MONTANA ADMINISTRATIVE REGISTER

1986 ISSUE NO. 1
JANUARY 16, 1986
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the proposed new rules concerning the Noxious Weed Trust Fund	)))))	NOTICE OF HEARING ON PROPOSED NEW RULES REGARDING THE NOXIOUS WEED TRUST FUND

TO: All Interested Persons:

1. On February 19, 1986 at 10:00 a.m. in room 225 Agriculture/Livestock Building, Sixth and Roberts, Helena, a public hearing will be held to consider the adoption of new rules concerning the noxious weed trust fund.

2. The proposed rules read as follows:

RULE I DEFINITIONS When used in these rules, unless a different meaning clearly appears from the context:

(1) "Department" means the department of agriculture provided for in 2-15-3001, MCA.

(2) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and where possible, eradication of noxious weeds.

(3) "Advisory council" means the noxious weed management advisory council provided for in 80-7-805, MCA.

(4) "Project" means a planned undertaking which involves one or more renewable resources at an identified site or geographic location in Montana.

(5) "Project Sponsor" means the local state or national organization, either public or private, supporting a project.

(6) "Renewable Resource" means all land used for domestic livestock grazing, timber, or crop production, recreation, or wildlife and all water resources.

(7) "Public benefits" means those benefits that accrue to persons other than the grant recipient and enhance the common well-being of the people of Montana.

(8) "Tangible Returns" means either monetary or non-monetary returns that will accrue to the state.

(9) "Community Group" means three or more private landowners or federal, state, or local entities working together to control noxious weeds.

(10) "Noxious weed emergency" means a new and potentially harmful noxious weed growing in the state that has been verified by the department and declared an emergency as provided for in 80-7-815, MCA.

AUTH: 80-7-802, MCA IMP: 80-7-801, 80-7-811, MCA

RULE II APPLICATION PROCEDURE (1) The department will specify funding cycles and application deadlines as necessary.

(2) The department may return an insufficient or incomplete proposal for correction or completion. The department may provide the applicant with reasons for the proposals return and a brief description of the information required in order to make

the proposal correct or complete, or both. If these corrections or completions, or both, are not made, the proposal will not be evaluated.

(3) Proposals which more closely fit the legislative authority of another loan or grant program within state government will be referred to that program for review.

(4) The applicant may request assistance from the Department in completing the application. The Department will provide such assistance, the level of which will be determined by availability of staff and funds.

(5) The advisory council will review and rank proposed projects according to the guidelines and criteria described in Rule VIII. Advisory council recommendations will be submitted to the department for final ranking. The applicant will receive written notification from the department of the action taken on the proposal.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE III APPLICATION CONTENT FOR GRANTS All applications for grants shall contain:

(1) Name, address, and telephone number of the project sponsor, project manager and liaison (if different than manager).

(2) Title or name of the proposed project.

(3) Location of proposed project.

(4) A brief description of the history and background of the project.

(5) A discussion of the need and urgency for the project and why it is best means to achieve the desired results.

(6) Objectives of the project and desired accomplishments.

(7) Discussion of the projects technical feasibility.

(8) Amount of money to be requested for a grant. A statement indicating the amount of funding available from other sources. If no other funding is available, the applicant must give the reasons.

(9) Proof, where appropriate, the applicant has the cooperation of all landholders within the project area including federal, state, and private entities.

(10) A statement indicating both public and tangible benefits which would accrue as a result of the proposed project.

(11) An evaluation of the project as required in Rule V and Rule VI.

(12) A statement that the project sponsor, if the grant receives department approval, is willing to enter into a contract with the Department for utilization of grant funds.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE IV TECHNICAL FEASIBILITY OF PROJECTS Technical data and information to be provided in the proposal shall include but is not limited to the following:

(1) A thorough discussion of the work plan including the purpose, location and schedule of major project phases.

(2) A listing of herbicides, biological control agents, or

cultural methods used for weed control within the project area where appropriate. This description may include prior field investigations, and research information to support the proposal.

(3) Educational programs that will be conducted in conjunction with the project to increase weed awareness and improve weed control techniques of county residents.

(4) Maps, drawings, charts, tables, etc., used as a basis for project planning and implementation.

(5) A map showing land ownership associated with the project; and

(6) Description of other management alternatives and applicants consideration of those alternatives.

(7) The department may request any additional information deemed necessary to document technical feasibility.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE V PROJECT EVALUATION All project sponsors shall document the results of the project and the impact on the state and/or renewable resource. The amount of information required for evaluation of the technical, economic, environmental, financial and other factors may vary depending on the size and complexity of the project. The department may advise the applicant of the amount of documentation and evaluation necessary.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE VI ECONOMIC ASSESSMENT OF PROJECTS (1) The projects which receive funding shall demonstrate tangible return to the state of Montana or its citizens.

(2) The applicant shall document current benefit and cost data.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE VII LEGAL REQUIREMENTS (1) The applicant is required to follow all statutory and regulatory standards.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE VIII RANKING OF PROJECTS (1) The advisory council shall utilize a scoring system to rank all projects in regard to how well they meet the criteria for the program.

(2) The advisory council shall consider the following criteria in ranking projects for funding.

(a) Projects which meet requirements specified in section 80-7-814, MCA, of the Noxious Weed Trust Fund Act.

(b) Projects that involve community groups and weed districts.

(c) Projects which can be utilized statewide and will provide the most tangible returns to the county or state.

(d) Projects in areas where county weed district funding sources for noxious weed control are limited.

(e) Projects which include educational programs to increase weed awareness and improve weed control techniques.

(f) Projects which involve an integrated weed management plan including biological, cultural, and chemical control.

(g) Projects which will enhance the renewable resources.

(h) Projects which include matching funds (including in-kind services) from private, state, and/or federal entities.

(i) Projects which have not previously received funds from the program.

(j) Projects whose results will provide public benefits.

(k) Projects with long term effect on natural resources.

(l) Projects which involve noxious weed emergencies.

(3) The results of this scoring system will be submitted to the department for final ranking and determination of funding priority for grant requests. The department will use the same criteria in ranking the proposals.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE IX REPORTING AND MONITORING PROCEDURES (1) The project sponsor or project manager shall monitor the progress and results of the project and evaluate its overall effectiveness. The project sponsor shall submit to the department quarterly progress and fiscal reports. The department will conduct annual field evaluations. If the department determines that improper progress or fiscal reports have been filed, the project sponsor shall initiate necessary corrective action.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

RULE X NOXIOUS WEED LIST (1) All plants or weeds listed on the labels of herbicide products registered by the Environmental Protection Agency and the department are hereby declared to be noxious weeds pursuant to the Noxious Weed Trust Fund section 80-7-801 (3), MCA.

(2) These noxious weeds are subject to various types of controls: biological, chemical, physical and mechanical. The herbicides used to control these weeds when sold to an applicator or consumer are subject to a surcharge of 1 cent per dollar of the retail value in the state of Montana as provided for in 80-7-812, MCA. Herbicides exempt from the tax are those registered by EPA and the department and labeled exclusively for personnel home, yard, or garden use and sold in containers less than 10 pounds or 1 gallon containers.

AUTH: 80-7-802, MCA IMP: 80-7-812, MCA

RULE XI NOXIOUS WEED IDENTIFICATION AND VERIFICATION (1) The department will identify new and potentially harmful noxious weeds based on characteristics which make the plant undesirable, troublesome, and/or difficult to control in cropland, rangeland, forestry, industrial, recreational or non-crop sites.

(2) The department shall verify the existence of a noxious weed in Montana in the following manner:

(a) Verification of location of the infestation based on herbarium records.

(b) Scientific identification of the plant by a botanist or weed scientist and by the concurrence of another botanist or weed scientist, or

(c) Submission of a plant by any person which is scientifically identified by the scientists of the Montana State University or University of Montana Herbarium.

AUTH: 80-7-802, MCA IMP: 80-7-812, MCA

RULE XII NOXIOUS WEED MANAGEMENT COUNCIL (1) The director of the department shall serve as chairman and also appoint the members of the noxious weed management council. Each appointed member shall serve a term of three years beginning 1986 except those members who are replacing members who resigned their membership prior to the expiration of their term or except for the provisions in subpart (2).

(2) The following members shall initially serve an initial term of one year: bio control, dealer or applicator. The following members shall serve an initial term of two years livestock, weed control and sports/wildlife. The following members shall serve an initial term of three years grain, consumer, and agriculture representatives at large. Following the completion of the first term the subsequent terms shall be three years.

AUTH: 80-7-802, MCA IMP: 80-7-805, MCA

3. The reason for the proposed rules is to implement the legislation passed by the 1985 legislature so as to establish: the requirements for applications for noxious weed trust fund grants, the criterium for evaluation of the applications, define noxious weeds for purposes of the act, and clarify the term for serving on the Noxious Weed Advisory Committee.

4. Interested persons may submit their data, views or arguments concerning the proposed rules, either orally or in writing at the hearing. Written data views, arguments, may be submitted to Celestine Lacey, Weed Coordinator, Department of Agriculture, Agriculture/Livestock Building, Helena, Montana 59620, no later than February 19, 1986.

5. Garth Jacobson, Department of Agriculture has been designated to preside over and conduct the hearing.

Keith Kelly
Department of Agriculture

Certified to the Secretary of State January 6, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the amendments regarding importing Alfalfa Leafcutting Bee Rules 4.12.1205 & 4.12.1207	))))	NOTICE OF PROPOSED AMENDMENTS to Alfalfa Leafcutting Bee Rules 4.12.1205 and 4.12.1207 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 15, 1986 the Department of Agriculture proposes to amend rules 4.12.1205 and 4.12.1207 concerning requirements for importation of alfalfa leafcutting bees.

2. The proposed amendments read as follows:

4.12.1205 CERTIFICATION OF IMPORTED ALFALFA LEAFCUTTING BEES (1) Bees imported into Montana must meet the standards for (a) Unconditional Alfalfa Leafcutting Bee Certification set forth in Rule 4.12.1203(2) or (b) Restricted A Alfalfa Leafcutting Bee Certification set forth in Rule 4.12.1203(3a) with the exception that bees shall contain no more than 0.5% infestation of alfalfa leafcutting bee chalkbrood (Ascosphaera sp.).

(2) Bees that do not meet these certification standards shall not be released for distribution or other delivery within the state. The importer of the bees shall be notified by certified mail of the fact of non-certification, together with a notice that the said bees must be removed from the state of Montana, at importer's expense, within 30 days, or the said bees will be destroyed. AUTH: 80-6-1103, MCA; IMP: 80-6-1107, MCA.

4.12.1207 CERTIFICATION PROCEDURES AND FEES (1) All requests for certification shall be made on forms provided by the department. The required certification fee shall be transmitted with the request for each certification.

(a) Import Certification - All bees proposed to be imported into Montana shall be delivered ~~on or before April 15 to the examination/analysis laboratory located at Montana State University, Bozeman, Montana where they shall be examined and analyzed~~ to a designated storage facility for sampling on or before April 15. After Official sampling the bees shall remain in quarantine until results of certification analysis are known. The official sample shall be analyzed by the department's designated laboratory following the submission of a request for certification and payment of appropriate fees. Bees requiring import certification after April 15 must receive permission to import from the department.

(b) no changes
(c) no changes
(d) no changes
(2) no changes

AUTH: 80-6-1103, MCA; IMP: 80-6-1109.

3. The purpose of these proposed amendments is to allow Montana beekeepers to import low levels of chalkbrood (.5%) into areas of the state where known chalkbrood levels are known to exist at levels higher than (.5%). The proposed rule is not intended to change existing certificate standards. All bees

imported at (.5%) level will enter under a permit system.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than February 14, 1986.

5. If a person who is directly affected by the proposed adoption 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 the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than February 14, 1986.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is fewer, of the persons who will be directly affected by the proposal, from the Administrative Code Committee of the legislature; from a governmental sub-division 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 10 persons, based on 100 Alfalfa Leafcutting Bee growers.

Keith Kelly
Department of Agriculture

Certified to the Secretary of State January 6, 1986.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of adopting amendments to certified seed potato rules	)	NOTICE OF THE PROPOSED ADOPTION OF RULES PERTAINING TO CERTIFIED SEED POTATOES
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 15, 1986 The Department of Agriculture proposes to adopt amendments pertaining to the grading of certified seed potatoes.

2. The proposed amendments read as follows:

4.12.3503 BLUE TAGS (1) (a) through (h) no changes

(1) (i) Oversized, undersized, sprouts, and hollow heart shall be permissible provided the excess tolerance is noted on the official grade tags.

(1) (j) Freezing injury other than frozen or affected by soft rot or wet breakdown shall be scored when removal of the affected area causes a loss of more than 10% of the total weight of the tuber.

AUTH: 80-3-110, MCA IMP: 80-3-104, 80-3-105, MCA

4.12.3504 RED TAGS (1) (a) through (d) no changes

(1) (e) The following blue tag exceptions shall also apply to red tag: air cracks, sunburn (greening), stemend discoloration, immaturity, sprouts, oversize, undersize, hollow heart, and freezing injury.

AUTH: 80-3-110, MCA IMP: 80-3-104, 80-3-105, MCA

3. The reason for the proposed amendments is that under the Montana Seed Potato rules, field frost damage commonly referred to as freezing is not an exception from the U.S. No. 1 or U.S. No. 2 grades. It requires potatoes must be free from freezing. "Freezing" means that the potato is frozen or shows evidence of having been frozen. The tolerance of the U.S. No. 1 or U.S. No. 2 grades allows 5% for external defects or 6% for external defects respectively of which only 3% is for potatoes which are affected by freezing, etc., including therein not more than 1% for potatoes which are frozen or affected by soft rot or wet breakdown. This means that if a potato has even a small dried spot from freezing, it is counted against the tolerance of 3% and against the applicable 5% or 6%, leaving only the remainder of that tolerance towards other defects.

To resolve the problem we are proposing the rule change. The amendments permit a greater tolerance for freezing damage.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than February 14, 1986.

5. If a person who is directly affected by the proposed adoption 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 the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than February 14, 1986.

6. If the agency receives requests for a public hearing on the proposed adoption 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 10 persons based on 100 seed potato growers in Montana.

Keith Kelly
Director

Certified to the secretary of state January 6, 1986.

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

In the matter of the amendment of rule 6.6.2003 pertaining to unfair trade practices on mid-term cancellations of casualty or property insurance	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 6.6.2003 PERTAINING TO UNFAIR TRADE PRACTICES ON MID-TERM CANCELLATIONS OF CASUALTY OR PROPERTY INSURANCE

TO: All Interested Persons

1. On February 26, 1986 at 10:00 a.m., a public hearing will be held in room 160 of the Mitchell Building, Helena, Montana, to consider the amendment of ARM 6.6.2003.

2. The proposed amendment adds to present ARM 6.6.2003 found in the Administrative Rules of Montana. The proposed amendment would restrict an insurer from cancelling policies issued for a term longer than one year where the premium is prepaid or for additional premium consideration an agreed term is guaranteed, except for reasons specifically allowed by statute, for failure to pay a premium when due, or on grounds stated in the policy which pertain to those grounds listed in ARM 6.6.2003(1)(a) through (f).

(3) The rule as proposed to be amended provides as follows:

6.6.2003 MID-TERM CANCELLATION

(1) Except as provided by subsection (3) or (4), no insurance policy may be cancelled by the insurer prior to the expiration of the agreed term or one year from the effective date of the policy or renewal, whichever is less, except for reasons specifically allowed by statute, for failure to pay a premium when due or on grounds stated in the policy which pertain to the following:

(a) Material misrepresentation;

(b) Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract; or

(c) Substantial breaches of contractual duties, conditions or warranties;

(d) Determination by the Commissioner that continuation of the policy would place the insurer in violation of the Montana Insurance Code;

(e) Financial impairment of the insurer; or

(f) Such other reasons that are approved by the Commissioner.

(2) Cancellation under subsection (1) shall not be effective prior to 10 days after the 1st class mailing or delivery of written notice to the policyholder.

(3) Subsections (1) and (2) do not apply to any newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until at least 10 days after the 1st class mailing or delivery of a written notice to the policyholder.

(4) If a policy has been issued for a term longer than one year, and if the premium is prepaid or for additional premium consideration an agreed term is guaranteed, the insurer may not cancel the policy except for reasons specifically allowed by statute, for failure to pay a premium when due, or on grounds stated in the policy which pertain to those grounds listed in ARM 6.6.2003(1)(a) through (f).

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

4. The Insurance Commissioner is proposing this amendment to ARM 6.6.2003 because many public entities and small businesses in this state purchase policies with terms longer than one year and either prepay the premium or pay additional premium in consideration for a guaranty of an agreed term. ARM 6.6.2003 as proposed to be amended permits insurers to cancel a policy one year from the effective date of the policy or renewal. The mid-term cancellation of a policy issued for a term longer than one year where the premium is prepaid or for additional premium consideration an agreed term is guaranteed: (1) breaches policyholder trust, (2) unfairly and prematurely terminates the bargained for agreement, (3) forces substituted insurance at greater cost, and (4) creates marketplace confusion precipitating market unavailability.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to John Bebee no later than February 13, 1986.

6. John Bebee has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Section 33-1-313, MCA, and the rule implements Section 33-18-1003, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 2nd day of January, 1986.

BEFORE THE STATE AUDITOR

AND COMMISSIONER OF INSURANCE

OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to the Montana Title Insurance Act	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO THE MONTANA TITLE INSURANCE ACT

TO: ALL INTERESTED PERSONS

1. On February 21, 1986 at 10:00 a.m. a public hearing will be held in Room 107 of the Social and Rehabilitation Services Building, Helena, Montana, to consider the adoption of proposed rules pertaining to the implementation of the Montana Title Insurance Act.

2. The proposed rules provide as follows:

RULE I LIENS, ENCUMBRANCES, AND STANDARDS OF INSURABILITY

(1) Defects of title are not regulated by subsection (2) or (3) of this rule.

(2) "Knowingly issuing an owner's title insurance policy or commitment to insure without showing an outstanding enforceable recorded lien or other interests against the property title to be insured" is the issuance of the policy or commitment with the intent to conceal information from the insured or any other person by suppressing or withholding title information, with actual knowledge that the concealment is likely to result in monetary loss either to the title insurance company or to the insured under the policy or commitment.

(3) The requirements that a title insurer show all outstanding enforceable recorded liens or other interests against the property title to be insured and make a determination of insurability as to possible liens and encumbrances shall not be construed as prohibiting a title insurer from issuing a policy without taking exception to a specific recorded, inchoate, or death tax item when sound underwriting standards and practices allow insurance against the item. Specifically, an insurer may issue a policy without taking exception to a specific recorded, inchoate, or death tax item in the following situations:

(a) Where a lien securing an obligation, though not released of record, to the satisfaction of the insurer has been discharged, and the insurer or its agent has documentary evidence in its file that the obligation has been paid in an amount which the holder of such obligation has accepted in full satisfaction of such obligation;

(b) Where funds are in escrow to pay said item, and a recordable release in form for filing or recording is available for recording in the ordinary course of business;

(c) Where liens are barred by the statute of limitations;

(d) Where inchoate liens arise from improvements to the described property and have priority over an interest being insured, and a sufficient indemnity made by a person or persons other than the named insured, the makers of the obligation secured by the insured mortgage, or a guarantor thereof, has been delivered to and accepted by the insurer, or where collected or cleared funds have been deposited with the insurer or its agent to assure ultimate payment and release of such liens; provided, an exception as to such inchoate liens shall be shown on the policy with a provision insuring against the enforcement thereof;

(e) Where the insurer has previously issued a policy without taking exception to the specific item and is called upon to issue an additional policy where it is already obligated to the insured under such prior policy and where the new policy will not increase the insurer's liability or exposure; provided, an exception as to such item shall be shown on the policy with a provision insuring against the enforcement thereof;

(f) Where the mortgage policy issued insures validity and priority of a lien; provided, when issuing a preliminary report, commitment, or a binder for a mortgagee's policy, all subordinate liens shall be shown but a statement may be made that they are subordinate; and

(g) With reference to federal estate taxes and state inheritance taxes which have not been paid, where the insurer has examined a balance sheet of the estate and determined that more than adequate funds are on hand to pay such taxes, and the insurer has taken an indemnity from a responsible person protecting itself against such unpaid taxes, or where sufficient moneys or other securities to pay such taxes have been placed in escrow pending the payment thereof or pending receipt of waiver of lien from the taxing authority.

(4) For purposes of Rule I(3)(d), "sufficient indemnity" means a direct obligation to pay such liens in an amount judged adequate by the insurer and executed by a financial institution regulated by the state or federal government or executed by a responsible person except where the provisions of 71-3-516, MCA are applicable.

(5) Rule I(3)(d) shall apply to recorded liens being contested if the indemnity is 150% of the claim, is executed by a financial institution regulated by the state or federal government, or is in an amount judged to be adequate by the insurer.

(6) For purposes of Rule I(3)(f), the insurer shall not be required to itemize liens which are subordinate to the lien insured, whether by express subordination or operation of law, unless such coordinated matters must be shown to comply with a policy provision, or unless requested by the insured to do so.

(7) For purposes of Rule I(4), "responsible person" is any person, or persons if they are jointly and severally liable, whose current verified balance sheet upon examination is determined by the insurer to be sufficient for the purpose of the indemnity given. Verified copies of all statements shall be retained by the insurer or its agent.

AUTH: 33-1-313, MCA IMP: 33-25-214, MCA

RULE II ESCROW, CLOSING, OR SETTLEMENT SERVICES (1) Escrow, closing, or settlement services are those activities undertaken by a title insurer or title agent acting in a fiduciary capacity with regard to a particular transaction or transactions, including the receipt and disbursement of money and the proration of insurance and taxes. Activities coincidental to the issuance of a title insurance policy such as accepting instruments for recording and filing and handling funds to pay recording and filing fees and property taxes are not considered escrow, closing, or settlement services.

(2) An escrow agent shall not accept funds or papers in escrow without first receiving dated, written instructions adequate to administer the escrow account and without receiving collected or cleared funds and documents to carry out the terms of the escrow instructions.

(3) An escrow agent shall use documents or other property deposited in escrow only in accordance with the written instructions of the principals to the escrow transaction or, if not so directed, in accordance with sound escrow practice or order of a court of competent jurisdiction.

(4) An escrow agent shall act without partiality to any of the parties to the escrow. An escrow agent may not close a transaction where he has, directly or indirectly, a monetary interest in the subject property either as buyer or seller.

(5) If an escrow agent has a business interest in the escrow transaction other than as escrow agent, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows:

"We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agent in this transaction, but you are, nevertheless, free to request that the transaction be closed by some other escrow agent."

(6) Upon completion of an escrow transaction, the escrow agent shall deliver to each principal a verified written closing statement of the principal's account. The statement shall show all receipts and disbursements of escrow funds for that account as well as charges and credits to that account. Service charges made by the escrow agent and all disbursements by the agent in connection with the transaction shall be clearly designated. Payments outside of escrow, if shown in the statement, shall be set forth separately from payments

under the escrow. A copy of the closing statement shall be retained by the escrow agent in the appropriate escrow file. The statement shall be dated and signed, a copy delivered to each interested real estate broker, and an additional copy furnished to an appropriate principal upon his request.

(7) An escrow agent shall not authorize or allow a bank to remove funds from the agent's trust account or escrow account for payment of bank service charges, overdraft charges, printed check charges, collection charges, bank fees, or service charges of any kind. Such charges shall be paid from the escrow agent's own funds. If bank procedures require, however, the deduction of such charges, the escrow agent must re-deposit to the account non-trust funds equal to the amount of the deduction within one business day of receipt of notification of the deduction.

(8) No escrow funds shall be placed in an interest-bearing account unless:

(a) the escrow agent has received express written instructions to do so from the principal; and

(b) all earnings accruing to such account are credited to that account exclusively for the use and benefit of the principal or such other persons as the principal has designated in the written escrow instructions.

(9) (a) An escrow agent shall establish and maintain on a current basis the following books of account pertaining to its escrow business:

(i) an escrow ledger containing a separate, numbered sheet to record the accounting on each escrow agreement; and

(ii) an escrow liability control account.

(b) All escrow account disbursements shall be posted from checks or vouchers to the agent's cash journal. When receipts or disbursements are posted as a total to the cash journal or to the control account, the adding machine tape or other means of tracing the individual transactions in an audit shall be preserved and filed in a logical sequence.

(c) The escrow liability control account shall be in balance with the escrow ledger at all times. The balance of the escrow liability control account shall equal the balance of the trust account or escrow account in the bank and shall be reconciled at least once each month with the balance of such bank account.

(10) (a) A check against a particular escrow account shall not be drawn, executed, or dated unless the escrow account contains a sufficient credit balance consisting of collected or cleared funds at the time of drawing and executing the check and at the date of the check.

(b) Transfer of funds between escrow accounts may not be accomplished by ledger entries alone, but must be accomplished by writing checks and receipts which are charged and credited to the respective escrow accounts. The reason and appropriate authorization for the transfer must be included in the escrow files. However, transfers between one collection escrow

account and another collection escrow account may be made on each of the escrow ledger accounts affected.

(c) An escrow agent shall not withdraw payment or transfer money from any escrow account in excess of the credit balance of the account at the time of the withdrawal payment or transfer.

(d) Escrow fees from a closing escrow account shall not be withdrawn from the account until it is ready for closing in accordance with the escrow instructions, and must be withdrawn no later than the day on which other final disbursements are made from the escrow account.

(e) When the collection service has been performed, escrow fees from a collection escrow account shall be withdrawn from the account or posted to a separate fee ledger. If escrow fees are posted in a separate fee ledger, the fees must be withdrawn at least once each month.

(f) No funds other than those received as part of an escrow transaction shall be deposited in the bank trust account or escrow account, or otherwise commingled with escrow funds.

(g) All money deposited in a trust account or escrow account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written instructions of the principals to the escrow transaction or the order of a court of competent jurisdiction.

(h) All receipts and disbursements of money shall be posted in the escrow ledger as of the date of the transaction, without regard to the date of posting.

(11) If any disbursement made out of an escrow account results in a discount, refund, credit, or other benefit directly or indirectly to an escrow agent or its officers or employees, such benefit shall be credited to the principal for whose account the payment is made.

(12) (a) Records of the escrow agent shall be based upon a method which provides accounting control and traceability and an audit trail of the receipts and shall include:

(i) copies of all prenumbered receipts forms used, with all numbers accounted for;

(ii) all cancelled checks, with all numbered check forms accounted for; and

(iii) all prenumbered voucher or prenumbered check stubs used, with all numbers accounted for.

(b) These records shall be made and kept by the escrow agent to account for funds received in and disbursed from escrow.

(c) No funds shall be received in escrow or paid out of escrow without issuing a receipt or check, respectively, to evidence the transaction. On closing escrows, the receipt shall be issued as soon as practicable after the money is received. On collection escrows, the receipt may be issued to show receipts over a period of time not exceeding one year.

(d) The receipt and check forms shall be prenumbered

consecutively. All voided forms shall be preserved in the records in numerical sequence, and all lost or missing forms shall be accounted for with an explanation of why the form is missing.

(13) The offices, places of business, books, records, accounts, safes, files, and papers of an escrow agent shall be maintained so as to be freely accessible and available for audit, inspection, or examination by the Insurance Commissioner at all reasonable times.

(14) An escrow agent shall preserve for at least six years all records required by this rule and all bank statements of its trust accounts and escrow accounts.

(15) Each escrow agent shall have available not less often than the end of every third year, an audit by an independent public accountant of the escrow accounts of the agent, and such audit shall be available to the Insurance Commissioner upon request. The scope of the audit shall be limited to a sample check of closed escrow transactions, a verification of open escrows, and a determination as to whether the escrow agent's records are maintained in a manner to permit such audit. The audit report shall contain a balance sheet of the close of the audit period; a statement of receipts and disbursements of escrow funds showing reconciliation between the beginning and ending balances; a list of all bank accounts of the escrow agent containing escrow funds showing the name, address, and account number; a list of any closing escrow accounts which have been open for more than one year at the end of the audit period showing the name, number, and amount of such escrow liability; an explanation of the method used to verify the escrow account liabilities together with the number of escrows; the number of confirmations requested; the number of discrepancies and approximate percentage of escrow accounts checked; and a statement that the escrow agent has complied with the regulations of the Insurance Commissioner as to escrow accounts listing any exceptions as disclosed by such sampling and said statements and lists.

AUTH: 33-1-313, MCA IMP: 33-25-201, MCA

RULE III REBATES AND INDUCEMENTS

(1) "Rebate" means the payment or return of any charge or any portion thereof of the amount constituting the total rate for title insurance or services constituting the business of title insurance or the rates on file with the Insurance Commissioner to any person.

(2) "Inducements" entail the following activities or practices:

(a) Furnishing title information in written form without charge or at a charge less than the applicable rate filing. However, cancellation of a title commitment due to the failure of any party to complete the transaction at a charge deter-

mined by an underwriter's filed rate schedule shall not be considered an inducement.

(b) Furnishing information packets, listing kits or hybrid forms of title information. An insurer or agent may, however furnish without charge a copy of any existing plot or map and tax information covering a specific parcel of real estate in substantially the "Property Profile" form, approved by the Insurance Commissioner and available upon request to the Insurance Commissioner, without additions, addenda, or attachments which may be construed as containing conclusions of the insurer or agent regarding matters of marketable ownership or encumbrances.

(c) Paying or offering to pay any charges which constitute an obligation of any producer of title insurance business for the cancellation of an existing title insurance order with a competing company.

(d) Furnishing escrow, closing, or settlement services for a charge (independent of the rate charged for involved title insurance) less than the reasonable cost of so providing.

(e) Deferring any payment for insurance or services otherwise due or payable to become applicable to the payment for insurance or services not yet furnished and not reasonably an integral part of a completed transaction.

(f) Furnishing or offering to furnish services not reasonably related to bona fide insurance or escrow, closing, or settlement transactions, including, but not limited to: computer services, nonrelated delivery services, accounting assistance, and the referral of legal matters to an attorney with whom the title company has a referral arrangement, unless disclosure is made of that fact and the customer has been advised that the attorney is an agent of the title company and does not represent the individual.

(g) Renting or offering to rent as either landlord or tenant at a rental favorable to any producer of title insurance or to any insurer or agent of title insurance as compared with terms otherwise generally available.

(h) Providing or paying for, as an inducement, the sale of title insurance or escrow services of any of the following non-exclusive items: credit extensions, prizes, vacations, travel expenses, membership or registration fees, or lodging.

(i) Depositing funds, whether interest bearing or not, with a credit or lending institution based on an understanding that title insurance business will be referred to a particular agent or insurer.

(3) A title insurance agent, who is also a licensed attorney rendering any legal services in the transaction insured, must render a separate legal billing therefor. The escrow fees shall not include such legal services.

AUTH: 33-1-313, MCA IMP: 33-25-202, MCA
33-25-401(1)(a), MCA

3. These rules are proposed to implement the provisions of the Montana Title Insurance Act. They are necessary to effectuate the purposes of the Act and are adopted pursuant to the authority granted therein.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing no later than February 13, 1986 to:

John Bebee
Deputy Insurance Commissioner
State Auditor Insurance Commissioner's Office
P. O. Box 4009
Helena, MT 59604-4009

5. John Bebee, Deputy Insurance Commissioner, has been designated to preside over and conduct the hearing.

6. The authority of the agency to adopt the proposed rules is based on Section 33-1-313, MCA, and the rules implement Section 33-25-104, et seq., MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 3rd day of January, 1986.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.8.1404, limiting visible air contaminants; the adoption of new rule I [to be codified 16.8.1428], prohibiting wood stove combustion of certain materials; and the repeal of 16.8.1201, 16.8.1202 and 16.8.1203 and the adoption of new rules II, III and IV [to be codified 16.8.1204, 16.8.1205 and 16.8.1206], setting standards for stack heights	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.8.1404; THE REPEAL OF ARM 16.8.1201 - 16.8.1203; AND THE ADOPTION OF NEW RULES I, II, III, AND IV (Air Quality)

TO: All Interested Persons:

1. On March 14, 1986, at 10:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment, repeal and adoption of the above-captioned rules

2. The amendment to ARM 16.8.1404 would clarify that the rule does not apply to emissions from wood stoves, and the adoption of Rule I would prohibit burning certain materials in wood or coal residential stoves. The repeal of ARM 16.8.1201-16.8.1203 and the adoption of new rules are proposed to update Montana's stack height requirements with current federal regulations. The new Rules II, III and IV would replace the existing stack height rules currently found on pages 16-213 through 16-215, Administrative Rules of Montana.

3. The rules proposed to be repealed can be found on pages 16-213 through 16-215 of the Administrative Rules of Montana.

4. The rule on visible air contaminants as proposed to be amended, provides as follows (stricken material interlined, new material underlined):

16.8.1404 VISIBLE AIR CONTAMINANTS (1) No person ~~shall~~ may cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, ~~which~~ that exhibit an opacity of forty percent (40%) or greater averaged over six (6) consecutive minutes. The provisions of this subsection ~~shall~~ do not apply to transfer of molten metals or emissions from transfer ladles.

(2) No person ~~shall~~ may cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, ~~which~~ that exhibits an opacity of twenty percent (20%) or greater averaged over six

(6) consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of sections (1) and (2) shall apply, except that a maximum average opacity of sixty percent (60%) ~~shall be~~ is permissible for not more than one (1) four-minute period in any sixty (60) consecutive minutes. Such a four-minute period ~~shall~~ means any four (4) consecutive minutes.

(4) This rule ~~shall~~ does not apply to emissions from:

(a) wood-waste burners,

(b) incinerators,

(c) motor vehicles,

(d) those new stationary sources listed in ARM 16.8.1423 for which a visible emission standard has been promulgated, or

(e) residential solid-fuel combustion devices such as fireplaces and wood or coal stoves.

AUTHORITY: 75-2-111, 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

5. The new rule proposed for materials unsuitable for burning in residential wood or coal stoves provides as follows:

RULE I PROHIBITED MATERIALS FOR WOOD OR COAL RESIDENTIAL STOVES (1) No person may cause or authorize the use of the following materials to be combusted in any residential solid-fuel combustion device such as a wood, coal, or pellet stove or fireplace:

(a) food wastes;

(b) styrofoam and other plastics;

(c) wastes generating noxious odors;

(d) poultry litter;

(e) animal droppings;

(f) dead animals or dead animal parts;

(g) tires;

(h) asphalt shingles;

(i) tarpaper;

(j) insulated wire;

(k) treated lumber and timbers including railroad ties;

(l) pathogenic wastes;

(m) colored newspaper or magazine print;

(n) hazardous wastes as defined by 40 CFR Part 261; or

(o) chemicals.

AUTHORITY: 75-2-111, 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

6. The proposed rules concerning stack heights provide as follows:

RULE II DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1)(a) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) using that portion of a stack which exceeds good engineering practice stack height;

(ii) varying the emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) increasing final exhaust gas plume rise by manipulating source process parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(b) The term "dispersion technique" does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the merging of gas streams when:

(A) the source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant (this exclusion from the definition of "dispersion technique" applies only to the emission limitation for the pollutant affected by such change in operation); or

(C) before July 8, 1985, such merging is part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. If there was an increase in the emission limitation or, if no emission limitation was in existence prior to the merging, an increase in the quantity of pollutant actually emitted prior to the merging, the department shall presume that merging was significantly motivated by the intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the department shall deny credit for the effects of such merging in calculating the allowable emissions for the source.

(iii) smoke management in agricultural or silvicultural prescribed burning programs;

(iv) episodic restrictions on residential solid-fuel burning and open burning; or

(v) techniques under (1)(a)(iii) of this rule that increase final exhaust gas plume rise when the resulting allowable emissions for sulfur dioxide from the facility do not exceed five thousand (5,000) tons per year.

(2) "Good engineering practice" (GEP) stack height means the greater of:

(a) sixty-five (65) meters, measured from the ground-level elevation at the base of the stack;

(b)(i) for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required by this chapter,

$$GEP = 2.5H$$

if the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(ii) for all other stacks,

$$GEP = H + 1.5L$$

where: GEP = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack, and

L = lesser dimension, height or projected width, of nearby structure(s);

however, the department may require the use of a field study or fluid model to verify GEP stack height for the source; or

(c) the height demonstrated by a fluid model or a field study approved by the department that ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, or nearby structures or nearby terrain features.

(3) "Nearby" as used in this subchapter for a specific structure or terrain feature means:

(a) for purposes of applying the formula provided in (2)(b) of this rule, that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometers (1/2 mile); and

(b) for purposes of conducting demonstrations under (2)(c) of this rule, not greater than 0.8 kilometers, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten (10) times the maximum height (Ht) of the feature, not to exceed two (2) miles if the feature achieves a height 0.8 kilometers from the stack that is at least forty percent (40%) of the GEP stack height determined by the formulae provided in (2)(b)(ii) of this rule or twenty-six (26) meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is

measured from the ground-level elevation at the base of the stack.

(4) "Excessive concentration" as used in (2)(c) of this rule means:

(a) For sources seeking credit for stack height exceeding that established under (2)(b) of this rule, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes and eddy effects produced by nearby structures or nearby terrain features that individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and that contributes to a total concentration due to emissions from all sources greater than an ambient air quality standard as provided in sub-chapter 8. For sources subject to the prevention of significant deterioration program (sub-chapter 9), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features that individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part is prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates to the satisfaction of the department that this emission rate is infeasible. Where such a demonstration has been made, the department shall establish an alternative emission rate after consultation with the source owner or operator.

(b) For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under (2)(b) of this rule, either:

(i) a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects as provided in section (4)(a) of this rule, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate as defined in ARM 16.8.921(2)) shall be used, or

(ii) the actual presence of a public nuisance caused by the existing stack, as determined by the department.

(c) For sources seeking credit after January 12, 1979, for a stack height determined under (2)(b) of this rule if the department requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic

influence of structures not adequately represented by the equations in (2)(b) of this rule, a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects that is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.
AUTHORITY: 75-2-111, 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE III REQUIREMENTS (1) The degree of emission limitation required of any source or stack for control of any air pollutant regulated under the Montana Clean Air Act must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in Rule IV.

(2) Before a new or revised state implementation plan emission limitation that is based on good engineering practice stack height that exceeds the height allowed by Rule II(2)(b)(i) or (ii) is submitted to the Environmental Protection Agency, the department must provide notice and opportunity for public hearing of the availability of any demonstration study as provided by Rule II(2)(c). Such notice and public hearing will be conducted in accordance with the Montana Administrative Procedure Act.

(3) This rule does not require a source owner or operator to restrict, in any manner, the actual stack height of any source.
AUTHORITY: 75-2-111, 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE IV EXEMPTIONS The requirements of Rule III do not apply to stack heights in existence or dispersion techniques implemented on or before December 31, 1970, except when pollutants are being emitted from such stacks or using such dispersion techniques by stationary sources (as defined by ARM 16.8.921(28)) that were constructed or reconstructed or for which major modifications (as defined in ARM 16.8.921(21)) were carried out after December 31, 1970.
AUTHORITY: 75-2-111, 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

7. The amendment to ARM 16.8.1404 is proposed because the rule is not a workable or appropriate means for regulating emissions from residential wood stoves. The department is awaiting the federal EPA's final decision concerning regulation of wood stoves under the federal Clean Air Act. The new Rule I is proposed to prevent the potentially toxic or excessively dirty emissions from combustion of rubber tires, shingles, and the like.

8. The repeal of ARM 16.8.1201-16.8.1203 and the adoption of new Rules II, III, and IV are proposed to conform Montana's stack height rules to the recently revised federal regulations and thereby assuring a state program fully approved by EPA.

9. 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 L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 7, 1986.

10. Robert L. Solomon has been designated to preside over and conduct the hearing.

11. The authority of the Board to make the proposed amendment, repeal and adoption is based on sections 75-2-111 and 75-2-203, MCA, and the rules implement section 75-2-203, MCA.

JOHN F. McGREGOR, M.D., Chairman

By JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State January 6, 1986.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the Amendment of Attorney Fee Rule ARM 24.29.3801	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 24.29.3801 (No Public Hearing Contemplated)

TO: All Interested Persons:

1. The Workers' Compensation Division proposes to amend its rule concerning attorney fee regulation and the submission of attorney fee contracts.

2. The proposed rule to be amended provides as follows:

24.29.3801 ATTORNEY FEE REGULATION (1) An attorney representing a claimant on a workers' compensation claim shall submit to the division, in accordance with section 39-71-613, MCA, a contract or copy of a contract of employment stating specifically the terms of the fee arrangement. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the administrator of the Division of Workers' Compensation. The administrator or his designee shall return the contract to the attorney along with a notification that the contract has been approved or disapproved.

(2) An attorney representing a claimant on a workers' compensation claim and who plans to utilize a contingent fee arrangement to establish the fee arrangement with the claimant, may not charge a fee above the following amounts:

(a) ~~f~~For cases that have not gone to a hearing before the workers' compensation judge, ~~a--fee--above~~ twenty-five percent (25%) of the amount of compensation payments the claimant receives due to the efforts of the attorney.

(b) For cases that go to a hearing before the workers' compensation judge, thirty-three percent (33%) of the amount of compensation payments the claimant receives from an order of the workers' compensation judge.

(c) For cases that are appealed to the Montana supreme court, forty percent (40%) of the amount of compensation payments the claimant receives based on the order of the supreme court.

(3) The amount of medical and hospital benefits received by the claimant shall not be considered in calculating the fee, unless the workers' compensation insurer has denied all liability, including medical and hospital

benefits, in the claimant's case, or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.

(4) For good cause shown, the division may allow contingent fees in excess of the maximum set forth in subsection (2). Such a variation from the maximum contingent fee schedule must be approved by the division before a final fee contract is entered into between the attorney and the claimant.

(5) The fee schedule set forth in subsection (2) does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate, but the fee charged may not exceed the schedule set forth in subsection (2). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.

(6) The contingent fee schedule set forth in subsection (2) is a maximum schedule, and nothing prevents an attorney from charging a contingent fee below the maximum contingent fee schedule. The division encourages attorneys to review each workers' compensation claim on a case by case basis in order to determine an appropriate fee. An attorney may also reduce the attorney's fee from what was originally established in the fee contract, without the approval of the division.

(7) Attorneys' compensation ~~in claims settled prior to the hearing of a petition before the workers' compensation court~~ shall be determined solely by the approved fee arrangement and shall be paid out of the funds received in settlement or recovery or other funds available to the claimant. Upon the occurrence of a hearing before the workers' compensation court, that court shall have exclusive jurisdiction for the award of attorney's fees on the claim against the insurer or employer which shall be credited to the fee due from the claimant.

(8) In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claim ~~not having gone to hearing on a petition before the workers' compensation court~~, the administrator, upon request of either the claimant or the attorney, shall review the matter and issue his order resolving the dispute pursuant to procedures set forth in section 24.29.201, et seq., ARM. The fee contract between attorney and client shall clearly identify the rights granted by this subsection.

(9) This rule constitutes the administrator's regulation of the amount of attorney's fees in any workers' compensation case as permitted by section 39-71-613, MCA.

AUTH: 39-71-203,MCA; IMP: 39-71-611 thru 39-71-614, MCA

3. The rationale for amending ARM 24.29.3801 is to set forth the limits and the manner in which attorneys who represent a claimant in a workers' compensation case submit to the division a contract of employment between the attorney and the claimant, and to set forth the manner in which the administrator of the division regulates the amount of the attorney's fee in any workers' compensation case. The amendment of this rule is necessary to distinguish the division's responsibility to regulate attorney fees pursuant to section 39-71-613, MCA, and the workers' compensation court's responsibility to award attorney fees pursuant to section 39-71-611 or 39-71-612, MCA, according to these statutes as amended by the 1985 Legislature.

4. Interested parties may submit their data, views or arguments concerning these changes in writing to William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, by February 17, 1986.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to William R. Palmer, address above, no later than February 17, 1986.

6. If the division receives requests for a public hearing on the proposed amendment from 25 persons who are directly affected by the proposed amendment or ten percent of the population of the state of Montana, 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. The rule will affect each individual in the state. Notice of hearing will be published in the Montana Administrative Register.

GARY L. BLEWETT,
Administrator

CERTIFIED TO THE SECRETARY OF STATE: January 6, 1986

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.22.1102 and 42.22.1119 relating to net proceeds reclamation costs.	NOTICE OF PUBLIC HEARING on the Proposed Amendment of Rules 42.22.1102 and 42.22.1119 relating to net proceeds reclamation costs.

TO: All Interested Persons:

1. On February 5, 1986, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the amendment of rules 42.22.1102 and 42.22.1119 relating to net proceeds reclamation costs.

2. The rules proposed to be amended can be found on pages 42-2241 and 42-2248 of the Administrative Rules of Montana.

3. The rules as proposed to be amended can be found on pages 1604 and 1605 of the 1985 Montana Administrative Register, issue number 20.

4. The Department is holding the hearing upon request of the Montana Mining Association which represents more than 25 or 10% of the persons directly affected by the proposed amendments.

5. 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:

Dawn Sliva
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than February 13, 1986.

6. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments is based on § 15-23-108, MCA, and § 3, Ch. 623, L. 1985, and implement §§ 15-23-502 and 15-23-503, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 01/06/86

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.6705, 2.21.6710, 2.21.6711, 2.21.6712, 2.21.6714, through 2.21.6717, the amendment of ARM 2.21.6702, 2.21.6703, 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, and 2.21.6718, and the adoption of ARM 2.21.6708 relating to the administration of the Employee Incentive Awards Program	NOTICE OF THE REPEAL OF ARM 2.21.6705, 2.21.6710, 2.21.6711, 2.21.6712, 2.21.6714, THROUGH 2.21.6717 THE AMENDMENT OF ARM 2.21.6702, 2.21.6703, 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, and 2.21.6718, AND THE ADOPTION OF ARM 2.21.6708 RELATING TO THE ADMINISTRATION OF THE EMPLOYEE INCENTIVE AWARDS PROGRAM

TO: All Interested Persons.

1. On November 15, 1985, the department of administration published notice of the proposed repeal of ARM 2.21.6705, 2.21.6710, 2.21.6711, 2.21.6712, 2.21.6714 through 2.21.6717, the amendment of ARM 2.21.6702, 2.21.6703, 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713 and 2.21.6718, and the adoption of ARM 2.21.6708 relating to the administration of the employee incentive awards program at page 1660 of the 1985 Montana Administrative Register, issue number 21.

2. The rules have been repealed, amended and adopted as proposed.

3. One comment supporting the proposed rule changes was received.

BY: Ellen Feaver
Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State January 6, 1986.

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

In the matter of the adoption of an emergency amendment of rules pertaining to unfair trade practices on cancellations of casualty or property insurance	)))))	NOTICE OF ADOPTION OF EMERGENCY AMENDMENT OF RULES

TO: All Interested Persons

1. Statement of reason for emergency. The State Auditor and Commissioner of Insurance finds it necessary to adopt this emergency rule restricting mid-term cancellation of policies issued for a term longer than one year where the premium is prepaid or for additional premium consideration an agreed term is guaranteed. To meet mandatory liability insurance requirements or protect themselves from liability exposure, many public entities and small businesses in this state have prepaid coverage for a period greater than one year. ARM 6.6.2003(1) permits insurers to cancel a policy one year from the effective date of the policy or renewal, even if none of the grounds listed in ARM 6.6.2003(1)(a) through (f) exists. The effective date of a number of policies purchased by public entities and small businesses is January 1, 1985. Given the current language of ARM 6.6.2003(1), insurers may cancel those policies on January 1, 1986 even though none of the grounds listed in ARM 6.6.2003(1)(a) through (f) exist.

The mid-term cancellation of a policy issued for a term longer than one year where premium is prepaid or for additional premium consideration an agreed term is guaranteed: (1) breaches policyholder trust, (2) unfairly and prematurely terminates the bargained for agreement, (3) forces substituted insurance at greater cost, and (4) creates marketplace confusion precipitating market unavailability. The Commissioner further finds that prompt action must be taken to prevent unfair treatment of policyholders purchasing policies for a term longer than one year where premium is prepaid or for additional premium consideration an agreed term is guaranteed.

2. The text of the proposed emergency rule is as follows:

6.6.2003 MID-TERM CANCELLATION

(1) Except as provided by subsection (3) or (4), no insurance policy may be cancelled by the insurer prior to the expiration of the agreed term or one year from the effective date of the policy or renewal, whichever is less, except for reasons specifically allowed by statute, for failure to pay a premium when due or on grounds stated in the policy which pertain to the following:

(a) Material misrepresentation;

(b) Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract; or

(c) Substantial breaches of contractual duties, conditions or warranties;

(d) Determination by the Commissioner that continuation of the policy would place the insurer in violation of the Montana Insurance Code;

(e) Financial impairment of the insurer; or

(f) Such other reasons that are approved by the Commissioner.

(2) Cancellation under subsection (1) shall not be effective prior to 10 days after the 1st class mailing or delivery of written notice to the policyholder.

(3) Subsections (1) and (2) do not apply to any newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until at least 10 days after the 1st class mailing or delivery of a written notice to the policyholder.

(4) If a policy has been issued for a term longer than one year, and if the premium is prepaid or for additional premium consideration an agreed term is guaranteed, the insurer may not cancel the policy except for reasons specifically allowed by statute, for failure to pay a premium when due, or on grounds stated in the policy which pertain to those grounds listed in ARM 6.6.2003(1)(a) through (f).

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

3. The authority for the agency to adopt this emergency rule is based upon 2-4-303, MCA and 33-1-313, MCA, and the rule implements 33-18-1003, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 6th day of January, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the amendment of 8.97.402 (3) concerning criteria for determining eligibility, and adoption of new rule 8.97.415 concerning purchase of guaranty of debentures of qualified Montana capital companies	))))))	NOTICE OF AMENDMENT OF 8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY and ADOPTION OF NEW RULE 8.97.415 PURCHASE OF GUARANTY OF DEBENTURES OF QUALIFIED MONTANA CAPITAL COMPANIES

TO: All Interested Persons:

1. On August 15, 1985, the Montana Economic Development Board published a notice of amendment and adoption of the above-stated rules at pages 1077 through 1079, 1985 Montana Administrative Register, issue number 15.

2. A public hearing was held concerning the proposed amendment and adoption of the above-stated rules on September 6, 1985 at 10:00 a.m., in the upstairs conference room of the Department of Commerce at 1424 9th Avenue, Helena, Montana. The written and oral comments and testimony are noted below.

3. The Board has amended Rule 8.97.402 as proposed with the following changes:

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY The Board shall determine that an application for financing is eligible under this Sub-Chapter only if it finds that:

(1) ...

(3) All financing except THE purchase or guarantee of the debentureS of qualified Montana Capital Companies, short-term certificates of deposit and loans purchased under the Interim Funding of Pooled Industrial Revenue Bond Loans Program must be for the benefit of a business engaged in "basic" economic activity, import substitution activity, or the wholesale or retail distribution of Montana-made goods as defined in ARM 8.97.401. For purposes of this section, "business" shall mean the applicant for financing or such other person as may be shown to directly and substantially benefit from the financing to the satisfaction of the board through reduced rental rates or other verifiable means for the term of the loan.

(4) ..."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

4. The Board has thoroughly considered all oral and written comments received:

COMMENT: No comments dealing specifically with the proposed change to 8.97.402 were received although general comments unanimously endorsed the concept reflected by this proposed

change and proposed Rule 8.97.415. Minor changes in style have been made in this proposal.

5. The Board has adopted new Rule 8.97.415 as proposed with the following changes:

"8.97.415 PURCHASE ~~OF~~ OR GUARANTY OF DEBENTURES OF QUALIFIED MONTANA CAPITAL COMPANIES (1) In order to facilitiate the venture capital investments in Montana businesses and at the same time protect the instate investment fund from loss the ~~MEDB~~ board may provide leverage to any qualified Montana Capital Company through the purchase or guaranty of debentures ~~of~~ issued by the capital company.

(2) For the purpose of this section, a 'debenture' is a bond, ~~which is secured only by unpledged assets and the general credit of the issuer~~ note or other evidence of indebtedness.

(3) (a) In no event shall the amount of debentures purchased by ~~MEDB~~ the board be in excess of ~~75%~~ 100% of the net worth of the capital company.

(b) Upon written notice by ~~MEDB~~ the board, the entire ~~indebtedness and/or~~ the principal amount of the debentures may be declared immediately due and payable if the capital company fails to maintain the minimum ratio described in (3)(a) above, or is determined to be in violation of any provision of Title 90, Chapter 9, MCA, by the annual examination provided for by 90-8-313, MCA.

(4) The board may specify terms and conditions to be included in the debenture.

(5) The maximum terms of a debenture ~~is~~ shall be ten years.

(6) ~~The board may not purchase more than $2,000,000 in debentures of all capital companies.~~ The maximum aggregate amount of debentures the board may purchase or guaranty shall not exceed 10% of all Coal Trust funds of the board.

(7) (a) A qualified capital company ~~may~~ shall apply to the board for the purchase or guarantee of its debentures on an application form approved and provided by the board.

(b) The capital company shall pay a non-refundable $200 application fee to the board at the time the application is made.

(c) ~~The application shall identify the specific investments and loans to be financed by the debenture and the terms and conditions of the investments and shall certify that the investments are consistent with the terms and conditions of the Montana Capital Company Act.~~ The application shall certify that investments made with the board's funds are consistent with the terms and conditions of the Montana Capital Company Act.

(d) The provisions of ARM 8.97.306 and 8.97.307 apply to review and approval of an application by the administrator and board.

(e) The capital company shall pay to the board at the time of purchase or guaranty of the debentures a one time fee of $10 per thousand on the par value (face amount) of the debentures.

(f) The board shall adapt and periodically establish and make available to the public and capital companies a schedule of rates for the debentures of capital companies financed by a debenture purchased or guaranteed by the board.

(g) ~~A~~ The capital company originating a loan or investment may charge the borrower a rate of interest or dividend no more than ~~five~~ seven percentage points ~~percent~~ above the board's interest rate on the debentures guaranteed or purchased by the board. This limitation does not apply to additional income received by the capital company through revenues or income participations, appreciation in the value of equity, product or service royalties, or fees for services.

(h) The capital company shall file with the board an annual CPA prepared financial statement and may be required to submit more frequent reports at the request of the administrator on the status of its investment portfolio or financial statement."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

6. The board has thoroughly considered all oral and written comments received:

COMMENT: All of those commenting endorsed the concept reflected by this proposal. Some suggested minor changes as noted below.

COMMENT: The term "debenture" should be more precisely defined in the rule.

RESPONSE: The board concurs and has incorporated the proposed definition in subsection (2).

COMMENT: The maximum leverage rate established by subsection (3) should be increased from the proposed 75 percent to 100 percent.

RESPONSE: The board concurs and has incorporated this change.

COMMENT: The maximum value of debentures which the board can purchase (established in subsection (6)) should be expressed as a percent of the board's coal tax trust funds rather than as a dollar amount.

RESPONSE: The board concurs and has incorporated this change. Currently $2,000,000 represents approximately 10 percent of the coal tax trust funds available to the board.

COMMENT: As originally proposed, subsection (7)(c) would require a capital company which was applying to the board for the purchase or guarantee of its debentures to identify the specific investments and loans to be financed by the debenture and the terms and conditions of the investments. Testimony offered at the hearing indicated that these requirements were unnecessarily burdensome and would unduly limit the capital company's flexibility with no corresponding public benefit.

RESPONSE: The board concurs and has deleted these requirements.

COMMENT: The maximum interest rate, established by subsection (7)(g), which a capital company may charge a borrower for loans or investments should be seven percentage points above the interest rate charged by the board rather than five percentage points as originally proposed.

RESPONSE: The board concurs and has made this modification.

COMMENT: The interest rate limitation established by subsection (7)(g) should not apply to loans or investments of funds derived from sources other than the board.

RESPONSE: The board concurs and has incorporated this exclusion into the proposed rule.

COMMENT: A few less substantive suggestions offered at the hearing have not been incorporated into the adopted rule. However, prior to adopting the modified rule, the board distributed it to those who made these suggestions, and these persons registered their approval of the approach taken by the board. The board has made several modifications of form and style in the proposed rule for purposes of clarity and consistency.

7. No other comments or testimony were received.

MONTANA ECONOMIC DEVELOPMENT BOARD
D. PATRICK McKITTRICK
CHAIRMAN

BY: _____
ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, January 6, 1986.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of rules defining long-term care, and relating to the provision of long-term care and swing-bed services in health care facilities	))))))	NOTICE OF THE ADOPTION OF RULES (Certificate of Need)

To: All Interested Persons

1. On July 25, 1985, the department published notice of a proposed adoption of Rules I and II defining long-term care and relating to the provision of long-term care and swing-bed services in health care facilities, at page 996 of the 1985 Montana Administrative Register, issue number 14.

2. The department has adopted the rules with the following changes (text of rule with matter stricken interlined and new matter underlined):

16.32.102 (RULE I) LONG-TERM CARE -- DEFINITION; WHERE PROVIDED (1) "Long-term care" means skilled nursing care, intermediate nursing care, intermediate developmental disability care, or personal care, as defined in ~~50-5-101(19)(b)~~ 50-5-101(27)(b) through (e), which is provided to patients with chronic infirmities or disabilities necessitating the provision solely of such care ~~for periods in excess of thirty days~~. The term does not include such regular inpatient hospital treatment of specific psychiatric, rehabilitative or acute medical problems under the direct and regular supervision of a physician as is ordinarily furnished by a hospital, ~~the course of treatment of which extends beyond thirty days~~.

(2) A health care facility may provide long-term care only if:

(a) it is licensed as a long-term care facility; or

(b) it has received certificate of need approval pursuant to ~~[RULE II]~~ ARM 16.32.128 for the establishment of swing beds, is certified to provide long-term care in such swing beds, and the provision of long-term care is limited to such swing beds.

16.32.128 (RULE II) SWING BEDS -- REVIEW CRITERIA (1) A "swing bed" is a hospital bed which is certified for the provision of long-term care for the purpose of medicare reimbursement pursuant to 42 U.S.C. 1395tt and 42 C.F.R. 405.1041.

(2) A certificate of need may be issued to a hospital to establish swing beds only if, in addition to compliance with all other applicable provisions of 50-5-304, MCA, and ARM 16.32.110:

(a) existing licensed long-term care facilities in the service area, which provide the level of care proposed to be provided by the hospital, have an aggregate ~~three-year~~ average occupancy level of at least 95 percent during the three years prior to the date of the application for certificate of need; and

(b) no more than fifty percent of the hospital's excess bed capacity will be certified as swing beds. Excess bed capacity is the difference between the number of licensed hospital beds in the facility and the ~~current three-year~~ average acute care occupancy level of the facility over the three years prior to the date of the application for certificate of need.

(3) A long-term care patient occupying a swing bed must be transferred to a long-term care facility in the service area which provides the appropriate level of care as soon as such long-term care bed becomes available and the facility in question notifies the hospital of that fact.

3. Comments made on the rules, and the department's responses, follow:

(a) Ron Borgman, administrator of the Stillwater Convalescent Center, noted the need for the rules because some hospitals, rather than transferring long-term care patients to long-term care facilities, were keeping those patients in their own facilities where certain services, such as social/activity areas and programs, dining room facilities, outside activities, etc., were not provided because licensure standards require only long-term care facilities and not hospitals to provide them, thereby depriving those patients of needed social stimulation.

(b) Bill Leary, president of the Montana Hospital Association, while voicing general support for an attempt to define "long-term care", felt that, at least in the case of patients whose care is paid for with private rather than public funds, it was a violation of freedom of choice to prohibit them from staying indefinitely in a hospital as long-term care patients even if other licensed long-term care beds were available in the service area; therefore, he suggested the rules be limited to apply only to long-term care patients whose care is paid for wholly or in part with federal, state, or county funds. Olga Cook, representing Stillwater Community Hospital, voiced somewhat the same sentiments.

The department did not make the requested change. Any licensing law, while intended to protect the public from inferior facilities or care, also by nature limits the "freedom" of the public to choose to utilize a facility that does not meet licensure standards. In this case, there are a number of services which long-term care facilities, by virtue of

the fact that patients are there theoretically for a long time, have to provide which hospitals do not, most of which are in the order of mental and social stimulation. Only by limiting the "freedom of choice" of a patient or that patient's family to choose an inferior facility is the public guaranteed any measure of quality in the facilities the legislature chooses to subject to licensure. Neither is there any basis in law for a distinction between private-pay and public-pay patients in terms of licensure standards which must be met. Therefore, there is no justification for waiving long-term care standards simply because the patients pay for their own care.

(c) Mr. Leary opposed, and the Montana Health Care Association supported, deletion of that portion of the Rule I definition of long-term care which indicated it had to last more than 30 days. The MHCA felt that the level of care needed by an individual did not necessarily correlate with the length of time a person needs that level of care. The Hospital Association, on the other hand, felt that removal of the 30-day phrase would mean that patients needing what is defined as long-term care, but for a short time period potentially, would be upset by being moved to long-term care facilities because of the fear of never seeing the outside world again and, as a result, some would go outside the community for needed care.

The department deleted the 30-day modifying phrase because it agreed the need for that level of care had little or nothing to do with the length of time it was needed and that the effect of leaving it in would be to unnecessarily defer the decision for a month concerning what level of care they needed. Patients needing "long-term care" on a short-term basis can still stay in the hospital if no beds are readily available in a long-term care facility.

(d) Mr. Leary also requested a definition be developed for acute care as well and to submit it to the Medical Association or the Montana Foundation for Medical Care for approval, since the proposed definition excludes "acute medical problems".

The decision whether a patient no longer needs "direct and regular supervision of a physician", but long-term care instead, is, and remains, a physician's to make and the definition is considered as clear as necessary. Therefore the suggestion was not followed.

(e) Mr. Leary requested Rule I be rewritten to allow any type of health care facility, even if not licensed as a long-term care facility, to provide long-term care to patients whose care is paid for with private funds so long as a licensed physician orders it.

The department did not make the change for the same

reasons cited in (b) above.

(f) In regard to Rule II, Mr. Leary requested clarification of what three-year period would be used to determine the average occupancy level. The department agreed and accepted his suggestion that the latest three years be used.

(g) Mr. Leary objected that the requirement that the occupancy rate in long-term care facilities be 95% before swing-beds could be approved was too high and had no counterpart in federal regulations, recommending instead that a 75% occupancy rate be substituted.

The department rejected 75% as too low because it allowed a hospital to keep long-term care patients in an area where adequate vacant beds were available in long-term care facilities. The 95% figure was retained as appropriate and in conformity with the current Montana State Health Plan, which, after considering all the public input, recommended an occupancy level of 97.5% be aimed at for all long-term care facilities.

(h) Mr. Leary requested an additional clause be added to Rule II which requires a swing-bed occupant to be transferred to a long-term care facility only after the latter facility informs the hospital of the vacancy.

The notification requirement was found reasonable and the rule amended accordingly.

(i) Jay Toth, administrator of Big Sandy Medical Center, supported Mr. Leary's comments and requested a "grandfather" clause to allow the private-pay long-term care patients currently in the center to stay there until the center's nursing home is finished.

The department could not write the suggestion into the rules since to do so would be to endorse a violation of state licensure law, as discussed in (b) above.

(j) A staff attorney for the Administrative Code Committee queried whether the department had the legal authority to distinguish between hospitals and long-term care facilities in order to limit the services hospitals may provide. The Committee itself did not submit comments.

The department's response was that the distinction between the acute care services given by hospitals and the long-term care provided by nursing homes had been clear to, and accepted by, all those in the health care facility field since the licensing and certificate of need laws had been adopted, and that legal authority did indeed exist.

(k) The citation to law contained in Rule I(1) was changed because it was incorrectly taken from section 50-5-101 as it is to appear in 1987 rather than 50-5-101 as it currently appears in the code (due to expire in 1987).

(l) Rose Skoog of the Montana Health Care Association suggested further clarification of the "long-term care" def-

inition to distinguish between the acute care offered by hospitals, which naturally could include nursing care and other types of care included within the statutory definition of long-term care, and the level of care offered by a skilled or intermediate nursing, intermediate developmental disability, or personal care facility -- which would not include acute care.

The department agreed, and added the word "solely" to the definition to indicate that a patient needing only long-term care and not long-term care in addition to acute care was to be transferred to a long-term care facility or could occupy a hospital swing-bed.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 6, 1986.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of a rule regarding completion and filing of final disposition reports.	))))	NOTICE OF THE ADOPTION OF A RULE ON FINAL DISPOSITION REPORTS

TO: All Interested Persons.

1. On November 14, 1985, the Department of Justice published notice of proposed adoption of a rule concerning final disposition reports at pages 1698 and 1699 of the 1985 Montana Administrative Register, issue number 21.

2. The Department has adopted proposed Rule I as 23.12.101, with the following changes:

23.12.101 FINAL DISPOSITION REPORTS (1) Whenever a person charged with a crime is fingerprinted under section 44-5-202, MCA, a (1) State of Montana final disposition report, and (2) Federal Bureau of Investigation (FBI) final disposition report shall be ~~completed~~ initiated by the ~~originating~~ criminal justice agency~~, and filed with the charging documents,~~ which fingerprinted the person charged. The ~~originating~~ criminal justice agency shall provide fingerprints and the charge(s) against the accused~~,~~ and the reports shall be filed with the charging documents.

(2) When the administrative office of the court receives a new criminal file, it shall check to insure that it contains the State and FBI final disposition reports, and that both final disposition reports bear the fingerprints of the accused~~,~~ and the charges filed.

(3) same as proposed rule.

(4) If the criminal charges are resolved outside a formal court proceeding, the ~~originating~~ criminal justice agency which initiated the final disposition reports shall provide the final disposition of all charges against the accused, and send the final disposition reports to the state repository within 30 days.

3. No public hearing was held on the proposed adoption of this rule. The above changes were made to clarify the rule in response to comments and suggestions received from John McMaster of the Administrative Code Committee staff.

4. The authority for the rule is section 44-5-213(7), MCA, and the rule implements section 44-5-213, MCA.

MIKE GREELY
Attorney General

Certified to the Secretary of State, January 2, 1986.

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

In the matter of the adoption of a rule setting forth the manner for annually adopting minimum wage rates paid on public construction projects and adoption of current rates pursuant to 18-2-402 MCA, and adoption of discretionary form DL1-PC-1 which may be used when submitting wage information pursuant to ARM 24.16.9003.	NOTICE OF ADOPTION OF ARM 24.16.9007 AND FORM DL1-PC-1

TO: All Interested Persons.

1. On November 29, 1985 the Department of Labor and Industry published at 1985 MAR p. 1846, a proposed adoption of a new rule to be codified as ARM 24.16.9007 concerning the annual adoption of minimum wage rates to be paid to workers on public works projects and proposing the adoption of annual rates to be effective from January 17, 1986, until superceded. On November 30, 1985, ARM 24.16.9003 was adopted and in part sets forth the manner by which wage survey and voluntary wage information on Form DL1-PC-1 or in any form comparable may be submitted for consideration in annual wage rate determinations.

2. The Department of Labor and Industry has adopted ARM 24.16.9007 as proposed and has adopted Form DL1-PC-1, as follows:

24.16.9007 ANNUAL ADOPTION OF STANDARD PREVAILING RATE OF WAGES (1) The commissioner's determination of minimum wage rates to be paid on public works projects shall be adopted in accordance with The Montana Administrative Procedures Act and rules implementing the act.

(a) A notice of proposed adoption of the commissioner's determination shall be published in the Montana Administrative Register on the regular publication next preceding the first day of September.

(b) A notice of adoption of minimum wage rates by project character, by county or locality and by craft, classification and type of worker shall be published in the Montana Administrative Register on the regular publication date next preceding the first day of October.

(c) Such minimum wage rates shall become effective on the first day of October and shall supercede and replace all previously adopted wage rates for corresponding classifications. Adopted wage rates shall remain in effect until superceded and replaced by a subsequent adoption.

(d) An adoption of wage rates shall have no effect on contracts for public works awarded during the effective period of a previous adoption of rates under these rules.

(e) The commissioner's determination of minimum wage rates proposed and the wage rates adopted shall be incorporated by reference in the above respective notices and copies of either the proposed wage rates or adopted wage rates will be mailed to all interested persons or agencies as evidenced by their inclusion on a mailing list maintained by the commissioner. All others may obtain a copy of the determination of proposed wage rates or adopted wage rates, or be included on the commissioner's mailing list by request made to the Office of the Commissioner, attention Labor Standards Division at the address shown in Section 24.16.9003(3), above.

(f) During the transition and initial determination of standard prevailing wage rates pursuant to these rules, the commissioner will propose for adoption as interim rates, his previous determination as follows:

(i) Building construction rates,
Date of publication: 08-27-84.

(ii) Heavy and highway rates,
Date of publication: 08-27-84.

(iii) General Rates,
Effective date: 6-11-84.

Such wage rates shall be enforced under applicable law on public works contracts awarded on or after the indicated dates and hereafter until the same are superceded and replaced by a subsequent adoption. ARM 24.16.9003(5) supra. (AUTH: Sec. 18-2-431, MCA; IMP, Sec. 18-2-402, MCA)

WAGE SURVEY INFORMATION

This form may be used to submit information of wage rates, fringe benefits or travel allowances actually paid to workers on construction projects within Montana. The Commissioner of the Montana Department of Labor and Industry may consider such information in determining standard prevailing wage rates to be paid as a minimum under contracts for public works, provided: (1) the construction project was ongoing or completed within one year prior to July 1 and (2) the information is received at the Office of the Commissioner, Department of Labor and Industry, corner of Roberts and Lockey, P. O. Box 1728, Helena, Montana 59624, on or before July 1. All sources must be completed.

(1) Name or identification of Project:

_____

(2) Location of Construction Site:

_____

(3) Brief description of project work (building, heavy, history, maintenance and repair, etc):

_____

_____

(4) Date that construction began and completion date:

_____

_____

(5) Approximate cost of project: $_____

(6) Name and address of party letting the contract:

_____

(7) Name and address of general or principle contractor:

_____

_____

(8) Names and addresses of subcontractors who employed workers:

_____

_____

(9) Were wage rates subject to:

(a) Federal public works law or regulations: _____
(b) Montana public works law or regulations: _____
(c) A collective bargaining agreement (attach copy):

(d) Other legal restriction binding the employer (specify):

_____

(10) Remarks and other information: _____

_____

I CERTIFY under penalty of perjury that the information furnished by me on this form is true and correct unless expressly qualified above.

_____
Signature

_____
Address

Telephone (___) _____

Form DLI-PC-1 (effective November 30, 1985).

-1-

(11) Wages paid on project (hourly or specify)_____

(a) Worker type craft or classification	(b) Number of of workers in class	(c) Regular rate of wage (Dollars)	(d) Health and Welfare (Dollars)	(e) Pension (Dollars)	(f) Other benefit Plan (explain) (Dollars)	(g) Travel allowance (Per diem, lodging, mileage in dollars)

Page 2 Form DLI-PC-1 (Effective November 30, 1985)

3. No formal hearing on the proposed rule adoption was held although procedures available to interested parties for requesting a hearing were stated in the notice of proposed adoption at 1985 MAR p. 1846. The contents of Form DL1-PC-1 are contained in ARM 24.16.9003 and the proposal of a form were fully considered at formal public hearing of the proposed adoption of ARM 24.16.9003 held at Billings, Great Falls, Missoula and Helena. Form DL1-PC-1 was thereafter prepared in conformity with ARM 24.16.9003.

4. The Authority for adopting ARM 24.16.9007 and Form DL1-PC-1 is contained in 2-4-201, 18-2-409 and 431, MCA.

COMMISSIONER OF LABOR & INDUSTRY

By David E. Wanzenried
DAVID E. WANZENRIED
Commissioner

Certified to the Secretary of State this 6th day of January, 1986.

BEFORE THE WORKERS' COMPENSATION DIVISION
of the Department of Labor & Industry
of the State of Montana

In The Matter of Amendment of ARM 24.29.705, and 24.29.3503 Regarding Corporate Officer Coverage Under the Workers' Compensation Act.	))))	NOTICE OF THE ADOPTION OF AMENDMENTS OF ARM 24.29.705, AND 24.29.3503

TO: All Interested Persons

1. On October 17, 1985, the Workers' Compensation Division published notice of the proposed adoption of amendment of ARM 24.29.705 and 24.29.3503 regarding elections of corporate officers not to be bound by the Workers' Compensation Act at page 1490 of 1985 Montana Administrative Register issue number 19.

2. No public hearing was contemplated and no request for a public hearing was received. Public comments were accepted until November 30, 1985. No public comments were received.

3. The agency has amended ARM 24.29.705 and 24.29.3503 as proposed.

4. The authority for the rule amendments is 39-71-203, 39-71-410 and 39-71-2303, MCA and the rule implements 39-71-410 and 39-71-2303, MCA.

GARY L. BLEWETT,
Administrator

CERTIFIED to the Secretary of State this 6th day of January, 1986.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule 32.8.202 Time from Processing that Fluid Milk may be sold for Human Consumption	)	NOTICE OF ADOPTION OF AMENDMENT TO RULE 32.8.202 RELATING TO THE SALE OF MILK IN CONTAINERS WITH A PULL DATE LONGER THAN 12 DAYS

TO: All Interested Persons.

1. On October 17, 1985 the Board of Livestock published notice of a hearing on an amendment to the above stated rule at pages 1494 and 1495 of the Montana Administrative register, issue number 19.
2. On November 13, 1985 a hearing was held at the offices of the Department of Livestock.
3. The Board has amended the Rule as proposed.
4. At the Public hearing testimony was received and submitted in both oral and written form. Appearing in opposition were Darigold of Bozeman and Gallatin Dairies, Inc. of Bozeman, and Brown Swiss Jersey of Billings. In opposition were Michael Pangburn of Idaho, Earl Wortman of Washington, Delbert Kamerman of Montana, and Russel Tagliarini of Washington. K. M. Kelly appeared on behalf of the six remaining milk distributors in Montana and testified in favor of the amendment. Also testifying in favor was Ed McHugh of Cloverleaf Dairy in Helena.

The bulk of the opposition testimony was in opposition to the 12 day pull date rule. This portion of the rule was not considered by the Board for amendment, so such testimony was not received on the basis it was immaterial to the amendment.

The remainder of the testimony concerned the issue of burdensome bookkeeping problems for those dairies which sell out of state.

The Board believes that the continued assurance that the public receives fresh milk heavily outweighs any problem caused by the need to preserve records.

The Board also believes that the amendment proposed is the least burdensome alternative available to accomplish its stated objective.

5. The authority for the rule and its amendment is Section 81-2-102 MCA and it implements 81-2-102 MCA.

Nancy Espy

Nancy Espy,
Chairman, Board of Livestock

BY: Les Graham

Les Graham
Executive - Secretary
Board of Livestock

Certified to the Secretary of State, January 6, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.15.501) relating to SRS inspection of income tax returns.	NOTICE OF THE ADOPTION of Rule I (42.15.501) relating to SRS inspection of income tax returns.

TO: All Interested Persons:

1. On September 12, 1985, the Department published notice of the proposed adoption of rule I (42.15.501) relating to SRS inspection of income tax returns at pages 1318 and 1319 of the 1985 Montana Administrative Register, issue number 17.

2. The Department has adopted rule I (42.15.501) with the following changes:

42.15.501 INSPECTION OF INFORMATION RETURNS (1) through (3) remains the same.

(4) The information returns will be released to the department of social and rehabilitation services upon notification to the department of revenue that the required notice to the applicant has been provided. The required notice to the applicant must include the following statement: ~~"Information furnished by third parties to the department of revenue for income tax administration will be used by the department of social and rehabilitation services to verify statements made by you".~~ "Information obtained from the department of revenue will be: Amount of interest, dividends, royalties, and other payments to you that are furnished to the department of revenue by financial institutions and others."

(5) remains the same.

AUTH: 15-30-305 MCA and § 2, Ch. 131, L. 1985; IMP: 15-30-303 MCA and § 1, Ch. 131, L. 1985.

3. The above changes to rule I (42.15.501) are to clarify the language only and are being made at the suggestion of Bonnie Frey, Chief of Field and Program Management Bureau for the Department of Social and Rehabilitation Services. No other comments or testimony were received.

4. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and § 2, Ch. 131, L. 1985, and the rule implements § 15-30-303, MCA, and § 1, Ch. 131, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 01/06/86

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules; the repeal of Rule 46.5.912; and the amendment of Rules 46.5.902, 46.5.908, 46.5.909, 46.5.910, 46.5.913, 46.5.914, 46.5.915, 46.5.916, 46.5.917, 46.5.918, 46.5.919, 46.5.920, 46.5.921, 46.5.922, 46.5.923, 46.5.924, 46.5.930, 46.5.931, 46.5.933, 46.5.935, 46.5.936, 46.5.937, 46.5.938, 46.5.943, 46.5.944 and 46.5.946 pertaining to day care facilities	) AMENDED AND SUPPLEMENTAL FINAL NOTICE OF THE AMENDMENT OF RULES 46.5.902, 46.5.922 AND 46.5.924 PERTAINING TO DAY CARE FACILITIES

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services' final rule notice published at page 2041, 1985 Montana Administrative Register, issue number 24, amended Rules 46.5.902, 46.5.922 and 46.5.924, among others, pertaining to day care facilities. Changes are required to make the various provisions of that notice consistent.

2. Three changes concern the proposed amendment of ARM 46.5.902, "Definitions".

(a) During the rule hearing on December 4, 1985, the comment was made that the terms "nursery school" and "day nursery" in ARM 46.5.902(3) were not defined in the proposed rules. The department representative's response was that he agreed and the entire last sentence of ARM 46.5.902(3) would be deleted since deletion of these terms would have no effect on the remainder of the proposed rule. This change was not reflected in the final notice.

(b) During review of the proposed rule, it was noted that the term "registrant" was defined in ARM 46.5.902(8) and ARM 46.5.902(11). The decision was made to retain the proposed definition in subsection (11), delete the prior definition in subsection (8) and renumber all subsections accordingly. This change was not reflected in the final notice.

(c) The comment-response section states at page 2048:

COMMENT: The Early Childhood Project recommended that the definition section be expanded to include five categories of age groups for children from infant to school age.

RESPONSE: Since the department has determined to keep the definition of infant at 0 to 24 months, further categorization of age groups is not necessary at this time. All infant requirements will apply to children 0 to 24 months.

This change was not reflected in the definition of "preschooler" at ARM 46.5.902(19).

Therefore, the final notice of the amendment of ARM 46.5.902 is amended to state:

46.5.902 DEFINITIONS ~~AND--STANDARDS~~ Subsections (1) and (2) remain as stated on the final notice.

(3) "Day care center" means a place in which supplemental parental care is provided to 13 or more children on a regular basis including the provider's own children who are less than 6 years of age. ~~It may include facilities--known as nursery--schools,--and--day--nurseries,--and--centers--for--the mentally-retarded.~~

Subsections (4) through (7) remain as stated on the final notice.

~~(8)--"Registrant"--means--the-holder--of--a--registration certificate--issued-by--the--department-in-accordance-with-the provisions-of-this-part.~~

Subsections (9) through (18) remain as stated on the final notice but will be renumbered as (8) through (17).

(~~20~~19~~18~~) "Preschooler" means a child between ~~24~~ ~~18~~ 24 months of age ~~to-approximately~~ and the age the child will be when he or she initially enters the first grade of a public or private school system.

Subsections (20) and (21) remain as stated on the final notice but will be renumbered as (19) and (20).

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-501 and 53-4-504 MCA

2. Based upon the decision to apply infant requirements to children 0 to 24 months, consistency requires that the final notice regarding ARM 46.5.922 be amended to state:

46.5.922 DAY CARE CENTERS, STAFFING REQUIREMENTS

(1) Child/staff ratio.

(a) 4:1 for infants 0~~-2 years~~ to ~~18~~ 24 months;

(b) 8:1 for children ~~2-3~~ ~~18-months-to-4~~ 2 TO 4 years;

(c) 10:1 for children 4 TO 6 years;

(d) 14:1 for children over 6 years;

~~(e)--centers-may-have-only-one-provider-whenever-the-number-of-children-in-attendance-is-less-than-seven.~~

Subsections (1)(e) through (8) remain as stated on the final notice.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504, 53-4-506 and 53-4-508 MCA

3. The department representative noted that ARM 46.5.924 would be clarified by the deletion of "and" in the

list of provider qualifications. Therefore, the final notice regarding ARM 46.5.924 is amended to state:

46.5.924 GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS Subsections (1) through (4)(b) remain as stated on the final notice.

(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists; and

Subsections (4)(d) through (10) remain as stated on the final notice.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 6, 1986.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The 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, volume 16. 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 list 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 Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1985. This table includes those rules adopted during the period October 1, 1985 through December 31, 1985, and any proposed rule action that is 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 September 30, 1985, 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 1985 Montana Administrative Register.

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