1.090	22%
1992 & older	5%	1.110	6%

(5) This rule is effective for tax years beginning after December 31, ~~1996~~ 1997.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT (1) and (2) remain the same.

(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year ~~1997~~ 1998.

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>
1997	100%	1.000	100%
1996	95%	1.000	95%
1995	89%	1.018	91%
1994	83%	1.056	88%
1993	77%	1.077	83%
1992	71%	1.091	77%
1991	65%	1.099	71%
1990	58%	1.123	65%
1989	51%	1.152	59%
1988	45%	1.210	55%
1987	39%	1.270	50%
1986	33%	1.284	42%
1985	28%	1.290	36%
1984	23%	1.308	30%
1983 & older	20%	1.343	27%
1998	100%	1.000	100%
1997	95%	1.000	95%
1996	90%	1.010	91%
1995	85%	1.030	88%
1994	79%	1.068	84%
1993	73%	1.090	80%
1992	68%	1.110	75%
1991	62%	1.112	69%
1990	55%	1.136	62%
1989	49%	1.166	57%
1988	43%	1.232	53%
1987	37%	1.285	48%
1986	31%	1.299	40%
1985	26%	1.305	34%
1984	23%	1.323	30%

1983 & older 20% 1.358 27%

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, 1996 1997.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.139 WORKOVER AND SERVICE RIGS (1) ~~Each tax year~~
~~bids~~ Rigs 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</u> <u>DEPTH RATING</u>	<u>SERVICE</u> <u>RIG R.C.N.</u>	<u>WORKOVER</u> <u>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).

(2) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year ~~1997~~ 1998.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>TRENDED % GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
1997	100%	80%	80%
1996	92%	80%	74%
1995	84%	80%	67%
1994	76%	80%	61%
1993	67%	80%	54%
1992	58%	80%	46%
1991	49%	80%	39%
1990	35%	80%	28%
1989	30%	80%	24%
1988	24%	80%	19%
1987 & older	20%	80%	16%

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
1998	100%	1.000	80%	80%
1997	92%	1.000	80%	74%
1996	84%	1.010	80%	68%
1995	76%	1.030	80%	63%
1994	67%	1.068	80%	57%
1993	58%	1.090	80%	51%
1992	49%	1.110	80%	44%
1991	39%	1.112	80%	35%
1990	30%	1.136	80%	27%
1989	24%	1.166	80%	22%
1988 & older	20%	1.232	80%	20%

(6) This rule is effective for tax years beginning after December 31, 1996 1997.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.140 OIL DRILLING RIGS (1) ~~Each tax year bids~~ 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.

<u>Class</u>	<u>DEPTH CATEGORIES</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).

(2) The department ~~of revenue~~ 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 ~~1997~~ 1998 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>TRENDED % GOOD</u>
1997	100%
1996	92%
1995	84%
1994	76%
1993	67%
1992	58%
1991	49%
1990	35%
1989	30%
1988	24%
1987 and older	20%

<u>YEAR NEW/ ACQUIRED</u>	<u>TREND FACTOR</u>	<u>% GOOD</u>	<u>TRENDED % GOOD</u>
1998	1.000	100%	100%
1997	1.000	92%	92%
1996	1.010	84%	84%
1995	1.030	76%	78%
1994	1.068	67%	72%
1993	1.090	58%	63%
1992	1.110	49%	54%
1991	1.112	35%	39%
1990	1.136	30%	34%
1989	1.166	24%	28%
1988 and older	1.232	20%	25%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~1996~~ 1997.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

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

(4) The trended depreciation schedules referred to in (2) and (3) are listed below and shall be in effect for tax year ~~1997~~ 1998.

TABLE 1: 5-YEAR "DISHES"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	85%	1.000	85%
1995	69%	1.013	70%
1994	52%	1.050	55%
1993	34%	1.079	37%
1992 & older	20%	1.100	22%
<u>1997</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>1996</u>	<u>69%</u>	<u>1.014</u>	<u>70%</u>
<u>1995</u>	<u>52%</u>	<u>1.029</u>	<u>54%</u>
<u>1994</u>	<u>34%</u>	<u>1.066</u>	<u>36%</u>
<u>1993 & older</u>	<u>20%</u>	<u>1.096</u>	<u>22%</u>

TABLE 2: 10-YEAR "TOWERS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	92%	1.000	92%
1995	84%	1.013	85%
1994	76%	1.050	80%
1993	67%	1.079	72%
1992	58%	1.100	64%
1991	49%	1.114	55%
1990	39%	1.136	44%
1989	30%	1.166	35%
1988	24%	1.229	29%
1987 & older	20%	1.282	26%
<u>1997</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>1996</u>	<u>84%</u>	<u>1.014</u>	<u>85%</u>
<u>1995</u>	<u>76%</u>	<u>1.029</u>	<u>78%</u>
<u>1994</u>	<u>67%</u>	<u>1.066</u>	<u>71%</u>
<u>1993</u>	<u>58%</u>	<u>1.096</u>	<u>64%</u>
<u>1992</u>	<u>49%</u>	<u>1.118</u>	<u>55%</u>
<u>1991</u>	<u>39%</u>	<u>1.131</u>	<u>44%</u>
<u>1990</u>	<u>30%</u>	<u>1.154</u>	<u>35%</u>
<u>1989</u>	<u>24%</u>	<u>1.185</u>	<u>28%</u>
<u>1988 & older</u>	<u>20%</u>	<u>1.248</u>	<u>25%</u>

(5) This rule is effective for tax years beginning after December 31, ~~1996~~ 1997.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

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

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

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

Installed Cost X Trended Percent Good = Average Market Value

<u>YEAR</u>	<u>TREND FACTOR</u>	<u>PERCENT GOOD</u>	<u>TRENDED % GOOD</u>
1996	1.000	92%	92%
1995	1.013	84%	85%
1994	1.050	76%	80%
1993	1.079	67%	72%
1992	1.100	58%	64%
1991	1.114	49%	55%
1990	1.136	39%	44%
1989	1.166	30%	35%
1988	1.229	24%	29%
1987 & older	1.282	20%	26%
1997	1.000	92%	92%
1996	1.014	84%	85%
1995	1.029	76%	78%
1994	1.066	67%	71%
1993	1.096	58%	64%
1992	1.118	49%	55%
1991	1.131	39%	44%
1990	1.154	30%	35%
1989	1.185	24%	28%
1988 & older	1.248	20%	25%

(a) and (b) remain the same.

(4) This methodology is effective for tax years beginning after December 31, ~~1996~~ 1997.

~~(5) Five percent of the installed cost of the entire lift will be used as the cost of the tower bases and will be appraised and assessed as are all other improvements to real estate.~~

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

Installed Cost X Percent Good = Average Market Value

<u>YEAR</u>	<u>PERCENT GOOD-TABLE</u>
1st	92%
2nd	90%
3rd	88%
4th	82%
5th	73%
6th	65%
7th	57%
8th	48%
9th	38%
10th	32%
11th and older	25%

Method of determining installation cost using invoice price of equipment by classification invoice price x percent for that classification = installation cost.

<u>CLASSIFICATION</u>	<u>PERCENT OF INVOICE FOR INSTALLATION</u>
Aerial Lifts (Condola Chair)	40%
Surface Lifts (T Bar, J Bar, Platter)	30%
Tows (Rope, Cable)	20%
Portable Lift	10%

Five percent of installed costs on aerial and surface lifts will be placed in class four. The taxpayer must list each year as of January 1:

- (a) all equipment by year of installation;
- (b) invoice costs as per year of installation;
- (c) make special note of any addition or deletion from previous years list, with invoice cost.

(6) This rule is effective for tax years beginning after December 31, 1990.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year 1997 1998 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>
1996	70%	1.000	70%
1995	45%	0.945	43%
1994	20%	0.907	18%

1993 and older	10%	0.913	9%
1997	70%	1.000	70%
1996	45%	0.918	41%
1995	20%	0.859	17%
1994 and older	10%	0.824	8%

CATEGORY 2

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	85%	1.000	85%
1995	69%	1.007	69%
1994	52%	1.005	52%
1993	34%	1.010	34%
1992 and older	20%	1.010	20%
1997	85%	1.000	85%
1996	69%	1.001	69%
1995	52%	1.007	52%
1994	34%	1.006	34%
1993 and older	20%	1.011	20%

CATEGORY 3

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	85%	1.000	85%
1995	69%	0.997	69%
1994	52%	0.957	50%
1993	34%	0.956	33%
1992 and older	20%	0.953	19%
1997	85%	1.000	85%
1996	69%	0.995	69%
1995	52%	0.926	48%
1994	34%	0.907	31%
1993 and older	20%	0.907	18%

CATEGORY 4

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	85%	1.000	85%
1995	69%	0.991	68%
1994	52%	0.981	51%
1993	34%	0.972	33%
1992 and older	20%	0.984	20%
1997	85%	1.000	85%
1996	69%	0.975	67%
1995	52%	0.967	50%
1994	34%	0.957	33%

1993 and older 20% 0.949 19%

CATEGORY 5

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	85%	1.000	85%
1995	69%	1.018	70%
1994	52%	1.035	54%
1993	34%	1.054	36%
1992 and older	20%	1.063	21%
1997	85%	1.000	85%
1996	69%	1.011	70%
1995	52%	1.030	54%
1994	34%	1.047	36%
1993 and older	20%	1.066	21%

CATEGORY 6

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	85%	1.000	85%
1995	69%	1.030	71%
1994	52%	1.043	54%
1993	34%	0.998	34%
1992 and older	20%	1.028	21%
1997	85%	1.000	85%
1996	69%	1.015	70%
1995	52%	1.041	54%
1994	34%	0.054	36%
1993 and older	20%	1.009	20%

CATEGORY 7

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	92%	1.000	92%
1995	84%	1.026	86%
1994	76%	1.049	78%
1993	67%	1.071	72%
1992	58%	1.096	64%
1991	49%	1.128	55%
1990	39%	1.174	46%
1989	30%	1.222	37%
1988	24%	1.270	30%
1987 and older	20%	1.296	26%
1997	92%	1.000	92%
1996	84%	1.019	86%
1995	76%	1.045	79%

1994	67%	1.069	72%
1993	58%	1.092	63%
1992	49%	1.116	55%
1991	39%	1.150	45%
1990	30%	1.196	36%
1989	24%	1.246	30%
1988 and older	20%	1.294	26%

CATEGORY 8

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	92%	1.000	92%
1995	84%	1.028	86%
1994	76%	1.054	80%
1993	67%	1.079	72%
1992	58%	1.097	64%
1991	49%	1.112	54%
1990	39%	1.143	45%
1989	30%	1.187	36%
1988	24%	1.242	30%
1987 and older	20%	1.286	26%
1997	92%	1.000	92%
1996	84%	1.019	86%
1995	76%	1.046	79%
1994	67%	1.072	72%
1993	58%	1.098	64%
1992	49%	1.116	55%
1991	39%	1.132	44%
1990	30%	1.163	35%
1989	24%	1.208	29%
1988 and older	20%	1.263	25%

(3) This rule is effective for tax years beginning after December 31, 1997.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.156 CATEGORIES (1) and (2) remain the same.

(3) Category 2 consists of calculating and accounting machines, cash registers, copiers, typewriters, vending machines, jukeboxes, fax machines, addressing machines, time recording machines, check endorsing machines, postage machines, electronic games, transcribing equipment, and other office and store machines. The index used will be the "Producer Price Index for Commodity Grouping, No. 1193", "Office and Store Machines and Equipment", published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(4) through (6) remain the same.

(7) Category 6 consists of janitorial equipment, electronic testing equipment, coin-operated washers and dryers,

video equipment and tapes (other than class 6 property), cameras, equipment used for beauty and barber shops (except beauty and barber chairs), exercise equipment, tanning beds, tanning toning tables, and carpet and shampooing equipment and ceramic molds. The index used will be the "Producer Price Index for Commodity Grouping", No. 15, "Miscellaneous Products," published by the United States Department of Labor, Bureau of Labor Statistics. A 5-year depreciation table will be used.

(8) remains the same.

(9) Category 8 consists of all other commercial furniture and fixtures and includes but is not limited to medical and dental chairs and tables, theatre equipment, stereo equipment, survey equipment, billboards, garbage bins, coin-op car wash equipment, coin-op pool tables, gas pumps, bar equipment, restaurant equipment and furniture and fixtures, bowling alleys and equipment (auto scorers should be valued using category 1), photo and developing equipment, mortuary equipment, safes, and security alarm systems and port-a-potties. The index used will be the "Producer Price Index for Commodity Grouping", No. 122, "Commercial Furniture", published by the United States Department of Labor, Bureau of Labor Statistics. A 10-year depreciation table will be used.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-139, MCA

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same except for the tables below.

1997 1998 INDUSTRIAL MACHINERY & EQUIPMENT TREND FACTORS

Trend

<u>Table</u>	<u>Description</u>	<u>Life</u>
(1)	Aircraft/Airframe Mfg.	15
(4)	Alcohol Plant	15
(2)	Baking	12
(21)	Bentonite	20
(3)	Bottling	12
(4)	Brewing & Distilling	20
(5)	Candy & Confectionery	20
(25)	Cardboard Container	20
(6)	Cement Manufacturing	20
(14)	Cereal Products	16
(7)	Chemical Manufacturing	12
(8)	Clay Products	15
(21)	Coal Crushing & Handling	20
(28)	Coal Fired Power Gener.	16
(6)	Concrete Products	18
(6)	Concrete Ready Mix	18
(9)	Contractor Equipment	10
(10)	Creamery & Dairy	12
(16)	Egg Packing	20
(11)	Electric Power Equipment	16
(12)	Electrical Equipment Mfg.	10
(12)	Electronic Component Mfg.	10
(14)	Feed Milling	16

(30)	Fertilizer Distribution	10
(7)	Fertilizer Manufacturing	12
(13)	Fish Cannery	12
(14)	Flour, Cereal & Feed	16
(14)	Flour Milling	16
(20)	Foundry	15
(15)	Fruit Cannery	12
(16)	Fruit Packing	12
(31)	Furniture Manufacturing	10
(4)	Gasohol Plant	15
(32)	Glass Manufacturing	15
(14)	Grain Handling Facilities	16
(21)	Graphite Products	20
(21)	Gypsum	20
(21)	Heap Leach Mechanical	20
(21)	Heap Leach Pads	5
(15)	Honey Processing	12
(11)	Hydroelectric Generation	20
(9)	Industrial Shop Equipment	10
(17)	Laundry & Drycleaning	10
(29)	Leather Fabrication	20
(21)	Lime/Calcium Benefication	20
(18)	Logging Equipment	10
(19)	Meat Packing	12
(20)	Metal Fabrication	20
(20)	Metal Machining & Milling	15
(20)	Metal Working	20
(21)	Mining & Milling	15
(23)	Natural Gas Processing	16
(21)	Nonferrous Smelting	15
(23)	Oil Refining	16
(21)	Open Pit Mining/Quarrying	15
(21)	Ore Milling/Concentrating	15
(7)	Oxygen Generation	20
(22)	Paint Manufacturing	12
(30)	Peat Moss/Compost Plant	20
(23)	Petroleum	16
(21)	Phosphate Benefication	20
(32)	Plastic Products Mfg.	20
(18)	Pole Treating Equipment	10
(32)	Polystyrene	20
(24)	Printing	12
(25)	Pulp & Paper Mfg.	13
(26)	Refrigeration	12
(20)	Rifle Manufacturing	15
(27)	Rubber & Vulcanizing	15
(18)	Sawmill Equipment	10 12
(14)	Seed Treating & Cleaning	16
(6)	Stationary Asphalt Plant	15
(28)	Steam Power Generation	16
(21)	Stone Products	15
(23)	Sugar Refinery	18
(23)	Sulphur Manufacturing	12
(21)	Talc Benefication	20

(29)	Textile Fabrication	10
(21)	Underground Mining	10
(14)	Vegetable Oil Extraction	20
(21)	Vermiculite Processing	20
(30)	Warehousing	10
(14)	Wood Pellet Plant	16
(31)	Wood Products, Reconstituted	10
(31)	Woodworking	20

Note: 1. Lab equipment is to be included in its related industry's table at 10-year life expectancy.

<u>YEAR</u>	<u>TABLE 1</u>	<u>TABLE 2</u>	<u>TABLE 3</u>	<u>TABLE 4</u>	<u>TABLE 5</u>
1996	1.000	1.000	1.000	1.000	1.000
1995	1.013	1.013	1.014	1.017	1.014
1994	1.053	1.055	1.054	1.055	1.056
1993	1.080	1.087	1.082	1.080	1.080
1992	1.097	1.108	1.100	1.097	1.108
1991	1.105	1.123	1.111	1.109	1.123
1990	1.122	1.148	1.132	1.134	1.151
1989	1.147	1.179	1.160	1.166	1.185
1988	1.204	1.244	1.228	1.235	1.253
1987	1.259	1.300	1.287	1.290	1.310
1986	1.274	1.322	1.304	1.306	1.332
1985	1.280	1.345	1.312	1.318	1.357
1984	1.296	1.371	1.329	1.337	1.385
1983	1.331	1.403	1.364	1.370	1.417
1982	1.357	1.423	1.384	1.390	1.435
1981	1.416	1.491	1.444	1.455	1.505
1980	1.560	1.650	1.591	1.609	1.668
1979	1.728	1.823	1.752	1.782	1.842
1978	1.896	1.998	1.920	1.938	2.022
1977	2.035	2.147	2.067	2.084	2.175
1976	2.143	2.263	2.173	2.192	2.294

<u>YEAR</u>	<u>TABLE 1</u>	<u>TABLE 2</u>	<u>TABLE 3</u>	<u>TABLE 4</u>	<u>TABLE 5</u>
1997	1.000	1.000	1.000	1.000	1.000
1996	1.010	1.014	1.013	1.013	1.015
1995	1.024	1.029	1.028	1.033	1.031
1994	1.064	1.072	1.069	1.071	1.074
1993	1.092	1.105	1.097	1.097	1.107
1992	1.109	1.126	1.115	1.114	1.127
1991	1.117	1.141	1.127	1.126	1.142
1990	1.135	1.166	1.148	1.151	1.170
1989	1.159	1.198	1.177	1.184	1.205
1988	1.217	1.264	1.246	1.254	1.274
1987	1.273	1.321	1.305	1.310	1.332
1986	1.287	1.343	1.323	1.327	1.355
1985	1.293	1.366	1.331	1.338	1.381
1984	1.310	1.393	1.348	1.358	1.409
1983	1.346	1.426	1.383	1.391	1.441
1982	1.371	1.446	1.404	1.411	1.459
1981	1.431	1.515	1.465	1.477	1.531
1980	1.577	1.676	1.614	1.634	1.696

1979	1.747	1.852	1.784	1.809	1.880
1978	1.916	2.030	1.948	1.968	2.058
1977	2.057	2.181	2.097	2.116	2.478

YEAR	TABLE 6	TABLE 7	TABLE 8	TABLE 9	TABLE 10
1996	1.000	1.000	1.000	1.000	1.000
1995	1.017	1.018	1.017	1.014	1.016
1994	1.052	1.056	1.052	1.042	1.058
1993	1.076	1.077	1.077	1.068	1.087
1992	1.092	1.091	1.096	1.097	1.104
1991	1.102	1.099	1.107	1.110	1.118
1990	1.124	1.123	1.130	1.145	1.145
1989	1.154	1.152	1.164	1.182	1.178
1988	1.212	1.218	1.224	1.238	1.249
1987	1.255	1.270	1.269	1.279	1.307
1986	1.267	1.284	1.284	1.296	1.329
1985	1.276	1.290	1.295	1.307	1.349
1984	1.294	1.308	1.316	1.323	1.373
1983	1.326	1.343	1.355	1.350	1.405
1982	1.347	1.362	1.380	1.379	1.424
1981	1.421	1.434	1.458	1.458	1.492
1980	1.578	1.595	1.617	1.626	1.651
1979	1.736	1.769	1.780	1.796	1.835
1978	1.826	1.923	1.940	1.968	2.081
1977	2.040	2.072	2.083	2.120	2.145
1976	2.156	2.182	2.212	2.237	2.258

YEAR	TABLE 6	TABLE 7	TABLE 8	TABLE 9	TABLE 10
1997	1.000	1.000	1.000	1.000	1.000
1996	1.029	1.030	1.033	1.035	1.032
1995	1.066	1.068	1.068	1.063	1.075
1994	1.089	1.090	1.093	1.090	1.104
1993	1.106	1.104	1.113	1.119	1.122
1992	1.115	1.112	1.124	1.140	1.136
1991	1.138	1.136	1.148	1.168	1.164
1990	1.168	1.166	1.182	1.205	1.197
1989	1.227	1.232	1.243	1.263	1.269
1988	1.270	1.285	1.288	1.305	1.328
1987	1.283	1.299	1.304	1.322	1.350
1986	1.291	1.305	1.315	1.334	1.371
1985	1.310	1.323	1.336	1.350	1.395
1984	1.342	1.358	1.376	1.378	1.428
1983	1.364	1.378	1.402	1.407	1.447
1982	1.438	1.451	1.480	1.488	1.516
1981	1.597	1.613	1.642	1.659	1.677
1980	1.757	1.789	1.807	1.832	1.864
1979	1.919	1.945	1.969	2.007	2.033
1978	2.064	2.096	2.115	2.163	2.180
1977	2.182	2.207	2.247	2.282	2.295

YEAR	TABLE 11	TABLE 12	TABLE 13	TABLE 14	TABLE 15
1996	1.000	1.000	1.000	1.000	1.000
1995	1.002	1.011	1.013	1.014	1.011
1994	1.062	1.059	1.054	1.055	1.049

1993	1.085	1.085	1.088	1.084	1.086
1992	1.092	1.097	1.110	1.101	1.111
1991	1.088	1.098	1.126	1.111	1.131
1990	1.025	1.110	1.152	1.134	1.157
1989	1.113	1.132	1.181	1.163	1.190
1988	1.181	1.127	1.251	1.228	1.257
1987	1.257	1.266	1.302	1.282	1.313
1986	1.266	1.279	1.331	1.298	1.337
1985	1.273	1.285	1.353	1.313	1.359
1984	1.286	1.301	1.372	1.334	1.383
1983	1.319	1.337	1.413	1.364	1.417
1982	1.334	1.358	1.434	1.379	1.441
1981	1.379	1.405	1.503	1.443	1.505
1980	1.508	1.541	1.660	1.596	1.659
1979	1.692	1.721	1.833	1.768	1.827
1978	1.862	1.892	2.011	1.933	2.005
1977	1.973	2.017	2.166	2.074	2.167
1976	2.069	2.119	2.287	2.182	2.289

YEAR	TABLE 11	TABLE 12	TABLE 13	TABLE 14	TABLE 15
1997	1.000	1.000	1.000	1.000	1.000
1996	1.011	1.018	1.030	1.028	1.031
1995	1.065	1.067	1.073	1.070	1.070
1994	1.087	1.093	1.107	1.099	1.107
1993	1.094	1.105	1.129	1.116	1.133
1992	1.090	1.106	1.145	1.126	1.153
1991	1.097	1.118	1.172	1.150	1.180
1990	1.116	1.140	1.205	1.180	1.213
1989	1.183	1.205	1.273	1.245	1.282
1988	1.260	1.275	1.331	1.300	1.339
1987	1.269	1.288	1.354	1.316	1.363
1986	1.276	1.294	1.376	1.331	1.386
1985	1.288	1.310	1.402	1.352	1.410
1984	1.321	1.347	1.437	1.383	1.445
1983	1.337	1.368	1.459	1.398	1.469
1982	1.381	1.416	1.529	1.463	1.535
1981	1.511	1.552	1.689	1.618	1.692
1980	1.695	1.734	1.865	1.793	1.863
1979	1.865	1.906	2.045	1.960	2.045
1978	1.977	2.032	2.204	2.103	2.210
1977	2.073	2.134	2.327	2.213	2.334

YEAR	TABLE 16	TABLE 17	TABLE 18	TABLE 19	TABLE 20
1996	1.000	1.000	1.000	1.000	1.000
1995	1.009	1.014	1.012	1.015	1.016
1994	1.041	1.050	1.045	1.053	1.055
1993	1.072	1.079	1.074	1.085	1.082
1992	1.111	1.099	1.098	1.105	1.098
1991	1.125	1.111	1.115	1.122	1.107
1990	1.161	1.134	1.138	1.150	1.131
1989	1.195	1.165	1.169	1.185	1.162
1988	1.260	1.227	1.223	1.251	1.212
1987	1.210	1.218	1.267	1.301	1.272
1986	1.331	1.297	1.283	1.322	1.288

1985	1.347	1.398	1.292	1.344	1.297
1984	1.367	1.387	1.302	1.371	1.329
1983	1.403	1.366	1.341	1.406	1.356
1982	1.432	1.382	1.362	1.427	1.387
1981	1.492	1.454	1.444	1.501	1.450
1980	1.643	1.601	1.605	1.663	1.608
1979	1.797	1.758	1.764	1.834	1.786
1978	1.970	1.914	1.935	2.000	1.959
1977	2.135	2.052	2.087	2.146	2.108
1976	2.257	2.155	2.203	2.260	2.221

YEAR	TABLE 16	TABLE 17	TABLE 18	TABLE 19	TABLE 20
1997	1.000	1.000	1.000	1.000	1.000
1996	1.034	1.029	1.028	1.033	1.028
1995	1.066	1.067	1.061	1.072	1.068
1994	1.105	1.095	1.091	1.103	1.095
1993	1.138	1.116	1.115	1.124	1.111
1992	1.162	1.128	1.133	1.141	1.121
1991	1.189	1.151	1.156	1.170	1.145
1990	1.224	1.183	1.187	1.205	1.176
1989	1.290	1.246	1.242	1.272	1.234
1988	1.341	1.297	1.287	1.323	1.287
1987	1.363	1.317	1.303	1.345	1.304
1986	1.379	1.328	1.313	1.367	1.312
1985	1.399	1.348	1.330	1.394	1.336
1984	1.437	1.387	1.363	1.430	1.372
1983	1.466	1.411	1.391	1.452	1.404
1982	1.528	1.476	1.467	1.526	1.468
1981	1.682	1.626	1.630	1.692	1.627
1980	1.840	1.785	1.793	1.865	1.808
1979	2.017	1.944	1.966	2.034	1.982
1978	2.186	2.083	2.120	2.183	2.134
1977	2.311	2.188	2.238	2.299	2.248

YEAR	TABLE 21	TABLE 22	TABLE 23	TABLE 24	TABLE 25
1996	1.000	1.000	1.000	1.000	1.000
1995	1.014	1.016	1.019	1.013	1.011
1994	1.045	1.055	1.056	1.051	1.045
1993	1.074	1.081	1.078	1.077	1.077
1992	1.097	1.099	1.088	1.093	1.102
1991	1.115	1.109	1.097	1.097	1.117
1990	1.141	1.133	1.125	1.113	1.132
1989	1.176	1.161	1.154	1.131	1.168
1988	1.240	1.226	1.213	1.193	1.232
1987	1.279	1.279	1.263	1.249	1.283
1986	1.290	1.296	1.267	1.269	1.300
1985	1.297	1.304	1.268	1.292	1.308
1984	1.312	1.322	1.282	1.300	1.323
1983	1.329	1.352	1.305	1.343	1.360
1982	1.370	1.382	1.318	1.366	1.384
1981	1.445	1.442	1.405	1.430	1.450
1980	1.605	1.601	1.575	1.558	1.599
1979	1.761	1.768	1.750	1.724	1.757

1978	1.927	1.929	1.912	1.922	1.914
1977	2.084	2.073	2.063	2.035	2.066
1976	2.207	2.184	2.192	2.145	2.178

YEAR	TABLE 21	TABLE 22	TABLE 23	TABLE 24	TABLE 25
1997	1.000	1.000	1.000	1.000	1.000
1996	1.030	1.030	1.034	1.029	1.031
1995	1.062	1.070	1.072	1.067	1.066
1994	1.091	1.097	1.094	1.093	1.098
1993	1.115	1.115	1.105	1.110	1.123
1992	1.133	1.124	1.113	1.114	1.139
1991	1.159	1.147	1.142	1.130	1.161
1990	1.196	1.177	1.171	1.148	1.191
1989	1.260	1.244	1.231	1.211	1.256
1988	1.300	1.298	1.282	1.268	1.308
1987	1.311	1.314	1.286	1.289	1.325
1986	1.318	1.322	1.287	1.302	1.334
1985	1.334	1.341	1.301	1.319	1.349
1984	1.361	1.379	1.325	1.363	1.387
1983	1.392	1.401	1.338	1.389	1.412
1982	1.469	1.469	1.426	1.441	1.478
1981	1.631	1.623	1.599	1.582	1.630
1980	1.790	1.793	1.777	1.750	1.791
1979	1.958	1.956	1.941	1.921	1.951
1978	2.118	2.103	2.095	2.066	2.106
1977	2.243	2.215	2.217	2.178	2.220

YEAR	TABLE 26	TABLE 27	TABLE 28	TABLE 29	TABLE 30
1996	1.000	1.000	1.000	1.000	1.000
1995	1.016	1.017	1.015	1.012	1.007
1994	1.054	1.052	1.056	1.042	1.036
1993	1.082	1.078	1.078	1.070	1.070
1992	1.103	1.099	1.091	1.091	1.095
1991	1.116	1.110	1.096	1.104	1.110
1990	1.140	1.135	1.114	1.120	1.130
1989	1.171	1.167	1.143	1.157	1.157
1988	1.226	1.227	1.211	1.215	1.209
1987	1.287	1.275	1.268	1.266	1.247
1986	1.305	1.296	1.282	1.287	1.264
1985	1.315	1.306	1.288	1.302	1.274
1984	1.325	1.320	1.308	1.321	1.288
1983	1.375	1.371	1.351	1.359	1.317
1982	1.400	1.399	1.369	1.382	1.333
1981	1.472	1.477	1.430	1.447	1.392
1980	1.622	1.614	1.582	1.596	1.541
1979	1.795	1.811	1.755	1.748	1.670
1978	1.954	1.982	1.905	1.901	1.822
1977	2.096	2.141	2.027	2.043	1.970
1976	2.201	2.252	2.141	2.147	2.079

YEAR	TABLE 26	TABLE 27	TABLE 28	TABLE 29	TABLE 30
1997	1.000	1.000	1.000	1.000	1.000
1996	1.031	1.031	1.025	1.028	1.024
1995	1.070	1.067	1.065	1.060	1.053

1994	1.099	1.092	1.088	1.087	1.088
1993	1.120	1.113	1.100	1.108	1.114
1992	1.133	1.125	1.106	1.122	1.129
1991	1.158	1.150	1.124	1.147	1.149
1990	1.182	1.182	1.154	1.176	1.177
1989	1.255	1.243	1.222	1.235	1.229
1988	1.306	1.292	1.280	1.287	1.268
1987	1.325	1.313	1.294	1.308	1.286
1986	1.335	1.323	1.300	1.323	1.295
1985	1.355	1.347	1.320	1.342	1.310
1984	1.396	1.389	1.363	1.381	1.340
1983	1.422	1.418	1.382	1.405	1.356
1982	1.494	1.497	1.443	1.470	1.416
1981	1.653	1.666	1.596	1.622	1.567
1980	1.823	1.835	1.771	1.776	1.706
1979	1.984	2.008	1.922	1.932	1.860
1978	2.128	2.169	2.055	2.076	2.003
1977	2.234	2.282	2.160	2.182	2.114

YEAR TABLE 31 TABLE 32

1996	1.000	1.000
1995	1.007	1.016
1994	1.036	1.057
1993	1.072	1.081
1992	1.108	1.097
1991	1.130	1.103
1990	1.149	1.122
1989	1.180	1.150
1988	1.245	1.214
1987	1.295	1.269
1986	1.313	1.284
1985	1.321	1.290
1984	1.339	1.306
1983	1.376	1.341
1982	1.407	1.360
1981	1.468	1.422
1980	1.610	1.567
1979	1.766	1.735
1978	1.931	1.894
1977	2.094	2.032
1976	2.216	2.142

YEAR TABLE 31 TABLE 32

1997	1.000	1.000
1996	1.033	1.028
1995	1.063	1.070
1994	1.099	1.094
1993	1.137	1.110
1992	1.159	1.116
1991	1.178	1.136
1990	1.210	1.164
1989	1.277	1.229
1988	1.328	1.284
1987	1.347	1.299

<u>1986</u>	<u>1.355</u>	<u>1.306</u>
<u>1985</u>	<u>1.373</u>	<u>1.322</u>
<u>1984</u>	<u>1.411</u>	<u>1.358</u>
<u>1983</u>	<u>1.443</u>	<u>1.377</u>
<u>1982</u>	<u>1.505</u>	<u>1.439</u>
<u>1981</u>	<u>1.651</u>	<u>1.586</u>
<u>1980</u>	<u>1.811</u>	<u>1.756</u>
<u>1979</u>	<u>1.980</u>	<u>1.917</u>
<u>1978</u>	<u>2.148</u>	<u>2.057</u>
<u>1977</u>	<u>2.272</u>	<u>2.169</u>

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138 and 15-8-111, MCA

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) remains the same.

(2) The department will utilize the depreciation schedules set forth above as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed.

1. Determine the economic life of the subject industry.
2. Acquire a set of reasonable trends for that economic life.
3. Acquire the original installed cost (direct and indirect) for the subject equipment.
4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).
5. Depreciate the RCN on the basis of age to arrive at sound value.

Example:

Industry - Sawmill
Economic life - ~~10~~ 12 years
~~1995~~ 1998 Table - Table 18

Case	I	II
Equipment - Motor		
Original Installed Cost	\$ 200	\$ 100
Year Installed	1987	1974

Case I

Cost	\$ 200
x Trend	1.247 <u>1.303</u>
RCN	249 <u>261</u>
x % Good	.24
Sound Value	\$ 60

Case II

Cost	\$ 100
x Trend	1.263* <u>2.238*</u>
RCN	126 <u>224</u>
x % Good	.20
Sound Value	\$ 25

*The trending factor is applied only to the last year of the

economic life. Although the equipment is ~~20~~ 24 years old, it is trended by the ~~10th~~ 12th year trend.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-138 and 15-8-111 MCA

3. The department proposes to repeal the following rules:

42.21.106 TRUCKS found at page 42-2109 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, 15-6-139, 15-6-140 and 61-3-321, MCA

42.21.107 TRAILERS found at page 42-2110 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, 15-6-139, and 15-6-201, MCA

42.21.301 VALUATION PROCEDURE found at page 42-2161 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

42.21.302 VEHICLES LISTED IN THE GUIDES found at page 42-2161 of the Administrative Rule of Montana

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

42.21.303 VEHICLES PREVIOUSLY REGISTERED THAT ARE "SUBSEQUENTLY NOT LISTED" IN THE GUIDES found at page 42-2161 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

42.21.305 TRENDING DEPRECIATION SCHEDULES found at page 42-2162 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

42.21.307 BASE VALUE ADJUSTMENTS found at page 42-2163 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

42.21.308 VEHICLE AGE DETERMINATION found at page 42-2164 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

42.21.310 FINAL VALUATION AUTHORITY found at page 42-2164 of the Administrative Rules of Montana

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

42.21.314 CO-OP VEHICLES found at page 42-2164 of the

Administrative Rules of Montana

AUTH: Sec. 15-30-305, MCA; IMP, Sec. 15-6-135, MCA

4. The department is proposing the amendments because 15-8-111, MCA requires the department to assess all property at 100% of market value except as otherwise provided. The statute does not address in detail how the department is to arrive at market value.

To determine the market value of certain property, the department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to schedules. The District Court has indicated that those schedules should be adopted in rule.

In addition, the action of the 1997 legislature requires the department to amend certain rules and allows the department to repeal specific other rules.

Amendments to ARM 42.19.1203, 42.19.1222, and 42.19.1235 are necessary for consistent application dates in each rule. The rules govern the certification for new industry, new or expanding industry and pollution control. The rules either have inconsistent application dates or no application date at all. The department proposes to make all the application dates the same for all the certifications. The change will require all property owners applying for special certifications to submit the application on or before January 1 of the tax year, to be granted the certification for that year. In the past, the different application dates and lack of application dates have caused inconsistent treatment resulting in unnecessary appeals and litigation.

Amendments to ARM 42.21.113 are proposed to reflect the requirements of Senate Bill 300 which amended 15-6-136, MCA to allow all lease and rental equipment having an acquired cost of \$20,000 or less to be taxed as class 6 property at a tax rate of 4%. Previously, the law only allowed lease and rental equipment valued at less than \$5,000 to be taxed as class 6 property. The amendments comply with the new statutory direction. The change allows separate trended percent good depreciation schedules based on acquired cost. For example, equipment with an acquired cost of \$0 to \$500, is placed in a four year trended depreciation schedule while equipment with an acquired cost of \$5,001 to \$20,000 uses the same depreciation schedule as that used for heavy equipment. In addition, the amendment addresses language required by the passage of Senate Bill 57 which specified that special mobile equipment as defined in 61-1-104, MCA is class 8 property. As a result, equipment that receives a special movement permit (SM plate), will be classified as class 8 property whether or not it is used for lease or rental purposes.

Amendments to ARM 42.21.122 are proposed to correct an error in its adoption last year and to comply with existing practice. Specifically, in (6)(f) the words "female llamas and"

are being struck. Female llamas are already correctly identified in (6)(e). In addition, it has been determined that the value for miniature horses that results from including them with the valuation of show, roping, and race horses is too high. As a result, the department proposes to include them in the category with mules, asses, shetland ponies, donkeys, and burros.

Amendments to ARM 42.21.123 are proposed to comply with Senate Bill 127 which specifies that the market value for farm machinery and equipment shall be the "average wholesale value" instead of the "loan value". In addition, it specifies a new valuation guide for determining the average wholesale value. The new guide is the Guides 2000, Northwest Region Official Guide. Changes are proposed to acknowledge the use of the new guide and the wholesale value.

Amendments to ARM 42.21.124 are proposed to better align the per capita livestock tax categories as they are received from the department of livestock. The per capita livestock tax is generally administered by the department of livestock though the department of revenue collects livestock number information and calculates the tax on their behalf.

Amendments to ARM 42.21.131 are housekeeping and eliminate the phrase "or its agent" in section (2) since that is outdated language. It also updates the depreciation schedule.

Amendments to ARM 42.21.137 are to update the new trended depreciation schedules for seismograph units and seismograph allied equipment in accordance with the newest trend factors provided by the Marshall Valuation Service.

Amendments to ARM 42.21.138 are to update the new trended depreciation schedules for oil and gas field machinery and equipment in accordance with the newest trend factors provided by the Marshall Valuation Service.

Amendments to ARM 42.21.139 are to update the new trended depreciation schedules for workover and service rigs in accordance with the newest trend factors provided by the Marshall Valuation Service. Since it remains unlikely the practice of soliciting bids each year for current replacement costs will occur in the foreseeable future, its reference is struck. In addition, the language in the rule has long required the use of trend factors. Those factors are introduced into the trended depreciation schedule. That change results in minor changes to the trended wholesale per cent good category. For example, the trended wholesale per cent good for rigs acquired in 1996 would change from 67% to 68%; in 1993 from 46% to 51%; in 1988 from 16% to 20%. This action places this category of property in compliance with existing rule and treats it similar to other personal property.

Amendments to ARM 42.21.140 are to update the new trended depreciation schedules for oil drilling rigs in accordance with the newest trend factors provided by the Marshall Valuation Service. Since it remains unlikely the practice of soliciting bids each year for current replacement costs will occur in the foreseeable future, its reference is struck. In addition, the language in the rule has long required the use of trend factors.

Those factors are introduced into the trended depreciation schedule. That change results in minor changes to the trended wholesale per cent good category. For example, the trended wholesale per cent good for rigs acquired in 1996 would be unchanged from 84%; would change in 1993 from 58% to 63%; in 1988 from 20% to 25%. This action places this category of property in compliance with existing rule and treats it similar to other personal property.

Amendments to ARM 42.21.151 are to update the new trended depreciation schedules for television cable systems in accordance with the newest trend factors provided by the Marshall Valuation Service.

Amendments to ARM 42.21.153 are to update the new trended depreciation schedules for ski lift equipment in accordance with the newest trend factors provided by the Marshall Valuation Service. In addition, outdated language is being struck.

Amendments to ARM 42.21.155 are to update the new trended depreciation schedules for the various categories of property identified in ARM 42.21.156 in accordance with the newest trend factors provided by the Marshall Valuation Service. In addition, new (3) is proposed to clarify the effective date of the rule.

Amendments to ARM 42.21.156 are to allow for the addition of certain types of equipment to the respective categories. Copiers would be added to category 2. Exercise equipment and ceramic molds would be added to category 6. A correction is made to category 6 by changing the term "tanning tables" to "toning tables". Category 8 is expanded to include port-a-potties.

The amendments to ARM 42.22.1311 and 42.22.1312 are necessary so that the department may utilize the industrial trend factors to update historic industrial machinery and equipment costs to present day reproduction/replacement cost new (RCN) 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.

5. The department is proposing to repeal ARM 42.21.106 because the passage of Senate Bill 57 makes it no longer necessary to value motor vehicles for tax purposes. That function will become the responsibility of the department of justice and the department of transportation. The department of justice was also given rulemaking authority in this area. The new law provides for the taxation of automobiles, trucks 1 ton or less, vans, and sport utility vehicles at 2 per cent of the depreciated manufacturer's suggested retail price (MSRP). Buses, trucks greater than 1 ton, truck tractors, personal property attached to exempt vehicles, and quadricycles will pay a fee in lieu of tax and will be exempt from property taxation. Special mobile equipment will be subject to property tax.

Repeal of ARM 42.21.107 is proposed because the passage of Senate Bill 26. Trailers less than 26,000 pounds GVW are exempt from property taxation. They are required to pay a fee in lieu of tax based on age and declared weight. The current rule specifies the methodology and trended per cent good schedules for the valuation of trailers less than 26,000 pounds GVW for property tax purposes. Since the methodology and schedules are no longer valid and since the department of justice has assumed responsibility for the valuation of trailers, the rule is proposed for repeal.

ARM 42.21.301, 42.21.302, 42.21.303, 42.21.305, 42.21.307, 42.21.308, 42.21.310, and 42.21.314 are proposed for repeal because of the passage of Senate Bill 57.


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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 3, 1997.

7. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

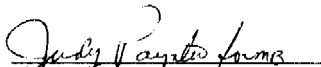
Certified to Secretary of State September 22, 1997

no later than November 3, 1997.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 3, 1997.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the Legislature; 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. Ten percent of those persons directly affected has been determined to be greater than 25.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State September 22, 1997

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION,
Rule I, repeal of rule 2.5.504,) REPEAL, AND
and the amendment of rules) AMENDMENT OF RULES
2.5.201, 2.5.202, 2.5.301, 2.5.302,)
2.5.402, 2.5.403, 2.5.404, 2.5.406,)
2.5.502, 2.5.503, 2.5.505, 2.5.601,)
2.5.602, 2.5.603, 2.5.604, and)
2.5.607 concerning state procurement.)

TO: All Interested Persons

1. On July 7, 1997, the Department of Administration published notice to adopt Rule I, repeal rule 2.5.504, and amend rules 2.5.201, 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.403, 2.5.404, 2.5.406, 2.5.502, 2.5.503, 2.5.505, 2.5.601, 2.5.602, 2.5.603, 2.5.604 and 2.5.607 pertaining to state procurement at page 1107, 1997 Montana Administrative Register, issue number 13.

2. The Department has adopted Rule I (2.5.507) exactly as proposed, repealed rule 2.5.504, and amended rules 2.5.201, 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.403, 2.5.404, 2.5.502, 2.5.503, 2.5.505, 2.5.601, 2.5.602, 2.5.603, 2.5.604 and 2.5.607 exactly as proposed.

3. The Department will adopt 2.5.406 as proposed, but with the following changes:

2.5.406 VENDOR PROTEST PROCEDURE (1) ~~Bidders and offerors may protest a bid, proposal, or award by notifying the procurement officer as soon as possible after they discover any potential irregularity in the procurement process. The protest must be in writing and state in detail all of the protestor's objections.~~

~~(2) The state is under no obligation to delay, halt, or modify the procurement process due to a protest, but it will conduct an internal review of the procurement.~~

~~(3) The procurement officer must notify the protestor in writing of the findings within thirty (30) working days of the protest. The procurement officer may extend this time period if sufficient evidence cannot be obtained within the thirty (30) working days. Written notice must be sent to the protesting party with justification for extension.~~

~~(4) If the procurement officer finds an irregularity, the procurement officer will adopt the course of action which is in the best interest of the state. Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may~~

protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA.

(2) IN THE EVENT THE PROTEST CONCERNS A SOLICITATION OR AWARD OF A SMALL PURCHASE OR LIMITED SOLICITATION AS DEFINED IN ARM 2.5.603, THE VENDOR MAY REQUEST AN ADMINISTRATIVE REVIEW OF THE PROCUREMENT FILE BY THE AGENCY ISSUING OR AWARDED THE CONTRACT. THE AGENCY MUST SUBMIT A WRITTEN DECISION WITHIN 30 DAYS OF THE REQUEST FOR ADMINISTRATIVE REVIEW. THE DECISION OF THE AGENCY IS FINAL.

~~(2)~~ (3) In the event the protest concerns the administration of an existing contract, the protesting party must follow the protest procedure set out in the contract. If there is no procedure stated in the contract, the protesting party must submit a protest in writing no later than 14 days after the cause of action, question, or dispute has arisen. If the protest is not resolved by mutual agreement, the department shall issue a written decision on the protest within 30 days after the receipt of the protest. In issuing the final decision, the decision must:

(a) state the reason for the action taken by the department with regard to the contract; and

(b) inform the aggrieved party of the party's right to pursue judicial action under Title 18, chapter 1, part 4, MCA.

~~(6)~~ (4) "Days" mean calendar days as defined in ARM 2.5.201.

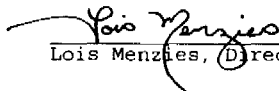
~~(7)~~ (5) Any agency which exercises delegated authority from the department to engage in purchasing activities is responsible for responding to a protest or contested case hearing concerning the solicitation, award, or administration of a contract within their authority. (AUTH. Sec. 18-4-221, MCA; IMP, 18-4-221 and 18-1-402, MCA.)

4. After reviewing the draft rules, the department decided to add language to 2.5.406 to specify a protest procedure for vendors concerned over a small purchase or limited solicitation made by the state. No other written or oral comments were received.

5. These rule changes will be effective October 7, 1997.



Dal Smilie, Chief Legal Counsel
Rule Reviewer



Lois Menzies, Director

Certified to the Secretary of State on September 11, 1997.

In the matter of the) NOTICE OF AMENDMENT
amendment of Rule 6.6.511)
pertaining to medicare)
supplement insurance.)
)
)

1. On August 18, 1997, the state auditor and commissioner of insurance of the state of Montana published notice of proposed amendment of Rule 6.6.511 pertaining to medicare supplement insurance. The notice was published at page 1421 of the 1997 Montana Administrative Register issue number 16.

3. No comments or testimony were received.

By: Rusty Harper
Rusty Harper
Executive Assistant

Executive Assistant

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

Certified to the Secretary of State on this 19th day of
September, 1997.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULES
of rules pertaining to fees and)	PERTAINING TO FEES AND CON-
continuing education and the)	TINUING EDUCATION AND THE
adoption of a new rule pertain-)	ADOPTION OF A NEW RULE
ing to renewals)	PERTAINING TO RENEWAL OF
)	LICENSE

TO: All Interested Persons:

1. On August 4, 1997, the Board of Realty Regulation published a notice of public hearing on the proposed amendment and adoption of rules pertaining to fees, continuing education and renewals at page 1333, 1997 Montana Administrative Register, Issue Number 15. The public hearing was held on August 25, 1997, in Helena, Montana.

2. The Board has adopted the second alternative of new rule I (8.58.426) exactly as proposed. The Board did not adopt the proposed amendments to ARM 8.58.415A in either alternative. The Board has amended the second alternative of ARM 8.58.411 as proposed, but with the following changes:

"8.58.411 FEE SCHEDULE (1) through (4) will remain the same as proposed.

- | | | |
|---|-----|-----|
| (5) For each original resident broker's license <u>prorated to next full renewal cycle</u> | 260 | 120 |
| (6) For each annual renewal of a resident broker's license <u>prorated to assigned renewal cycle</u> | | 240 |
| (7) For each original non-resident broker's license <u>prorated to next full renewal cycle</u> | 260 | 120 |
| (8) For each annual renewal of a non-resident broker's license <u>prorated to assigned renewal cycle</u> | | 240 |
| (9) For each original salesman's license <u>prorated to next full renewal cycle</u> | 140 | 60 |
| (10) For each annual renewal of salesman's license <u>prorated to assigned renewal cycle</u> | | 120 |
| (11) through (24) will remain the same as proposed." | | |

Auth: Sec. 37-1-131, 37-1-134, 37-51-203, 37-51-204, MCA;
IMP, Sec. 37-1-134, 37-51-202, 37-51-204, 37-51-207, 37-51-303, 37-51-310, 37-51-311, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

ARM 8.58.411

COMMENT NO. 1: One comment was received. Commentor states that licensees required to renew for the full licensure period will be faced with a much larger fee than those who are required to renew for only one-half of the licensure period. Therefore, commentor states that the Board should prorate the fees to lessen the burden faced by the licensees who are chosen to renew for the longer period of time.

RESPONSE: The Board appreciates the comment but rejects the proration of fees. The implementation of the four year license period will occur as stated in the proposed Rule 1. Such a payment mechanism shall allow those individuals who are selected to renew for the full four-year term to not pay a renewal fee until December 31, 2001. The remaining licensees will only be required to pay for a two-year license term.

ARM 8.58.415A

COMMENT NO. 2: Seventeen commentors provided comments on this amendment. Overwhelmingly, commentors favored a one-year requirement for continuing education. The reasons for such comments were as follows:

(1) Four commentors state that allowing a two or four year continuing education cycle would result in licensees waiting until the last minute to obtain the 24 or 48 credit hours necessary to renew a license. Accordingly, these same individuals would be able to avoid obtaining necessary information updates for a period of up to four years. Such a period is much too long to receive education on important changes which occur in the industry on an annual basis.

(2) Nine commentors requested that the Board eliminate the mandatory requirements in favor of a "market driven" approach to continuing education.

(3) One commentor urged an amendment to expand the approved topic areas and grant automatic course approval to nationally recognized courses.

RESPONSE: Commentors overwhelmingly requested an annual continuing education cycle. The board accepts this comment and will not adopt the proposed amendment.

COMMENT NO. 3: One commentor urged an amendment to ARM 8.58.413 to reflect the current education requirements for inactive licensees. Commentor states that "[t]he number of hours required and the time frame should be modified to reflect the twelve hours and annual term."

COMMENT NO. 4: One commentor states that ARM 8.58.415A(5) should, in the event the continuing education cycle extends past one year, be amended to allow licensees to repeat a course during the cycle not to exceed one time each year.

RESPONSE: The Board also received several other comments regarding continuing education. The Board rejects these comments in favor of a full discussion of the continuing education issue at the October 10, 1997 board meeting.

NEW RULE I (8.58.426)

COMMENT NO. 5: Twelve commentors expressed support for the four year license renewal period. Their support, however, was tempered by the belief that a four year continuing education renewal cycle was much too long to be tied to a four year license renewal cycle.

COMMENT NO. 6: Two commentors supported a two year renewal cycle.

COMMENT NO. 7: One commentor urged support for continuing with the one year renewal period stating that the Board should attempt to determine whether a two year renewal cycle works well enough to merit extending the period to four years.

RESPONSE: The majority of the comments favored a four year license term. Accordingly, the Board accepts the proposal for a four year term and rejects the remaining comments supporting a lesser term.

GENERAL COMMENTS

COMMENT NO. 8: Several commentors expressed approval at instituting a fine arrangement for individuals who did not comply with the continuing education requirements implemented by the Board. Two of the commentors suggested that the Board amend its rules to shift the burden of demonstrating compliance with the continuing education requirements to the broker with the Board conducting a type of "audit" to ensure that the information was accurate.

COMMENT NO. 9: Robert Connole and Jack Morton of Connole Morton Schools offered the following amendments:

8.58.415A(1) Each Licensee is required to complete a minimum of 12 hours of continuing real estate education ~~for every in each year of the renewal period~~ beginning January 1, 1996g.

8.58.415A(6) Proof of successful completion in each of the renewal years must be submitted to the board with the licensee's renewal application at the conclusion of every year the renewal period. If a licensee has not completed 12 hours in each year an additional requirement of 6 hours will be required in each of the years the requirement was not satisfied.

RESPONSE: The Board received several comments with regard to discipline of individuals who fail to comply with continuing education requirements. The commentors favored a fine or a remedial education program. These types of discipline are already available to the Board under the terms of the Uniform Licensing Act and, in response to the comments, the Board will

attempt to utilize these types of discipline in future continuing education infractions.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 22, 1997.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE OF AMENDMENT
of rules pertaining to General) OF ARM 8.97.1402 AND
Requirements for All Invest-) 8.97.1410
ments in Mortgages and Loans)

TO: All Interested Persons:

1. On May 19, 1997, the Board of Investments published a notice of proposed amendment of the above-stated rules at page 859, 1997 Montana Administrative Register, issue number 10.

2. On August 4, 1997, the Board published a notice of adoption at page 1361, 1997 Montana Administrative Register, issue number 15. The Board, in that notice, adopted ARM 8.97.1402 as proposed, but with changes and adopted 8.97.1410 exactly as proposed.

3. On September 8, 1997, the Board published an amended notice of amendment at page 1579, 1997 Montana Administrative Register, issue number 17, further amending ARM 8.97.1401 and 8.97.1410 by striking language in response to comments received at the hearing.

4. ARM 8.97.1402(4)(d) should have been published in the adoption notice as follows:

"8.97.1402 APPRAISALS (1) through (4)(c) will remain the same as adopted.

(d) Complete ~~summary~~ self-contained appraisal report under USPAP Standards Rule 2-2(a) will be required for commercial; and multi-family loans \$250,000 and over unless the loan-to-value is 50% or less of the project cost (up to \$1 million) as defined under ARM 8.97.1411(2);

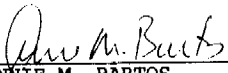
(e) and (f) will remain the same as adopted."

5. The word "summary" was published in the first line of (4)(d) in the adoption notice, but the notice should have contained the language "self-contained" as originally proposed. The adoption notice also indicates that (e) through (7)(t) will remain the same as proposed, but should state (e) and (f) will remain the same as proposed.

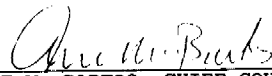
6. The last sentence of the amendment of ARM 8.97.1410 in the original notice should have stated that (15) and (16) will remain the same, but will be renumbered (16) and (17).

7. The replacement pages reflecting these changes will be submitted on September 30, 1997.

BOARD OF INVESTMENTS
WARREN VAUGHN, CHAIRMAN



ANNIE M. BARTOS
RULE REVIEWER

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 22, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.12.106 AND 42.12.122)
relating to Licensing of)
Restaurants which Meet Certain)
Minimum Qualifications)

TO: All Interested Persons:

1. On July 7, 1997 the Department published notice of the proposed amendment of ARM 42.12.106 and 42.12.122 relating to licensing of restaurants which meet certain minimum qualifications at page 1151 of the 1997 Montana Administrative Register, issue no. 13.

2. A Public Hearing was held on August 14, 1997, to consider the proposed amendments where written and oral comments were received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: Kati Kintli, attorney representing the Montana Tavern Association, requested amendment to ARM 42.12.122(b)(ii), line 6, beginning after the words preparation area, that the stricken word "and" be reinserted and the added word "with" be stricken. This amendment is intended for clarification purposes only as it appears that the bar preparation area is required to have a sufficient seating area. This conflicts with lines 8 through 11 of that subsection which require sufficient seating area at either a bar, or tables, booths, gaming areas or any combination of the above.

RESPONSE: Agree to delete the word "with" and reinsert the word "and."

COMMENT: Eric Kaplan, attorney stated that it may be appropriate to define by rule the term "meals." The statute is silent as to what constitutes a "meal." Mr. Kaplan advised it would be inconsistent with legislative intent for an applicant to meet the "meal" requirement by offering snacks or other light food that did not constitute a "meal."

RESPONSE: We respectfully decline the recommendation to venture into the subjective arena of defining what constitutes a meal. The term meal does not require definition given the clear statutory requirements describing what kind of establishment is eligible for the new category of licenses. For example the requirements related to ratio of food versus beer/wine gross receipts, requirements for a service bar, configuration of the premise to include a dining room, kitchen staff and all other characteristics of a restaurant including an evening dinner menu. Again, the Department believes the statute provides adequate guidance as to what type of facility qualifies and how the facility will be required to operate as related to

service of wine and beer.

3. Based on the comments received and further discussions within the agency, the department is amending ARM 42.12.106 to delete the language referring to "Service Bar". New rules which cover this newly enacted statute were noticed up under a separate notice which relate to the restaurant beer and wine license lottery process and the definition of "Service Bar" best belongs with those rules. Therefore, the Department amends the rules as follows:

42.12.106 DEFINITIONS (1) through (8) remain the same.

~~(9) "Service bar" means an area where alcoholic beverages are stored and prepared for table service delivery to patrons for on premises consumption. Consumption of alcoholic beverages by patrons or any other person is not permitted at the service bar.~~

AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-4-105, 16-4-207 and 16-4-420 and 16-4-423, MCA

42.12.122 DETERMINATION OF SUITABILITY OF PREMISES (1) and (2)(a) remain the same.

(b) and (i) remain the same.

(ii) A license issued for on-premises consumption operates at a premises recognizable as a restaurant, bar, tavern or other business directly related to the on-premises consumption of alcoholic beverages such as a bowling alley, hotel, or gambling casino. The licensed premises must have a bar preparation area with AND sufficient seating to encourage patrons to remain on the premises and consume the alcoholic beverages sold by the drink. Sufficient seating must consist of not less than 12 seats at either a bar, not including a service bar as defined in ARM 42.12.106, or tables, booths, gaming areas or any combination of the above.


(iii) remains the same.

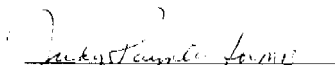
(c) through (j) remain the same.

(3) and (4) remain the same.

AUTH: Sec. 16-1-303 MCA; IMP: Secs. 16-4-402, 16-4-404, 16-4-405 and 16-4-420, MCA

4. As a result of the comments received the Department has amended ARM 42.12.106 and 42.12.122 as shown and adopts those amendments listed above.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State September 22, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
ARM 42.20.140, 42.20.147,)
42.20.148, 42.20.149, 42.20.)
157, and 42.20.159 relating)
to Real Property)

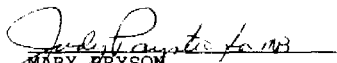
TO: All Interested Persons:

1. On August 18, 1997, the Department published notice of the proposed amendment of ARM 42.20.140, 42.20.147, 42.20.148, 42.20.149, 42.20.157, and 42.20.159 relating to Real Property at page 1438 of the 1997 Montana Administrative Register, issue no. 16.

2. No public comments were received regarding these rules.

3. The Department has amended these rules as proposed.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State September 22, 1997

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment)	
of 44.10.327 and 44.10.411)	
pertaining to reporting of)	NOTICE OF AMENDMENT
contributions or expenditures)	OF RULES
by incidental political)	
committees)	

TO: All Interested Persons.

1. On August 4, 1997, the Commissioner of Political Practices published a notice of public hearing on the proposed amendment of rules pertaining to reporting of contributions and expenditures by incidental political committees at pages 1354 through 1356 of the 1997 Montana Administrative Register, issue number 15.

2. On August 27, 1997, at 9:00 a.m., a public hearing was held in Room 104 of the State Capitol Building, Helena, Montana. Written comments were accepted through September 2, 1997.

3. After consideration of the comments received, the Commissioner has amended 44.10.327 as proposed. The Commissioner has amended 44.10.411 as proposed, but with the following changes (new material is underlined; material to be deleted is interlined):

44.10.411 INCIDENTAL POLITICAL COMMITTEE. FILING SCHEDULE. REPORTS (1) Except as provided in (2), ~~following notification by the commissioner, an incidental committee shall file a statement of organization and periodic reports according to the schedule set forth in 13-37-226(2)(a) through (f), MCA.~~

(2) Except as provided in (2)(a), ~~following notification by the commissioner, an incidental committee that makes contributions or expenditures to a state district candidate, to a local candidate or issue, or to a political committee that is specifically organized to support or oppose a state district candidate or a local candidate or issue, shall file a statement of organization and periodic reports according to the schedule set forth in 13-37-226(3)(a) through (c), MCA.~~

(2)(a) through (3) adopted as proposed.

(4) Incidental committees that receive contributions that are earmarked for a specified candidate, ballot issue, or petition for nomination must report the contributions pursuant to 13-37-229, MCA, and ARM 44.10.511 and 44.10.519. A contribution to an incidental committee is earmarked if it meets the criteria set forth in ARM 44.10.519(1), and the exemptions described in ARM 44.10.519(1)(a) do not apply to such contributions received by incidental committees.

(5) If it is determined that an incidental committee has failed to file any of the reports required by these rules or the statutes governing reporting of contributions and expenditures,

the commissioner may issue an order of noncompliance pursuant to 13-37-121, MCA, or may take any other action authorized by law.

(4) adopted as proposed, but is renumbered (6).

AUTH: 13-37-114, MCA; IMP: 13-37-226(6), MCA

4. One person appeared at the hearing and submitted oral and written comments. The Commissioner has thoroughly considered the comments received. Those comments, and the Commissioner's responses thereto, are as follows:

COMMENT NO. 1: The requirement that incidental committees report contributions and expenditures should not be dependent on notification by the Commissioner.

RESPONSE: The language in the proposed rule that makes reporting contingent on notification by the Commissioner has been deleted. In addition, subsection (5) has been added to provide that upon determining that an incidental committee has failed to file necessary reports, the Commissioner may issue an order of noncompliance. However, the subsection makes clear that the Commissioner retains the authority to take whatever action the Commissioner deems appropriate, depending on the circumstances. This change is justified given the nature of incidental committees, which are not organized for the primary purpose of influencing elections. The Commissioner believes that, pursuant to his statutory authority to adopt rules regarding the extent to which incidental committees shall report their politically related activities (13-37-226(6), MCA), these amendments establish reasonable reporting requirements for such committees.

COMMENT NO. 2: Incidental committees should be required to report contributions they receive if the contributions are given for the purpose of influencing an election.

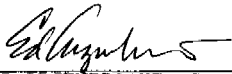
RESPONSE: Subsection (4) has been added to the proposed amendments to clarify that incidental committees that receive earmarked contributions must report them. Because incidental committees are, by definition, not organized for the primary purpose of influencing elections, it is not reasonable to require them to report all contributions received. See response to Comment No. 1. However, when such committees receive contributions that are to be used for a specific candidate, issue, or petition for nomination, the contributions should be reported.

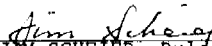
COMMENT NO. 3: There is no rational basis for excluding from the reporting requirements incidental committees that make contributions or expenditures not exceeding \$500 to a local candidate or issue or to political committees specifically organized to support or oppose such candidates or issues.

RESPONSE: 13-37-226(4), MCA, specifically exempts such political committees from the reporting requirements of the

statute. The proposed amendment to the rule is consistent with the statute.

5. Based on the foregoing, the Commissioner hereby amends the rules as proposed, with changes noted above.


ED ARGENBRIGHT, Commissioner


JIM SCHEIER, Rule Reviewer

Certified to the Secretary of State September 12, 1997.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1997. This table includes those rules adopted during the period July 1, 1997 through September 30, 1997 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, 1997, 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 1996 and 1997 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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