# MONTANA ADMINISTRATIVE REGISTER



1998 ISSUE NO. 3
FEBRUARY 12, 1998
PAGES 376-514

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

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| In the matter of the proposed amendment of ARM 2.43.302, 2.43.304, 2.43.308, and 2.43.309 which pertain to definitions used in rules and statutes, actuarial data, and mailing for non-profit groups | ) NOTICE OF PROPOSED AMENDMENT<br>)<br>)<br>) NO PUBLIC HEARING CONTEMPLATED<br>) |

TO: All Interested Persons.

1. On March 27, 1998 the Public Employees' Retirement Board proposes to amend ARM 2.43.302, 2.43.304, 2.43.308, and 2.43.309 which pertain to definitions used in rules, actuarial data, and mailing for non-profit groups.

2. The proposed amendments to the rules are as follows:

2.43.302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) "Benefit recipient" means any retired member, contingent annuitant, or survivor who ~~is receiving~~ receives a monthly benefit payment from a retirement system~~, but~~. It does not include a beneficiary who receives ~~either~~ a lump-sum payment or an annuity ~~of equal and fixed payments for life that is the actuarial equivalent of a lump-sum payment~~.

~~(2) "Board" or "retirement board" means the public employees' retirement board as provided for in 2-15-1009, MCA.~~

~~(3)~~ (2) "Contested case" is a legal proceeding, as set forth in these rules, subsequent to ~~initial~~ preliminary administrative determination.

(3) "Contingent Beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

(4) "Continuous employment" means ~~that~~ a member ~~of a retirement system~~ serves in ~~covered employment, whether~~ full-time, part-time, or seasonal~~, for a period of time~~ employment~~, without terminating such covered employment and without withdrawing his~~ but does not terminate service nor withdraw the accumulated contributions from the member's account ~~during any intervening periods which may occur between covered employment~~.

~~(5) "Division" or "retirement division" means the public employees' retirement division of the department of administration.~~

~~(6)~~ (5) "Employment" or "reemployment" means the performance of services for an employer by a person other than an independent contractor. If any of the four factors listed in

~~(9)~~(8) ~~for determining freedom from control for independent contractors~~ indicate ~~lack of freedom from~~ control or direction by the employer, an employment relationship exists.

~~(7)~~(6) "Full-time employment" for service credit, means ~~any period of employment in which the member is compensated~~ an employer or employers paid the member for at least 160 hours during a calendar month. A member may not receive more than one month credit for months in which the member receives pay for more than 160 hours.

~~(8)~~(7) "Full-time public service employment" means ~~a period of at least 160 hours of paid employment during a calendar month with the state of Montana, or a political subdivision thereof of, which was not subject to coverage under a state administered retirement system at the time the service was~~ full time employment which when it was performed was not covered by a system referred to in section 19-2-302, MCA, and ~~is~~ may not otherwise ~~qualifiable for service credit~~ be credited in a retirement system.

~~(9)~~(8) "Independent contractor" means an individual who renders service in the course of an occupation and is both:

(a) ~~is~~ engaged in an ~~independently established~~ independent trade, occupation, profession or business; and

(b) ~~is at all times,~~ under contract and in fact, at all times free from control or direction over the performance of the services. ~~Factors to be considered in~~ The division may consider but is not limited to the following factors when determining freedom from control and direction ~~include~~:

(i) right or exercise of control of the means by which the work is accomplished;

(ii) method of payment (time basis indicates employment);

(iii) furnishing of equipment; and

(iv) employer's right to fire.

Independent contractor status may only be established by a convincing accumulation of these factors indicating freedom from control or direction over performance of the services.

~~(10)~~(9) "Part-time employment" for service credit, means ~~any period of employment in which the~~ an employer or employers paid a member ~~is compensated~~ for less than 160 hours during a calendar month.

~~(11)~~(10) "PERS" means the public employees' retirement system.

(11) "Primary Beneficiary" means a beneficiary designated to receive payments upon the death of a member. Primary beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

(12) "Seasonal employment" means ~~a period of full-time~~ employment within a calendar or fiscal year which is less than 6 months duration, ~~and which~~ Seasonal employment ~~recurs~~ occurs on an on going basis during ~~those~~ the same months in succeeding years ~~on a permanent basis~~.

~~(13) "Service" or "membership service" means a period of employment for which the required contributions are deposited into the member's retirement system.~~

~~(14)~~(13) "Service years" or "years of service" means

periods of 12 calendar months of ~~continuous employment~~ membership service which ~~are used to determine eligibility~~ qualify members for retirement or other benefits~~, this number can be larger than the actual number of years of "creditable service" for certain employees'~~.

~~(15) "Service credits" or "creditable service" means the number of years and months applied to the statutorily defined formulas for specific benefits; this number can be smaller than the number of "service years" for certain employees'.~~

~~(16) "Termination of employment" means cessation of all work related activities and accrual of any benefits attributable to that employment.~~

~~(17)~~(14) "Survivor" means the designated or statutory beneficiary of a member who dies while in ~~membership~~ service.

~~(18) "Survivorship benefit" means a monthly benefit payable for life to the survivor or designated beneficiary of a member who dies while serving in covered employment.~~

~~(19) "Vested" means the member has satisfied any statutorily imposed requirements and has a right to retirement benefits after reaching minimum retirement age.~~

AUTH: 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202 MCA
IMP: Title 19, Ch 2, 3, 5, 6, 7, 8, 9, 13, 17 MCA

2.43.304 ACTUARIAL ~~TABLES.~~ RATES AND ASSUMPTIONS

(1) ~~Actuarial tables and assumptions will be adopted by the board after the presentation of the recommendations of the actuary by including the tables, rates, etc. in the minutes of the board with the resolution adopting said tables, rates or assumptions.~~ The actuary will present the actuarial data and recommend the Board adopt specific rates and assumptions. The Board in its discretion will adopt rates and assumptions and publish them in a Board policy.

(2) The ~~retirement~~ division shall maintain a historical file of ~~copies of all resolutions adopting tables,~~ all rates or assumptions~~, and~~ including the current version ~~of all tables assumptions as amended by the board~~. The file shall be open and readily available to the public.

(3) This rule includes ~~but is not limited to~~ at least the following actuarial ~~tables~~ rates and assumptions:

(a) ~~interest~~ investment earnings ~~rate assumptions~~ assumption;

(b) salary increase assumptions;

(c) required contribution rates;

(d) asset valuation assumption;

(e) administrative expense assumption;

~~(e) separation and retirement assumptions; and~~

~~(d)~~(f) mortality ~~assumptions~~ rates;

~~(f) joint and survivor tables.~~

(g) disability rates;

(h) retirement rates;

(i) withdrawal rates; and

(j) service purchase rates.

(4) The ~~tables, rates or assumptions shall be effective as~~

~~provided in the adopting resolution~~ board will provide effective dates when adopting the rates and assumptions.

AUTH: 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202 MCA

IMP: 19-3-305, 19-5-201(2), 19-6-202, 19-7-201(3), 19-8-202, 19-9-504, 19-13-504, 19-17-107 MCA

2.43.308 ~~MAILING ON BEHALF OF FOR~~ NON-PROFIT ~~ORGANIZATIONS ELIGIBILITY AND APPLICATION PROCESS PAYMENTS~~ GROUPS (1) ~~As staff resources permit, the~~ The division may mail ~~information on behalf of~~ materials to retirees for eligible non-profit ~~retiree organizations~~ groups. The division may send the materials to retirees ~~of the retirement systems~~, or to members ~~who request~~ requesting estimates of their retirement benefits~~, and~~ The information may also be sent to ~~any retirement~~ system ~~participant~~ participants as a part of or in addition to regular newsletters.

(2) Eligible non-profit ~~organizations~~ groups are limited to ~~those organizations~~ groups formed for participants of board-administered retirement systems. The group must be ~~granted~~ tax exempt ~~status~~ under section ~~501(c)(3)~~ 501(c)(4) of the Internal Revenue Code. ~~and which~~ It must ~~possess~~ also hold a non-profit ~~organization~~ mailing permit from the U.S. postal service in Helena, Montana.

(3) The division will provide ~~Application~~ application forms ~~will be provided by the division~~. A non-profit ~~organization~~ group must submit ~~a completed~~ an application to the division ~~for approval~~ at least one month ~~prior to~~ before ~~a proposed bulk~~ any mailing ~~or initiation of a program to insert membership recruitment information for mailing along with estimates of the member's retirement benefit~~. ~~Applications~~ An application packet must contain:

(a) ~~a completed~~ an application form signed by an officer of the ~~requesting organization~~ non-profit group;

(b) a copy of the IRS ~~exemption~~ letter ~~provided to non-profit organizations receiving exemption~~ exempting the group under section ~~501(c)(3)~~ 501(c)(4) of the tax code;

(c) a copy of the ~~certification of the appropriate state official of the organization's current~~ certificate of incorporation as a non-profit entity in Montana;

(d) if requesting bulk mailing, a copy of the ~~organization's~~ group's current U.S. postal mailing permit ~~for non-profit organizations for an organization requesting a separate bulk mailing on behalf of the organization~~; and

(e) an exact copy of the ~~proposed mailing~~ materials to be mailed.

(4) Upon approval, the division will bill the organization for the estimated cost of the mailing. ~~and provide~~ For bulk mailing, the division will provide a proposed completion date ~~for bulk mailing~~. The organization must pay ~~Payment of~~ the total estimated cost ~~must be made in full~~ at least 10 working days ~~prior to initiation of~~ before the mailing.

(5) ~~Upon completion of~~ When the mailing is complete, ~~or monthly for insertion mailing,~~ the division will bill the

organization for any additional ~~costs incurred by the division to accomplish this service~~ cost. For mail inserted with estimates, the division will send the group a bill each month. All charges must be paid ~~in full~~ within 30 days of billing. Thereafter, ~~interest will be assessed at the maximum rate allowed by law~~ the division will charge the greater of interest at 9% compounded monthly from the billing date ~~of billing~~ or $10 per day.

AUTH: 19-2-403 MCA
IMP: 2-6-109 MCA

2.43.309 ACCEPTABLE ~~DOCUMENTS MAILED ON BEHALF OF~~ MATERIALS -- NON-PROFIT ~~ORGANIZATIONS~~ MAILING (1) The division will ~~approve materials for mailing~~ mail materials which conform to the following criteria:

(a) ~~Each piece~~ the packet of materials mailed to each person must be ~~exactly the same as every other piece to be mailed~~ identical;

(b) Each ~~piece~~ packet may include an application for membership in the ~~organization~~ non-profit group and general information about the ~~organization's non-profit~~ group's activities. No piece may urge or recommend ~~specific~~ actions not within the non-profit nature and scope of the ~~organization~~ group. ~~(e.g.,~~For example, a ~~non-profit organization~~ group may not urge ~~an activity such as~~ voting for a particular individual or joining another ~~organization~~ or affiliated ~~organization)~~ group.

(2) Each piece ~~approved for insertion~~ inserted with ~~mailing of~~ retirement estimates must be ~~no more than~~ one single page, no larger than 8 ½ inches by 17 inches ~~(or smaller)~~, folded to fit within a regular business envelope. ~~(and~~ It may not be stapled or sealed in any manner~~)~~.

(3) Each ~~piece approved~~ packet for bulk mailing must meet current postal ~~bulk mailing~~ requirements and must be printed with the ~~organization's~~ group's non-profit mailing permit ~~from Helena, Montana~~.

AUTH 19-2-403 MCA
IMP: 2-6-109 MCA

3. Amendments to 2.43.302 are necessary for consistency with changes to §19-2-303, MCA, made by SB 124. Deleted definitions are either obsolete or defined in the statute. New definitions were added to clarify terms used in statutes and rules. Amendments to 2.43.304 are necessary to meet the requirements of the Government Accounting Standard Board's statement number 25. That statement requires the Board to disclose additional pension system information. It also clarifies current practice under the Montana Constitution Article VIII, Section 15. Amendments to 2.43.308 and 2.43.309 are necessary to comply with changes made by SB 124 to §2-6-109, MCA. Those changes include amplifying the types of organizations which may qualify for non-profit mailing, and changing the required tax exemption from 501(c)(3) to 501(c)(4). All amended sections include editorial changes to make the

sections more easily understood.

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

Mike O'Connor, Administrator
Public Employees' Retirement Division
P.O. Box 200131
Helena, Montana 59620-0131

A fax may be sent to (406) 444-5428.
An electronic message may be sent to the following Internet address, kmccallum@mt.gov.
Any comments must be received no later than March 12, 1998.

5. If a person who is directly affected by the proposed amendment 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 Mike O'Connor at the address above.
A fax may be sent to (406) 444-5428.
An electronic message may be sent to the following Internet address, kmccallum@mt.gov.
A written request for hearing must be received no later than March 12, 1998.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative 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 4,446 based on December 1997 payroll reports of active and retired members.

7. The Board maintains a list of interested persons and sends copies of rule notices to everyone on the list. Anyone may request their name be added to this list by calling the Board at (406) 444-3154.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Kelly Jenkins, General Counsel and
Rule Reviewer

Certified to the Secretary of State on February 2, 1998.

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

| | | |
|---|---|---|
| In the matter of the adoption of new rules I through XV pertaining to annuity disclosure and sales illustrations. | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES |

TO: All Interested Persons

1. On March 9, 1998, at 10:00 a.m., a public hearing will be held in room 312-1 of the State Capitol, at Helena, Montana, to consider the adoption of new rules I through XV pertaining to annuity disclosure and sales illustrations.

2. The new rules proposed for adoption provide as follows:

RULE I PURPOSE (1) The purpose of this sub-chapter is to provide standards for the disclosure of certain minimum information about annuity contracts and to provide rules for annuity illustrations that will protect consumers and foster consumer education. These rules specify the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. These rules provide illustration formats, prescribe standards to be followed when illustrations are used, and specify the disclosures that are required in connection with illustrations. The goals of these rules are to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts and to make illustrations more understandable. Insurers shall define terms used in the disclosure statement and illustration in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement or illustration is directed.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE II AUTHORITY (1) These rules are issued based upon the authority granted the commissioner under section 33-20-308, Montana Code Annotated, (MCA).

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE III APPLICABILITY AND SCOPE (1) This sub-chapter applies to all annuity contracts and certificates except:

(a) Registered or non-registered variable annuities or other registered contracts;

(b) Annuities used to fund an employee pension benefit

plan which is covered by the Employee Retirement Income Security Act, (ERISA), or a plan described by sections 401(a), 401(k) or 457 of the Internal Revenue Code (IRC), or a governmental or church plan defined in section 414, IRC, or a non-qualified deferred compensation arrangement not prohibited by ERISA.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE IV DEFINITIONS For the purposes of this sub-chapter:

(1) "Actuarial standards board" means the board established by the American academy of actuaries to develop and promulgate standards of actuarial practice.

(2) "Contract owner" means the owner named in the annuity contract.

(3) "Currently payable scale" means a scale of non-guaranteed elements in effect for an annuity contract or certificate form as of the preparation date of the illustration or declared to become effective within the next 60 days.

(4) "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the actuarial standards board may be relied upon if the standards:

(a) Are consistent with all provisions of this sub-chapter;

(b) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;

(c) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and

(d) Do not permit assumed expenses to be less than minimum assumed expenses.

(5) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(6) "Guaranteed elements" means the benefits, values, credits and charges under an annuity contract that are guaranteed and determined at issue.

(7) "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the annuity contract than the lessor of:

(a) The disciplined current scale; or

(b) The currently payable scale.

(8) "Illustration" means a presentation or depiction that includes non-guaranteed elements of an annuity contract over a period of years and that is one of the 3 types defined below:

(a) "Basic illustration" means a ledger or proposal used

in the sale of an annuity contract that shows both guaranteed and non-guaranteed elements.

(b) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this sub-chapter, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

(c) "In force illustration" means an illustration furnished at any time after the contract that it depicts has been in force for one year or more.

(9) "Illustration actuary" means an actuary meeting the requirements of this sub-chapter who certifies to illustrations based on the standard of practice promulgated by the actuarial standards board.

(10) "Lapse-supported illustration" means an illustration of an annuity contract failing the test of self-supporting as defined in this sub-chapter.

(11) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for an annuity contract form. The insurer may choose to designate each year the method of determining assumed expenses for all annuity contract forms from the following:

(a) Fully allocated expenses;

(b) Marginal expenses; and

(c) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

(d) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(12) "Non-guaranteed elements" means the benefits, values, credits and charges under an annuity contract that are not guaranteed or not determined at issue.

(13) "Premium outlay" means the amount of premium to be actually paid or assumed to be paid by the contract owner or other premium payer out-of-pocket.

(14) "Self-supporting illustration" means an illustration of an annuity contract for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth contract anniversary or upon contract expiration, if sooner, the accumulated value of all contract cash flows equals or exceeds the total contract owner value available. For this purpose, contract owner value will include cash surrender values and any other illustrated benefit amounts available at the contract owner's election.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE V GENERAL RULES AND PROHIBITIONS (1) At or prior to the taking of an application for any annuity contract, the

insurer, its producers or other authorized representative shall provide to the applicant a disclosure document which meets the requirements of this sub-chapter.

(2) When using an illustration in the sale of an annuity contract, an insurer or its producers or other authorized representatives shall not:

(a) Represent the contract as anything other than an annuity contract;

(b) Use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(c) State or imply that the payment or amount of non-guaranteed elements is guaranteed;

(d) Use an illustration that does not comply with the requirements of this sub-chapter;

(e) Use an illustration that at any contract duration depicts contract performance more favorable to the contract owner than that produced by the illustrated scale of the insurer whose contract is being illustrated;

(f) Provide an applicant with an incomplete illustration;

(g) Use an illustration that is "lapse-supported"; or

(h) Use an illustration that is not "self-supporting".

(i) If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE VI STANDARDS FOR DISCLOSURE (1) The following information shall be contained in the disclosure document required to be provided under this rule:

(a) The generic name of the contract, the company product name, if different, and form number;

(b) The insurer's name and address;

(c) A description of the contract and its benefits, identifying it as an annuity, emphasizing its long-term nature and describing:

(i) the guaranteed and non-guaranteed elements of the contract, and their limitations, if any, and an explanation of how they operate;

(ii) if a first specific rate is mentioned, a statement of recent data history is required;

(iii) the availability of periodic income (annuitization) and description of periodic income including whether principal will be returned;

(iv) the surrender charges if applicable, specifically their duration and how they are applied;

(v) any other fees and charges, their limits and how they are applied;

(vi) how values in the contract can be accessed;

(vii) the death benefit, if available;

(viii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the

contract; and

(ix) impact of any rider, such as nursing home, long term care rider, or accelerated benefits.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE VII FORMAT STANDARDS FOR BASIC ILLUSTRATIONS

(1) A basic illustration shall conform with the following format requirements:

(a) The illustration shall be labeled with the date on which it was prepared;

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g. the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages");

(c) The assumed dates of payment receipt and benefit pay-out within a contract year shall be clearly identified;

(d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;

(e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;

(f) Guaranteed benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;

(g) Any non-guaranteed elements shall not be based on a scale more favorable to the contract owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed;

(h) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements");

(i) The account or accumulation value of a contract shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;

(j) The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, contract loans and contract loan interest, as applicable;

(k) Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;

(l) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

(i) the benefits and values are not guaranteed;

(ii) the assumptions on which they are based are subject

to change by the insurer; and
(iii) actual results may be more or less favorable.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE VIII NARRATIVE SUMMARY STANDARDS FOR BASIC ILLUSTRATIONS (1) A basic illustration shall include the following in its narrative summary:

(a) A brief description of the contract being illustrated, including a statement that it is a life insurance contract;

(b) A description of the contract and its features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

(c) The availability of periodic income;

(d) The surrender charges, if applicable, specifically their duration and how they are applied;

(e) Any other fees and charges, their limits and how they are applied;

(f) How values in the contract can be accessed;

(g) The death benefit, if available;

(h) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract;

(i) Impact of any riders, such as long term care, nursing home, or accelerated benefits;

(j) Identification and a brief definition of column headings and key terms used in the illustrations; and

(k) A statement containing in substance the following: "This illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE IX NUMERIC SUMMARY STANDARDS FOR BASIC ILLUSTRATIONS (1) A basic illustration shall include a numeric summary of the accumulation value, cash surrender value and the premium outlay, as applicable. For a contract that provides for a contract premium, the values shall be based on the contract premium. This summary shall be shown for at least contract years 5, 10, and 20 and at age 65, as applicable, on the three bases shown below:

(a) Contract guarantees;

(b) Insurer's illustrated scale;

(c) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:

(i) dividends at 50% of the dividends contained in the illustrated scale used;

(ii) non-guaranteed credited interest at rates that are

the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(iii) all non-guaranteed charges, including but not limited to, expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(2) In addition, the summary shall show, on three bases:

(a) The amount of monthly annuity income payable on a life annuity basis selected by an applicant. If none is selected, then the amount of monthly annuity income shall be shown on a life annuity with 10 year certain payments using the insurer's current single premium annuity purchase rate and the contract value using the insurer's illustrated scale; second,

(b) The insurer guaranteed annuity purchase rates and the guaranteed contract value using the contract guaranteed contract elements; and thirdly,

(c) Using factors midway between the current purchase rate and the illustrated scale for contract value and the guarantee annuity purchase rates and guarantee contract values.

(3) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the contract owner in the case of an illustration provided at time of delivery, as required in this sub-chapter:

(a) A statement to be signed and dated by the applicant or contract owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are not guaranteed."

(b) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE X TABULAR DETAIL STANDARDS FOR BASIC ILLUSTRATIONS

(1) A basic illustration shall include in its tabular detail the following for at least each contract year from 1 to 10 and for every fifth contract year thereafter ending at the later of age 85, or the maximum annuitization age. In addition, the basic illustration shall show the amount of monthly annuity income based on the annuity option selected by the applicant, if an option is not selected, then on a life annuity with 10 year certain for annuitization ages 65 and 70, or if later, for the annuitization age in the 10th and 15th contract year, but, in no event later than age 90.

(a) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(b) The corresponding guaranteed accumulation and cash surrender value, as provided in the contract;

(c) For a contract that provides for a contract premium, the guaranteed accumulation and cash surrender value available shall correspond to the contract premium;

(d) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a contract on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no cash surrender value is available at any duration, a zero shall be displayed.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE XI STANDARDS FOR SUPPLEMENTAL ILLUSTRATIONS

(1) A supplemental illustration may be provided so long as:

(a) It is appended to, accompanied by or preceded by a basic illustration that complies with this sub-chapter;

(b) The non-guaranteed elements shown are not more favorable to the contract owner than the corresponding elements based on the scale used in the basic illustration;

(c) It contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and

(d) For a contract that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For contracts that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE XII DELIVERY OF ILLUSTRATION AND RECORD RETENTION

(1) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of an annuity contract and the contract is applied for as illustrated, a copy of that illustration, signed in accordance with this sub-chapter, shall be submitted to the insurer at the time of contract application. A copy also shall be provided to the applicant.

(2) If the contract is issued with an initial lower guarantee interest rate or rates than that illustrated, a revised basic illustration conforming to the contract as issued shall be sent with the contract. The revised illustration shall conform to the requirements of this sub-chapter, shall be

labeled "Revised Illustration" and shall be signed and dated by the applicant or contract owner and producer or other authorized representative of the insurer no later than the time the contract is delivered. A copy shall be provided to the insurer and the contract owner.

(3) If no illustration is used by an insurance producer or other authorized representative in the sale of an annuity contract, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration was provided. This form shall be submitted to the insurer at the time of contract application.

(4) If the basic illustration or revised illustration is sent to the applicant or contract owner by mail from the insurer, it shall include instructions for the applicant or contract owner to sign the duplicate copy of the numeric summary page of the illustration for the contract issued and return the signed copy to the insurer. The insurer's obligation shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(5) A copy of the basic illustration and revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the contract was issued other than as illustrated, shall be retained by the insurer until 3 years after the contract is no longer in force. A copy need not be retained if no contract is issued.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE XIII ANNUAL NOTICE TO CONTRACT OWNERS (1) The insurer shall provide each contract owner with an annual report on the status of the contract that shall contain at least the following information:

(a) The beginning and end date of the current report period;

(b) The accumulation and cash surrender value at the end of the previous report period and at the end of the current report period;

(c) The total amounts that have been credited to the contract value during the current report period; and

(d) The amount of outstanding loans, if any, as of the end of the current report period.

(2) If a sales illustration was used or is available for that annuity contract form, and the annual report does not include an in force illustration, it shall contain the following notice displayed prominently:"IMPORTANT CONTRACT OWNER NOTICE: You should consider requesting more detailed information about your contract to understand how it may

perform in the future. You should not consider replacement of your contract or make changes without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] and [insurer's address] or contacting your producer. If you do not receive a current illustration of your contract within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(3) If a sales illustration was used or is available for that contract form, the annual report must contain a statement that upon the request of the contract owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of this sub-chapter. No signature or other acknowledgment of receipt of this illustration shall be required.

(4) If an adverse change in non-guaranteed elements that could affect the contract has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE XIV ANNUAL CERTIFICATIONS (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the actuarial standards board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this sub-chapter.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American academy of actuaries;

(b) Be familiar with the standard of practice regarding annuity contract illustrations;

(c) Not have been found by the commissioner, following appropriate notice and hearing to have:

(i) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(ii) been found guilty of fraudulent or dishonest practices;

(iii) demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(iv) resigned or been removed as an illustration actuary within the past 5 years as a result of acts or omissions

indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards.

(4) The illustration actuary shall notify the commissioner of any action taken by a commissioner of another state.

(5) The illustration actuary shall disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous 5 years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If non-guaranteed elements illustrated for new contracts are not consistent with those illustrated for similar in force contracts, this must be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in force contracts are not consistent with the non-guaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification.

(6) The illustration actuary shall disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(a) Fully allocated expenses;

(b) Marginal expenses; or

(c) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

(7) The illustration actuary shall file a certification with the board and with the commissioner:

(a) Annually for all annuity contract forms for which illustrations are available; and

(b) Before a new annuity contract form is illustrated.

(8) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(9) If an illustration actuary is unable to certify the scale for any annuity contract form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(10) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of this sub-chapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(b) That the company has provided its producers with information about the expense allocation method used by the company in its illustrations and disclosed as required in this sub-chapter.

(11) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(12) If an insurer changes the illustration actuary

responsible for all or a portion of the company's annuity contract forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE XV PENALTIES (1) In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this sub-chapter shall be guilty of a violation of section 33-1-317, MCA.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

3. These rules shall become effective July 1, 1998, and shall apply to policies sold on or after the effective date.

4. REASON: The 1997 Montana Legislature required the commissioner to adopt rules pertaining to annuity disclosure and sales illustrations. The purpose of this sub-chapter is to provide standards for the disclosure of certain minimum information about annuity contracts and to provide rules for annuity illustrations that will protect consumers and foster consumer education. These rules specify the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. These rules provide illustration formats, prescribe standards to be followed when illustrations are used, and specify the disclosures that are required in connection with illustrations.

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 Frank Coté at the State Auditor's Office, P.O. Box 4009, Helena, Montana, 59604, and must be received no later than March 13, 1998.

6. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the office no later than 5:00 p.m., March 2, 1998, to advise us as to the nature of the accommodation needed. Please contact Sandi Binstock at 126 North Sanders, Mitchell Building, Room 270, Helena, Montana, 59620; telephone (406) 444-1744; Montana Relay 1-800-332-6148; TDD (406) 444-3246; facsimile (406) 444-3497. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Sandi Binstock.

7. Kevin Phillips, attorney, has been designated to preside over and conduct the hearing.

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

9. The both bill sponsor notice requirements of section 2-4-302, MCA, apply and have been complied with.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance Commissioner

By: _____
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State this 2nd day of February, 1998.

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

| | | |
|---|---|---|
| In the matter of the proposed amendment of rules 6.6.302 through 6.6.310 pertaining to replacement of life insurance. | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES |

TO: All Interested Persons

1. On March 9, 1998, at 11:00 a.m., a public hearing will be held in room 312-1 of the State Capitol, Helena, Montana, to consider the amendment of rules 6.6.302 through 6.6.310.

2. The proposed amendments provide as follows (new text is underlined; text to be deleted is interlined):

6.6.302 PURPOSE (1) The purpose of this sub-chapter is:

~~(1)~~(a) To regulate the activities of insurers and ~~agents~~ producers with respect to the replacement of existing life insurance and annuities~~;~~ ; and

~~(2)~~(b) To protect the interests of life insurance and annuity policyowners by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of existing life insurance or annuities by:

(a) through (c) remain the same but are renumbered (i) through (iii).

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.303 DEFINITIONS (1) remains the same.

(2) "Conservation" means any attempt by the existing insurer or its ~~agent~~ producer to continue existing life insurance or annuity in force when it has received proper notice as required by ARM 6.6.306~~(3)(d)~~ (1)(c)(iv) ~~of this sub-chapter~~ from a replacing insurer that the existing life insurance or annuity is or will be replaced.

(3) "Direct-response sales" means any sale of life insurance where the insurer does not utilize ~~an agent~~ its producer in the sale or delivery of the policy.

(4) and (5) remain the same.

(6) "Existing annuity" means any annuity in force, including variable, deferred and immediate annuities, including annuities under a binding or conditional receipt or an annuity within an unconditional refund period.

(6) remains the same but is renumbered (7).

~~(7)~~(8) "Replacement" means any transaction in which new life insurance or annuity is to be purchased, and it is known or should be known to the proposing ~~agent~~ producer, or to the

proposing insurer, if there is no ~~agent~~ producer, that by reason of such transaction existing life insurance or annuity has been, or is to be:

(a) through (e) remains the same.

~~(8)~~(9) "Replacing insurer" means the insurance company that issues a new policy which is a replacement of existing life insurance or annuity.

~~(9)~~(10) "Sales proposal" means individualized sales aids of all kinds which are designed to justify the replacement or conservation of existing life insurance or annuity and used by an insurer~~, agent~~ or producer~~, or broker~~ for presentation to policyowners. Sales aids of a generally descriptive nature, which are maintained in the insurer's advertising compliance file, shall not be considered a sales proposal within the meaning of this definition.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.304 EXEMPTIONS (1) Unless otherwise specifically included, this sub-chapter shall not apply to:

~~(1) Annuities;~~

~~(2)~~(a) Individual credit life insurance; or

~~(3)~~(b) Group life insurance, group credit life insurance, ~~and life insurance policies~~ and group annuities issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums, provided, however, that as to any plan described in this rule, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced; or

~~(4) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account; or~~

~~(5)~~(c) Where the application is made to the existing insurer that issued the existing life insurance or annuity and a contractual change or conversion privilege is being exercised; or

(6) remains the same but is renumbered (d).

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.305 DUTIES OF ~~AGENTS~~ PRODUCERS (1) Each ~~agent~~ producer shall submit to the replacing insurer with or as part of each application for life insurance or annuity:

(a) A statement signed by the applicant as to whether or not such insurance will replace existing life insurance or annuities; and

(b) A signed statement as to whether or not the ~~agent~~ producer knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved, the ~~agent~~ producer shall:

(a) Obtain with or as part of each application a list of

all existing life insurance and/or annuities to be replaced. Such existing life insurance or annuities shall be identified by name of insurer and the policy number. In the event that a policy number has not been assigned by the existing insurer, alternative identification information, such as an application or receipt number, must be listed.

(b) If replacing existing life insurance, ~~Present~~present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement of Life Insurance" in the form substantially as described in ARM 6.6.310~~(1) or (2) Sample~~ sample form A or B, whichever is applicable. The notice must be signed by the ~~agent~~ producer and receipt of it acknowledged by the applicant. A copy of the notice must be left with the applicant.

(c) If replacing existing life insurance, ~~Submit~~submit to the replacing insurer with the application, a copy of the "Notice Regarding Replacement of Life Insurance", signed by the ~~agent~~ producer and receipt of it acknowledged by the applicant and a separate statement including the information described in ARM 6.6.306 (1) (b) (i) ~~(2) (a)~~ unless such information is included in the application.

(d) Present to the applicant, not later than the time of taking the application, an "Applicant Statement Regarding Replacement of Life Insurance or Annuities" in the form substantially as described in ARM 6.6.310 - sample form D. The statement must be signed by the applicant.

(e) Submit to the replacing insurer with the application, a copy of the "Applicant Statement Regarding Replacement of Life Insurance or Annuities", signed by the applicant.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.306 DUTIES OF REPLACING INSURERS (1) Each replacing insurer shall:

(1) remains the same but is renumbered (a).

~~(2)~~ (b) Require with or as part of each completed application for life insurance or annuity:

~~(a)~~ (i) A statement signed by the applicant as to whether or not such insurance will replace existing life insurance or annuity; and

~~(b)~~ (ii) ~~A statement signed by the agent as to whether or not he or she knows replacement is or may be involved in the transaction.~~ A signed statement as to whether or not the producer knows replacement is or may be involved in the transaction.

(3) remains the same but is renumbered (c).

~~(a)~~ (i) Require with or as part of each application for life insurance or annuity a list of all of the applicant's existing life insurance or annuities to be replaced. Such existing life insurance or annuities shall be identified by name of insurer and the policy number. In the event that a policy number has not been assigned by the existing insurer, alternative identification information, such as an application

or receipt number, must be listed.

~~(b)~~(ii) Require from the ~~agent~~ producer with the application for life insurance a copy of the "Notice Regarding Replacement of Life Insurance" signed by the ~~agent~~ producer and receipt of it acknowledged by the applicant, a copy of the "Applicant Statement Regarding the Replacement of Life Insurance or Annuities", signed by the applicant, and a copy of all sales proposals used for presentation to the applicant.

~~(c)~~(iii) If replacing life insurance, ~~Unless~~unless otherwise modified by the provisions of ~~(3)(d)~~(1)(c)(iv) or ~~(3)(e)~~(1)(c)(v) furnish to the applicant a policy summary in accordance with the provisions of ~~the Life Insurance Solicitation Regulation (Sub Chapter 2)~~ ARM Title 6, chapter 6, sub-chapter 2.

~~(d)~~(iv) Delay, if it is not also the existing insurer, the issue of its policy for twenty days after it sends the existing insurer a written communication that includes the name of the insured, the identification information with respect to the existing life insurance or annuities to be replaced that is obtained pursuant to ~~(3)(a)~~ this rule, and a copy of the policy summary, unless it provides in its "Notice Regarding Replacement of Life Insurance" and in either its policy or in a separate written notice that is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy, and it sends the written communication required by this rule to the existing insurer within 3 working days of the date its policy is issued, in which event the replacing insurer may issue its policy immediately.

(e) remains the same but is renumbered (v).

~~(f)~~(vi) Maintain copies of the written communication required by ~~(3)(d)~~(1)(c)(iv), the "Notice Regarding Replacement of Life Insurance", the "Applicant Statement Regarding Replacement of Life Insurance or Annuities", the policy summary, and all sales proposals used, and a replacement register, cross indexed, by replacing ~~agent~~ producer and existing insurer to be replaced, for at least ~~three~~ five years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.307 DUTIES OF INSURERS WITH RESPECT TO DIRECT-RESPONSE SALES (1) Each insurer shall:

(1) remains the same but is renumbered (a).

~~(2)~~(b) Require with or as part of each completed application for life insurance or annuity a statement signed by the applicant as to whether or not such insurance will replace existing life insurance or annuities.

(3) remains the same but is renumbered (c).

~~(a)~~(i) At the time the policy is mailed to the applicant,

include a "Notice Regarding Replacement of Life Insurance" in a form substantially as described in ARM 6.6.310~~(3) Sample~~ sample form C.

(4) remains the same but is renumbered (d).

~~(a)~~(i) Request from the applicant with or as part of the application a list of all existing life insurance or annuities to be replaced. Such existing life insurance or annuities shall be identified by the name of insurer.

~~(b)~~(ii) If the applicant furnishes the name of the existing insurers, then the replacing direct-response insurer shall mail the applicant a "Notice Regarding Replacement of Life Insurance" in a form substantially as described in ARM 6.6.310~~(3) Sample Form~~ sample form C and an "Applicant Statement Regarding Replacement of Life Insurance or Annuities" in a form substantially as described in ARM 6.6.310~~(4)~~ sample form D, within three working days after receipt of the application and shall comply with all of the provisions of ARM 6.6.306~~(3)(c)(d)(e) and (f)~~ (1)(c)(iii), (iv), (v) and (vi), except that it need not maintain a replacement register required by ARM 6.6.306~~(3)(f)~~ (1)(c)(vi).

~~(c)~~(iii) If the applicant does not furnish the names of the existing insurers, then the replacing direct-response insurer shall at the time the policy is mailed to the applicant, include a "Notice Regarding Replacement of Life Insurance" in a form substantially as described in ARM 6.6.310~~(3) Sample~~ sample form C.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.308 DUTIES OF THE EXISTING INSURER (1) Each existing insurer which undertakes a conservation effort shall:

~~(1)~~(a) If life insurance is being replaced, ~~Furnish~~furnish the policyowner with a policy summary for the existing life insurance within twenty days from the date it receives the written communication required by ARM 6.6.306~~(3)(d)~~ from the replacing insurer. Such policy summary shall be completed in accordance with the provisions of ~~the Life Insurance Solicitation Regulation, (Sub Chapter 2)~~ ARM Title 6, chapter 6, sub-chapter 2 except that information relating to premiums, cash values, death benefits and dividends, if any shall be computed from the current policy year of the existing life insurance. The policy summary shall include the amount of any outstanding policy indebtedness, the sum of any other dividend, accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary. If index figures are included in the policy summary, the policyowner must be notified at the time the policy summary is delivered that such figures should only be used for comparing the relative costs of similar policies.

~~(2)~~(b) Furnish the replacing insurer with a copy of the policy summary for the existing life insurance within three

working days of the date that the policy summary is sent by the existing insurer to either its ~~agent~~ producer or directly to the policyowner.

(3) remains the same but is renumbered (c).

~~(a)~~(i) Written communication required by ARM 6.6.306~~(3)(d)~~ received from replacing insurers; and

~~(b)~~(ii) Copies of policy summaries prepared pursuant to ~~(1)~~ this rule and all sales proposals used.

(2) This material shall be indexed by the replacing insurer and held for ~~three~~ five years or until the conclusion of the next regular examination conducted by the insurance department of its domicile, whichever is later.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.309 PENALTIES (1) Any insurer, ~~agent~~ producer, representative, officer or employee of such insurer failing to comply with the requirements of this sub-chapter shall be subject to such penalties as may be appropriate under the ~~Insurance Laws~~ insurance laws of Montana.

(2) remains the same.

(3) Policyowners have the right to replace existing life insurance and annuities after indicating in or as part of the applications for life insurance and annuities that such is not their intention; however, patterns of such action by policyowners who purchase the replacing policies from the same ~~agent~~ producer shall be deemed ~~prima facie~~ prima facie evidence of the ~~agent's~~ producer's knowledge that replacement was intended in connection with the sale of those policies, and such patterns or action shall be deemed ~~prima facie~~ prima facie evidence of the ~~agent's~~ producer's intent to violate this sub-chapter.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

6.6.310 SAMPLE FORMS (1) The following are sample forms of notice:

~~(1)~~(a) Sample form A:

(To be used where the existing and proposed policies are written by different companies.)

(Name, address and telephone number of the insurance company)

IMPORTANT NOTICE REGARDING REPLACEMENT OF LIFE INSURANCE

Our ~~agent~~ producer is recommending to you that you purchase a life insurance policy from us. In connection with this purchase, you have indicated, either as a result of his recommendation or at your own initiative, that you may terminate or change your existing policy issued by another insurance company or that you may obtain a loan from that company against your policy to pay premiums on the proposed policy. Any of these actions is a replacement of life insurance, and this notice is required.

Please read it carefully.

Whether it is to your advantage to replace your existing insurance coverage, only you can decide. It is in your best interest, however, to have adequate information before your decision to replace your present coverage becomes final so that you may understand the essential features of the proposed policy and of your existing insurance coverage.

To this end, we are required to give you a policy summary of the proposed policy no later than when the policy is delivered to you. In addition, we are required to notify the insurance company that issued your existing policy. That company may then furnish you with a similar policy summary of your existing policy. You may want to contact that company or its ~~agent~~ producer for additional information and advice or discuss your purchase with other advisors. The information you receive will be of value to you in reaching a final decision.

After we have received your application and notified the other insurance company ~~(which we are required to do by state regulation at the time we issue your policy)~~, you will have 20 days from the date ~~of~~ the proposed policy is delivered to you to cancel the policy issued on your application and receive back all payments you made to us.*

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*(Alternate paragraph is 20 day money-back guarantee is not provided)

Please note that, by state ~~regulation~~ requirement, we must delay the issuance of any policy which is intended to replace any of your existing insurance for twenty days from the date on which we send your existing insurer notification that their policy will be replaced.

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You should recognize that a policy which has been in existence for a period of time may have certain advantages to you over the new policy. If the policy coverages are basically similar, the premiums for a new policy may be higher because rates increase as your age increases. Under your existing policy, the period of time during which the issuing company could contest the policy because of a material misstatement or omission on your application, or deny coverage for death caused by suicide, may have expired or may expire earlier than it will under the proposed policy. Your existing policy may have options which are not available under the policy being proposed to you or may not come into effect under the proposed policy until a later time during your life. Also, your proposed policy's cash values and dividends, if any, may grow slower initially because the company will incur the cost of issuing your new policy. On the other hand, the proposed policy may offer advantages which are more important to you.

If you are considering borrowing against your existing policy to pay the premiums on the proposed policy, you should understand that in the event of your death the amount of any unpaid loan, including unpaid interest, will be deducted from the benefits of your existing policy thereby reducing your total insurance coverage.

CAUTION

If, after studying the information made available to you, you do decide to replace the existing life insurance with our life insurance policy, you are urged not to take action to terminate or alter your existing life insurance coverage until after you have been issued the new policy, examined it and have found it to be acceptable to you. If you should terminate or otherwise materially alter your existing coverage and fail to qualify for the life insurance for which you have applied, you may find yourself unable to purchase other life insurance or able to purchase it only at substantially higher rates.

by _____
~~Agent~~ Producer or Employee

I have received and read a copy of this Replacement Notice.

(Signed) _____ Date _____
Applicant

~~(2)~~(b) Sample form B:

(To be used where the existing and proposed policies are written by the same company.)

(Name, address and telephone number of the insurance company)

IMPORTANT NOTICE REGARDING REPLACEMENT OF LIFE INSURANCE

Our ~~agent~~ producer is recommending to you that you purchase a life insurance policy from us. In connection with this purchase, you have indicated, either as a result of his recommendation or at your own initiative, that you may terminate or change your existing policy to pay premiums on the proposed policy. Any of these actions is a replacement of life insurance, and this notice is required.

Please read it carefully.

Whether it is to your advantage to replace your existing insurance coverage, only you can decide. It is in your best interest, however, to have adequate information before your decision to replace your present coverage becomes final so that you may understand the essential features of the proposed policy and of your existing insurance coverage.

To this end, we are required to give you a Policy Summary of the proposed policy no later than when the policy is delivered to you. In addition, we will, at your request, furnish you with a similar policy summary of your existing policy. You may want to discuss your purchase with other advisors. The information you receive will be of value to you in reaching a final decision.*

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*(Alternate paragraph is 20 day money-back guarantee is provided)

After we have issued your policy, you will have twenty days from the date ~~of~~ the new policy is delivered to you to cancel the policy issued on your application and receive back

all payments you made to us.

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You should recognize that a policy which has been in existence for a period of time may have certain advantages to you over a new policy. If the policy coverages are basically similar, the premiums for a new policy may be higher because rates increase as your age increases. Under your existing policy, the period of time during which our company could contest the application, or deny coverage for death caused by suicide, may have expired or may expire earlier than it will under the proposed policy. Your existing policy may have options which are not available under the policy being proposed to you or may not come into effect under the proposed policy until a later time during your life. Also, your proposed policy's cash values and dividends, if any, may grow slower initially because the company will incur the cost of issuing your new policy. On the other hand, the proposed policy may offer advantages which are more important to you.

If you are considering borrowing against your existing policy to pay the premiums on the proposed policy, you should understand that in the event of your death, the amount of any unpaid loan, including unpaid interest, will be deducted from the benefits of your existing policy thereby reducing your total insurance coverage.

CAUTION

If, after studying the information made available to you, you do decide to replace the existing life insurance with our company with a new life insurance policy issued by our company, you are urged not to take action to terminate or alter your existing life insurance coverage until after you have been issued the new policy, examined it and have found it acceptable to you. If you should terminate or otherwise materially alter your existing coverage and fail to qualify for the life insurance for which you have applied, you may find yourself unable to purchase other life insurance or able to purchase it only at substantially higher rates.

By _____
~~Agent~~ Producer or Employee

I have received and read a copy of this Replacement Notice.

(Signed) _____ Date _____
Applicant

~~(3)~~(c) Sample form C:

(Name, address and telephone number of the insurance company)

IMPORTANT NOTICE REGARDING REPLACEMENT OF LIFE INSURANCE

You have indicated that you intend to replace an existing life insurance policy or policies in connection with the purchase of our life insurance policy. As a result, we are required to send you this notice. Please read it carefully.

Whether it is to your advantage to replace your existing

insurance coverage, only you can decide. It is in your best interest, however, to have adequate information before your decision to replace your present coverage becomes final so that you may understand the essential features of the proposed policy and your existing insurance coverage.

You may want to contact your existing life insurance company or its ~~agent~~ producer for additional information and advice or discuss your purchase with other advisors. The information you receive should be of value to you in reaching a final decision.

You should recognize that a policy which has been in existence for a period of time may have certain advantages to you over a new policy. If the policy coverages are basically similar, the premiums for a new policy may be higher because rates increase as your age increases. Under your existing policy, the period of time during which the issuing company could (contest the policy because of a material misrepresentation or omission concerning the medical information requested in your application, or)* deny coverage for death caused by suicide, may have expired or may expire earlier than it will under the proposed policy. Your existing policy may have options which are not available under the policy being proposed to you or may not come into effect under the proposed policy until a later time during your life. Also, your proposed policy's cash values and dividends, if any, may grow slower initially because the company will incur the cost of issuing your new policy. On the other hand, the proposed policy may offer advantages which are more important to you.

If you are considering borrowing against your existing policy to pay the premiums on the proposed policy, you should understand that in the event of your death, the amount of any unpaid loan, including unpaid interest will be deducted from the benefits of your existing policy thereby reducing your total insurance coverage.**

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**(Alternate paragraph if direct-response insurer's solicitation proposes replacement, and a twenty-day money-back guarantee is provided by the insurer.)

After we have issued your policy, you will have twenty days from the date the new policy is received by you to notify us you are canceling the policy issued on your application and you will receive back all payments you made to us.

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You are urged not to take action to terminate or alter your existing life insurance coverage until you have been issued the new policy, examined it and have found it acceptable to you.

* Use bracketed language only when the application asks health questions.

(d) Sample form D:

(Name, address and telephone number of

the insurance company)
APPLICANT STATEMENT REGARDING REPLACEMENT OF
LIFE INSURANCE OR ANNUITIES

(1) In your own words, why are you considering replacing your current life insurance or annuities?

(2) Did the replacing insurance producer (agent) or insurance company suggest you replace the life insurance or annuity? If yes, what were the producer's (agent's) or insurance company's reasons for replacement?

(3) What did the replacing insurance producer (agent) or insurance company tell you about the life insurance or annuity you are replacing?

(4) What did the replacing producer (agent) or insurance company tell you about the life insurance or annuity you are currently purchasing?

(5) What is the surrender charge schedule of your existing life insurance or annuity?

(6) What is the surrender charge schedule of the life insurance or annuity you intend to purchase?

Signed _____ Date _____
Applicant

You are urged not to take action to terminate your policy or alter your existing life insurance or annuity contract until you have been issued the new policy, examined it and have found it to be acceptable to you.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

3. REASON: At the direction of the legislature and upon request of the insurance industry and consumer groups, this agency periodically reviews its rules to determine whether the rules are necessary and to make changes to better reflect what is happening in the market place. There have been some drafting changes to make the proposed rules consistent with changes made in the statutes and other rules such as referring to producers instead of agent. The substantive changes that were made close a loop hole that allowed replacement of annuities to be made without complying with the same requirements that were placed on replacement life insurance. Since the impact can in many instances be the same for replacement of annuities as life insurance, the present rules needed to be changed to reflect these present day changes in the market place in order to avoid consumer abuse.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Frank G. Cote', Deputy Insurance Commissioner, P.O. Box 4009, Helena, MT 59604-4009 and must be received no later than March

13, 1998.

5. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the office no later than 5:00 p.m., March 2, 1998, to advise us as to the nature of the accommodation needed. Please contact Sandi Binstock, P.O. Box 4009, Helena, MT 59604-4009; telephone (406) 444-1744; Montana Relay 1-800-332-6148; TDD (406) 444-3246; facsimile (406) 444-3497. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Sandi Binstock.

6. Kevin Phillips, attorney, has been designated to preside over and conduct the hearing.

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

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance Commissioner

By: _____
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State this 2nd day of February, 1998.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to reactivation of licenses ) NOTICE OF PROPOSED AMENDMENT OF 8.58.413 REACTIVATION OF LICENSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1998, the Board of Realty Regulation proposes to amend the above-stated rule.

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

"8.58.413 REACTIVATION OF LICENSES (1) For an inactive real estate licensee to again become active, he or she must:

~~(a)~~ file a change of address application and pay the required fee in accordance with ARM 8.58.411~~;~~.

~~(b) submit proof of obtaining 15 classroom or equivalent hours of continuing education for each two year period of inactive status or any combination of active and inactive status.~~"

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-204, 37-51-302, 37-51-311, MCA

REASON: This amendment is being proposed to eliminate the requirement for licensees reactivating their license to provide back hours of continuing education, as they are now required to maintain those education hours while on inactive status.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 12, 1998.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., March 12, 1998.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be

directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 70 based on the 700 licensees in Montana.

6. Persons who wish to be informed of all Board of Realty Regulation administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board, in writing, at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-2961.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of Teacher Certification | ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO ARM 10.57.404 CLASS 4 VOCATIONAL CERTIFICATE |

To: All Interested Persons

1. On March 12, 1998, at 1:00 p.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education Offices, 2500 Broadway, Helena, in the matter of the proposed amendment to ARM 10.57.404 Class 4 Vocational Certificate.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the Board of Public Education office no later than 5:00 p.m. on March 6, 1998, to advise us the nature of the accommodation that you need. Please contact Dr. Wayne Buchanan, Board of Public Education, 2500 Broadway, Helena, MT 59620; telephone (406) 444-6576; FAX (406) 444-0847.

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

10.57.404 CLASS 4 VOCATIONAL CERTIFICATE (1) Appropriately endorsed vocational certification may be available to ~~teachers~~ individuals ~~of vocational subjects~~ who have been accepted as employees within programs for vocational and technical instruction of students in grades 7 through 12 when not certified ~~with a~~ under class 1, 2, or 5 specifically endorsed for the same vocational subject(s).

(a) Recreational and adult education certification, although outlined in 20-4-106, MCA, will not be certified by the superintendent of public instruction.

(b) Occupations related to fields of study not normally considered vocational or technical may be denied for certification pending appeal to the board of public education.

(2) through (2)(b) remain the same.

(c) Class 4C

(i) High school graduate or GED certificate.

(ii) Experience as required for the for the class 4B.

(iii) An applicant must submit a copy of an agreement form verified by a school system confirming employment conditional upon receipt of the class 4C (temporary) certificate.

~~(iii)~~(iv) Issuance of a class 4C (temporary) certificate is dependent upon the applicant's signing of a plan of professional intent leading to a class 4A or 4B certificate.

~~(iv)~~(v) The class 4C (temporary) certificate is issued for

five years. ~~and~~ The class 4C (temporary) certificate may be reinstated one time upon application to the office of public instruction, without additional requirements for a period of five years until renewals for the year 1998, but not thereafter.

AUTH: Sec. 20-4-102 MCA IMP: Sec. 20-4-106, 20-4-108 MCA

4. The board's proposal would place additional restrictions on the qualifications of class 4 vocational certificates in order to assure that certificate holders actually intend to teach rather than use it as another credential. In the past, individuals have applied for class 4 certificates in order to claim they had a "teaching certificate" when they had no intention of teaching in the public or private schools, i.e. inmates of the Montana prison system.

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 Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than March 12, 1998.

6. Storrs Bishop, Chairman of the Board of Public Education, 2500 Broadway, Helena, has been designated to preside over and conduct the hearing.

7. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices. Such written requests may be mailed or delivered to the Board of Public Education office, 2500 Broadway, Helena, MT 59620, or may be faxed to the office at (406) 444-0847.

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

Wayne G Buchanan

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 1/30/98.

BEFORE THE BOARD OF TRUSTEES
OF THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed adoption of rules regarding procedures that state agencies must follow to protect heritage properties and paleontological remains and providing general procedures which the state historic preservation office must follow in implementing its general statutory authority | ) | NOTICE OF PROPOSED ADOPTION<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On April 16, 1998, the State Historic Preservation Office of the Montana Historical Society proposes to adopt new rules regarding procedures that state agencies must follow to protect heritage properties and paleontological remains and providing general procedures which the state historic preservation office must follow in implementing its general statutory authority.

2. The proposed new rules provide as follows:

RULE I POLICY (1) State, federal, and other agencies are required or allowed by statute to consider the retention of heritage properties and paleontological remains on lands owned by the state in consultation with the state historic preservation officer. It is the policy of the Montana historical society to assist those agencies in preserving heritage properties and paleontological remains and to encourage the avoidance, whenever feasible, of agency actions or agency assisted or licensed actions that substantially alter heritage properties or paleontological remains on those lands.

AUTH: 22-3-423(9), MCA IMP: 22-3-424, MCA

RULE II DEFINITIONS Terms defined in 22-3-421, MCA, have the same meaning in this subchapter and for the further purposes of this subchapter:

(1) "Action" means any undertaking, including a project or action considered under the Montana environmental policy act, which has the potential to alter or affect the heritage values of heritage property or paleontological remains.

(2) "Adverse effect" means any change caused by an action which impacts heritage property or paleontological remains visually, audibly, physically or atmospherically to the extent that its heritage values are substantially diminished including

a transfer of rights or title which results in the neglect of heritage property.

(3) "Area of effect" means the land area in which an action takes place and which may be changed by the action.

(4) "Heritage values" means the economic, educational, scientific, social, recreational, cultural or historic qualities possessed by sites, structures or objects possessing sufficient significance to warrant consideration under these rules as heritage property or paleontological remains.

(5) "Interested parties" include applicants, tribes or groups directly involved in the action or landowners, tribes, groups, agencies, or institutions with a clear and reasonable interest in the consideration of heritage properties associated with an action.

(6) "Restore" means to conduct major repairs, reconstruction, structural or other improvements on a building, structure or feature possessing heritage values with the intention of preserving or reconstructing physical features representing those values.

(7) "SHPO" means the state historic preservation office of the Montana historical society as created by 2-15-1512, MCA.

(8) "State entity" means an agency or governmental unit recognized by the state constitution or created by the legislature, including counties and municipalities.

AUTH: 22-3-423(9), MCA IMP: 22-3-421, 22-3-424, MCA

RULE III INITIATION OF ANTIQUITIES CONSULTATION UNDER 22-3-424, MCA (1) The agency shall initiate reviews and studies required by 22-3-424, MCA, prior to initiating any action which has the potential to adversely affect heritage properties. The agency shall complete its review early enough to be used in formulating agency decisions about the action. Completion of reviews and studies after the agency has irrevocably committed itself to the scope, format or siting of the action will not constitute adherence to these rules.

(2) At specified stages within the following rules, SHPO response to the agency is required. If the SHPO fails to respond in the times described in this subchapter, the agency shall assume that the SHPO does not object to the agency position and the agency may move forward with the action.

AUTH: 22-3-423(9), MCA IMP: 22-3-424, MCA

RULE IV RESPONSIBILITY FOR ANTIQUITIES CONSULTATION (1) The director of each agency is responsible for assuring compliance with 22-3-424, MCA, when actions involving his division may affect heritage properties or paleontological remains.

(2) Each agency may designate a position to manage issues concerning heritage property or paleontological remains protection.

(3) Each agency shall bear its costs of administration related to compliance with this rule.

(4) Requests for SHPO consultation shall be made in writing.

(5) Agencies shall, to the maximum extent possible, include interested parties in consultations regarding heritage properties or paleontological remains.

AUTH: 22-3-423(9), MCA IMP: 22-3-424, MCA

RULE V IDENTIFICATION OF HERITAGE PROPERTIES AND PALEONTOLOGICAL REMAINS (1) The agency shall identify all known heritage properties and paleontological remains that are located on state lands within the area of effect. The agency shall use the following heritage value criteria in identifying heritage property, whether or not it meets the criteria for listing on the register. Heritage property values are the qualities of significance in American history, architecture, archaeology, engineering, and culture present in districts, sites, buildings, structures, and objects achieving significance prior to the last 50 years and that possess integrity of location, design, setting, materials, workmanship, feeling, and association and which:

(a) are associated with events that have made a significant contribution to the broad patterns of Montana or the nation's history;

(b) that are associated with the lives of persons significant in our past;

(c) that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;

(d) that have yielded, or may be likely to yield, information important in prehistory or history; or

(e) are verified by a professional paleontologist advising the SHPO through formal agreement to be paleontological remains.

(2) The agency shall use the following procedure to identify what known historic, architectural, or prehistoric properties or paleontological remains exist within an action area and how unknown or unevaluated resources should be discovered:

(a) The agency shall provide the SHPO with: (i) the legal description of the property on which the action is proposed; (ii) a description of the current condition and use of the area of effect; (iii) a brief summary of the nature and scope of the proposed action; and (iv) information the agency has on heritage property or paleontological remains in the area of effect.

(b) If an action would change or remove a building, including cases where new buildings are to be built adjacent to old buildings, the agency shall provide the SHPO with: (i) information on the legal description of the property on which the building(s) is located; (ii) a photograph of the building(s); (iii) a brief description of the proposed action; and (iv) when available, dates of building construction, information on building use, and changes to the building over

time. (v) If applicable and available, the design of new building(s) shall be provided.

(3) The SHPO shall provide the agency with information on: (a) known heritage property or paleontological remains in the area; (b) the likelihood of unknown heritage property or paleontological remains in the area; and (c) whether a previous cultural resource survey has occurred in the area of effect.

(4) If the SHPO has information that heritage resources or paleontological remains exist or may exist in the area of effect, the SHPO shall recommend inventory, recordation, and data collection methods. If an action involves a building, the SHPO shall inform the agency about whether any building has been recorded previously or if its historic and architectural value has been assessed. If recordation and evaluation of heritage properties has not occurred, the SHPO shall recommend documentation and evaluation methods. All SHPO recommendations for methods to be applied shall follow standards, procedures, and guidelines provided for in 22-3-428, MCA. The SHPO shall provide its recommendation to the agency within 30 days of the SHPO's receipt of an agency's request.

(5) Upon receipt of the information and recommendations from the SHPO, the agency shall determine what additional action is necessary to fulfill its responsibility to identify Montana heritage properties in the area of effect.

(6) If the agency does not follow the SHPO's recommendation, it shall document its decision and justification in the action file. A copy of the documentation must be forwarded to the SHPO.

AUTH: 22-3-423(9), MCA IMP: 22-3-424, MCA

RULE VI EVALUATION OF HERITAGE PROPERTIES AND PALEONTOLOGICAL REMAINS (1) In consultation with the SHPO, and appropriate tribes or interested parties, the agency shall assure that any historic, prehistoric or architectural property identified in an area of effect has been evaluated to determine whether it is a heritage property and whether it is eligible for the register or if it contains paleontological remains. That evaluation shall include the following:

(a) The agency shall seek the SHPO's written evaluation of whether a property qualifies as a site that contains paleontological remains, or heritage property and, if so:

(i) whether any fossilized remains in question are rare and critical to scientific research; or

(ii) whether any property in question is eligible for the register.

(b) The SHPO shall provide the agency with a written evaluation of any site as a heritage property, register site or paleontological remains within 15 days of receipt of a request for the evaluation. The time for evaluation may be extended an additional 15 days to a maximum total of 30 days upon request by SHPO and concurrence by the agency.

AUTH: 22-3-423(9), MCA IMP: 22-3-424, MCA

RULE VII AVOIDANCE OR MITIGATION OF ACTION IMPACTS

(1) After an agency has followed [Rules III-VI] and found that no heritage properties or paleontological remains exist within an action's area of effect, the agency may proceed with the action.

(2) If sites within the area of effect are found to be heritage properties but are not eligible for the register, the agency shall follow its own procedures or policies, if any, regarding the protection of heritage values prior to proceeding with the action. In forming those procedures or policies, the agency may consult with entities appropriately concerned with heritage values including recreational, economic development, and travel interests.

(3) If heritage properties eligible for the register or paleontological remains are found to exist within the action's area of effect, the agency shall determine, in writing, whether the action will have an adverse effect on that property and propose mitigation of the effect. If the agency determines that an action will have an adverse effect, it shall prepare a written explanation of why one or more of the actions in (3)(a) through (d) has been chosen and how it will be carried out. In determining mitigation the agency may solicit the opinions of interested parties and otherwise collect public comment on the protection of heritage property or paleontological remains in the area of effect as to:

(a) protecting the heritage values of the heritage property or paleontological remains by avoiding that property;

(b) abandonment of the proposed action;

(c) modification or redesign of the proposed action to avoid or lessen adverse effects or mitigate harm or alteration through any method including:

(i) relocating the action;

(ii) incorporating the heritage property or paleontological remains into the action in a useful way;

(iii) inviting private, commercial, non-profit, governmental or other interests to use the historic property in productive ways;

(iv) scientific excavation of archaeological or paleontological deposits;

(v) recordation of heritage properties prior to their removal or alteration;

(vi) production of a public education program about the property; or

(d) continuance of the project with no avoidance or mitigation measures.

(4) Upon completion of its assessment of action impact and selection of the proposed mitigation, the agency shall forward a statement of its decision in a single page mitigation plan to the SHPO for review and comment. Mitigation plans shall address whether or not the properties might be utilized for practical purposes in that they:

(a) possess the potential for promotional, commercial, recreational or other uses which may provide economic gain to citizens of the state or use by units of government;

(b) embody educational information which may be applied to instruct children or adults in aspects of Montana's history;

(c) have social associations which illustrate the interaction and behavior of people in Montana's history or prehistory;

(d) possess attributes which support the appreciation of heritage values through sightseeing, photography, painting or other means of personal experience or artistic expression;

(e) have cultural associations which illustrate and contribute to the understanding of human cultures; or

(f) contribute to the understanding of paleontological resources.

(5) The SHPO will review and comment on the agency's assessment of action impacts and mitigation plan in accordance with 22-3-430, MCA, within ten days of receipt of a request for comment.

(6) If the SHPO does not concur with the agency's assessment of action impacts and mitigation plan, the agency and the SHPO may attempt to resolve the difference. If the agency and SHPO cannot agree, the agency shall decide how to proceed, notify the SHPO upon making that decision and document its decision in writing for the action file. The agency shall provide the SHPO with a copy of its final decision.

AUTH: 22-3-107(2), 22-3-423(9), MCA
IMP: 22-3-424, 22-3-435, MCA

RULE VIII EMERGENCY DISCOVERY OF HERITAGE PROPERTIES OR PALEONTOLOGICAL REMAINS (1) If historic or prehistoric properties or paleontological remains are identified during the course of the action the agency shall, in accordance with 22-3-435, MCA, notify the SHPO immediately, provide information on the property and stop any action work that could harm the property. The SHPO shall assess the property's value as a heritage property or paleontological remains within two days. The agency shall subsequently consider any adverse effects on heritage properties according to [Rule VII(1) through (3)] and report its mitigation plan to the SHPO immediately upon completion of that plan.

AUTH: 22-3-107(2), 22-3-423(9), MCA
IMP: 22-3-424, 22-3-435, MCA

RULE IX FEDERAL HISTORIC PRESERVATION REVIEW CONSTITUTES COMPLIANCE (1) The review of actions under 16 U.S.C. 470(f) (1996) shall constitute compliance with those sections of 22-3-424 and 22-3-430, MCA, which deal with heritage properties eligible for the register. Section 16 U.S.C. 470(f) (1996) is hereby incorporated by reference. Copies may be obtained free of charge from the State Historic Preservation Office, 1410 Eighth Avenue, Helena, Montana 59620; telephone (406) 444-7715.

AUTH: 22-3-107(2), MCA IMP: 22-3-424, 22-3-430, MCA

RULE X ADVICE TO SHPO ON PALEONTOLOGICAL REMAINS (1) The SHPO may request an advisor or group of advisors to assist the SHPO in protecting paleontological remains in accordance with state statute and these rules. Such advisor or advisory group may participate in any of the activities assigned the SHPO in protecting paleontological remains through memorandums of agreement between the SHPO and paleontological institutions.

AUTH: 22-3-107(2), MCA
IMP: 22-3-421(7), 22-3-423(9), 22-3-424, 22-3-430, MCA

RULE XI MEMORANDUM OF AGREEMENT (1) For a specific action or for a specific type of action, the agency may propose different procedures from those described in [Rules I through VII] to the SHPO.

(2) The SHPO will respond to such request within 20 days of the receipt of a request.

(3) Procedures agreed to by both the agency and the SHPO for a specific action or specific types of actions may be incorporated into a memorandum of agreement, signed by both parties.

AUTH: 22-3-423(9), MCA IMP: 22-3-424, MCA

RULE XII ANTIQUITIES PERMITS (1) The state historic preservation officer shall prepare and make available the criteria for granting antiquities permits and the applications for antiquities permits provided for under 22-3-432, MCA, using 36 C.F.R. 61 as a guideline. The state historic preservation officer may designate a state archaeologist, a state paleontologist and/or a state historical architect to assist with the management of antiquities permits and the protection of heritage values.

(2) Applications for antiquities permits will be submitted by applicants to the state agency responsible for the management of lands owned by the state. Upon review, the state agency will forward the application for an antiquities permit with the agency's comments and recommendations to the SHPO.

(3) Antiquities permits shall be granted or denied to the applicant by the SHPO within 15 days of receipt of an application containing all needed information by the SHPO. A copy of the granted or denied antiquity permit will be forwarded by the SHPO to the state agency.

(4) No antiquities permit will be required for the purpose of identifying and recording heritage properties and paleontological remains on state-owned lands when such activities will not result in the excavation, removal or restoration of heritage properties or paleontological remains.

(5) Antiquities permits shall specify the means by which the state will protect artifacts, features, objects or paleontological remains excavated or removed in the course of the permitted work.

AUTH: 22-3-107(2), MCA IMP: 22-3-432, MCA

RULE XIII DEPOSIT OF MATERIALS RELATED TO HERITAGE PROPERTY AND PALEONTOLOGICAL REMAINS (1) The agency shall deposit with the SHPO all inventory reports and other pertinent documents, maps, photographs, and site forms generated in the course of complying with 22-3-421 through 22-3-441, MCA.

AUTH: 22-3-107(2), MCA
IMP: 22-3-421 through 22-3-441, MCA

RULE XIV CONSULTATION UNDER 22-3-429, MCA (1) Agencies, federal agencies or state entities requesting consultation with the SHPO under 22-3-429, MCA, shall make such requests in writing to the SHPO and shall specifically reference the statute under which the request is made.

(2) Reviews of such actions shall follow the procedures in 22-3-429 and 22-3-430, MCA.

AUTH: 22-3-107(2), MCA IMP: 22-3-429, 22-3-430, MCA

RULE XV RIGHT TO PRIVACY IN INFORMATION OR DOCUMENTS PROVIDED TO A STATE AGENCY (1) In instances in which an individual's right to privacy clearly exceeds the merits of public disclosure of information or documents submitted to an agency for decisionmaking under this chapter, the agency may assert the individual's right to privacy and refuse to permit public disclosure.

(2) If an interested party has information or documents in which they claim a right to privacy, the interested party may request a confidentiality review from the agency. In requesting a confidentiality review, the interested party shall submit to the agency a written general description of the private information or documents and shall assert all bases on which the right to privacy exists. The written submittal shall demonstrate how the demand of individual privacy clearly exceeds the merits of public disclosure by showing the person involved has an actual expectation of privacy and that society is willing to recognize that expectation as reasonable.

(3) Within five days of receiving the written submittal, the agency will notify the interested party whether the agency will assert the interested party's right to privacy in that the privacy interests clearly exceed the merits of public disclosure of the information or documents.

(a) If the agency decides to assert the right to privacy on behalf of the interested party, and the interested party submits information or documents to the agency, each page or item of the submittal must be clearly marked or identified as confidential. The agency will treat the information or documents so marked or identified as confidential and assert the interested party's right to privacy in the information or documents in response to a request for public information.

(b) If the agency decides not to assert the right to privacy on behalf of the interested party and the interested party provides the information or documents to the agency, the

interested party waives the right to privacy by providing the information to the agency.

AUTH: 22-3-107(3), MCA
IMP: 22-3-421 through 22-3-433, MCA

RULE XVI SHPO STANDARDS, PROCEDURES, AND GUIDELINES

(1) SHPO standards, procedures, and guidelines shall be referenced in SHPO recommendations when required by statute or rule.

(2) The standards and guidelines used by the national park service of the United States department of the interior and the advisory council on historical preservation are, in part, the standards and guidelines to be used to identify and protect heritage properties eligible for listing on the national register, and are hereby incorporated by reference. Copies may be obtained free of charge from the State Historic Preservation Office, 1410 Eighth Avenue, Helena, Montana 59620; telephone (406) 444-7715.

AUTH: 22-3-107(2), MCA IMP: 22-3-428, MCA

3. The heritage properties and paleontological remains that exist on state-owned property are an integral part of Montana's rich historical and prehistorical tradition. Montana's commitment toward maintaining and preserving its early history and artifacts has been a strong and continuing one throughout Montana's history. That tradition benefits us all by identifying and recording not only paleontological remains but also places, buildings, documents, artifacts, and areas that reflect the struggles and triumphs of early Montanans. Montana's history and artifacts should be identified and preserved for current and future generations, to the extent possible within the realities of modern day life. Without a system in place to identify historical and prehistorical artifacts on state lands, they run the risk of being inadvertently altered or destroyed. But the system developed must be standardized and efficient to assure developers, businessmen, and the public a consistent and timely response to all such issues. The interested public, adjoining landowners, and tribes should also have a voice in how public lands are developed and how our history and prehistory is used or preserved.

Toward that end, state agencies are required by 22-3-424, MCA, to develop rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state. If state agencies do not develop their own rules, the state historic preservation officer is required to provide rules that will protect Montana's history and prehistory.

These rules are intended to provide agencies that have no rules of their own with guidelines that will allow them to

identify any historic, architectural, or prehistoric properties or paleontological remains that exist on state-owned lands before any changes take place that may adversely affect the property. The method that was chosen to accomplish this goal is to have state agencies first identify the items or sites of historical, architectural, or prehistorical significance, through consultation with the historical society, then inventory and collect data regarding those sites using generally accepted historical preservation guidelines. Once all historical, architectural, and prehistoric properties or paleontological remains have been identified and inventoried, they must be evaluated to determine their historical significance. If properties are found that are eligible for the register or if paleontological remains are found, the agency must assess whether the action proposed will adversely affect the property and if so, develop a mitigation plan. In developing a mitigation plan, public comment may be sought on the manner in which the agency should proceed. This method was chosen because it allows properties and paleontological remains to be identified and assessed in accordance with accepted historical preservation guidelines in an attempt to adequately assess and determine the appropriate use of any items of significance on the properties. It allows all citizens to take an active part in deciding how best to use Montana's state-owned lands and whether or how Montana's history and prehistory should be preserved or used for other purposes. This method standardizes the way to request a consultation, the guidelines used, and the time periods by which the SHPO must comment or lose the opportunity to do so. This is intended to assure that all such issues will be treated in a fair and consistent manner and that the assessment is completed in a reasonably timely fashion.

While every effort may be made to assess the items of historical or prehistoric significance prior to taking any actions on the property, it is possible that unanticipated historical properties or paleontological remains will be discovered after an action is commenced on the property. If that happens, these rules provide a procedure to quickly assess the find and consider any adverse effects the action may have on the heritage properties.

These rules allow the SHPO to request assistance from paleontological experts in assessing paleontological remains to the extent necessary. The rules allow agencies to propose a different procedure for specific actions or types of actions if they wish to utilize a different procedure but do not want to adopt rules of their own. The rules also standardize the criteria for granting antiquities permits based on national guidelines, provide time lines for SHPO responses, and allow the state to specify how antiquities removed will be protected. The rationale for this rule is as with the others, to provide a consistent and timely response to antiquities permits based on nationally accepted guidelines.

The right to privacy in information or documents provided to a state agency rule is needed in order to address the situation in which a tribe, or other interested party, has in

its possession knowledge or information regarding the existence, whereabouts, use, or significance of some items or areas of particular historical, tribal, or prehistoric significance but wants assurances from the agency that the information will be kept and held confidential before it discloses the information. To the extent possible, this rule is designed to provide a pre-disclosure review of whether the information is such that an agency will assert that the information is private or confidential in response to a request for public information, to the extent provided by law. The method chosen is designed to allow a general description of the documents to be submitted without actually providing the documents to the agency and the grounds on which a privacy interest is claimed in order to allow an agency to assess if it will assert that privacy interest in the material before receiving it. This allows the tribe or interested party to decide whether to disclose the information to the agency based on the agency's determination that it will or will not assert a right of privacy in the information.

4. Interested persons may present their data, views, or arguments concerning the proposed new rules in writing to Paul Putz, State Historic Preservation Office, P.O. Box 201202, Helena, Montana 59620-1202, to be received no later than March 12, 1998.

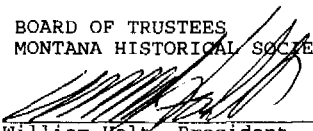
5. If a person who is directly affected by the proposed adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Paul Putz, State Historic Preservation Office, P.O. Box 201202, Helena, Montana 59620-1202. The comments must be received no later than March 12, 1998.

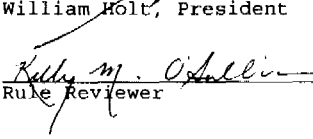
6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, from the administrative code committee of the legislature, from a governmental subdivision or agency, or from an 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 more than 25 persons based on the number of people in Montana. State-owned lands are held in trust for all Montanans.

7. The Montana Historical Society maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request which includes the name and address of the person to receive notice. Persons who wish to have their names deleted from the list shall make a written request which includes the name and address of the person to be deleted from the list. Such written requests shall be mailed or delivered to the Montana Historical Society, P.O. Box 201202, Helena, Montana 59620-1202. The submission may

be made at any time. Interested persons will be notified of any proposed agency action after their name is placed on the list.

BOARD OF TRUSTEES
MONTANA HISTORICAL SOCIETY

By: 
William Holt, President


Rule Reviewer

Certified to the Secretary of State February 2, 1998.

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

| | |
|---|---|
| In the matter of the proposed adoption of new rules creating "primitive fishing access site designation" where site development and maintenance are limited. | NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES FOR PRIMITIVE FISHING ACCESS SITE DESIGNATION |

To: All Interested Persons.

1. The Montana Fish, Wildlife and Parks Commission (commission) will hold public hearings to consider the adoption of rules I through VIII, as proposed in this notice. The hearing dates are as follows:

March 4, 1998, 7:00 p.m.
FWP Region 5 Office
2300 Lake Elmo Drive
Billings, MT 59105

March 9, 1998, 7:00 p.m.
FWP Region 2 Office
3201 Spurgin Road
Missoula, MT 59804

March 18, 1998, 7:00 p.m.
Fish, Wildlife, and Parks Headquarters
1420 East 6th Avenue
Helena, MT 59620

2. The proposed new rules will read as follows:

"RULE I DESIGNATION OF PRIMITIVE FISHING ACCESS SITES

(1) The department hereby designates certain fishing access sites as "primitive fishing access sites." The primary purpose of a fishing access site (FAS) owned or controlled by the department is to provide public access to public waters. Many of these sites should have a low level of development in keeping with their primary purpose. Therefore, future developments of primitive sites will be commensurate with the department's ability to maintain the sites for the primary purpose of providing access to public waters."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE II PRIMITIVE FISHING ACCESS SITES IN REGION 1

(1) The following sites are designated as primitive fishing access sites within Region 1:

(a) Ashley Creek;
(b) Beaver Lake;
(c) Blanchard Lake;
(d) Bootjack Lake;
(e) Ducharme;
(f) Frank Lake;
(g) Horseshoe Lake - Ferndale;

(h) Kokannee Bend;
(i) Loon Lake - Eureka;
(j) Loon Lake - Ferndale;
(k) Marle Lake;
(l) Marlowe Springs;
(m) McKay Landing;
(n) Moran Lake;
(o) Pressentine;
(p) Savage Lake;
(q) Skyles Lake;
(r) Spring Creek;
(s) Swan River;
(t) Whitefish."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE III PRIMITIVE FISHING ACCESS SITES IN REGION 2

(1) The following sites are designated as primitive fishing access sites within Region 2:

(a) Aunt Molly;
(b) Belmont Creek;
(c) Daigles Eddy;
(d) Forks;
(e) Harry Morgan;
(f) Poker Joe;
(g) Red Rock;
(h) River Junction;
(i) Sheep Flats;
(j) Thibodeau;
(k) Whitaker Bridge."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE IV PRIMITIVE FISHING ACCESS SITES IN REGION 3

(1) The following sites are designated as primitive fishing access sites within Region 3:

(a) Axtell Bridge;
(b) Blackbird;
(c) Cardwell;
(d) Cherry River;
(e) Chicory;
(f) Cobblestone;
(g) Corrals;
(h) Corwin Springs;
(i) Dewey;
(j) Drouillard;
(k) Emigrant;
(l) Emigrant West;
(m) Erwin Bridge;
(n) Fairweather;
(o) Four Corners;
(p) Free River;
(q) Gallatin Forks;
(r) Glen;
(s) Greenwood Bottoms;

(t) Grey Owl;
(u) Henneberry;
(v) High Bridge;
(w) High Road;
(x) Highway 89;
(y) Kalsta Bridge;
(z) Kirk Wildlife Refuge;
(aa) Kountz Bridge;
(ab) Limespur;
(ac) Maidenrock;
(ad) Mallard's Rest;
(ae) Mayflower Bridge;
(af) McAtee Bridge;
(ag) Meadow Lake;
(ah) Milwaukee;
(ai) Notch Bottom;
(aj) Paradise;
(ak) Parrot Castle;
(al) Pennington Bridge;
(am) Pine Creek;
(an) Poindexter Slough;
(ao) Point of Rocks;
(ap) Powerhouse;
(aq) Queen of the Waters;
(ar) Salmon Fly;
(as) Sappington Bridge;
(at) Shed's Bridge;
(au) Sheep Mountain;
(av) Silver Star;
(aw) Slip & Slide;
(ax) Springdale Bridge;
(ay) Tizer Lakes;
(az) Toston;
(ba) Williams Bridge."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE V PRIMITIVE FISHING ACCESS SITES IN REGION 4

(1) The following sites are designated as primitive fishing access sites within Region 4:

(a) Arod Lake;
(b) Big Bend;
(c) Brewery Flats;
(d) Carroll Trail;
(e) Carter Ferry;
(f) Dearborn;
(g) Dunes;
(h) Eagle Island;
(i) Fort Shaw;
(j) Hardy Bridge;
(k) Hruska;
(l) Lichen Cliff;
(m) Loma Bridge;
(n) Lower Carter Pond;
(o) Mid-Canon;

(p) Prickly Pear;
(q) Spite Hill;
(r) Spring Hill;
(s) Table Rock;
(t) Truly Take-Out;
(u) Upper Carter Pond;
(v) White Bear."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE VI PRIMITIVE FISHING ACCESS SITES IN REGION 5 (1) The following sites are designated as primitive fishing access sites within Region 5:
(a) Absaroka;
(b) Beaver Lodge;
(c) Big Rock;
(d) Bridger Bend;
(e) Bull Springs;
(f) East Bridge;
(g) General Custer;
(h) Grant Marsh;
(i) Homestead Isle;
(j) Horsethief Station;
(k) Two Leggins."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE VII PRIMITIVE FISHING ACCESS SITES IN REGION 6 (1) The following sites are designated as primitive fishing access sites within Region 6:
(a) Bjornberg Bridge;
(b) Cole Ponds;
(c) Faber Reservoir;
(d) Whitetail Reservoir;
(e) Region VII;
(f) Amelia Island;
(g) Broadus Bridge;
(h) Diamond Willow;
(i) Elk Island;
(j) Fallon Bridge;
(k) Joe's Island (adjacent to Intake FAS);
(l) Little Powder River;
(m) Myers Bridge;
(n) Powder River Depot;
(o) Seven Sisters;
(p) Twelve Mile Dam."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE VIII DEVELOPMENTS AND IMPROVEMENTS ALLOWED AT FISHING ACCESS SITES (1) The following management and development limitations will be applied to primitive fishing access sites. All new or future developments or improvements for primitive fishing access sites are limited as provided in this rule:

(a) basic weed control;
(b) perimeter fencing (if necessary);
(c) access road - to maintain in the condition as when the site was purchased or to be developed as a single lane gravel road only;
(d) no paved roads or paved parking areas;
(e) sign designating site and directional sign from the nearest public road and secondary highway;
(f) no latrine unless necessary for sanitary reasons;
(g) no potable water available;
(h) single lane boat ramp only;
(i) no developed camping or picnic areas."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

3. During the 1993 legislative session, the legislature passed House Bill 314 which established a primitive state park designation. The purpose of the legislation was to ensure that the future development and improvements at specific state parks was kept to a minimal level. A similar limitation on development of a designated primitive fishing access sites through rulemaking is appropriate. Development at these sites will be kept to a minimum, so that they serve the primary purpose of providing access to public waters.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Thomas Reilly, FAS program coordinator, Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701, and must be received no later than March 20, 1998.

5. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701.

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

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE AND PARKS COMMISSION

Patrick J. Graham, Secretary

Certified to the Secretary of State on February 2, 1998.

BEFORE THE DEPARTMENT OF CORRECTIONS
STATE OF MONTANA

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|---|---|
| In the matter of the adoption of new rules I through X pertaining to the siting, establishment, and expansion of pre-release centers or juvenile transition centers in the State of Montana | NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES |

TO: All Interested Persons

1. On Monday, March 16, 1998, at 9:30 a.m., a public hearing will be held in the downstairs conference room at the Department of Corrections, 1539 11th Avenue, Helena, Montana, to consider the adoption of new rules I through X pertaining to the siting, establishment, and expansion of pre-release centers and juvenile transition centers in Montana.

2. Any person/party may be placed on the Department of Corrections' list of interested persons/parties by contacting Yoli Fitzsimmons, Community Corrections Division, in writing, at PO Box 201301, Helena, MT 59620-1301; telephone (406) 444-4906; FAX (406) 444-4920.

3. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this document. If you need to request an accommodation, please contact Yoli Fitzsimmons at least one week prior to the hearing to advise us of the nature of the accommodation you need.

4. The proposed new rules provide as follows:

RULE I DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Center" means pre-release center or juvenile transition center.

(2) "Community" means the county in which the department determines a center is needed.

(3) "Department" means department of corrections.

(4) "Juvenile transition center" means a residential facility located in a community for juvenile offenders which offers the offender room and board, supervision, counseling, education opportunities, and treatment.

(5) "Pre-release center" means a residential facility located in a community for adult offenders which offers the offender room and board, supervision, counseling and treatment.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE II DETERMINATION OF NEED (1) Before proceeding with plans to site a pre-release center or juvenile transition center, at the community's or department's request, the department shall make a preliminary determination that there is a need for a center in the community being considered. The department shall:

(a) determine the type of center needed; and

(b) develop written rationale for documenting the need for a center including demographic and statistical data on the general and offender population of the area, and its relationship to the correctional needs of the state.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE III DETERMINATION OF COMMUNITY MINIMUM REQUIREMENTS (1) The department must determine that the community being considered meets the following minimum requirements:

(a) The community must have access to a law enforcement agency capable of emergency response within fifteen minutes.

(b) Twenty-four hour emergency medical and fire protection services must be available.

(i) Fire protection must be available by a professional fire protection service. Appropriate fire protection services and response time will be determined by the state fire marshal or the authority having jurisdiction.

(ii) Medical transportation services must be available from a licensed ambulance service.

(c) The following services must be available within the community:

(i) appropriate mental health and chemical dependency services;

(ii) adequate job opportunities for the resident population as determined by appropriate state agencies;

(iii) opportunities for basic education, GED, technical training and post secondary education; and

(iv) opportunities for volunteer and community service.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE IV OBTAINING SUPPORT OF COMMUNITY OFFICIALS (1) The department shall determine that community officials support a pre-release center or juvenile transition center in their community. The department shall contact the following community officials to determine their support for a center in the community being considered:

(a) city and/or county commissioners;
(b) county attorney;
(c) chief public defender;
(d) mayor or chief executive officer of city or town;
(e) local district judges;
(f) local state legislators;
(g) sheriff;
(h) chief juvenile probation officer; and
(i) if applicable, the chief of police.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE V NOTIFICATION OF MEDIA (1) Once the department determines that community officials are interested in a pre-release center or juvenile transition center, the department will inform the media of the proposed interest. The media should receive the following information:

(a) statistics demonstrating the need for a center in the proposed community;

(b) proposed process as outlined in these rules; and

(c) the role of the public in the process as outlined in these rules.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE VI WORKING COMMITTEE (1) The department will meet with community officials to form a working committee.

(2) The working committee should be representative of the diverse interests and areas within the community being considered. Working committee members should be appointed by city and county commissions.

(3) The goal of the working committee will be to:

(a) educate the community;

(b) determine if there is public support for a center; and

(c) if there is support for a center:

(i) identify an appropriate geographical area within the community for that center; and

(ii) select the most appropriate geographical area within the community for that center.

(4) The committee will develop a plan to educate themselves and the public, specifically addressing the following:

(a) the type of center;

(b) the rationale for choosing this community;

(c) the services that will be provided; and

(d) the process the department will use to screen offenders for the center.

(5) The working committee and the department shall agree upon and establish time lines for the siting of the center and the requisite tasks involved in the siting.

(6) The area the committee chooses must comply with all applicable laws, codes, ordinances and acts.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE VII PUBLIC INVOLVEMENT PROCESS (1) In order to determine the level of public support for a center and for a specific geographic area within the community, the committee will develop a process to include the public in a meaningful way.

(a) The committee, with assistance from community officials and the department, shall schedule and participate in an informational public meeting process to determine the level of community support for a center.

(b) If there is sufficient public support, then the committee shall determine the level of community support for specific geographic areas within the community.

(2) The public involvement process will also include the following:

(a) The committee will involve local organizations such as service groups and local government advisory boards to determine public support for a center and to assist the committee to select a specific geographic area for the center;

(b) The committee will involve the general public in the process to review the proposal and siting criteria;

(c) A comprehensive, statistically valid and non-biased survey will be conducted to determine the level of support of community officials and the public for a center; and

(d) Should the committee determine there is community support for a center, the committee moves forward to determine the specific geographic area within the community for the center.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE VIII COMPREHENSIVE SURVEY (1) A comprehensive, statistically valid and non-biased survey will be conducted to determine the level of support of community officials and the public for the specific geographic area which the working committee proposes.

(2) The department will contract with a professional consulting firm to survey the following local officials:

(a) city and/or county commissioners;

(b) county attorney;

(c) chief public defender;

(d) mayor or chief executive officer of city or town;

(e) local district judges;

(f) state legislators who represent any portion of the county of the proposed geographic area;

(g) sheriff; and

(h) if applicable, the chief of police.

(3) The department will contract with a professional consulting firm to survey the general public in the area impacted by the specific geographic area proposed.

(4) The working committee must approve both surveys.

(5) The department cannot site a center in the proposed specific geographic area without the support of community officials and citizens.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE IX PUBLIC HEARING (1) The committee, with the assistance of community officials and the department, shall conduct a public hearing held in conformity with Title 2, chapter 3, MCA.

(2) The department shall publish notice of the hearing in a newspaper of general circulation within the proposed specific geographic area reasonably in advance of the hearing. The department shall also mail notice of the hearing to all

interested parties who have registered with the department as interested persons.

(3) The department shall allow interested persons the opportunity to submit data, views, or arguments orally or in writing prior to the hearing, at the hearing, and for a reasonable time after the hearing.

(4) The hearing must be held in an accessible facility in the specific geographic area proposed for the center.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

RULE X REQUEST FOR PROPOSALS (1) After the committee has approved a specific geographic area of the community for the center, the department shall request proposals for the center and shall choose the best proposal consistent with the criteria developed by the department.

(2) Proposers shall submit proposals based on a specific site within the geographic area selected by the committee.

AUTH: 53-1-203, MCA IMP: 53-1-203, MCA

5. The adoption of new rules I through X is reasonably necessary to implement the legislative directive pertaining to the siting, establishment, and expansion of pre-release centers and juvenile transition centers in Montana, and to ensure public participation in the siting process.

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Yoli Fitzsimmons, Department of Corrections, PO Box 201301, Helena, MT 59620-1301, and must be received no later than March 23, 1998.

7. Lois Adams, Policy Coordinator, has been designated to preside over and conduct the hearing.

Rick Day, Director
Department of Corrections

David L. Ohler
Rule Reviewer

Certified to the Secretary of State, February 2, 1998.

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

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| In the matter of the proposed amendment of ARM 24.29.1425, and the adoption of three new rules related to hospital rates payable in workers' compensation cases | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.29.1425 AND THE PROPOSED ADOPTION OF THREE NEW RULES |

TO ALL INTERESTED PERSONS:

1. On March 5, 1998, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.29.1425 and the adoption of three new rules related to the rates payable to hospitals in workers' compensation and occupational disease cases.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., March 2, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulations Bureau, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to amend ARM 24.29.1425 as follows: (new matter underlined, deleted matter interlined)

24.29.1425 RATES FOR HOSPITAL SERVICES PROVIDED PRIOR TO JULY 1, 1997 (1) Beginning January 1, 1988, through December 31, 1991, hospital rates payable by workers' compensation insurers shall not exceed those rates prevailing in the hospital in effect on January 1, 1988.

(2) Beginning January 1, 1992, hospital rates payable shall not exceed the product of the rates prevailing in the hospital and the applicable discount factor issued by the department. Applicable discount factors are identified for inpatient services according to the date of discharge, and for outpatient services according to the date of service. The department shall establish discount factors according to the following methodology:

(a) The discount factor in effect for a hospital beginning January 1, 1992, is the discount factor in effect on December 31, 1991, multiplied by 1.0402, and divided by the

quantity 1 + ORI, where ORI is the overall percent rate increase, if any, adopted by the hospital for January 1, 1992, divided by 100. Discount factors in effect December 31, 1991, are those established by the department in accordance with ~~subsection~~ (1). These discount factors are available from the department upon request.

(b) The discount factor in effect for a hospital beginning January 1, 1993, is the discount factor in effect on December 31, 1992, multiplied by the quantity 1 + AWW93, and divided by the quantity 1 + ORI, where AWW93 is the percent increase in the state's average weekly wage over fiscal year 1992, divided by 100, and ORI is the overall percent rate increase, if any, adopted by the hospital for January 1, 1993, divided by 100.

(c) In addition to the dates given in ~~subsections~~ (2)(a) and (2)(b), the discount factor for a hospital is also updated on any date(s) through December 31, 1993, for which a rate change is adopted by the hospital. The discount factor in effect beginning the date of rate adoption is the previous discount factor divided by the quantity 1 + ORI, where ORI is the overall percent rate increase adopted by the hospital, divided by 100.

(3)(a) The discount factor in effect for a hospital from January 1, 1994 through June 30, 1997, is the discount factor in effect on December 31 of the previous year, multiplied by the quantity 1 + AWW (current year), and divided by the quantity 1 + ORI, where AWW (current year) is the percentage increase in the state's average weekly wage over the previous calendar year, divided by 100, and ORI is the overall percentage rate increase, if any, adopted by the hospital on January 1, divided by 100.

(b) In addition to the dates given in (3)(a), the discount factor for a hospital is also updated on any date(s) through June 30, 1997, for which a rate change is adopted by the hospital. The discount factor in effect beginning the date of rate adoption is the previous discount factor divided by the quantity 1 + ORI, where ORI is the overall percentage rate increase adopted by the hospital, divided by 100.

~~(3)~~(4) The overall rate increase adopted by a hospital shall be reported to the department on a department-approved form before the effective date of any rate change. Notification by the Montana hospitals rate review system of the amount and date of an overall rate increase shall be accepted in lieu of direct rate change reporting by the hospital. The department may in its discretion conduct audits of any hospital's financial records, to determine proper reporting of rate filings.

~~(4)~~(5) Charges billed by a hospital are not subject to reduction under the Montana relative value fee schedule, except that hospital professional fees may be paid according to either the fee schedule or the applicable hospital rates, but not both.

~~(5)~~(6) Insurers shall make timely payments of hospital bills. In cases where there is no dispute over liability the insurer shall, within 30 days of receipt of a hospital's charges, either pay the charges according to the rates

established ~~in subsection (2)~~ by this rule, or notify the hospital that additional information is requested, and specify that information. The insurer shall then pay the charges within 30 days of receipt of the requested information.
AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1425 in order to specify the method by which a hospital (other than a hospital licensed as medical assistance facility) January 1, 1997, discount factor is calculated. The January 1, 1997, discount factor is then used in determining the post-July 1, 1997, rate or discount factor, as provided by NEW RULE I, below. The amendments are reasonably necessary to implement the provisions of Chapter 308, L. of 1997 (Senate Bill 331).

3. The Department of Labor and Industry proposes to adopt three new rules as follows:

NEW RULE I HOSPITAL SERVICE RULES (1) Any overall rate change adopted by a hospital shall be reported to the department on a department-approved form before the effective date of the rate change. The department may in its discretion conduct audits of any hospital's financial records to determine proper reporting of rate change filings.

(2) Charges billed by a hospital are not subject to reduction under the Montana relative value fee schedule, except that hospital professional fees may be paid according to either the fee schedule or the applicable hospital rates, but not both. In the event that the department adopts a relative value fee schedule for out-patient services, this rule will be amended.

(3) Insurers shall make timely payments of hospital bills. In cases where there is no dispute over liability the insurer shall, within 30 days of receipt of a hospital's charges, either pay the charges according to the rates established by these rules, or notify the hospital that additional information is requested, and specify that information. The insurer shall then pay the charges within 30 days of receipt of the requested information.
AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

NEW RULE II HOSPITAL RATES FOR JULY 1, 1997, THROUGH JUNE 30, 1998 (1) For hospital services rendered by a hospital not licensed as a medical assistance facility under Title 50, chapter 5, MCA, the amount payable by an insurer for those services performed during the period starting July 1, 1997, and ending March 31, 1998, is the higher of:

(a) 69% of the hospital's usual and customary charges, as those charges were in existence for the hospital on January 1, 1997; or

(b) the discount factor established by the department that was in effect on June 30, 1997, as calculated pursuant to ARM 24.29.1425.

(2) Starting April 1, 1998, for hospital services rendered

by a hospital, other than one licensed as a medical assistance facility under Title 50, chapter 5, MCA, that changes its usual and customary charges between January 1, 1997, and June 30, 1998, must have its rates adjusted by the use of a discount factor. The discount factor is computed by taking the existing discount factor for that hospital, divided by the quantity 1 + ORI, where ORI is the overall percentage rate change adopted by the hospital, divided by 100.

(3) As an example of the application of this rule, if a hospital changes its rates between January 1, 1997, and June 30, 1998, the discount factor is adjusted before determining whether use of (1)(a) or (1)(b) above yields the greater payment. Assume that a hospital's January 1, 1997 discount factor is .5655 and the hospital increases its rates by 2% on March 1. The rate provided by (1)(a) is calculated as follows: A $100 charge times 69% yields a $69.00 payment. If rates are increased by 2%, the $69.00 payment divided by the increased amount billed of $102 yields an adjusted discount factor of .6765. The rate provided by (1)(b) is calculated as follows: A $100 charge times the discount factor, which in this example is .5655 yields a payment of $56.55. If rates have been increased by 2%, the $56.55 payment divided by the increased amount billed of $102 yields an adjusted discount factor of .5544. Because (1)(a) yields a $69.00 payment with a discount factor of .6765 and (1)(b) only yields a $56.55 payment with a discount factor of .5544, the greater payment is chosen. The discount factor for the hospital in this example is established as .6765, and is effective for services rendered on or after April 1, 1998.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

NEW RULE III HOSPITAL RATES BEGINNING JULY 1, 1998

(1) Any hospital, other than one licensed as a medical assistance facility under Title 50, chapter 5, MCA, that changes its usual and customary charges on or after July 1, 1998, must have its rates adjusted by the use of a discount factor. The discount factor is computed by taking the existing discount factor for that hospital, divided by the quantity 1 + ORI, where ORI is the overall percentage rate change adopted by the hospital, divided by 100.

(2) For hospital services rendered by a hospital not licensed as a medical assistance facility under Title 50, chapter 5, MCA, the amount payable by an insurer for those services performed during the fiscal year starting July 1, 1998, is that hospital's discount factor in effect on June 30, 1998, plus the percentage increase in the state's average weekly wage. The adjusted discount factor is computed by multiplying the existing discount factor for that hospital times (1 + the percentage increase).

(3) The department will thereafter recalculate each hospital's discount factor to take into account changes to the hospital's usual and customary charges. The department will also annually recalculate, effective July 1 of each year, each

hospital's discount factor to take into account the percentage increase in the state's average weekly wages made during the previous calendar year. If for any year the state's average weekly wage does not increase, the rates will be held at the existing level until there is a net increase in the state's average weekly wage.
AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt the three proposed new rules. Proposed NEW RULE I is reasonably necessary in order to require that hospitals furnish rate change information to the department. The former source for most rate change information, HealthShares Montana (formerly the Montana hospitals rate review system), was dissolved effective January 31, 1998. Proposed NEW RULE I also provides guidance for insurers making payment pursuant to the proposed rule. Finally, the rule places both hospitals and insurers on notice that the Department will undergo rulemaking prior to adopting an out-patient fee schedule for hospitals. Chap. 308, L. of 1997 (Senate Bill 331) specifically permits the Department to adopt a fee schedule for out-patient services on or after July 1, 1998. The Department anticipates that it will propose such a fee schedule, but later than July 1, 1998.

There is reasonable necessity to adopt proposed NEW RULE II in order to implement certain provisions of Chap. 308, L. of 1997 (Senate Bill 331) related to the rate of payment made by workers' compensation insurers to hospitals. Proposed NEW RULE II is reasonably necessary to explain the methodology of setting hospital rates by calculation of a discount factor. Proposed NEW RULE II is also reasonably necessary to provide a mechanism that compensates for interim rate increases made by hospitals.

Finally, there is reasonable necessity to adopt proposed NEW RULE III in order to implement certain provisions of Chap. 308, L. of 1997 regarding annual adjustments of hospital rates to allow for increases in the state's average weekly wage. Proposed NEW RULE III is reasonably necessary to both describe the adjustment methodology and to provide for on-going discount factor adjustments as needed. NEW RULE III is reasonably necessary to avoid the Department having to annually adopt a rule describing the adjustment process for the next year. The Department further anticipates that when it proposes an out-patient fee schedule, proposed NEW RULE III will be amended to specify that it applies only to in-patient services.

The noticing of these rules was delayed while the Department attempted to informally reconcile the differing understandings of various interested parties regarding how the provisions of SB 331 should be implemented.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written

data, views or arguments may also be submitted to:

Jim Hill, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., March 12, 1998.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Legal/Centralized Services Division, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department has complied with the provisions of 2-4-302, MCA, regarding notification of the bill sponsor about the proposed action regarding these rules.

7. The Department proposes to amend and adopt these rules effective April 1, 1998. The Department reserves the right to amend and adopt only portions of the proposed rule changes, or to adopt some or all of the proposed changes at a later date.

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

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 2, 1998.

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

| | |
|---|---|
| In the matter of the proposed amendment of ARM 24.30.102, related to occupational safety and health standards for public sector employment | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.30.102 |

TO ALL INTERESTED PERSONS:

1. On March 6, 1998, at 1:30 p.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.30.102, to generally incorporate by reference the current version of federal health and safety regulations.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., March 2, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Safety Bureau, Attn: Mr. Dave Folsom, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Mr. Folsom.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) Section 50-71-311, MCA, of the Montana Safety Act provides that the department of labor and industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal Occupational Safety and Health Act of 1970 does not include safety standards coverage for employees of this state or political subdivisions of this state. It is the intent of this rule that public sector employees of this state and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards for employments covered by the federal Occupational Safety and Health Act of 1970. The department is therefore adopting by reference certain occupational safety and health standards, adopted by the United States Secretary of Labor under the Occupational Safety and Health Act of 1970. The department has determined, with the assent of the secretary of state, that publication of the rules

would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) As used in the rules adopted by reference in ~~subsection~~ (3) below, unless the context clearly requires otherwise, the following definitions apply:

(a) "Act" means the Montana Safety Act (50-71-101 through 50-71-334, MCA).

(b) "Assistant secretary of labor" or "secretary" means the commissioner of the Montana department of labor and industry.

(c) "Employee" or "public sector employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of a public sector employer, as defined below, under any appointment or contract of hire, expressed or implied, oral or written.

(d) "Employer" or "public sector employer" means this state and each county, city ~~and county~~, city school district, irrigation district, all other districts established by law and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.

(3) The department of labor and industry hereby adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of July 1, ~~1996~~ 1997:

(a) Title 29, Part 1910;

(b) the provisions of 29 CFR 1910.146 appendix C, example 1, part A, as mandatory provisions that are applicable to all confined spaces; and

(c) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of July 1, ~~1996~~ 1997, are considered under this rule as the printed form of the safety code adopted under this subsection, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code adopted under this subsection. All the provisions, remedies, and penalties found in the Montana Safety Act (50-71-101 through 50-71-334, MCA) apply to the administration of the provisions of the safety code adopted by this rule.

(5) For convenience, the federal number of a particular section found in the code of federal regulations should be used when referring to a section in the safety code adopted in

~~subsection~~ (3) above. The federal number is to be preceded by the term (5). Thus, when section 1910.27 of the Code of Federal Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102(5) 1910.27".
AUTH: 50-71-311, MCA
IMP: 50-71-311 and 50-71-312, MCA

REASON: The proposed amendments to this rule are reasonably necessary to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). The Department finds that it is reasonably necessary to annually update this rule to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The current version of the state rule incorporates the 1996 version of the federal rules. In the past year, there have been some significant changes in CFR parts 1910 and 1926. The July 1, 1997, version is proposed for incorporation by reference because it is the most recent version generally available in printed form, and was published by the U.S. Government Printing Office in printed form on or about January 1, 1998.

3. 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 Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., March 13, 1998.

4. In addition to the publication of this notice in the Montana Administrative Register, an abbreviated Notice of Public Hearing is being published in one or more daily newspapers of general circulation in this state, as required by 50-71-302, MCA. Persons interested in viewing or obtaining a copy of the abbreviated Notice of Public Hearing published in a newspaper should contact Mr. Folsom at the address listed in paragraph 1 of this Notice.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Legal/Centralized Services Division, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTD (406) 444-0532.

6. The Department is not required by 2-4-302, MCA, to notify any bill sponsor about the proposed action regarding this

rule action.

7. The Department proposes to make these amendments and repeals effective May 1, 1998; however, the Department reserves the right to make the amendments effective at a later date, or not at all.

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

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 2, 1998.

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

| | |
|---|---|
| In the matter of the proposed amendment of ARM 24.30.1302, related to safety standards for coal mines | ) NOTICE OF PUBLIC HEARING ON ) PROPOSED AMENDMENT OF ) ARM 24.30.1302 ) |

TO ALL INTERESTED PERSONS:

1. On March 6, 1998, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.30.1302, to generally incorporate by reference the current version of federal safety regulations applicable to coal mines.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., March 2, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Safety Bureau, Attn: Mr. Dave Folsom, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Mr. Folsom.

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

24.30.1302 COAL MINING CODE (1) ~~Scope and purpose. Section 50-73-103 MCA of the Montana coal mining code, provides that the division of workers' compensation ". . . may adopt rules to carry out the provisions of . . . (the coal mining code), and safety standards for all coal mines in . . . (Montana)." The federal government has adopted safety regulations for coal mining, and it is the intent of the rules adopted below under the Montana coal mining code that employees in this state who work in coal mines shall be protected by, with minor exceptions, the same safety regulations adopted by the federal government. The division is, therefore, adopting by reference certain safety rules adopted by the federal government which are found in the code of federal regulations as indicated below. Under section 2-4-307 MCA, the division consents to the omission from publication in the administrative rules of Montana or register the rules adopted below because the division has determined, with the assent of the secretary of state, that publication of the rules would be unduly cumbersome and expensive. The rules in printed form are available and copies may be obtained on application to the division of workers'~~

~~compensation.~~

~~(2) Definitions.~~ As used in the rules adopted in ~~subsection (3)~~ (2) below, unless the context clearly requires otherwise, the following definitions apply:

(a) "Act" means the Montana coal mining code.

(b) "Bureau of mines" means the ~~division of workers' compensation~~ department of labor and industry.

(c) "Certified" or "registered" means a person certified or registered by the ~~division~~ department of labor and industry.

(d) "Coal mine district manager" means the ~~division of workers' compensation~~ department of labor and industry.

(e) "Department of the interior" means the ~~division of workers' compensation~~ department of labor and industry.

(f) "Mining enforcement and safety administration" means the ~~division of workers' compensation~~ department of labor and industry.

(g) "Qualified person" means~~, as the context requires:~~

~~(1)~~ an individual deemed qualified by the ~~division~~ department of labor and industry and designated by the operator to make tests and examination required by the ~~division~~ department of labor and industry.

(h) "Secretary" means the administrator of the employment relations division of ~~workers' compensation~~ department of labor and industry.

~~(3)~~(2) ~~Adoption by reference.~~ The ~~division of workers' compensation hereby~~ department of labor and industry adopts under ~~section~~ 50-73-103, MCA, coal mine safety standards to protect employees who work in coal mines in this state. ~~These~~ The following standards are adopted by reference to certain safety and health rules and standards that have been adopted by the federal government and are found in the code of federal regulations, ~~volume~~ title 30, revised as of July 1, ~~1974~~, 1997; ~~sections 70.1 through 70.210, 70.240 through 70.250, 70.270, 70.271, 70.300, through 70.506, 71.1 through 71.105, 71.200 through 71.301, 71.400 through 74.3, 75.1 through 75.154, 75.159 through 75.1200-1, 75.1201 through 77.104, 77.106 through 77.1916, and 81.1 through 82.20.~~

(a) 30 CFR 41.1 through 30 CFR 41.30;

(b) 30 CFR 70.1 through 30 CFR 70.210;

(c) 30 CFR 70.220;

(d) 30 CFR 70.300 through 70.511;

(e) 30 CFR 71.1 through 71.300;

(f) 30 CFR 70.1900;

(g) 30 CFR 71.400 through 30 CFR 74.3;

(h) 30 CFR 75.1 through 30 CFR 75.154;

(i) 30 CFR 75.159 through 30 CFR 1200-1;

(j) 30 CFR 75.1201 through 30 CFR 77.104; and

(k) 30 CFR 77.106 through 77.1916; but

(i) as to the requirements of 30 CFR 807.1, the minimum height for high voltage power lines is 20 feet above the ground; and

(ii) in addition to the requirements of 30 CFR 77.1710, there are additional requirements that:

(A) except for personnel who work in an office or on

clerical matters under nonhazardous conditions, rings may not be worn around a mine or plant; and

(B) persons with long hair shall have their hair confined while working around moving equipment and machinery.

(3) All sections adopted and referred to above are binding on every employer who is covered by the Montana coal mining code even though the sections are not separately printed in a separate state pamphlet and are omitted from publication in the Montana ~~a~~Administrative ~~r~~Register and the ~~a~~Administrative ~~r~~Rules of Montana. The sections referred to above that are contained in the code of federal regulations referred to above are considered under this rule as the printed form of the safety rules and standards adopted under this ~~subsection~~ rule, and ~~shall~~ must be used by the ~~division~~ department of labor and industry and all employers, employees, and other persons when referring to the provisions of the safety rules and standards adopted in this ~~subsection~~ rule. All the provisions, remedies, and penalties found in the Montana coal mining code (~~sections~~ 50-73-101 through 50-73-418, MCA) apply to the administration of the provisions of the safety rules and standards adopted in this ~~subsection~~ rule. . A copy of the rules adopted by reference are available in printed form by contacting the Montana Department of Labor and Industry, Employment Relations Division, Safety Bureau, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

~~(4) Changes and additions to sections adopted in subsection (3) above.~~

~~(a) Section 77.807.1 adopted in subsection (3) above is changed to read that in no event shall any high voltage power line be installed less than 20 feet above ground.~~

~~(b) Section 77.1710 adopted in subsection (3) above is amended by adding to the section subsections (j) and (k) which provide:~~

~~(j) Except for personnel who work in an office or on clerical matters under nonhazardous conditions, rings shall not be worn while working around a mine or plant.~~

~~(k) Persons with long hair shall have their hair confined while working around moving equipment and machinery.~~

~~(5)~~ (4) ~~Numbering.~~ For convenience ~~purposes~~, the federal number of a particular section found in the code of federal regulations ~~referred to in subsection (3) of this section shall~~ should be used when referring to a section in the safety rules and standards adopted in subsection ~~(3)~~ (2) above. The federal number ~~shall~~ is to be preceded by the term ~~(6)~~ (4). Thus, when section 70.100 of the code of federal regulations pertaining to dust standards is to be referred to or cited, the correct cite would be "subsection ~~(6)~~ (4) 70.100 of section 24.30.1302 ARM" or "ARM 24.30.1302(4) 70.100".

AUTH: 50-71-301, MCA
IMP: 50-73-103, MCA

REASON: There is reasonable necessity to update Montana's safety rules for coal mines in order for the Department to

respond to the concerns raised by some coal mine operators that the mines are required to comply with current federal safety standards by the federal government, and that Montana's requirements may sometimes be inconsistent with, or contradictory to, those federal safety rules. Incorporation by reference of federal rules also minimizes the need for mine operators to track compliance with two potentially different sets of rules, and to have two sets of rules available for the operator's personnel to study. The July 1, 1997, version of the referenced federal rules is the most recent, widely available version and is available in both printed and electronic form. The July 1, 1997, version was published by the U.S. Government Printing Office in printed form on or about January 1, 1998. Additionally, there is reasonable necessity to make a number of technical and style changes in the rule, in order to make the rule comply with current style requirements of the Administrative Rule Bureau of the Secretary of State's office and to update the agency name and address.

3. 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 Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., March 13, 1998.

4. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Legal/Centralized Services Division, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

5. The Department is not required by 2-4-302, MCA, to notify a bill sponsor about the proposed action regarding this rule.

6. The Department proposes to make these amendments effective May 1, 1998; however, the Department reserves the right to make the amendments effective at a later date, or not at all.

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

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 2, 1998.

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

| | | |
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| In the matter of the proposed adoption of rules I through XXIII and the repeal of rules 46.30.1501, 46.30.1502, 46.30.1507, 46.30.1508, 46.30.1513 through 46.30.1516, 46.30.1520 through 46.30.1522, 46.30.1525, 46.30.1532 through 46.30.1535, 46.30.1538, 46.30.1541, 46.30.1542, 46.30.1543, and 46.30.1549 pertaining to child support enforcement guidelines | ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF EXTENSION OF COMMENT PERIOD |

TO: All Interested Persons

1. On January 29, 1998, the Department of Public Health and Human Services published notice of the proposed adoption of rules I through XXIII and the repeal of rules 46.30.1501, 46.30.1502, 46.30.1507, 46.30.1508, 46.30.1513 through 46.30.1516, 46.30.1520 through 46.30.1522, 46.30.1525, 46.30.1532 through 46.30.1535, 46.30.1538, 46.30.1541, 46.30.1542, 46.30.1543, and 46.30.1549 pertaining to child support enforcement guidelines at page 317 of the 1993 Montana Administrative Register, issue number 2.

2. Paragraph 5 of this notice gave interested parties until February 12, 1998, to submit written data, views or arguments to the Department. The Department is extending the close of comment period until 5:00 p.m. on March 5, 1998. By extending the close of comment period, the public and interested parties will have a period of time after the proposed rule hearing (to be held by Metnet Conference on February 23, 1998) to present additional views and comments that may arise as a result of the hearing.

3. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than March 5, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State February 2, 1998.

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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| In the matter of the amendment of rules pertaining to licensure of out-of-state applicants, examinations, individual seal, renewals, unprofessional conduct, fees, architect partnerships, screening committee, and solicitation of business by architects from other states and the adoption of a new rule pertaining to use of title | NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF ARCHITECTURE |

TO: All Interested Persons:

1. On December 1, 1997, the Board of Architects published a notice of proposed amendment and adoption of rules pertaining to the practice of architecture at page 2142, 1997 Montana Administrative Register, issue number 23.

2. The Board has amended ARM 8.6.405, 8.6.407, 8.6.410, 8.6.413, 8.6.415, 8.6.416 and 8.6.418, and adopted new rule I (8.6.419) exactly as proposed. The Board has amended ARM 8.6.409 and 8.6.412 as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.6.409 INDIVIDUAL SEAL (1) Every licensed architect shall have a seal, the impression of which must contain the name of the architect, the city and state of the architect's place of business, the architect's Montana license number, and the words "LICENSED ARCHITECT, STATE OF MONTANA", with which the architect shall stamp and sign all drawings and specifications issued from the architect's office for use in this state.

~~(2) Every licensed architect shall have a seal which shall contain the information required by the board. All technical submissions prepared by such architect, or under his or her responsible control, shall be stamped with the impression of his or er seal, which shall mean that the architect was in responsible control over the content of such technical submissions during their preparation and has applied the required professional standard of care. No licensed architect may sign or seal technical submissions unless they were prepared by or under the responsible control of the architect; except that:~~

~~(a) the architect may sign or seal those portions of the technical submissions that were prepared by or under the responsible control of persons who are licensed under the architecture licensure laws of Montana if the architect has reviewed and adopted in whole or in part such portions and has either coordinated their preparation or integrated them into the architect's work; and~~

~~(b) the architect may sign or seal those portions of the technical submissions that are not required by this law to be prepared by or under the responsible control of an architect if the architect has reviewed and adopted in whole or in part such submissions and integrated them into his or her work.~~"

"8.6.412 UNPROFESSIONAL CONDUCT (1) through (1)(i) will remain the same as proposed.

(j) representing the work of others as the architect's own; ~~signing or sealing drawing specifications reports, or other professional work which was not prepared in accordance with ARM 8.6.409;~~

~~(i) "responsible control" shall be that amount of control over detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others, does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed knowledge of, the content of such submissions throughout their preparation;~~

(k) through (m) will remain the same as proposed."

3. The Board accepted written comments if received by December 29, 1997. The Board has thoroughly considered all comments received. Those comments, and the Board's responses, are as follows:

COMMENT NO. 1: One comment was received stating ARM 8.6.412(1)(j), Unprofessional Conduct, should add commas to the sentence "signing or sealing drawing specifications reports, ...."

RESPONSE: The Board will withdraw this proposed amendment. See response to Comment No. 4 below.

COMMENT NO. 2: One comment was received stating ARM 8.6.409, Individual Seal, should clarify whether the architect's signature, along with a hand-written notation of the city and state of the architect's place of business would meet the rule requirement. The comment also suggested clarification of whether a stamp bearing the city and state information could be placed adjacent to the official seal to meet the rule requirement.

RESPONSE: The Board noted that the rule simply requires that the architect's information now contain information on the city and state of the architect's place of business. If the architect's title block contains the city and state, or if it is handwritten in, this is sufficient. The architect's seal does not have to contain the information within one impression, if the information is contained elsewhere on the sheet, it is sufficient, and will comply with the rule.

The Board further noted that ARM 8.6.409 should contain the word "the" before the word "architect" and will make that change as noted above.

COMMENT NO. 3: One comment was received stating ARM 8.6.412(1)(j), Unprofessional Conduct, does not appear to have any "teeth" as far as the building owner is concerned relative to receiving a building permit to proceed with the project, nor does it address a corporation building the structure for itself, then transferring ownership after the building is completed.

RESPONSE: The Board stated that the recent Attorney General Opinion interpreting its practice of architecture statute states the owner is not required to hire an architect for building his own building. The AG opinion did clarify that an architect is needed for pre-fabricated metal buildings and other similar situations. The statute on the definition of architecture, 37-65-102(5), MCA, already requires a licensed architect in all other situations which are not exempt.

COMMENT NO. 4: Two comments were received stating ARM 8.6.412(1)(j) would seem to preclude Montana architects from taking responsibility for (after adequate review) drawings for buildings that may be professionally prepared by others and re-used in Montana locations. While the rule was intended to protect the public from architects stamping the work of others without proper review and acceptance of the responsibility, it may actually cause unnecessary costs to redraw plans, and licensure of out-of-state architects who are less familiar with Montana's climate, in order for their plans to be site adapted in Montana. The comment suggested different wording to be used for the rule. In addition, the placement of the definition of "responsible control" within this rule implies that reviewing or correcting technical submissions by others does not constitute responsible control.

RESPONSE: The Board agreed with the comments, and will withdraw ARM 8.6.409(2)(a) and (b) and ARM 8.6.412(1)(j) and (1)(j)(i). The Board will work on new language, and will re-propose as a new rule containing both the definition of "responsible control" and language on guidelines for signing and stamping others' work.

COMMENT NO. 5: One comment was received stating ARM 8.6.409(2)(b) on responsible control states that an architect signing or sealing portions of technical submissions is not required to be under the responsible control of an architect. The comment suggested some clarifying language or examples of situations where this was appropriate (e.g. supplemental technical submissions such as shop drawings) would save a lot of questions.

RESPONSE: See response to Comment No. 4 above. The Board will review this proposed language.

BOARD OF ARCHITECTS
PAMELA HILL, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE DEPARTMENT OF COMMERCE
BOILERS, BLASTERS AND CRANE OPERATORS PROGRAM
STATE OF MONTANA

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| In the matter of the amendment of rules pertaining to construction blasters, hoisting operators and crane operators and the adoption of a new rule pertaining to boiler engineer training | NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE BOILER, BLASTER AND CRANE OPERATOR INDUSTRY |

TO: All Interested Persons:

1. On December 1, 1997, the Boilers, Blasters and Crane Operators Program of the Department of Commerce published a notice of proposed amendment and adoption of rules pertaining to the industry at page 2149, 1997 Montana Administrative Register, issue number 23.

2. The Department has amended ARM 8.15.103, 8.15.106, 8.15.202, 8.15.203, 8.15.204, 8.15.205 and 8.15.301 and adopted new rule I (8.15.302) exactly as proposed.

3. The Department accepted written comment if received by December 29, 1997. The Department has thoroughly considered all comments received. Those comments, and the Board's responses, are as follows:

COMMENT NO. 1: Three comments were received stating ARM 8.15.301, Fee Schedule, should not increase the renewal fee for boiler engineers. The program should not have experienced a revenue shortfall, as it does not currently enforce existing regulations and fine employers that operate boilers without any license. The program should not increase fees for the legitimately licensed operators, since there are no longer any boiler inspections as there were in the past. The comments also stated there were no benefits to paying into the licensing fund, and requesting a furlough from payment of licensing fees when an operator is out of work.

RESPONSE: The Department noted that in previous years, the Boiler, Blasters, Crane Operators program was under a separate state department at the Department of Labor and Industry. At that time, boiler inspectors were funded through workers' compensation and the Department of Labor and Industry. Throughout the years, various legislative changes have caused the boiler inspectors to become part of the Building Codes Division of the Department of Commerce, where they inspect boilers for Code compliance only, and not for licensing. At the same time, all operator licensing functions were shifted to the Division of Professional and Occupational Licensing of the Department of Commerce, and license fees are the sole support of the boiler engineer licensing program. As costs have risen for administering the program over the years, the licensing fees

must keep up. Fees are always commensurate with costs, and no profit is allowed in setting fees. The fees must keep up with rising costs to keep the licensing program self-supporting.

DEPARTMENT OF COMMERCE
BOILERS, BLASTERS AND CRANE
OPERATORS PROGRAM

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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| In the matter of the amendment of rules pertaining to applications, general responsibilities and screening panel | ) ) ) ) ) | NOTICE OF AMENDMENT OF ARM 8.18.402 APPLICATIONS, 8.14.403 GENERAL RESPONSIBILITIES, 8.18.409 CONTINUING EDUCATION AND 8.18.412 SCREENING PANEL |

TO: All Interested Persons:

1. On September 22, 1997, the State Electrical Board published a notice of proposed amendment of the above-stated rules at page 1625, 1997 Montana Administrative Register, issue number 18. On December 1, 1997, the State Electrical Board published a notice of public hearing, in response to a request for a public hearing, at page 2161, 1997 Montana Administrative Register, issue number 23. The hearing was held on January 7, 1998 in Helena, Montana.

2. The Board has amended ARM 8.18.402, 8.18.409 and 8.18.412 exactly as proposed. The Board is withdrawing its proposed amendment to ARM 8.18.403 and the rule will remain as it currently reads.

3. The Board accepted oral testimony at the hearing on January 7, 1998 and also accepted written comment through January 7, 1998. The Board has thoroughly considered all comments received. Those comments, and the Board's responses, are as follows:

COMMENT NO. 1: One comment was received requesting to be notified of the outcome of the proposed amendments.

RESPONSE: The Board will add this name to its interested persons mailing list, and will send a copy of the adoption notice to this person to notify him of the outcome of the Board's consideration of the proposed rule changes.

COMMENT NO. 2: Nine comments were received stating the proposed amendments to ARM 8.18.403(3)(a) and (b) and (4)(a) and (b), General Responsibilities, were unnecessarily restrictive and unfair. The comments stated a "no active permits" status would not take into account the situations where a permit is pulled for a new home, and the rough-in is completed, bu it can be anywhere from two weeks to a year before the finish work is done. The permit would still be active during this time, but the proposed rule would not allow the electrician to seek other employment from another contractor if nothing else is going on. The comments suggested the language of the rule could be altered to allow a contractor with an open permit to work for another contractor, due to the time lapse in work on any particular project. The rule language should include a definition of "active open" and add "inactive open" permits. The comments also noted the Board staff would likely be unable to handle the numerous

communications regarding contractors' status as they moved from permit to permit.

RESPONSE: The Board agreed with the comments, and will withdraw the proposed amendment. The Board will instead work on a language revision and better wording for the rule. The new proposal will consider clarifying the language to allow for the common status of a permit being "active," but no work being required for some time.

COMMENT NO. 3: One comment was received stating ARM 8.18.403, General Responsibilities, should not prohibit a licensed electrical contractor from stopping work on a project and hiring another licensed contractor to complete the project. The rule should not dictate the same electrician who started the job must finish it for safety reasons.

RESPONSE: The Board noted that the proposed rule language would not require the same contractor to begin and end a job. The rule would not prohibit an electrical contractor from hiring another to finish a job. However, the Board is withdrawing the proposed rule amendment as noted above. See response to comment No. 2 above.

COMMENT NO. 4: One comment was received stating an electrician should not be prohibited from working for more than one employer, and the proposed rule change would not allow a contractor to engage in his business while working for another contractor. The proposed rule would put them out of business for a period of time. The comments also stated that the term "full time employment" as used in the proposed rule change should be defined as "all electrical work performed by the contracting business." The responsible electrician would then be responsible for all work performed by that contractor, whether it be one hour or one hundred hours per week. The responsible electrician will not become unfamiliar with the work being performed if he takes on another project, as the work is inspected, and the quality of work will be upheld.

RESPONSE: The Board noted its proposed rule change was not intended to make it more difficult for electricians to earn a living. The Board actually intended the opposite result, in trying to make it easier for an electrician to obtain work. However, the Board will withdraw the proposed rule amendment at this time. See response to comment No. 2 above.

COMMENT NO. 5: One comment was received stating ARM 8.18.403 will limit or control where a person works. This will not protect the public safety, which is already protected by training, testing, and other requirements for licensure.

RESPONSE: See response to Comment No. 2 above.

COMMENT NO. 6: One comment was received stating ARM 8.18.403 would require a contractor to ask the Board for permission to work elsewhere, and is therefore beyond the

jurisdiction of the Board. The Board should not regulate conduct.

RESPONSE: See response to Comment No. 2 above.

COMMENT NO. 7: Two comments were received in support of the proposed amendment to ARM 8.18.409, Continuing Education.

RESPONSE: The Board acknowledges receipt of the comments in support.

COMMENT NO. 8: Three comments were received stating ARM 8.18.412, Screening Panel, is an unnecessary rule, as the screening panel merely sets the Board farther apart from the working public, or from those who have master electricians. The screening panel does not solve any problems. Since everyone on the screening panel is already on the Board, the complaints should be brought before the full Board in the first place.

RESPONSE: The Board noted the screening panel procedure for handling complaints is mandated by 37-1-307 and 37-1-303, MCA. Since the statutes enacted by the Montana Legislature mandated this procedure, the Board must follow legislative mandates.

COMMENT NO. 9: One comment was received stating ARM 8.18.409, Continuing Education, should not use the phrase "met all other renewal requirements." Instead, the requirements should be specified. The language is too vague.

RESPONSE: The Board noted it did not want to unnecessarily repeat language that is contained elsewhere in the rules, so this phrase was used. The renewal requirements are listed in a previous rule, and the Board did not want to be redundant and repeat this in the CE rule.

STATE ELECTRICAL BOARD
CHARLES T. SWEET, CHAIRMAN

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

Annie M Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE DEPARTMENT OF COMMERCE
FIRE PREVENTION PROGRAM
STATE OF MONTANA

| | | |
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| In the matter of the amendment of rules pertaining to the practice of selling, servicing or installing fire prevention systems | ) ) ) ) | NOTICE OF AMENDMENT OF RULES PERTAINING TO FIRE PREVENTION |

TO: All Interested Persons:

1. On December 1, 1997, the Fire Prevention Program of the Department of Commerce published a notice of proposed amendment of rules pertaining to the practice of selling, servicing or installing fire prevention systems at page 2163, 1997 Montana Administrative Register, issue number 23.

2. The Department has amended ARM 8.19.108, 8.19.110, 8.19.112, 8.19.117, 8.19.118 and 8.19.119 exactly as proposed.

3. The Department accepted written comment if received by December 29, 1997. The Department has thoroughly considered all comments received. Those comments, and the Department's responses, are as follows:

COMMENT NO. 1: Six comments were received stating ARM 8.19.112(1)(b), Examination for Endorsement, does not recognize the Score Report which NICET sends directly to the Department of Commerce showing that individuals have passed the test elements necessary for certification, but are not yet certified. The two documents which the Department should require are either the Letter of Certification for NICET Level II, or the Score Report showing the candidate for NICET Level II certification has passed the elements required.

RESPONSE: The Department noted the proposed rule language already states an applicant may be "a candidate for certification." This language allow the Department to accept a Score Report, if it appropriately shows an applicant is a candidate for proper certification. The language is also flexible enough to allow the Department to accept other forms of verification for candidacy, if those are provided.

COMMENT NO. 2: Six comments were received stating ARM 8.19.112(1)(c) should be eliminated entirely, as the NICET elements listed there have already been changed, eliminated, or moved to different levels. NICET is also offering elements that aren't even on this list. If the list remains in the rules, it will have to be updated every year. The list is unworkable as outlined and impossible to meet.

RESPONSE: The Department noted that all the NICET elements listed are still available from NICET, according to recent NICET information. It would be premature to eliminate the list at this time, as some future applicants may already be in the process of completing the elements contained there for obtaining an endorsement. If, in the future, NICET makes

changes available, the Department will again review the rule for necessary changes.

COMMENT NO. 3: Six comments were received stating ARM 8.19.112(2) should also exclude special fire agent suppression systems from the proof of manufacturer training, as well as fire extinguishing systems. Manufacturers can send out certificates of training whether or not the individuals have ever attended actual training. Special Agent installers and service technicians would then have to either go through the NICET training program or an apprenticeship program, which would be the same as the sprinkler installers and technicians.

RESPONSE: The Department did not agree with the comment, and will adopt the rule language as proposed. The Department has been issuing endorsements in this manner, and based on this type of training, for a number of years without a policing problem. The Department will only eliminate the endorsement for fire extinguishing manufacturer training at this time, as there is no definitive model from which candidates may be trained.

COMMENT NO. 4: Six comments were received stating ARM 8.19.118(4) should also apply to any manufacturer certificates issued, as well as NICET certificates. Manufacturer's certificates can be forged on computers as easily as NICET certificates.

RESPONSE: The Department noted the rule language already calls for ALL certificates to be received by the Department directly from the certifying entity. The NICET certificate was only used an example, but the rule would require this procedure to be met for all certificates, as the rule already states.

DEPARTMENT OF COMMERCE
FIRE PREVENTION PROGRAM

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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| In the matter of the amendment of rules pertaining to fees, temporary licenses and continuing education | ) ) ) ) | NOTICE OF AMENDMENT OF 8.42.403 FEES, 8.42.405 TEMPORARY LICENSES AND 8.42.416 CONTINUING EDUCATION |

TO: All Interested Persons:

1. On December 1, 1997, the Board of Physical Therapy Examiners published a notice of proposed amendment of the above-stated rules at page 2169, 1997 Montana Administrative Register, issue number 23.

2. The Board has amended ARM 8.42.403 exactly as proposed, and has amended ARM 8.42.405 and 8.42.416 as proposed, but with the following changes: (authority and implementing sections will remain the same as proposed)

"8.42.405 TEMPORARY LICENSES (1) will remain the same as proposed.

(2) Physical therapist or physical therapist assistant ~~A~~applicants for licensure by examination may be issued a temporary license. The temporary license shall identify the licensed physical therapist who shall be responsible for providing direct supervision. After issuance of the temporary license, the applicant must schedule his/her examination within 120 days of the issuance date. The temporary license shall be valid until the board makes its final determination on licensure, but may be extended at the board's discretion. Only one temporary license will be issued per applicant.

(3) will remain the same as proposed.

~~(4) Temporary licenses will not be issued to applicants for a physical therapist assistant license.~~"

"8.42.416 CONTINUING EDUCATION (1) through (3) will remain the same as proposed.

(a) the activity must have significant intellectual or practical content. The activity must deal primarily with substantive physical therapy issues as contained in the physical therapy definition in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a physical therapist or physical therapist assistant. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette or videotape, correspondence course or peer reviewed publication of journal article(s) or textbook(s);

(b) through (4)(f) will remain the same as proposed."

3. The Board accepted written comment if received by December 29, 1997. The Board has thoroughly considered all

comments received. Those comments, and the Board's responses, are as follows:

COMMENT NO. 1: One comment was received in support of ARM 8.42.416(3)(a), Continuing Education, adding the language on publication of a journal article or textbook, as these activities are a significant contribution to learning. The comment did suggest, however, that an additional modification to the rule be made to include the delivery of continuing education presentations, seminars, workshops and addresses, as these also demand considerable preparation time including research, organization, etc.

RESPONSE: The Board did not agree with the comment, and noted that presentation does not constitute continuing education. If the presentation was made at a national level, it may require extensive research, but the typical local presentation does not require this kind of preparation. Often, a person attends a CE course, and immediately returns to his or her workplace and re-delivers the same information to another audience without additional preparation or work. The Board could not create appropriate standards without allowing every presentation to count as credit. This could actually double the credit allowed any particular licensee, as they would receive credit for receiving the information, and also for further presentation on the same subject. The Board also noted its rule does not call for pre-approval of CE activities, so this would not be possible with CE presentations either.

COMMENT NO. 2: One comment was received stating ARM 8.42.416(3)(a), Continuing Education, should add the term "peer reviewed" to the language on publication of journal articles or textbooks. The comment stated there are many journals and textbooks that are worthless, and only a peer review process insures quality of the writing, as well as relatedness to physical therapy. Alternatively, the proposed language on publication could be left out of the rule.

RESPONSE: The Board agreed with the comment and will amend the rule as shown, to add the phrase "peer reviewed."

COMMENT NO. 3: Two comments were received stating ARM 8.42.405, Temporary Licenses, should include physical therapist assistants as well. The same problems associated with physical therapist licensure, such as a four month waiting period for scheduling of exam dates, has been experienced by physical therapist assistant applicants as well. Physical therapist assistant students and applicants should be given the same consideration as physical therapist students and applicants, and be allowed to practice with a temporary license due to the length of time required for licensure. Finally, it would be financially detrimental to a physical therapist assistant applicant to work at an aide's wages when compared to the assistant salary while waiting to take the exam and become fully licensed.

RESPONSE: The Board agreed with the comment and will amend the rule as shown above to allow physical therapist assistant applicants to be granted a temporary license under the same restrictions as apply to the physical therapist applicant. The Board noted that physical therapist assistant applicants are also affected by the delays within the exam service, and they should not be penalized by being forced to work at a lower wage as an aide while they are waiting to take the exam.

BOARD OF PHYSICAL THERAPY
EXAMINERS
JEFF PALLISTER, PT, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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| In the matter of the amendment of rules pertaining to education requirements, fees and enforcement against licensees | ) ) ) ) | NOTICE OF AMENDMENT OF ARM 8.54.408 EDUCATION REQUIREMENTS, 8.54.410 FEE SCHEDULE AND 8.54.702 ENFORCEMENT AGAINST LICENSEES |

TO: All Interested Persons:

1. On December 1, 1997, the Board of Public Accountants published a notice of proposed amendment of the above-stated rules at page 2172, 1997 Montana Administrative Register, issue number 23.

2. The Board has amended the rules exactly as proposed.

3. The Board accepted written comments if received by December 29, 1997. The Board has thoroughly considered all comments received. Those comments, and the Board's responses, are as follows:

COMMENT NO. 1: One comment was received stating ARM 8.54.408(3)(e), Education Requirements, should not be adopted, as it is a reduction of education requirements. The comment suggested the Board should be increasing education requirements, because there is an ever-increasing need for more knowledge by a CPA. This would require MORE graduate work, at least one year's worth.

RESPONSE: The Board noted that the proposed rule language would not reduce the educational requirement. The Board's proposal is instead re-designating the credits, so that not all are upper division, as several colleges and universities indicated they do not offer that number of credits in upper division work in their accounting degree curriculum. The Board further noted that the 150 semester hour education requirement is still in place, so no decrease in education is proposed. After implementation of the 150 hour requirement, the rule as it is currently worded, proved unworkable, as the current language was preventing candidates from qualifying to sit for the exam. The Montana Legislature had agreed to enact the 150 hour education requirement, but the Legislature did not attempt to dictate where the hours would be earned, but left that up to the Board's expertise to implement through rule-making

BOARD OF PUBLIC ACCOUNTANTS
JAMES R. SMRCKA, CHAIRMAN

ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, February 2, 1998.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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| In the matter of the amendment of rules pertaining to definitions, application requirements and temporary permits and adoption of a new rule pertaining to support personnel | ) ) ) ) ) | NOTICE OF AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF VETERINARY MEDICINE AND THE ADOPTION OF A NEW RULE PERTAINING TO SUPPORT PERSONNEL |

TO: All Interested Persons:

1. On September 22, 1997, the Board of Veterinary Medicine published a notice of proposed amendment and adoption of rules pertaining to the practice of veterinary medicine at page 1633, 1997 Montana Administrative Register, issue number 18.

2. The Board has amended ARM 8.64.401, 8.64.501 and 8.64.502 exactly as proposed and has adopted new rule I (8.64.409) as proposed, but with the following changes:

"8.64.409 SUPPORT PERSONNEL (1) through (2)(b) will remain the same as proposed.

(3) ~~In an emergency, support personnel may initiate treatment only after consulting with the supervising veterinarian. In any such instances, a licensed veterinarian shall instruct the support personnel as to the appropriate action to take, shall advise the support personnel of potential complications and shall maintain an ongoing communication if necessary.~~ A veterinary support person may, under the general authority and at the responsibility of his/her veterinary employer, render emergency care to a patient without direct authorization when it would appear that to delay treatment and care for the time necessary to send the animal to another practitioner would be life threatening. Such care may be rendered only after reasonable efforts have been made to contact the employing veterinarian or another veterinarian who could manage the case within allowable time constraints."

3. The Board accepted written comment if received by October 20, 1997. The Board has thoroughly considered all comments received. Those comments, and the board's responses, are as follows:

COMMENT NO. 1: One comment was received in support of the amendments to ARM 8.64.401, 8.64.501 and 8.64.502.

RESPONSE: The Board acknowledges receipt of the comment in support.

COMMENT NO. 2: One comment was received stating opposition to new rule I and any support personnel administering anesthetics or preanesthetics to patients entrusted to veterinarians. This would potentially jeopardize the life of the pet and erode public trust.

RESPONSE: The Board noted the veterinarian would still have to determine the dose, and would not entrust this action to a support person who does not understand the proper procedures and consequences. This provision would be difficult to abuse, as the rule clearly states a veterinarian must be present. The veterinarian would still retain responsibility for the patient, and thus public trust would not be eroded.

COMMENT NO. 3: Two comments were received stating new rule I(3) on use of support personnel in an emergency is too restrictive. The comment stated that emergencies can occur when a veterinarian is not readily available to offer assistance to a client, or to consult with the veterinarian's support personnel. A support person must be allowed some leeway to react quickly in an emergency situation in order to save the life of the animal. The comments included suggested language changes to allow support personnel to act without direct authorization when reasonable efforts to contact a veterinarian have failed.

RESPONSE: The Board agreed with the comment, and will amend the rule as shown to use the suggested language change to (3). The Board agreed it can be difficult to reach a veterinarian, even by cell phone, in some parts of the state. The Board also agreed with the Legislative Committee's conclusions in enacting the bill on this subject that actions are sometimes needed without a veterinarian.

COMMENT NO. 4: One comment was received in support of ARM 8.64.401 Definitions.

RESPONSE: The Board acknowledges receipt of the comment in support.

COMMENT NO. 5: One comment was received in support of ARM 8.64.502 Temporary Permits.

RESPONSE: The Board acknowledges receipt of the comment in support.

BOARD OF VETERINARY MEDICINE
ROBERT P. MYERS, DVM, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of rules pertaining to the Microbusiness Advisory Council and the Microbusiness Finance Program | ) ) ) ) | NOTICE OF AMENDMENT OF RULES PERTAINING TO THE MICROBUSINESS ADVISORY COUNCIL AND THE MICROBUSINESS FINANCE PROGRAM |

TO: All Interested Persons:

1. On September 8, 1997, the Economic Development Division published a notice of public hearing on the proposed amendment of rules pertaining to the Microbusiness Advisory Council and the Microbusiness Finance Program at page 1547, 1997 Montana Administrative Register, issue number 17.

2. The Division has amended ARM 8.99.401, 8.99.402, 8.99.505 and 8.99.506 exactly as proposed. The Division amended ARM 8.99.404 and 8.99.510 as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.99.404 CERTIFICATION OF REGIONAL MICROBUSINESS DEVELOPMENT CORPORATIONS (1) through (4)(b) will remain the same as proposed.

(c) in regions with proposals for certification ~~and/or renewal~~ from more than one organization, the department will convene and chair a regional evaluation committee. Nominations for membership to the committee will be solicited from groups including, but not limited to, proposers from that region, local governments, certified community lead organizations, financial institutions, business assistance groups, women and representatives of low-income and minority populations. The committee will attempt, through negotiation, to arrive at a consensus proposal from the region. If, however, in the opinion of the chair and a majority of the committee a consensus cannot be reached in a timely fashion, then the committee will evaluate the competing proposals or any modified proposals that have emerged from negotiation, and will select by means of that evaluation a single proposal to be forwarded to the department for certification review.

(5) will remain the same as proposed."

"8.99.510 MICROBUSINESS LOANS - LENDING OUTSIDE THE REGION (1) Up to 10% of the number of loans made or guaranteed by an MBDC may be to clients outside the MBDC's service region. An MBDC may exceed this limit only after notifying in writing the MBDC certified in the other service region in which the proposed loan is to be made."

3. The Division has thoroughly considered all comments and testimony received. Those comments and the Division's responses are as follows:

COMMENT NO. 1: This comment was offered by Jim Plum, the Credit Officer for the Region V MBDC (Helena), during the public hearing held October 8, 1997. Jim Plum requested a definition of "good standing" in definition (15) of the proposed amendment to ARM 8.99.401. He further inquired whether or not an agreement for an unfunded MBDC has been developed by the Department and if the agreement met a published standard.

RESPONSE: An MBDC is in good standing if the organization has met all of the requirements of its contract with the Department of Commerce. The Department is in the process of developing an agreement with the unfunded MBDC serving Region VIII.

COMMENT NO. 2: A comment was made on the proposed amendment to ARM 8.99.401. Charles Hill, Credit Officer for the Region VI MBDC (Bozeman), inquired if there was a specific MBDC seeking certified unfunded status at this time.

RESPONSE: The Department is in the process of developing an agreement with an unfunded MBDC serving Region VIII.

COMMENT NO. 3: A comment was made on the proposed amendment to ARM 8.99.401. Linda McNeill, Credit Officer for the Region IV MBDC (Great Falls) asked if an unfunded MBDC would be eligible for grants the Department of Commerce may receive for operations or training.

RESPONSE: The process used by the Department in securing operation and/or training funds has been to develop the proposal with the input of all MBDCs. Any unfunded MBDCs will be included in that process. The funder then has certain criteria and goals which may or may not fit with an unfunded MBDC, or it may fit better with an unfunded MBDC. Finally, once a proposal is submitted by the Department and awarded by the funder there is a negotiation period during which MBDCs are always further consulted to work out certain details of delivery. It is likely that unfunded MBDCs will be included, particularly if that organization is the only MBDC serving a region.

Having considered the comments received, the Department will adopt the proposed amendments to ARM 8.99.401.

COMMENT NO. 4: Jim Plum, Region V MBDC (Helena) Credit Officer submitted written comments regarding the proposed amendment of ARM 8.99.404. "Section 8.99.404 is dealing with original certification of an MBDC. The intent of this section is to help the Department determine which of multiple proposals to certify as an MBDC. ARM 8.99.404(2) gives the Department authority to 'Certify' unlimited MBDCs in any given area, but only one MBDC will be funded with an RLF. Under the renewal process, it is assumed an MBDC has already been funded with an RLF or is certified as an unfunded MBDC."

"It should not be the department's position to erode and cause harm to the long-term community relations and partnership building the existing MBDCs have undergone."

"If a funded and existing MBDC is not to be renewed, the

Department should look to already existing unfunded MBDCs in the area and begin the funding process. If no other certified MBDC is found, the department should begin the decertification process and issue a new RFP for certification from eligible organizations in a given area. At this time, section 8.99.404 of the ARM would apply."

"The Montana Women's Capital Fund is opposed to the change in section 8.99.404(c) dealing with and/or renewal."

RESPONSE: Mr. Plum's comments are well taken; the Department will delete the language "and/or renewal" from the proposed amendment to the rule. The Department proposed adding the language "and/or renewal" to ARM 8.99.404 in order to clarify existing procedures used to award development loans between competing MBDC's. The comments received through the rulemaking process overwhelmingly reveal the clarification will not be achieved through this amendment.

The Department is required to "establishing criteria and procedures for certifying microbusiness development corporations" and "establishing criteria and procedures to select from competing development loan applications and to award development loans to certified microbusiness development corporations" section 17-6-406(1) and (2), MCA, (1997).

In ARM 8.99.404, the Department promulgates the procedure used to certify MBDCs, and provides a means to select between multiple applicants for certification in one region. ARM 8.99.501 and 8.99.502 provides notice of the criteria used to select the recipient of a development loan. The development loan is awarded at the sole discretion of the Department. ARM 8.99.502.

The amendment was proposed to address the situation of competing applications for development loans between an existing MBDC applying for a development loan renewal and an entity applying for funding and first time certification as an MBDC. In drafting the amendment, the Department considered the effectiveness of convening a regional evaluation committee to evaluate competing proposals between an existing, funded MBDC seeking renewal, and an entity seeking certification and funding at the same time. As pointed out by Mr. Plum and others attending the hearing, this situation is addressed in the existing rules.

Changing the language in the manner proscribed by the Department is inconsistent with the existing rules concerning certification and award of development loans. The Department uses the procedures set forth in ARM 8.99.404 for certification of MBDC's. The Department uses the procedures set forth in ARM 8.99.501 and ARM 8.99.502 in awarding development loans. The same rules will be applied in all certification proceedings, and in all development loan awards.

The addition of the words "and/or renewal" to ARM 8.99.404 is inconsistent with other rules, and clearly does not add clarity to the Microbusiness Administrative Rules. The Department will strike the language "and/or renewal" from the proposed amendment of ARM 8.99.404.

COMMENT NO. 5: A comment was made on the proposed amendment to ARM 8.99.404 by Linda McNeill, Region IV MBDC Credit Officer (Great Falls). She stated during the public hearing that she did not understand how a certification process involving a request for proposal could be conducted by the Department, while at the same time, the presently funded MBDC within the region is seeking renewal.

RESPONSE: ARM 8.99.404 provides that "there is no limit to the number of certified MBDCs per region; however, only one certified MBDC may be funded at any given time in any one region." Section 17-6-407(8), MCA, empowers the Department to adopt rules to divide the state into 12 regions "within each of which is not more than one microbusiness development corporation may be funded at any given time." Both the rule and the statute contemplate multiple MBDCs within a region.

The Department policy is to issue a Request for Proposals (RFP) any time an entity contacts the Microbusiness Development Program desiring to become an MBDC. In keeping with the state government's intent to provide equal access to governmental contracts, the RFP process provides notice to all entities potentially interested in serving as an MBDC of the application process for certification. The Microbusiness statutes and rules provide for multiple MBDCs within a region so long as only one is funded. The procedures for certification of an MBDC and the award of a development loan are separate processes and addressed in different sections of the ARM. (See response to Comment No. 4)

When an entity requests certification, the Department will issue an RFP. Because an entity can request certification as an MBDC at any time, it clearly is possible that an RFP could be issued at the same time the existing, funded MBDC within the region is seeking renewal. The development loan will ultimately be awarded according to ARM 8.99.501 and ARM 8.99.502.

In summary, a renewal application and an RFP for certification can be in process for the same region at the same time. Prohibiting or limiting entities in requesting certification as an MBDC would substantially change the open nature of the program. Allowing unfunded entities access to MBFP certification and oversight engages important lending support and entrepreneur services in the system. Certified, unfunded MBDC entities can access funding independently or through the MBFP with the certification. Allowing unfunded MBDCs to remain certified provides assistance in the creation of microbusinesses within the state.

COMMENT NO. 6: A comment was made on the proposed amendment to ARM 8.99.404 by Jim Plum, Region V MBDC Credit Officer (Helena). He stated: "At any time an individual agency seeks to become certified as an MBDC must an RFP be issued?"

RESPONSE: Yes, see above in response to Comment No. 5.

COMMENT NO. 7: A comment was made on the proposed amendment to ARM 8.99.404 by Kris Bakula, Executive Director of

the Region V MBDC (Helena) during the public hearing." ... am I hearing that there could be two certified MBDCs in the same region? ..perhaps what would make this less confusing...would be to separate the two processes-original certification is a different kind of thing than renewal and perhaps needs to be separated in ARM-that is a suggestion."

RESPONSE: The ARM does address renewal and original certification separately. See ARM 8.99.404 for certification of an MBDC, ARM 8.99.502 for development loan application process, ARM 8.99.506 for renewal requirements and ARM 8.99.507 for non-renewal rules for an MBDC. Also, see response to Comment No. 5.

COMMENT NO. 8: A comment was made on the proposed amendment to ARM 8.99.404 by Jim Plum, Region V MBDC Credit Officer (Helena) during the public hearing. "ARM 8.99.404 is dealing with the original certification of the MBDC. The intent of this section is to help the Department determine which multiple proposals to certify as an MBDC. ARM 8.99.404(2) gives the department authority to "Certify" unlimited MBDCs in any given area,but only one MBDC will be funded with an RLF. Under the renewal process it is assumed that an MBDC has already been funded with RLF or is certified as unfunded MBDC. It should not be the department's position to erode and cause harm to the long-term community relations and partnership building the MBDCs have undergone. If an existing funded MBDC is not be renewed, the department should look to already existing unfunded MBDCs in the area and begin the funding process. If no other certified MBDC is found the department should begin the de-certification process and issue an RFP for certification for eligible organizations in that area."

RESPONSE: It is not the Department's position to erode and cause harm to the long-term community relations and partnership building the MBDCs have undergone; on the contrary, the Department recognizes the importance of these relationships and encourages them by generally awarding four-year contracts.

As earlier stated, the Department agrees that inclusion of the words "and/or renewal" is not appropriate in this rule. See response to Comment No. 4.

COMMENT NO. 9: A comment was made on the proposed amendment to ARM 8.99.404 which was submitted by Jim Plum, Region V MBDC Credit Officer (Helena) as a written comment in response to the Notice of Public Hearing. The written comment proposed to change the language of the rule to eliminate "proposers from that region..." and keep on such a committee "local governments, certified community lead organizations, financial institutions, business assistance groups, women and representatives of low-income and minority populations." The solicitation language "from groups including, but not limited to" should remain in the rule according to Mr. Plum's comment.

RESPONSE: This comment proposes changes to the ARM which were not submitted for the Notice of Public Hearing and cannot

be considered in this rulemaking.

COMMENT NO. 10: A comment was made on the proposed amendment to ARM 8.99.404 which was submitted in writing in response to the Notice of Public Hearing by Charles Hill, Credit Officer for the Region VI MBDC (Bozeman) on behalf of Jeff Rupp, Executive Director of the Region VI MBDC (Bozeman). "The proposed change for section (c) is confusing and unnecessary. Renewing MBDCs will have been notified of the Department's intent to renew. If the department does not intend to renew with a funded MBDC that has been declared in default and decertified, that organization will have to seek certification again and will be in competition with other interested organizations. The department already has mechanisms to intervene in the community process if it is unwilling to accept multiple proposals. If there is an intent to renew an agreement and an RFP is published anyway, the department may certify another organization without funding it, as is now permitted. This change does not improve the microloan program."

RESPONSE: See response to Comment No. 4. The Department agrees that the addition of the language "and/or renewal" adds confusion and is unnecessary. The Department will strike the language from the proposed amendment.

COMMENT NO. 11: A comment was made on the proposed amendment of ARM 8.99.404 which was submitted in writing in response to the Notice for Public Hearing by Linda McNeill, Region IV MBDC Credit Officer (Great Falls). She wrote: "The first line states: the department will review proposals for certification and/or renewal from more than one organization etc."

"If the department is renewing an existing MBDC why would they have an open proposal or RFP process going on at the same time? This is very confusing and needs to be explained properly. It isn't clear here that the RFP process will be opened up because another organization wants to certify as an MBDC. A new organization applying for certification has nothing to do with the present MBDC renewing their existing contract. The process explained in 4C is for competition of proposals not for renewal."

"Another comment about this section: two proposing organizations should not be on the committee evaluating the decision. I also believe that each proposal should be limited to nominating one representative to cover each category. The department by fostering competition between two competing organizations could be creating stress and hindering community relations."

RESPONSE: In response to the first question, please see response to Comments No. 4 and 5.

In response to the second question, the change proposed by the comment to eliminate proposing entities from membership on the community evaluation committee was not proposed in the Notice of Public Hearing. The commentor's proposal to change

the membership of the committee cannot be considered in this rulemaking.

COMMENT NO. 12: A comment was made on the proposed amendment to ARM 8.99.404 which was submitted in writing in response to the Notice of Public Hearing by Rosalie Sheehy Cates, Executive Director of the Region II MBDC (Missoula). "In regard to solving the situation in which competing entities apply to serve one region, we doubt that it would be productive or effective for the Department of Commerce to serve as arbiter. It encourages local groups to "play state politics" rather than settle such a problem locally."

RESPONSE: The commentor's proposed change to eliminate the Department of Commerce as arbiter in the case of multiple proposals for certification was not included in the Notice of Public Hearing and cannot be considered in this rulemaking.

COMMENT NO. 13: A comment was made on the proposed amendment to ARM 8.99.404 which was submitted in writing in response to the Notice of Public Hearing and was read into the hearing records in person by George Lippert, member of the Board of Directors for the Region IV MBDC (Great Falls). He wrote: "**CHANGE THE ENTIRE SECTION TO READ**: An independent committee, recommended by the Governor of the State of Montana, and chaired by the Governor's appointee will decide and forward their decision to the Department of Commerce when there are competing proposals."

RESPONSE: The commentor's proposed change in membership and process of seating the community committee was not included in the Notice of Public Hearing and cannot be considered in this rulemaking.

COMMENT NO. 14: A comment was made on the proposed amendment to ARM 8.99.506 which was made by Jim Plum, Region V MBDC Credit Officer (Helena) during the public hearing. Mr. Plum stated that his interpretation of this rule is that the department would not be able to make a renewal determination until six months before the end of an agreement. He referred to his submitted written comment which proposes the following change: "The Department will notify MBDCs in writing of its intent to renew and/or require repayment of a development loan within two weeks after the last Quarterly Report is due to the Department of Commerce for the calendar year prior to that in which the Loan Agreement expires."

Mr. Plum's written comment also objected to the proposed change in (2). Mr. Plum's reason for objecting to the proposed change is because he feels that less than a four year agreement reduces the stability of program planning. The ability of the department to offer agreements less than four years, Mr. Plum states, "greatly hinders the ability of the local MBDCs to building long term local partnerships, grant funding, and cooperative agreements that build community support and long term viability of the program. The department currently has recourse on how to call a loan of an MBDC that is not meeting

performance standards under Section 19 Noncompliance and Default of the Microbusiness Development Loan Agreement. The MBDCs have recourse on termination under Section 20 Termination of Agreement of the Development Loan Agreement."

RESPONSE: The proposed change in "intent to renew" notification by the Department to MBDCs is from six months to two weeks following the Quarterly Report previous to the expiration of the development loan agreement. The change allows the Department to collect sufficient data to accurately evaluate the performance of an MBDC prior to renewal.

In regard to the amendment allowing one year agreements, the Microbusiness Program has received a request from an existing, funded MBDC for such a contract. If the Department did not have the ability to provide such a contract, no MBDC services would be available in that region. Further, the ability to offer a one-year contract is appropriate in instances when it is unclear if the MBDC will be able to successfully serve a region. This change was proposed and reviewed by the Advisory Council and Legislative Panel (MBFP) during its June and September 1997 meetings.

The primary purpose and goal of the Microbusiness Development Act is to encourage the promotion of microbusinesses throughout the 12 regions in the state. The goal is hampered if the Department does not have the ability to ensure that a viable MBDC is available to serve each region.

COMMENT NO. 15: Kris Bakula, Executive Director of the Region V MBDC (Helena) commented regarding to the proposed amendment to ARM 8.99.506 during the hearing. "I would just like to underscore for the Department of Commerce's consideration regarding this particular change that our comments from the Montana Women's Capital Fund come from an MBDC that sailed through the renewal process and yet we still believe strongly that the language should not be changed."

RESPONSE: See response to Comment No. 14.

COMMENT NO. 16: A comment was made on the proposed amendment to ARM 8.99.506 which was submitted by Jim Plum, Region V MBDC Credit Officer (Helena) during the hearing. Mr. Plum wrote: "This language should remain unchanged. Changing the term of a Development Loan Agreement would place undue hardships on MBDCs. Long-term planning and partnership building is facilitated by having long-term commitments from the State of Montana and the Department of Commerce. Development Loan Agreements currently have multiple reporting periods and continuous monitoring associated with them."

"Current Development Loan Agreements, provide both the Department of Commerce and the MBDCs methods of terminating their agreements in a professional and orderly fashion during the term of the agreement."

"This change is unneeded, and may place an undue burden on the MBDC and hamper its ability to build community support and long-term partnerships that is both the intent of the legislator and vital for program success in any given area."

"The Montana Women's Capital fund is opposed to any change in section 8.99.506(2) dealing with terms of other than 4 years."

RESPONSE: See response to Comment No. 14. The Department recognizes the value of the MBDC's long-term financial relationships, and encourages these relationships through the general practice of awarding four year contracts. The program can be better served, however, if the Department retains the ability to limit a contract to one year in unusual circumstances. The recent request for a one year contract demonstrates the need for this flexibility.

COMMENT NO. 17: A comment was made on the proposed amendment to ARM 9.99.506 which was submitted by Rosalie Sheehy Cates, Executive Director of the Region II MBDC. Ms. Cates wrote: "We believe that contracts should be renewed for four years as a standard practice, and that the administrative rules should reflect this intent. Changing the rules for "up to" four years creates an uncertain environment. If any changes were made in this area, we would recommend longer contracts for MBDCs with satisfactory track records."

"In general contracts are already excessive in length, complication, conditions, and modifications. All of this triggers too much reporting and paperwork in the program. Making the contracts provisional or short-term, on top of this, reduces agency incentive to participate in the program."

"We assume that this ARM change addresses non-performance in MBDCs. We acknowledge this problem but in general feel that more rules and shorter contracts will do little to address volume and financial management issues within MBDCs. The DOC already is financially protected by its ability to call its loan through default, so this provision does little to strengthen the agency's position, while it "hamstrings" MBDCs in a contract limbo."

RESPONSE: See response to Comments No. 14 and 16.

COMMENT NO. 18: A comment was made on the proposed amendments to ARM 8.99.506 which was submitted by George Lippert, Region IV MBDC (Great Falls) Advisory Board Member. Mr. Lippert introduced his written comments during the hearing. Mr. Lippert wrote: "I recommend this remain as originally written."

"Reasoning: As an Advisory Board member for Region IV that has been through this process of being offered a one year contract, it is not worth the Board's time to maintain a one year contract. There is not enough time to start and complete sufficient projects."

"It also shows lack of faith by the Department of Commerce to at their discretion to decide to issue only a one year contract."

"It also makes the Board curious, as to whether you are grooming another entity for our program."

"There is no need to change this rule because the Department of Commerce and the Microbusiness Development

Corporations have a contract agreement that now allows them to each terminate their present contract in sections 19 and 20."

RESPONSE: See response to Comments No. 14 and 16.

COMMENT NO. 19: A comment was made on the proposed amendment to ARM 8.99.506 which was submitted by Linda McNeill, Loan Officer for Region IV MBDC (Great Falls) during the public hearing. She wrote: "I advise that this section remain as originally intended in the first Administrative Rules for the following reasons:"

"Region IV has been through the process of being offered a one year contract."

"A. The first incident that happened was that the Advisory Board elected to quit, should the agency decide to accept the one year contract. They did not feel that a shortened time period would reap favorable results and that it would be a waste of their time and effort. Secondly, two training and technical providers resigned. It also made the present loan recipients very wary, they are used to dealing with their present loan officer. Because of the relationship built in the past, the party taking over may have a difficult time collecting payment."

"B. The viability and the sustainability of the program is being threatened."

"C. The Ability to attract grants and funding for a shortened period of time is almost non-existent. You can't match sources and uses of funds when you don't have a future to plan for."

"D. Staffing for the program is threatened. Staff would be seeking other positions and pursuing staffing for less than one year would not be a prudent expenditure on the part of the host agency."

"E. Less than a four year contract does not account for the risks and financial commitment the host agency has committed in the past and planned for in the future. The only prudent loan would be for one year or less."

"F. This Administrative Rule does not need to be changed because the present contract between the MBDC's and the Department of Commerce already provides for termination of the agreement by either party in sections 19 and 20."

RESPONSE: See response to Comments No. 14 and 16.

COMMENT NO. 20: A comment was made on the proposed amendment to ARM 8.99.506 which was submitted in writing by Charles Hill, Credit Officer for Region VI MBDC (Bozeman) on behalf of Jeffrey K. Rupp, Executive Director of the Region VI MBDC (Bozeman). He wrote: "The original program concept included almost automatic four year renewal as long as microloans were being made, community support was maintained and the organization maintained the capacity to operate. Since each organization participating in the program takes substantial risks and financial commitments, short term decisions impede operational and budget planning and tend to reduce the stability and functioning of the local program. By

removing the six month notice of intention to renew, local community planning and partnership building may be handicapped. After three and a half years of operation, it would seem reasonable that a decision to renew could be made. Notification by the Department six months before the renewal of a four year agreement should be maintained."

"Budget and operations planning for this program are based on known conditions of the duration of the agreement and level of effort required. These conditions should be clear in the RFP since staffing, organizational support, and community support are affected. Short period agreement periods will diminish the ability of the organization to plan for sustainability and establish long term funding sources and could affect its willingness to make any but short term commitments for microloan borrowers."

"Short term loan agreements for less than four years will make it more difficult to obtain local community support and will make it more difficult to sustain the technical assistance required by microloan borrowers."

"If renewal at less than four years is intended to reflect the Department's dissatisfaction with the daily operations of the participating organization, that purpose might be better achieved with existing provisions of the loan agreements."

"If MBDC performance has not been adequate, a plan for improvement is included in the renewal proposal and may be accepted, rejected, or modified through negotiation. In addition, specific remedies are contained in the loan agreements to permit the Department to terminate an organizations's participation in the program. We believe these ARM changes to shorten the Department's notice of intent to renew and shorten the agreement period are not useful to the long term success of the microloan program."

RESPONSE: See response to Comments No. 14 and 16. Further, the public, through the Montana Legislature, takes substantial risks in allocating Coal Tax Funds to community lenders with short term experience in lending for high risk use with little collateral backing. MBDCs take the risk of borrowing funds and making loans to borrowers. It is a partnership in risk. Flexibility on the part of the Department in program oversight should be the precedent rather than rigid formula. "Intent" is the term used in the ARM and contracts in order to provide a period of time when performance can be reviewed in the most positive sense.

Planning, funding, term commitments to micro-entrepreneurs, local community support, technical assistance for microloan borrowers has not been affected by MBDCs having 12 months remaining in the current four year development loan contracts. The certification RFP does not refer to the length of time of the development loan agreement. In fact, some MBDCs maintain terms on average longer than the four year development loan contracts with their borrowers.

This rule change will allow the Department to offer a reasonable period of time for an MBDC which has under performed in its contract but proposed to make substantive changes in

management. The Department offers four years for performance and then with this change may offer the additional year of time in such a case. This additional option of five years to reach proposed outcomes, is desirable rather than the limited option of non-renewal or "calling" the loan. Expanding the option will allow the Department to capitalize on the investment made by the communities and the state in MBDCs.

The Microbusiness Finance Advisory Council proposed and reviewed this change during its June and September 1997 meetings.

Having carefully considered all comments, the Department will adopt the proposed amendment to ARM 8.99.506 as proposed.

COMMENT NO. 21: A comment was made on the proposed amendment to ARM 8.99.510 which was made by Jim Plum, Credit Officer for the Region V MBDC (Helena) and introduced during the public hearing. He wrote: "(1) Up to 10% of the number of loans made or guaranteed by an MBDC may be to clients outside the ..." Mr. Plum suggested that the addition of the language "number of" to the rule added clarity.

RESPONSE: Mr. Plum's comments are well taken. Addition of the language "number of" more specifically indicates the number of loans that can be made outside the region. Addition of the language may avoid a dispute over this issue in the future. The Department has added the language "number of" to the rule.

ECONOMIC DEVELOPMENT DIVISION

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

BEFORE THE BURIAL PRESERVATION BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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| In the matter of the adoption of rules pertaining to unmarked burials within the State of Montana | ) ) ) ) | NOTICE OF ADOPTION OF RULES PERTAINING TO UNMARKED BURIALS WITHIN THE STATE OF MONTANA |

TO: All Interested Persons:

1. On December 15, 1997, the Burial Preservation Board published a notice of proposed adoption of the above-stated rules at page 2233, 1997 Montana Administrative Register, issue number 24.

2. The Board has adopted rules I through VIII (8.128.101 through 8.128.108) exactly as proposed.

3. No comments or testimony were received.

BURIAL PRESERVATION BOARD
GERMAINE WHITE, CHAIRPERSON

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 2, 1998.

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

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

(Petroleum Board)

To: All Interested Persons

1. On October 6, 1997, the board published notice of proposed adoption of new rule I, at page 1755 of the 1997 Montana Administrative Register, Issue No. 19.

2. Based upon comments received, the department has adopted the rule with the following changes (new material is underlined, material to be deleted is interlined):

RULE I (17.58.326) APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF TANKS (INTERPRETIVE RULE) (1) As used in 75-11-308, MCA, the term "applicable state rules" is interpreted to mean:

(a) rules governing the installation and design standards for petroleum storage tanks ~~(including but not limited to ARM 17.56.103, 17.56.104, 17.56.201, and 17.56.202)~~ such as the rules contained in ARM Title 17, chapter 56, subchapters 1 and 2;

(b) rules which govern release detection requirements for petroleum storage tanks ~~(including but not limited to ARM 17.56.401, 17.56.402, 17.56.404, and 17.56.405)~~ such as those rules contained in ARM Title 17, chapter 56, subchapter 4;

(c) rules governing spill and overfill requirements for petroleum storage tanks and anti-corrosion protection ~~(ARM 17.56.301)~~, and for petroleum storage tanks ~~(including but not limited to ARM 17.56.302)~~ such as those rules contained in ARM Title 17, chapter 56, subchapter 3;

(d) rules requiring the reporting of a release within 24 hours of detecting it and taking initial response and abatement measures ~~(including but not limited to ARM 17.56.602)~~ such as those rules contained in ARM Title 17, chapter 56, subchapters 5 and 6; and

(e) any other rules which, after an inspection by either the department of environmental quality underground storage tank

program or its agents, ~~or~~ the state fire marshal or its agents, or any other agency with regulatory authority on the subjects listed in (a) through (d) above, has been brought to the owner or operator's attention and the violation has not been remedied within a specified period of time.

3. The modification to the proposed rule deleting reference to specific rules was made as a result of several written comments indicating that failure to cite specific rules may affect the board's ability to rely on those rules in making eligibility determinations. The modification is meant to list broad categories of rules, compliance with which is essential to eligibility for the Petroleum Tank Release Compensation Fund.

The phrase "owner or" is placed in front of the term "operator's" so that the rule more closely parallels the statutory language requiring that owners and operators be responsible for complying with applicable rules. The language regarding other regulatory authorities in subsection (e) is added based on comments received indicating that there are other regulatory authorities which, in narrow circumstances, have jurisdiction over certain petroleum storage tanks, such as heating oil tanks. This modification recognizes that compliance with the applicable regulations of other regulatory authorities may also be considered in the board's eligibility determinations.

4. The Board has considered all comments received during the comment period in this matter. A summary of those comments and the Board's responses thereto are as follows:

Comment No. 1: Several comments were received indicating that the terminology "included but not limited to" in the original proposal might require citation to all applicable state and federal rules.

Response: The board concurs with this comment and, in lieu of citing all applicable rules, modified the proposed rule to reflect four broad categories of rules as they are listed in subsection (a) through (d) of the rule.

Comment No. 2: Several comments were received regarding the fact that there is no specific citation to rules governing above ground storage tanks in the proposed rule.

Response: The board is currently in the process of

considering a similar interpretive rule which will provide additional guidance with respect to above ground storage tanks. Until such an interpretive rule is promulgated, the board will continue to consider above ground storage tank eligibility requests as it has in the past.

Comment No. 3: Several comments were received regarding the need to add reference to other regulatory authorities in subsection (e) of the proposed rule.

Response: The board agrees with the comments and the suggested modification is adopted.

Comment No. 4: Several comments were received regarding the lack of citation to the Uniform Fire Code in the interpretive rule.

Response: The board is currently working with the Fire Prevention Investigation Bureau to adopt rule language which would provide guidance as to those fire codes with which the board considers "applicable" for purposes of eligibility determinations. Until such a rule is promulgated, the board will continue to review fire code violations and requests for eligibility as it has in the past.

PETROLEUM TANK RELEASE COMPENSATION BOARD
MARK SIMONICH, PRESIDING OFFICER

BY: JEAN A. RILEY, Executive Director

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State February 2, 1998.

**BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

**In the matter of the amendment of Rules 36.22.1303, 36.22.1308, and 36.22.1408 pertaining to well plugging requirement, plugging and restoration bond, and financial responsibility** ) **NOTICE OF** AMENDMENT

**TO: All Interested Persons.**

**1. On September 22, 1997, the department published notice of the proposed amendment of the above captioned rules at page 1646 of the 1997 Montana Administrative Register, issue number 18. On November 17, 1997, the department published notice of public hearing at page 2038 of the 1997 Montana Administrative Register, issue number 22, amending the proposed agency action because the required number of persons requested a public hearing.**

**2. On December 18, 1997, the Board of Oil and Gas Conservation held a public hearing to receive comments on the proposed amended rules. Eight individuals representing themselves or their companies/associations commented at the public hearing.** Written comments were **received through the December 15, 1997 deadline for written comments.**

**COMMENT 1:**

**A number of written comments were received on the first proposal expressing general opposition to the proposed rules and requesting a public hearing be held to receive further public comment. Comments from Judy Feland, F&J; Esther Kennedy, Kipling Energy, Inc.; Jerry Kennedy, J&G; Gary Feland, Foothills Oil and Gas; all of P.O. Box 562, Shelby, expressed opposition only to rule 36.22.1303 and requested a public hearing. A comment from Milan R. Ayers of Milan R. Ayers Oil and Gas Properties, P.O. Box 737, Shelby, expressed general opposition to all three proposed rule changes and requested a public hearing. Additionally Mr. Ayers questioned why this rulemaking proceeding did not fall under section 82-11-141, MCA, indicated he did not believe rule changes were an emergency under that section, and requested a cite to the law restricting who can ask for a hearing and present testimony. A comment from the Northern Montana Oil and Gas Association, P.O. Box 250, Cut Bank, requested a public hearing and commented that the proposed rules would force operators to plug and abandon stripper wells prior to the end of their economic life, would eliminate oil industry jobs, and erode local economies.**

**RESPONSE:**

**The Board responds to Mr. Ayers' comment by noting that the rulemaking process which applies to all agencies of Montana state government is generally contained in 2-3-301, MCA, et seq.**

Procedures in 82-11-141, MCA, apply generally to Board orders but not to agency rulemaking. Section 2-4-302(4), MCA, sets the requirement for requesting a public hearing: "... the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing." The Board determined this requirement had been met, and the public hearing was then scheduled as provided by law.

COMMENT 2:

The comment mentioned above from the Northern Montana Oil and Gas Association concerning plugging of stripper wells before the end of their economic life, loss of jobs, and erosion of local economies was also addressed by others. Senate President Gary Aklestad, P.O. Box 32, Galata, indicated he did not support the proposed rule if it required marginal wells to be taken out of production and permanently plugged during times of low oil prices. Representative Harriet Hayne, P.O. Box 209, Dupuyer, commented that the rules were counterproductive to the legislature's efforts to keep stripper wells producing as long as possible. Glacier County Commissioners, 512 E. Main, Cut Bank, believed rule 36.22.1303 was too severe and would require plugging wells that would be profitable in the future through different operating techniques or technology. Liberty County Commissioners submitted an identical letter to Governor Racicot's office, which sent it to the Board for consideration.

RESPONSE:

The Board is aware of the importance of marginal wells to our economy and the tax base of local governments. The Board is also concerned about the liability to the State if large numbers of unproductive wells that have "no possible future use" are allowed to accumulate without limit. The Board believes a clear reading of the proposed rule eliminates from consideration as a candidate for plugging any well which is an asset in the production of oil and gas, either at present or in the reasonably forseeable future.

COMMENT 3:

The Toole County Commission, 226 1st South, Shelby, and the Montana Association of Counties, Helena, on behalf of MACo District 4 and 5, comment that rule 36.22.1303 should be re-worded to provide a three-year period during which an operator must plug and abandon non-useful wells in lieu of the proposed one-year time frame.

RESPONSE:

The Board believes one year is a reasonable time period for an operator to either plug a non-productive well or make

arrangements with the Board's staff to develop an appropriate plugging schedule, or to request relief from the Board if the work to be done cannot, for whatever reason, be accomplished. The Board is aware that plugging several wells in a short time can pose an economic burden, particularly on those operators with a large number of wells to be plugged. While the Board is willing to cooperate with operators which are so burdened, it does not wish to see an across-the-board deferment of plugging extended beyond one year. The rule currently requires plugging of all wells on a lease within 90 days after the last well is no longer capable of production.

COMMENT 4:

Written comments from Mr. Kennedy of J&G, Shelby, discussed implementation of the rule change should the Board adopt the proposed rules. Mr. Kennedy comments that the low current oil prices, the large number of shut-in wells owned by some operators, and the uncertainties of working with the Board and its staff to develop an economically acceptable plugging plan are considerations the Board should make before it adopts the proposed rules.

RESPONSE:

The Board recognizes implementation of the proposed rule will be difficult in some cases. It is not likely that this, or any future Board, could ignore the consequences should its enforcement actions lead to the economic demise of its small operators. The Board has no desire to inherit the plugging liability (on behalf of the State) for any such wells, and has stated its intent to work cooperatively with the regulated community and develop reasonable guidelines for its staff to use in implementation of the proposed rule.

COMMENT 5:

The Northeast Montana Land and Mineral Owners Association, Antelope; Ken Hoversland, P.C., P.O. Box 687, Scobey; Somont Oil Co., P.O. Box 96, Ferdig; The Montana Petroleum Association, P.O. Box 1186, Helena; Branch Oil and Gas, P.O. Box 766, Shelby; and Croft Petroleum Co. P.O. Box 397, Cut Bank, all provided written comments generally supportive of the proposed rules. Somont and Branch encourage the Board to develop a flexible, cooperative approach to implementation of proposed rule 36.22.1303. Somont, Croft, and Branch associate the Board's consideration of increased well bonding requirements with adoption of the proposed rule. Somont and Branch suggest that increased bond amounts might be avoided by cooperative operators which have successfully reduced their liability by timely plugging of non-productive wells. Croft suggests that the Board consider a fee system in lieu of increased bonds to reduce the number of unplugged wells. This would avoid the necessity for the Board having to determine which wells must be plugged. The Montana Petroleum Association suggests the second sentence of rule 36.22.1303 be re-worded to include "either as currently constructed or as reasonably foreseen to be constructed"

immediately before the words "is no longer capable of production" and the words "for gas storage or withdrawal" before the words "or for disposal facilities."

RESPONSE:
As mentioned in the preceding responses, the Board fully intends to cooperate with operators in implementing the subject rule. Mr. Croft's comment on a fee in lieu of bond increases, although not part of this rulemaking, has merit. Unfortunately, a similar suggestion was made by the Board to the legislature in the past and was not successful. The language suggested by the Montana Petroleum Association does clarify the rule, but the Board believes a very lengthy list of items to be considered as demonstrative of the usefulness of a well could also be added to the rule. Rather than itemize such uses, the Board believes its staff should be directed to consider these possibilities as well as other future technological advances that would extend the useful life of a well.

COMMENT 6:
Written comments were received from the Commissioner, Division of Banking and Financial Institutions, Montana Department of Commerce, on proposed rules 36.22.1308 and 36.22.1408. These were the only substantive comments received on these two rules. The Commissioner suggests that rule 36.22.1308(b) state: "a certificate of deposit not greater than $100,000 issued by a state or federally chartered, FDIC-insured, commercial bank." and that rule 36.22.1408(a) state: "it must be issued by an FDIC-insured, Montana commercial bank or an out-of-state FDIC-insured, commercial bank having assets in excess of $200,000,000;".

RESPONSE:
The Board agrees that the Commissioner's language clarifies the intent of the rules and adopts the modified language for rule 36.22.1408; however, the Board does not adopt the modifications for rule 36.22.1308 because it believes the suggested language could be interpreted as limiting the Board's ability to require bonds in excess of $100,000.

COMMENT 7:
Seven persons provided oral comment at the public hearing held on December 18, 1997. Three comments generally were supportive of the proposed rules and four generally opposed. Mr. Lynn Stewart of Oilmont commented that the proposed rules would help to get old, abandoned wells promptly plugged. He felt such wells could be life threatening in some circumstances and related that, on three separate occasions, he or his family members were involved in collisions between unplugged wells and farm machinery. Mr. Monte Mason, Trust Land Management Division of DNRC, Helena, supported the proposed rules and suggested that the decision to plug unneeded wells should be made during the economic life of a lease--as required by the proposed rules, and not after the lease is no longer economically viable--as allowed

under the existing rule. Gary Broeder, attorney from Billings representing Shell Western Exploration and Production, Inc., supported the proposed rule and suggested that the Board consider six specific items when enforcing the rules. Those include: potential for new drilling, completion, and production technology, application of enhanced recovery, possible decreases in cost of repair, re-entry, or re-equipping of shut-in wells, and additional technical information that may identify additional pay zones in a well.

RESPONSE:
The Board agrees with the comments. Shell's suggestions for evaluation of wells will be considered for inclusion as staff policies for review of non-productive wells are developed.

COMMENT 8:
Mr. Pete Woods, Liberty County Commissioner, commented that as an independent operator, he could produce wells that larger companies could not and he opposed plugging wells with any production potential. He also said there were lots of little wells that if left to an individual can make money. Mr. Montalban of the Northern Montana Oil and Gas Association commented that large companies had sold properties to independents and left them with numerous shut-in wells which they cannot afford to plug at current oil prices. Mr. Montalban provided a written analysis indicating that at $15.00/bbl these operators are losing money. Mr. Gary Feland, J&G Operating, commented that the Board's rules were adopted to keep the state out of everybody's business and pointed to the levels of activity in other states as indicative of the adverse effect of changing rules. Mr. Feland commended the federal oil and gas program for cooperating with operators in getting non-productive wells plugged.

RESPONSE:
Although most of these concerns have been addressed above, the Board wishes to reiterate its position that it does not intend to require the plugging of productive wells, and it will cooperate with operators in developing plans to plug wells with no foreseeable usefulness. The federal procedures have been considered and the Board hopes to develop a similar process to cooperatively implement the rule change. Currently, rule 36.22.1303 allows an operator to indefinitely defer plugging of any well on a producing lease regardless of the future use or lack of use that a well might have. The Board believes this rule effectively eliminates its ability to reach a cooperative agreement with an operator to reduce the overall liability accruing from unplugged and unneeded wells because that operator has no obligation under the rule to promptly plug such wells. The states specifically mentioned as being good places for oil and gas operators to do business have all addressed the non-productive well situation by various means. Those means include increased bonds for shut-in wells, limits on the number of non-producing wells on a bond, requirements for periodic submission

of plugging plans, and non-refundable annual fees on dormant wells.

COMMENT 9:
Mr. Kim Hawley, Conrad, asks who will determine the usefulness of a well. Mr. Danny Mitchell, Cut Bank, remarks that he has never experienced contamination from unplugged wells. He has four wells with collapsed casing that were drilled in 1924, and they cannot now be plugged. He suggests that wells like those described by Mr. Stewart (see above) should just have cement dumped on them and they should be forgotten. He asks the Board to consider the geology and poor ground water quality of the Hi-Line area in developing plugging requirements.

RESPONSE:
While the Board believes every operator knows which wells have no value and should be plugged, the Board cannot delegate the determination as to the level of compliance with its rules achieved by each operator. The Board does not agree that unplugged wells result in no deleterious consequences; it does agree that the geology of an area and other technical factors should be considered in developing plugging plans.

3. The Board amended rule 36.22.1408, as proposed (as discussed above), but with the following changes:

36.22.1408 FINANCIAL RESPONSIBILITY Subsections (1) through (4) remain the same.

(5) The board may accept a letter of credit in lieu of a surety bond or certificate of deposit. A letter of credit must meet the following conditions:

(a) it must be issued by an FDIC-insured, Montana commercial bank ~~or any national bank in the United States that is federally insured and has total assets greater than $200 million~~ or an out-of-state FDIC-insured, commercial bank having assets in excess of $200,000,000;

Subsections (5)(b) through (6) remain the same.

AUTH: 82-11-111, MCA
IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127 and 82-11-137, MCA

The Board amended rules 36.22.1303 and 36.22.1308 as proposed.
AUTH: 82-11-111, MCA
IMP: 82-11-123 and 82-11-124, MCA

BOARD OF OIL AND GAS CONSERVATION

THOMAS P. RICHMOND
ADMINISTRATOR

DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State February 2, 1998

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

| | | |
|---|---|---|
| In the matter of the transfer of rules 11.7.105 through 11.7.306 and 11.7.315 through 11.7.901, with the exception of any repealed rules, and the transfer and amendment of 11.7.103 and the repeal of 11.7.310, pertaining to foster care services | ) ) ) ) ) ) ) ) | NOTICE OF TRANSFER, AMENDMENT AND REPEAL |

TO: All Interested Persons

1. On December 15, 1997, the Department of Public Health and Human Services published notice of the proposed transfer of rules 11.7.105 through 11.7.306 and 11.7.315 through 11.7.901, with the exception of any repealed rules, and the transfer and amendment of 11.7.103 and the repeal of 11.7.310, pertaining to foster care services at page 2250 of the 1997 Montana Administrative Register, issue number 24.

2. The Department has amended and transferred rule 11.7.103 (37.50.101) and repealed rule 11.7.310 as proposed.

3. The Department has transferred the rules 11.7.105 through 11.7.306 and 11.7.315 through 11.7.901 as proposed.

4. No comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State February 2, 1998.

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

| | | |
|---|---|---|
| In the matter of the adoption of Rules I through XXI and the amendment of 11.12.101 pertaining to youth care facilities | ) ) ) ) ) | NOTICE OF ADOPTION AND AMENDMENT |

TO: All Interested Persons

1. On October 6, 1997, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I through XXI and the amendment of 11.12.101 pertaining to youth care facilities at page 1759 of the 1997 Montana Administrative Register, issue number 19.

2. The Department has amended Rule 11.12.101 and adopted Rules I (11.12.501), II (11.12.505), III (11.12.509), IV (11.12.510), V (11.12.511), VI (11.12.515), VIII (11.12.517), IX (11.12.520), X (11.12.521), XI (11.12.522), XII (11.12.525), XIII (11.12.530), XIV (11.12.531), XVI (11.12.533), XVII (11.12.536), XVIII (11.12.537), and XX (11.12.542) as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE VII [11.12.516] YOUTH SHELTER CARE: PROGRAM REQUIREMENTS, PERSONAL NEEDS (1) The provider shall ~~provide~~ assure that each youth ~~with~~ has his or her own clothing suitable to the youth's age and size and comparable to the clothing of other youth in the community.

(2) and (3) remain as proposed.

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

RULE XV [11.12.532] YOUTH SHELTER CARE: ENVIRONMENT (1) A youth shelter care facility shall comply with the ~~following structural~~ environmental requirements~~:~~ set forth in ARM 11.12.405.

~~(a) all rooms and hallways shall have adequate lighting;~~

~~(b) adequate space shall be provided for all phases of daily living, including recreation, privacy, group activities and visits from family, friends and community acquaintances;~~

~~(c) indoor areas of at least 40 square feet of floor space per youth shall be provided for quiet, reading, study, relaxing, and recreation. Halls, kitchens, and any rooms not used by youth shall not be included in the minimum space requirement; and~~

~~(d) a sleeping room shall contain at least 50 square feet of floor space per person. Bedrooms for single occupancy must have at least 80 square feet.~~

~~(2) Bathrooms shall be cleaned thoroughly with a germicidal cleaner at least weekly and more often if needed.~~

~~(3) Other areas shall be cleaned on a regular basis.~~

~~(4) There shall be hot and cold water available in the youth shelter care facility. Water temperature for hot water must be limited to 120° or below.~~

~~(5) There must be a washing machine and dryer available.~~

~~(6) The youth shelter care facility must be equipped with a telephone. Telephone numbers of the hospital, police department, fire department, ambulance and poison control center must be posted by each telephone. Telephone numbers of the parent(s) and placing agency must be readily available.~~

~~(7) Youth shelter care facilities must have reasonable access to schools, churches, job opportunities, shopping, health and recreational activities.~~

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

RULE XIX [11.12.538] YOUTH SHELTER CARE: STAFF (1) and (2) remain as proposed.

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

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

(b) at least 2 years of direct work experience in youth services~~; and~~ .

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

(4) remains as proposed.

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

(5)(a) through (5)(a)(v) remain as proposed.

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

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

(ii) suicide prevention~~; and~~ .

~~(iii) first aid;~~

(c) within the first 30 days of the date of hire and prior to being the sole child care staff on duty, the employee shall receive training in CPR and first aid. ~~;and~~

(i) all staff certified in CPR shall receive annual CPR training.

(d) in their first year of employment, child care staff shall attend 14 hours of training in addition to their

participation in employee orientation. All other child care staff shall attend a minimum of 20 hours of training per year. Training shall be relevant to the child care staff person's responsibilities in the youth shelter care facility.

~~(5)~~ (6) Participation in all orientation and training shall be documented in the employee's personnel file.

~~(6)~~ (7) The resident to staff ratio on the premises shall not be more than 8:1 throughout a 24-hour period. At least one child care staff person shall provide awake coverage during designated sleep hours.

~~(7)~~ (8) There shall be a minimum of one child care staff person present who is directly responsible for resident care and activities when any resident is in the home.

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

RULE XXI [11.12.543] YOUTH SHELTER CARE: CASE RECORDS (1) The provider shall maintain a written case record for each youth which shall include, at a minimum, the following:

(a) ~~treatment, medical and dental records~~ name and sex of the youth;

~~(b)~~ (c) educational data from the time of admission until the time the youth leaves the youth shelter care facility;

~~(c)~~ (b) date of admission and placing agency; ~~and~~

(d) date of discharge, reason for discharge and the name, telephone number and address of the person or agency to whom the youth was discharged~~.~~ ; and

(e) the name, address and telephone number of the parent(s) or guardian of the youth.

(2) If available, each youth's case record shall include:

(a) the ~~name, sex,~~ birthdate and birthplace of the youth;

~~(b) the name, address, and telephone number of the parent(s) or guardian of the youth;~~

(2)(c) and (d) remain the same in text but are renumbered (2)(b) and (c).

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

(3)(a) through (3)(f) remain as proposed.

(g) dental records;

(3)(g) and (h) remain the same in text but are renumbered (3)(h) and (i).

(4) remains as proposed.

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

(5)(a) and (b) remain as proposed.

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

(d) an immediate needs assessment and assigned responsibilities; and

(5)(d) remains the same in text but is renumbered (5)(e).

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

4. The Department inadvertently misnumbered subsections in Rule XIX (11.12.538) causing there to be two subsections (5). The Department has renumbered the subsections starting with renumbering the second subsection (5) as subsection (6), and the existing subsections (6) and (7) as subsections (7) and (8) consecutively.

The Department is deleting subsection (3)(c) of Rule XIX (11.12.538) as it is essentially a redraft of subsection (1) of the same rule and is an unnecessary repetition of language.

The Department inadvertently omitted the requirement of an immediate needs assessment and assigned responsibilities as was suggested by the rule work group in formulating these rules. The Department has added this requirement to Rule XXI (11.12.543) as new subsection (5)(d).

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Commentor suggests that proposed language in Rule VII(1) (11.12.516) appears to restrict the ability of a youth shelter care provider to determine the clothing needs of individual youth. Commentor requests that wording of the rule be modified from "shall provide" to "as needed and that is reasonable".

RESPONSE: The Department concurs with the comment and has modified the language of Rule VII(1) (11.12.516) to reflect flexibility in the provider's determination of a youth's clothing needs.

COMMENT #2: Commentor is concerned about the time limits and the additional financial burden of training "on call" and "temporary staff" in CPR and First Aid as provided in Rule XIX (11.12.538). Commentor writes, "These staff do not work alone with residents and would always be supervised by a staff who has received CPR/First Aid training". Commentor believes that "permanent staff" should be required to participate in CPR and First Aid training annually.

RESPONSE: The Department recognizes the provider's need for flexible staffing and the necessary precautions against needless expenditures. The Department recognizes that annual CPR training is reasonable. The Department has modified the rule to so provide.

COMMENT #3: Commentor questioned how the annual staff training

requirement of 20 hours was derived in Rule XIX (11.12.538).

RESPONSE: The Department determined that 20 hours would generally allow 16 hours or 2 days of annual training related to youth care issues and 4 hours of training dedicated to annual CPR recertification.

COMMENT #4: Commentor requests expansion of Rule XIX(5) (11.12.538) regarding the location of individual employee training records to include "central location" as that has been the recommendation of the commentor's local licensing officials.

RESPONSE: The development of a rule relating to the specific placement of employee training records is new. The Department believes that placement of staff training records in an employee's individual personnel file is appropriate and sufficient.

COMMENT #5: Commentor requests expansion of Rule IV (11.12.510) to include "food preparation and handling" as a means to reduce the risk of occurrence of food borne illness outbreak.

RESPONSE: The Department thinks this issue requires careful consideration and input from the affected provider group. The Department will adopt the rule as proposed and will take commentor's suggested changes in front of a rulemaking work group the next time the issue is revisited.

COMMENT #6: Commentor requests more detail in Rule XV (11.12.532) per "Food and Consumer Safety" issues. Commentor states that the proposed rule does not address the issues of a safe potable water supply, sewage treatment system or solid waste disposal.

RESPONSE: The Department will adopt the provisions currently in ARM 11.12.405 which does address water supply, sewage and solid waste disposal. The Department thinks this issue requires careful consideration and input from the affected provider group. The Department will adopt the rules as proposed and will take commentor's's suggested changes in front of a rulemaking work group the next time the issue is revisited.

COMMENT #7: Commentor feels that Rule XV (11.12.532) does not adequately specify public health preventive measures. Commentor requests expansion of the rule relating to housekeeping and laundry provisions.

RESPONSE: The Department thinks this issue requires careful consideration and input from the affected provider group. The Department will adopt the rule as proposed and will take commentor's suggested changes in front of a rulemaking work group the next time the issue is revisited.

COMMENT #8: Commentor believes that 1:12 awake coverage is a sufficient night time staff:youth ratio and should not be set at a 1:8 ratio as specified in Rule XIX (11.12.538). Other commentors were in support of the 1:8 ratio.

RESPONSE: The Department believes the minimum standard of 24 hour, 1:8 awake coverage should be the minimum allowable ratio in shelter care facilities to maximize the safety of youth in case of an emergency. Some facilities have very young children that would need direct assistance in case of an emergency. Some facilities have high-risk potentially volatile youth, who may impose a risk to themselves or others if not adequately supervised. This ratio has been successfully utilized by the majority of state licensed youth group homes and shelter care facilities since 1983. The Department has received only one formal request to increase this ratio and believes it would be unwise to broaden a rule which has been effective in protecting youth.

COMMENT #9: Commentor believes that providers will not be able to obtain information relating to an individual youth's "maintenance of treatment", "medical" and "dental" records as required in proposed Rule XXI (11.12.543). Commentor believes that this rule, as written, is confusing.

RESPONSE: The Department concurs with the commentor and has modified Rule XXI (11.12.543) to clarify case record expectations.

COMMENT #10: Commentor believes that searches as provided in Rule IX (11.12.520) need to be authorized by the Department and should be balanced with the privacy interests of individual youth.

RESPONSE: The Department believes that the commentor's concerns regarding authorization of searches and the privacy interest of individual youth is reflected in the text of this rule and adopts Rule IX (11.12.520) as proposed.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State February 2, 1998.

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

| | | |
|---|---|---|
| In the matter of the adoption of rule I and the amendment of 46.12.102, 46.12.702 and 46.12.703 pertaining to medicaid outpatient drugs | ) ) ) ) ) | NOTICE OF ADOPTION AND AMENDMENT OF RULES |

TO: All Interested Persons

1. On December 15, 1997, the Department of Public Health and Human Services published notice of the proposed adoption of rule I and the amendment of 46.12.102, 46.12.702 and 46.12.703 pertaining to medicaid outpatient drugs at page 2241 of the 1997 Montana Administrative Register, issue number 24.

2. The Department has amended rules 46.12.102 and 46.12.703 as proposed.

3. The Department has adopted rule I (46.12.701A) as proposed.

4. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.702 OUTPATIENT DRUGS, REQUIREMENTS (1) through (6)(c) remain the same.

(d) The department hereby adopts and incorporates by reference 42 USC 1396r-8 (1997) as a part of these rules. This section of the federal law sets forth the requirements that must be met by the department, drug manufacturers and providers in order to receive reimbursement for outpatient drugs that have been dispensed. This statute describes rebate agreements, covered drugs, prior authorization, reimbursement limits and drug use review programs. A copy of 42 USC 1396r-8 (1997) can be obtained by writing to the Department of Public Health and Human Services, Medicaid Services Bureau, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-113, and 53-6-141, MCA

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Commentor noted that the Department's adoption and incorporation by reference of 42 USC 1396r-8 in ARM 46.12.702(6)(d) did not adequately describe what was being adopted and

incorporated by reference.

RESPONSE: The Department agrees and has amended ARM 46.12.702(d) to provide an appropriate description of the federal law being adopted and incorporated by reference.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State February 2, 1998.

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

| | | |
|---|---|---|
| In the matter of the amendment of rules 46.12.802 and 46.12.806 pertaining to medicaid durable medical equipment | ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Interested Persons

1. On December 15, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.802 and 46.12.806 pertaining to medicaid durable medical equipment at page 2257 of the 1997 Montana Administrative Register, issue number 24.

2. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) through (2)(a)(i) remain as proposed.

(b) Subject to the provisions of (3), ~~Medical~~ medical necessity for oxygen is determined in accordance with the medicare criteria set forth in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, Coverage Issue 60-4, Use of Home Oxygen, pages X-5 through X-9, as of December 1, 1997, which is hereby adopted and incorporated by reference. The medicare criteria specifies the health conditions and levels of hypoxemia in terms of blood gas values for which oxygen will be considered medically necessary. The medicare criteria also specifies the medical documentation and laboratory evidence required to support medical necessity. A copy of the medicare criteria may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2)(c) through (2)(g) remain as proposed.

(3) Providers of oxygen to recipients for whom oxygen was determined to be medically necessary prior to the adoption of the medicare criteria, effective March 1, 1998, set forth in (2) may be reimbursed for oxygen services to those recipients, even though the oxygen would not be medically necessary for them under the medicare criteria, until the recipient's next recertification of medical necessity.

(3) and (4) remain the same in text but are renumbered (4) and (5).

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) through (2)(d) remain as proposed.

(i) For all oxygen systems, portable and stationary, reimbursement will be made in accordance with the department's oxygen fee schedule dated ~~December 1, 1997~~ March 1, 1998, which is hereby adopted and incorporated by reference. A copy of the oxygen fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2)(e) through (4)(b) remain as proposed.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The costs of delivering oxygen services in rural Montana exceed those in other areas of the state where providers service larger communities. This price differential is not reflected in the new oxygen fee schedule.

RESPONSE: The department has considered the higher cost of providing oxygen in rural areas in arriving at the new fees. One of the reasons oxygen fees are being reduced 23% for nursing home residents but only 12% for other stationary oxygen providers is the fact that nursing facilities tend to be located in comparatively well-populated areas. Therefore, the department believes that the new fees do reflect the higher costs of providing services in rural areas.

COMMENT #2: The department determined that the quality of service would suffer under a sole source vender, but by applying these cuts across the board the department is asking the providers to maintain a high level of service at an unsatisfactory service level fee.

RESPONSE: The department regrets the necessity for reducing fees but notes that even after applying these rate reductions, the Montana Medicaid fee remains higher than surrounding states which have similar geographic makeups. The department believes the new fees to be reasonable and adequate to allow oxygen providers to maintain a high level of services to Medicaid recipients. In addition, portable oxygen cuts that were initially considered by the department as part of this rule change were not adopted, which will lessen the negative impact of the new fee schedule on providers.

COMMENT #3: Has the department determined how many recipients

would be denied services using the new stricter Medicare criteria who would have received services under the present Medicaid criteria?

RESPONSE: The department has no way of calculating the number of recipients who will not meet the new criteria. However, the department will continue to survey and take comments from recipients and providers regarding the new criteria. If necessary, the department will consider revising the medical necessity criteria for oxygen.

It should be noted that it has never been the department's intention to cut off payment for oxygen to recipients for whom oxygen was determined medically necessary under the old criteria even though they do not meet the new Medicare criteria. ARM 46.12.802 will be changed to make it clear that reimbursement for Medicaid recipients who are currently on oxygen using the old criteria will not be terminated as soon as the new criteria take effect. The Medicare criteria will only apply when certifying new oxygen patients or recertifying existing oxygen patients after March 1, 1998.

It should also be noted that the criteria adopted by Medicare in October 1995 for determining medical necessity has been applied by Montana providers to all patients including Medicare, Medicaid, and private insurance beneficiaries. The Medicare criteria was applied to all patients by Montana providers for administrative convenience. Montana Medicaid has waited more than two years since the adoption of these standards by other state Medicaid agencies to study the pitfalls of Medicare's criteria. All the states that we have contacted have not experienced any access problems under Medicare's criteria.

COMMENT #4: The reference to the Medicare criteria in subsection (2)(b) of ARM 46.12.802 does not explain what is contained in those criteria and does not state with sufficient specificity what part of the DMERC Region D Supplier Manual is being adopted.

RESPONSE: The department will state the specific portion and pages of the DMERC manual being adopted and will include a brief summary of the contents of the Medicare criteria in subsection (2)(b) of ARM 46.12.802.

COMMENT #5: The date of the oxygen fee schedule adopted in ARM 46.12.806(2)(d)(i) should be March 1, 1998, rather than December 1, 1997.

RESPONSE: The Department originally intended to implement the new fee schedule in December 1997 and also planned to promulgate revisions to the Medicaid Providers Manual oxygen services section with the new fee schedule on that date. Due to the

delay in implementing the new fee schedule, ARM 46.12.806(2)(d)(i) is being changed to show the date of the revised manual material with the new fee schedule as March 1, 1998. The contents of the fee schedule have not been changed since the notice of proposed amendment of ARM 46.12.802 and 46.12.806 was published. It is only the date of manual material containing the fee schedule which has been changed.

4. For administrative purposes, it is more convenient to implement a change in provider fees on the first day of the month. Therefore, these rule amendments will be effective March 1, 1998.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State February 2, 1998.

## NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

| | |
|---|---|
| Known Subject Matter | 1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute Number and Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1997. This table includes those rules adopted during the period October 1, 1997 through December 31, 1997 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1997, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1996, 1997 and 1998 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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