MONTANA ADMINISTRATIVE REGISTER

1999 ISSUE NO. 13
JULY 1, 1999
PAGES 1458-1564
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE MONTANA AGRICULTURE DEVELOPMENT COUNCIL
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.16.701 pertaining to the agricultural marketing development program; purpose, goals, and criteria.	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 31, 1999, the Montana agriculture development council, (council) proposes to amend ARM 4.16.701 pertaining to the agricultural marketing development program; purpose, goals, and criteria.

2. The council will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the agriculture development council no later than 5:00 p.m. on July 15, 1999, to advise us of the nature of the accommodation that you need. Please contact Stacia Dahl, Senior Marketing Officer, Montana Department of Agriculture, PO Box 200201, Helena, MT 59620-0201, Phone (406) 444-2402, TDD (406) 444-4687, Fax (406) 444-9442, or E-mail agr@state.mt.us.

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

4.16.701 AGRICULTURAL MARKETING DEVELOPMENT PROGRAM; PURPOSE, GOALS, AND CRITERIA (1) through (4)(e) remain the same.

(5) The council will ~~biannually~~ identify, at regularly scheduled meetings at which public comment will be invited, the markets, products, processes, and technologies it seeks to study, expand, or otherwise develop.

(5)(a) through (b)(iii) remain the same.

AUTH: 90-9-203
IMP: 90-9-201

The 56th Montana Legislature passed HB 260, which provides additional funding for the Growth Through Agriculture program. Due to an anticipated increase in requests for grants and loans, the council felt it would be advantageous to meet more often than biannually to review those requests.

4. Concerned parties may submit their data, views or arguments concerning the proposed amendment in writing to the council at the address in paragraph 2, to be received no later than July 29, 1999.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the council, at the address in paragraph 2. The comments must be received no later than July 29, 1999.

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 amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 6 persons based on the 60 grant/loan applicants for 1998/1999.

7. The council maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, feed, apiculture, fertilizer, commodity dealers and warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and marketing, rural development, and/or hail. Such written request may be mailed or delivered to the council at 303 N Roberts, Helena, MT 59601, faxed to the office at (406) 444-9442, or may be made by completing a request form at any rules hearing held by the council.

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

MONTANA AGRICULTURE DEVELOPMENT COUNCIL
Julie Burke, Chairperson

By: _____
Ralph Peck, Director
Montana Department of Agriculture

_____
Timothy J. Meloy, Rule Reviewer

Certified to the Secretary of State June 18, 1999.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to renewal dates, naturopathic physician continuing education requirements, licensing by examination, definitions, midwives continuing education requirements, licensure of out-of-state applicants, and adoption of a new rule pertaining to direct entry midwife protocol standard list	) NOTICE OF PROPOSED AMENDMENT OF ARM 8.2.208 RENEWAL DATES, 8.4.405 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS, 8.4.501 LICENSING BY EXAMINATION, 8.4.502 DEFINITIONS, 8.4.508 MIDWIVES CONTINUING EDUCATION REQUIREMENTS, 8.4.510 LICENSURE OF OUT-OF-STATE APPLICANTS, AND ADOPTION OF NEW RULE I DIRECT ENTRY MIDWIFE PROTOCOL STANDARD LIST

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 31, 1999, the Board of Alternative Health Care proposes to amend and adopt the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on July 19, 1999, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Alternative Health Care, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5436; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

"8.2.208 RENEWAL DATES (1) through (2)(e) will remain the same.

(f) April 30 is the renewal date for licenses ~~and other authorities~~ for naturopathic physicians, naturopathic physicians with childbirth specialty certificates and direct entry midwives granted by the board of alternative health care;

(g) through (q) will remain the same.

(r) December 31 is the renewal date for licenses and other authorities granted by the boards of nursing, public accountants, realty regulation, social work examiners and professional counselors, and is the renewal date for outfitters (regulated by the board of outfitters), property managers (regulated by the board of realty regulation), dangerous drug registration (regulated by the board of pharmacy), ~~and~~ cosmetology, manicuring, electrology and

esthetic schools and cosmetologists, manicurists, electrologists, estheticians and instructors (regulated by the board of cosmetologists) and direct entry midwife apprentices (regulated by the board of alternative health care)."

Auth: Sec. 37-1-101, MCA; IMP, Sec. 37-1-101, MCA

REASON: The proposed amendment will clarify that April 30 is the renewal deadline for naturopathic physicians and direct entry midwives under the Board of Alternative Health Care but that direct entry midwife apprentices have a renewal date of December 31.

Section 37-27-205, MCA, was amended by the 55th Legislature to provide that the Department of Commerce specify in its rules a renewal date for midwife apprentices. The Board of Alternative Health Care has determined that the renewal date for direct entry midwife apprentices be December 31.

"8.4.405 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION

(1) through (2)(a)(iii) will remain the same.

(iv) Preparation for and presentment of a program shall be allowed at the rate of one continuing education credit for each hour of preparation or presentment, limited to one presentation of the program. No more than three credits of continuing education presentations will be allowed.

(v) through (2)(b)(vii) will remain the same."

Auth: Sec. 37-1-319, 37-26-201, MCA; IMP, Sec. 37-1-306, MCA

REASON: The proposed amendment will limit the number of continuing education (CE) hours allowed for presentation of a program to three out of the 15 hours required. The Board has received continuing education reports in which the licensee submitted for credit only those CE programs that the licensee had presented to others. The licensees had not been exposed to any programs on new areas of professional development offered each year and the Board would like to ensure at least some exposure to these other programs as a protection to the public.

"8.4.501 LICENSING BY EXAMINATION (1) Applicants for direct entry midwifery licensure by examination shall submit a completed application with the proper fees and supporting documents, at least 90 days prior to the examination date, to the board office. Applications for licensure by examination shall expire one year from the date of receipt of the application. An applicant who, for any reason, fails or neglects to take the examination within the year shall be required to file another application and submit another application fee.

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

(b) achieve a ~~passing~~ scaled score of 75%.

(3) will remain the same.

(4) Applicants who fail the licensing examination twice

shall in addition to being retested, file in advance with the board a plan regarding arrangements for securing further professional training and experience."

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The proposed rule amendment will establish an expiration date of one year for an examination application, will clarify that the passing score on the national examination is a scaled score of 75 instead of 75% and will provide for an additional training requirement if an individual fails the licensing examination twice.

The Board is setting the expiration date at one year for examination applicants so that candidates will not put off sitting for the examination and to ensure that all references, work experience, etc. listed on the application will not become stale. There is currently no expiration date for applications. The national examination supplier has changed the method by which the midwife examination is scored and is using a scaled score instead of a percentage. The passing score in the rules should reflect this change made on a national level. The Board is proposing that anyone who twice fails the national examination be required to obtain and file with the Board a plan for some additional training and experience prior to sitting for the examination a third time. This would ensure some self-evaluation and further preparation for successful examination results.

"8.4.502 DEFINITIONS (1) "Grand multiparity" means a woman who is in her sixth or greater full term pregnancy.

(1) through (3) will remain the same, but will be renumbered (2) through (4)."

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-205, 37-27-320, MCA

REASON: The definition of "grand multiparity" is proposed as there is diagreement in the literature as to the number of births necessary to determine that a woman has the condition of grand multiparity. Grand multiparity is a condition which requires physician consultation under ARM 8.4.506 and the definition must be clear to both licensees and the public.

"8.4.508 MIDWIVES CONTINUING EDUCATION REQUIREMENTS

(1) through (2)(a)(iii) will remain the same.

(iv) Preparation for and presentment of a program shall be allowed at the rate of one continuing education credit for each hour of preparation or presentment, limited to one presentation of the program. No more than three credits of continuing education presentations will be allowed.

(v) through (2)(b)(vi) will remain the same."

Auth: Sec. 37-1-319, 37-27-105, MCA; IMP, Sec. 37-1-306, MCA

REASON: The amendment is necessary to limit the number of continuing education (CE) hours allowed for presentation of a program to three out of the 14 hours required. The Board has received continuing education reports in which the licensee submitted for credit only those CE programs that licensee had presented to others. The licensee had not been exposed to any programs on new areas of professional development offered each year and the Board would like to ensure at least some exposure as a protection to the public.

"8.4.510 LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice as a direct entry midwife in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. Applications for licensure from out-of-state applicants shall expire one year from the date of receipt of the application. The candidate must meet the following requirements:

(a) through (f) will remain the same."

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-1-304, MCA

REASON: The Board is setting the expiration date at one year for applications from out-of-state candidates so that candidates will not put off sitting for the examination and to ensure that all references, work experience, etc. listed on the application will not become stale. There is currently no expiration date for applications from out-of-state candidates.

4. The proposed new rule will read as follows:

"I DIRECT ENTRY MIDWIFE PROTOCOL STANDARD LIST REQUIRED FOR APPLICATION (1) The antepartum protocol standards include, but are not limited to, the following:

(a) abruptio placenta (suspected);
(b) anemia;
(c) bleeding, first, second and third trimesters;
(d) breech presentation;
(e) candidiasis;
(f) care schedule;
(g) date/size discrepancy;
(h) ectopic pregnancy;
(i) fetal demise first, second, third trimester;
(j) genetic counsel;
(k) glycosuria/glucose screen;
(l) group beta strep;
(m) hepatitis B;
(n) HIV;
(o) human papilloma virus (HPV);
(p) hyperemesis gravidarum;
(q) internal pelvic examination;
(r) intrauterine growth retardation;
(s) minor pregnancy discomfort (heartburn, constipation, insomnia, etc.);

(t) placenta previa (suspected);
(u) polyhydramnios;
(v) post dates pregnancy;
(w) pregnancy induced hypertension (mild, severe);
(x) proteinuria;
(y) Rh negative;
(z) sexually transmitted diseases (chlamydia, herpes, bacterial vaginosis, gonorrhea, trichomosis, etc.);
(aa) transfer of care/termination of midwife-parent relationship;
(ab) twins (diagnosis of);
(ac) ultrasound (indications for);
(ad) urinary tract infection;
(ae) vaginal birth after cesarean.

(2) The intrapartum protocol standards include, but are not limited to, the following:
(a) amnionitis/chorioamnionitis;
(b) bleeding in labor;
(c) care schedule;
(d) edematous cervical lip;
(e) emergency breech delivery;
(f) emergency twin delivery;
(g) face presentation;
(h) fetal distress;
(i) fetal heart rate evaluation;
(j) indications for transfer of care;
(k) meconium staining;
(l) nuchal cord;
(m) oxygen in labor;
(n) perineal support;
(o) placenta abruptio;
(p) posterior fetal presentation;
(q) premature labor;
(r) premature rupture of membranes (ROM and no labor);
(s) prolapsed cord;
(t) shoulder dystocia;
(u) stillbirth;
(v) vaginal birth after cesarean.

(3) The postpartum protocol standards include, but are not limited to, the following:
(a) assessment of placenta;
(b) breast care;
(c) care schedule
(d) delivery of placenta;
(e) depression;
(f) hematoma;
(g) hemorrhage;
(h) hemorrhoids;
(i) perineal second degree laceration or episiotomy repair (suture);
(j) preparation of mother for transport;
(k) retained placenta (manual removal);
(l) Rh negative mom;
(m) shock;

(n) subinvolution;
(o) uterine infection;
(p) uterine inversion.
(4) The newborn protocol standards include, but are not limited to, the following:
(a) care schedule (postpartum visits);
(b) eye prophylaxis;
(c) hypoglycemia (suspected);
(d) hypothermia;
(e) infection (suspected sepsis);
(f) evaluation of jaundice;
(g) neonatal resuscitation;
(h) newborn examination to include gestational age determination and assessment of minor anomalies;
(i) newborn metabolic screening;
(j) normal newborn transition to include maintenance of body temperature, cardiopulmonary function;
(k) normal infant feeding patterns;
(l) polycythemia (suspected);
(m) preparation of infant for transport;
(n) problems of large- and small-for-gestational-age infants;
(o) respiratory distress;
(p) umbilical cord care;
(q) vitamin K administration."
Auth: Sec. 37-1-131, 37-27-105, MCA; IMP, Sec. 37-27-201, MCA

REASON: Antepartum, intrapartum, postpartum and newborn protocols are required from apprentice midwives as verification of educational and practical experience requirements. The specific areas covered in the protocols vary between apprentices. The Board is proposing to list the specific areas it expects every apprentice to address to eliminate confusion over the protocol requirements.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Alternative Health Care, 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., July 29, 1999.

6. If a person who is directly affected by the proposed amendments and adoption 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 Alternative Health Care, 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., July 29, 1999.

7. If the Board receives requests for a public hearing on the proposed amendments and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, from the

Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 6 based on the 56 licensees in Montana.

8. Persons who wish to be informed of all Board of Alternative Health Care 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) 444-5436.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 18, 1999.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to nurse practitioner practice, standards relating to the licensed practical nurse's role in intravenous (IV) therapy and prohibited IV therapies	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.32.301 NURSE PRACTITIONER PRACTICE, 8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY AND 8.32.1409 PROHIBITED IV THERAPIES

TO: All Concerned Persons:

1. On July 30, 1999, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Small Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.32.301 NURSE PRACTITIONER PRACTICE (1) through (c) will remain the same.

(d) ~~work within nurse practitioner established protocols and~~ recognize when to refer clients to a physician or other health care provider;

(e) and (f) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

REASON: Nurse practitioners normally are not required to have protocols for their practice, but are held to professional standards of practice. This amendment is to clarify public and professional misconceptions which the old rule fostered regarding those professional standards of practice.

"8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY (1) and (2) will remain the same.

(3) "Standard intravenous solution" means an isotonic or hypotonic solution with no additives and the following hypertonic solutions with no additives:

(a) D5.2 normal saline;
(b) D5.3 normal saline;
(c) D5.45 normal saline;
(d) D5.9 normal saline;
(e) D5 in ringers; and
(f) D5 in lactated ringers.

(4) through (6)(d) will remain the same."

Auth: Sec. 37-8-415, MCA; IMP, Sec. 37-8-415, MCA

"8.32.1409 PROHIBITED IV THERAPIES (1) through (1)(b)(xiii) will remain the same.

(xiv) hypertonic solutions, except as in ARM 8.32.1408(3);

(xv) through (d) will remain the same."

Auth: Sec. 37-8-415, MCA; IMP, Sec. 37-8-415, MCA

REASON: ARM 8.32.1408 and 8.32.1409 are proposed for amendment to accurately reflect just what constitutes a "standard intravenous solution" and to clarify the confusion expressed by those in the medical community (i.e. hospitals, doctors and nurses). The definition of standard intravenous solution leaves out any hypertonic solutions and yet the new ones being added are hypertonic based on osmolarity. By making these amendments, the rules should standardize the professional standards of practice for nurse practitioners.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on July 19, 1999, to advise us of the nature of the accommodation that you need. Please contact Dianne Wickham, Executive Director, Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-2071; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-7759.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-7759, to be received no later than 5:00 p.m., July 29, 1999.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Board of Nursing. Such written request may be mailed or delivered to the Board of Nursing, faxed to the office at (406)444-7759 or may be made by completing a request form at any rules hearing held by the Board of Nursing.

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

BOARD OF NURSING
KIM POWELL, RN, BSN, PRESIDENT

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 18, 1999.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to qualifications for probationary license and fees, and the adoption of a new rule pertaining to unlicensed person	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.62.407 QUALIFICATIONS FOR PROBATIONARY LICENSE, 8.62.413 FEES AND THE ADOPTION OF NEW RULE I UNLICENSED PERSON

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons:

1. On July 31, 1999, the Board of Speech-Language Pathologists and Audiologists proposes to amend and adopt the above-stated rules.

2. The Board of Speech-Language Pathologists and Audiologists will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Speech-Language Pathologists and Audiologists, no later than 5:00 p.m., on July 19, 1999, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Speech-Language Pathologists and Audiologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

"8.62.407 QUALIFICATIONS FOR ~~PROBATIONARY~~ ACTIVE TEMPORARY LICENSE (1) will remain the same.

(a) ~~probationary~~ active temporary license to practice as a speech-language pathologist and/or audiologist in Montana will be issued to qualified individuals engaged in clinical experience year activities (CEY-Montana, 37-15-303(1), MCA); or clinical fellowship year (CFY-ASHA) activities. An ~~probationary~~ active temporary license shall be issued for two years and is non-renewable except at the discretion of the board."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-202, MCA

"8.62.413 FEES (1) through (5) will remain the same.

(6) The initial fee for an ~~probationary~~ active temporary speech-language pathology and/or audiology license shall be $5.

(7) through (12) will remain the same.

(13) A yearly registration fee for the unlicensed person shall be consistent with the initial application and initial

license fee for the speech-language pathologist and/or audiologist."

Auth: Sec. 37-1-134, 37-15-202, MCA; IMP, Sec. 37-15-307, 37-15-308, MCA

REASON: The proposed amendments to ARM 8.62.407 and 8.62.413 are necessary to make the name change from "probationary" license to "active temporary" license due to the interference of discipline on a license when the term "probationary" is used and also to be consistent with the Oracle database license status categories available.

Subsection (13) is being proposed to add a fee for the yearly registration of an unlicensed person. The fee is set commensurate with program area costs to cover the processing of the initial application and license.

4. The proposed new rule will read as follows:

"I UNLICENSED INDIVIDUALS (1) All forms and documents signed by the unlicensed individual must be signed by the signator as "unlicensed person" and shall not contain the words "speech-language pathologist," (i.e. Jane Doe, unlicensed person.)

(2) An unlicensed individual shall not work until properly registered with the board office."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-313, MCA

REASON: New rule I is being proposed to implement the requirements of House Bill 301 mandated by the 1999 Legislature. An unlicensed individual, when signing documents, must make clear to the public that the individual is unlicensed and is not a licensed "speech-language pathologist."

5. Concerned persons may submit their data, views or arguments concerning the proposed action(s) in writing to the Board of Speech-Language Pathologists and Audiologists, 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., July 29, 1999.

6. If persons who are directly affected by the proposed action(s) wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Speech-Language Pathologists and Audiologists, 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., July 29, 1999.

7. If the Board receives requests for a public hearing on the proposed action(s) from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action(s), from the appropriate administrative rule review committee of the legislature, from a governmental

agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The approximate number of licensees or applicants affected by this proposed action(s) is between one and three.

8. The Board of Speech-Language Pathologists and Audiologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Board of Speech-Language Pathologists and Audiologists. Such written request may be mailed or delivered to the Board at 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406)444-1667 or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
LYNN HARRIS, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 18, 1999.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule for the administration of the 1999 Treasure State Endowment (TSEP) Program	) NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1999 TREASURE STATE ENDOWMENT PROGRAM

TO: All Concerned Persons:

1. On July 21, 1999, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed adoption of a rule governing the administration of the 1999 Treasure State Endowment (TSEP) Program.

2. The proposed new rule will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1999 TREASURE STATE ENDOWMENT PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program 1999 Project Administration Manual published by it as rules for the administration of the TSEP.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) project start up;
(b) environmental requirements;
(c) procurement requirements;
(d) financial management;
(e) civil rights;
(f) labor requirements;
(g) property acquisition;
(h) public facilities construction management;
(i) involving the public;
(j) project monitoring; and
(k) project closeout.

(3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501."

Auth: Sec. 90-6-710, MCA; IMP, Sec. 90-6-710, MCA

REASON: It is reasonably necessary to adopt the rule because 90-6-710(4), MCA, requires the Department to adopt rules to implement the TSEP program, and because the Department must make grantees aware of the procedures to follow in administering their projects.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on July 12, 1999, to advise us of the nature of the accommodation that you need. Please contact Jim Edgcomb, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 444-5284; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4482 or by E-mail, addressed to jedgcomb@state.mt.us.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Jim Edgcomb, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501, facsimile (406) 444-4482, or by E-mail, addressed to jedgcomb@state.mt.us to be received no later than 5:00 p.m., July 29, 1999.

5. Richard M. Weddle, attorney, has been designated to preside over and conduct this hearing.

6. The Local Government Assistance Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Treasure State Endowment Program. Such written request may be mailed or delivered to Jim Edgcomb, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501, faxed to the office at (406)444-4482 or by E-mail, addressed to jedgcomb@state.mt.us or may be made by completing a request form at any rules hearing held by the Local Government Assistance Division.

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

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 18, 1999.

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

In the matter of the amendment of ARM 17.58.101, 17.58.201, 17.58.301, 17.58.302, 17.58.311, 17.58.312, 17.58.313, 17.58.323, 17.58.325, 17.58.326, 17.58.331, 17.58.332, 17.58.333, 17.58.334, 17.58.335, 17.58.336, 17.58.337, 17.58.339, 17.58.340, 17.58.341, 17.58.342, and 17.58.343; and the repeal of 17.58.338 pertaining to procedures and criteria for compensation of petroleum tank remedial costs	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL (Petroleum Board)

TO: All Concerned Persons

1. The Petroleum Tank Release Compensation Board will hold a public hearing on July 21, 1999 at 10 a.m. in the Lewis Room of the Phoenix Building, 2209 Phoenix, Helena, Montana, to consider the proposed amendment and repeal of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., July 12, 1999, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200902, Helena, Montana, 59620-0901; phone (406) 444-0925; fax (406) 444-1902.

3. The rules proposed to be amended provide as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.58.101 ORGANIZATION AND DUTIES OF BOARD (1) ~~History.~~ The Petroleum Tank Release Compensation Board was created by section 8, chapter 528, Laws of 1989.

(2) ~~Divisions.~~ The board is a unitary organization without divisions.

~~(3) Director.~~ The board is allocated to the department of environmental quality for administrative purposes only. ~~However, the board has authority to employ its own staff and consultants, and for that purpose, the 7 members of the board exercise the powers of a director of a department.~~

~~(4)~~(3) ~~Functions.~~ The functions of the board are to provide a financial assurance mechanism, and to reimburse the owners or operators of eligible tanks for their expenditures in cleaning up releases and compensating third parties who live or own property near the tanks for bodily injury or

property damage they may have sustained as a result of the releases. ~~The board operates in close conjunction with the department of environmental quality and the department of justice.~~ The board shall develop mechanisms and procedures to ensure that corrective action plans are reviewed to determine that associated costs are reasonable and necessary.

~~(5)~~ (4) ~~General or specific~~ ~~I~~Inquiries regarding the board may be addressed ~~to the executive director, petroleum tank release compensation board.~~ as follows:

~~(6) The mailing address of the executive director is as follows:~~

~~Executive Director~~
Petroleum Tank Release Compensation Board
PO Box 200902
Helena, MT 59620-0902

~~(7) A descriptive chart of the board's organization is omitted as unnecessary.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

17.58.201 ATTORNEY GENERAL'S MODEL RULES--INCORPORATION AND SUPPLEMENTATION (1) remains the same.

~~(2) The board also adopts the following policy on rehearing and reconsideration of its final decisions. A motion to rehear the facts of, or to reconsider the conclusions of, a final order in a contested case must be filed within 10 days of the issuance and mailing of the final order.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

17.58.301 GUIDELINES FOR PUBLIC PARTICIPATION

(1) remains the same.

(2) The board shall maintain ~~A~~ a mailing list ~~will be maintained~~ for persons who wish to know when the board is meeting. Any person may add their name and address to this list by contacting the ~~executive director~~ board.

(3) remains the same.

(4) Upon specific request and payment of reasonable copying fees, the board shall send ~~C~~copies of board determinations, orders, and decisions ~~will be made and sent only upon specific request and payment of reasonable copying charges. However, the board may produce and distribute a newsletter, briefly summarizing its actions, to interested parties on the mailing list if such publication is warranted by the numbers of interested persons~~ to any person making such a request.

~~(5) The board will notify the state library of the technical publications from the EPA which come to the attention of the board. The board will also maintain a small~~

~~library of government and nongovernment publications on corrective action technologies which any person may consult upon making prior arrangements with the executive director.~~

AUTH: 2-3-103, MCA
IMP: 2-3-103, MCA

17.58.302 CONDUCT OF BOARD MEETINGS (1) All meetings of the board, other than contested case hearings, shall be conducted by the presiding officer. In the absence of the presiding officer, the vice-presiding officer shall exercise the presiding officer's powers.

(2) and (3) remain the same.

(4) The presiding officer may appoint a hearing examiner to conduct a contested case hearing within the agenda of a board meeting. A member of the board, including the ~~chairman~~ presiding officer, may question a witness through and by leave of a hearing examiner so appointed.

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

17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

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

(b) located on land held by a federal agency if the petroleum storage tank is operated by a contractor for the primary benefit of a federal agency. However, if the contract binds the operator to hold the federal agency harmless from liability for any release from the petroleum storage tank and the federal agency required its contractor to make this commitment prior to March 31, 1990, the petroleum storage tank is not considered as belonging to the federal government.

(4) "Board staff" means those employees of the department of environmental quality provided to the board pursuant to 75-11-318, MCA.

(4) and (5) remain the same, but are renumbered (5) and (6).

~~(6)~~ (7) "Consultant" means a professional person or organization of such persons who advise petroleum storage tank owners or operators with respect to planning and implementing corrective action.

(7) remains the same, but is renumbered (8).

~~(8)~~ (9) "De minimis"~~, as referenced in the definition of "petroleum product" in 75-11-302, MCA,~~ means that amount of a hazardous substance, as defined in this rule, which when mixed with a petroleum product ~~which~~ does not alter the detectability of the petroleum product, effectiveness of corrective action, or toxicity of the petroleum product to any significant degree.

(10) "Department" means the department of environmental quality.

(9) through (10)(a) remain the same, but are renumbered (11) through (12)(a).

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 USC 9602, as amended; or

(c) through (14) Remain the same, but are renumbered (12)(c) through (16).

~~(15) "Responsible party" means the person, whether owner or operator, or any subsequent owner of the subject property who accepts responsibility for the release, who undertakes a corrective action after a release from a tank is discovered.~~

~~(16)~~ (17) "Site/facility" means a complex of petroleum storage tanks under the same ownership on a contiguous piece of property.

(17) and (18) remain the same, but are renumbered (18) and (19).

~~(19)~~ (20) "Tank~~,~~" is a ~~petroleum storage tank as defined in 75-11-302, MCA, and is further defined to mean a~~ stationary device designed to contain an accumulation of petroleum or petroleum products and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(20) remains the same, but is renumbered (21).

AUTH: 75-11-318, MCA
IMP: 75-11-302 through 75-11-318, MCA

17.58.312 ~~RELEASE DISCOVERED ON OR AFTER APRIL 13, 1989 CONSTRUED/TANK ELIGIBILITY REQUIREMENTS~~ ELIGIBILTY REQUIREMENTS (1) Except as otherwise provided in this rule, an owner or operator may be eligible for reimbursement of eligible costs incurred on or after April 13, 1989, ~~resulting from~~ as a result of an accidental release from a petroleum storage tank if the release was discovered on or after April 13, 1989~~, even though the tank, in place, was out of service on the date of discovery or is presently out of service~~.

(2) Unless otherwise provided under (3) of this rule, an owner or operator of a farm tank or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank storing heating oil for consumptive use on the premises where it is stored may be eligible for reimbursement of eligible costs incurred after May 14, 1991, if the release was discovered on or after April 13, 1989~~, even though the tank, in place, was out of service on the date of discovery or is presently out of service~~.

(3)~~(a)~~ An owner or operator of a ~~farm or residential~~ petroleum storage tank listed below that was installed on or before April 27, 1995, is not eligible for reimbursement of

otherwise eligible costs incurred after that date, unless the tank was voluntarily removed on or before December 31, 1995~~.~~:

~~(b) For purposes of (a) above, a tank is:~~

~~(i)~~(a) a farm tank or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;

~~(ii)~~(b) a farm tank or residential tank with a capacity of 1,100 gallons or less used for storing heating oil for consumptive use on the premises where it is stored; and

~~(iii)~~(c) a farm tank or residential underground pipe used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less.

~~(4) An owner or operator is not eligible for reimbursement under this rule, if the tank was removed prior to April 13, 1989, or the tank is excluded from eligibility under 75-11-308(2), MCA.~~

AUTH: 75-11-318, MCA
IMP: 75-11-308, MCA

17.58.313 APPLICABLE CO-PAYMENTS FOR ~~CO-MINGLED~~ COMMINGLED PETROLEUM STORAGE TANK RELEASES (1) ~~In the case of co-mingled plumes, for purposes of determining the appropriate percentage of costs covered by the fund for sites that have more than 1 release from separate petroleum storage tanks, the board will presume that the owner or operator may be reimbursed according to the rates and amounts~~ An owner or operator of a site with more than 1 release from separate petroleum storage tanks and whose plumes have commingled shall be reimbursed for eligible expenses as specified in 75-11-307(4)(b)(i), MCA. A person who seeks reimbursement from the fund at a ~~different~~ rate different than that provided ~~under~~ in 75-11-307(4)(b)(i), MCA, must prove that no leaking petroleum storage tank at the site is eligible under that section. ~~Different rates of reimbursement provided by the fund may not be combined to reimburse costs or damages incurred from a release at any site.~~

AUTH: 75-11-318, MCA
IMP: 75-11-307, MCA

17.58.323 VOLUNTARY REGISTRATION (1) An owner or operator may register a petroleum storage tank with the board for the purposes of determining potential eligibility of the petroleum storage tank for reimbursement under the petroleum tank release cleanup fund.

(2) An owner or operator may apply for such registration by submitting to the board a signed and otherwise completed application on a form provided by the board~~, referred to as the "Eligibility Checklist and Application for Voluntary~~

~~Registration", which must be signed by the owner or operator. Forms for voluntary registration may be obtained from the board~~.

(3) The board may investigate and consult with ~~other~~ regulatory agencies concerning the information submitted in the forms to confirm the accuracy of the information submitted by the owner or operator. If ~~another~~ a regulatory agency has information or the board discovers information that indicates the owner or operator submitted false or inaccurate information, the board may find that the ~~responsible party~~ owner or operator is ineligible for reimbursement.

(4) If ~~another~~ a regulatory agency has reported non-compliance regarding the operation and management of the petroleum storage tank, the board may find that the ~~responsible party~~ owner or operator is ineligible for reimbursement.

(5) If the information on the form would, if true, establish potential eligibility and no inaccuracies have been discovered by or reported to the board, the board shall issue a statement to the ~~responsible party~~ owner or operator indicating potential eligibility for reimbursement.

(6) The board may delegate to the ~~executive director~~ board staff the authority to issue determinations of eligibility for reimbursement when that determination is based on prior board decisions and similar material facts, subject to the ~~responsible party's~~ owner or operator's right to be heard by the board.

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

17.58.325 ~~NOTICE OF RELEASE; ELIGIBILITY DETERMINATION WHEN RELEASE HAS OCCURRED~~ ELIGIBILITY DETERMINATION

(1) When a person notifies the department of a release from a petroleum storage tank, the board shall ~~mail~~ ensure that the owner or operator ~~a "Document Request Form", which lists all of~~ receives the appropriate forms ~~that the person may need~~ necessary for a determination of eligibility or to receive reimbursement from the board.

(2) ~~For purposes of determining eligibility of the release, the owner or operator must complete an "Eligibility Checklist and Application for Voluntary Registration Form".~~ Upon receipt of the completed eligibility form, the board shall determine eligibility by following the procedures under ARM 17.58.323(3) through (6).

~~(3) The board may not consider an "Application for Reimbursement" unless the owner and operator has submitted a complete form, referred to as the "Eligibility Checklist and Application for Voluntary Registration".~~

~~(4) Unless the release is clearly ineligible for reimbursement under the Act, the board staff shall review the corrective action plan for the purpose of pre approving rates.~~

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.326 APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF PETROLEUM STORAGE TANKS ~~(INTERPRETIVE RULE)~~

(1) As used in 75-11-308, MCA, the term "applicable state rules" ~~is interpreted to~~ means:

(a) ~~rules governing the installation and design standards for petroleum storage tanks such as those rules located at ARM Title 17, chapter 56, subchapters 1 and 2,~~ the following provisions of the 1994 Uniform Fire Code, Article 79, "Flammable and Combustible Liquids" a copy of which may be obtained from Western Fire Chief's Association, 5360 South Workman Mill Road, Whittier, CA 90601:

(i) Section 7901.11.3, which states that aboveground metallic piping subject to corrosive action shall be fabricated from noncorrosive materials or provided with corrosion protection;

(ii) Section 7901.11.8, which states that aboveground piping joints shall be liquid tight and shall either be welded, flanged or threaded. Threaded joints shall be made up tight with a suitable thread sealant or lubricant;

(iii) Section 7902.1.8.2.1, which states that the design, fabrication and construction of tanks shall be in accordance with good engineering practice and nationally recognized standards;

(iv) Section 7902.1.13.2, which states that tank foundations shall be designed to minimize uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation; and

(v) Section 7902.3.6, which states that guard posts or other means shall be provided to protect aboveground storage tanks from vehicular damage.

(b) ~~rules which govern release detection requirements for petroleum storage tanks such as those rules located at ARM Title 17, chapter 56, subchapter 4,~~ The following subsections of Article 53 of the Uniform Fire Code as added and adopted in ARM Title 23, chapter 7, subchapter 3:

(i) Section 5301.5.1, which states that fuel dispensers shall be properly mounted on a minimum 6-inch high concrete island or other approved method;

(ii) Section 5301.5.2, which states that fuel dispensers shall not be secured to the island using piping or conduit;

(iii) Section 5301.5.3, which states that emergency shut down devices shall be provided for all fuel dispensers in locations approved by the chief;

(iv) Section 5302.4.1(1)(B), which states that fuel dispensing hoses shall be provided with a listed emergency breakaway device; and

(v) Section 5302.4.1(1)(C), which states that aboveground petroleum storage tanks shall be provided with overfill protection.

(c) ~~rules governing spill and overfill requirements for petroleum storage tanks and anti corrosion protection, and for petroleum storage tanks such as those rules located at ARM Title 17, chapter 56, subchapter 3;~~ The following subchapters of ARM Title 17, chapter 56:

(i) Subchapters 1 and 2, which address the installation of and design standards for underground storage tanks;

(ii) Subchapter 3, which addresses spill and overfill requirements for underground storage tanks;

(iii) Subchapter 4, which addresses release detection requirements for underground storage tanks;

(iv) Subchapters 5 and 6 which address release reporting, initial response and corrective action requirements; and

(v) ARM 17.56.701 and 17.56.702 to the extent that those rules require emptying of temporarily and permanently closed underground storage tanks.

~~(d) rules requiring the reporting of a release within 24 hours of detecting it and taking initial response and abatement measures such as those rules located at 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, 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. (History: (This rule is advisory only, but may be a correct interpretation of the law.)~~

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

17.58.331 ASSENT TO AUDIT (1) remains the same.

(2) The ~~responsible party~~ owner or operator shall obtain the assent on ~~an "Assent to Audit Form"~~ a form provided by the board. The form may be executed by the contractor, consultant, subcontractor, or vendor before or after the work is completed.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.332 INSURANCE COVERAGE: DISCLOSURE; COORDINATION OF BENEFITS (1) An owner or operator who incurs or may incur eligible costs under the Act must disclose to the board, on a form provided by the board, any policy of insurance on the petroleum storage tank or its premises which may cover some or all of the expenses arising from a release of petroleum products from the tank. ~~This disclosure must be made on the "Eligibility Checklist and Application for Voluntary Registration"~~ The disclosure form ~~and~~ must contain current

information as of the date of a release. A copy of the policy or policies must be furnished to the board by the ~~responsible party~~ owner or operator upon request by the board.

(2) The board may agree to coordinate benefits with an insurer who covers the same risks or other risks arising out of a release from the petroleum storage tank. ~~The executive director is authorized to execute such agreements on behalf of the board.~~ An agreement to coordinate benefits may designate which party is primarily responsible for which risks and may divide costs of claims investigation or adjustment.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.333 DESIGNATION OF REPRESENTATIVE (1) ~~If an owner or operator wishes to designate another person to receive reimbursement under the Act, the owner or operator shall complete and file with the board a "Designation of Representative" form~~ Owners or operators desiring to designate another person to receive reimbursement under the Act may do so by submitting the appropriate form provided by the board.

AUTH: 75-11-318, MCA
IMP: 75-11-307, MCA

17.58.334 ~~APPLICATION PROCEDURE REIMBURSEMENT AFTER EXPENDITURE~~ APPLICATION FOR REIMBURSEMENT OF CLAIMS (1) Upon completion of any aspect of an approved corrective action plan, the ~~responsible party~~ owner or operator, or a remediation contractor acting on behalf of an owner or operator, may ~~apply~~ submit the claim to the board ~~for reimbursement of expenditures on an "Application for Reimbursement"~~ on a form~~, which is available upon request from~~ provided by the board.

(2) If the claim is submitted by a person other than the owner or operator, ~~The balance of~~ the ~~application~~ claim form must include ~~the applicant's~~ a certification, verified by a notary public, that the individual signing the ~~application~~ claim form is authorized to represent the owner or operator and that the statements in the ~~application~~ claim form are true to the best of the signer's knowledge.

(3) remains the same.

~~(4) Charges for work conducted 2 years or more prior to the submittal of the application are ineligible for reimbursement.~~

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.335 APPLICATION FOR GUARANTEE OF REIMBURSEMENT OF FUTURE OR UNAPPROVED EXPENDITURES (1) Whenever an ~~applicant~~ owner or operator requests the board to guarantee reimbursement for eligible costs not yet approved by the board, or estimated costs not yet incurred, the board will issue the requested guarantee, with no specific dollar amount, if it is able to make the necessary findings under (2) of this rule.

(2) The board must find, before guaranteeing reimbursement of future or unapproved expenditures, that the release, the petroleum storage tank, and the ~~applicant~~ owner or operator are each eligible for reimbursement and that the expenditure or proposed expenditure would be of a type necessary in order to implement an approved corrective action plan or to pay eligible third-party damage claims.

(3) ~~An owner or operator shall apply to the board for this guarantee on the "Corrective Action Cost and Completion Schedule Estimate Form", entering "not applicable" where appropriate~~ Application forms for guarantee of reimbursement are available upon request from the board.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) Claims for reimbursement may not be considered unless the owner or operator has submitted a completed application for eligibility.

(2) ~~The board's staff shall receive all claims~~ Upon receipt of a claim for reimbursement for corrective action costs~~.~~ ~~T~~the board staff shall determine if the ~~application for the~~ claim form is complete ~~in the initial review, then forward it to the department for its review~~. The board staff shall promptly advise the ~~responsible party~~ owner or operator, or a remediation contractor acting on behalf of an owner or operator, of any incompleteness or deficiency which appears on the ~~application~~ claim form. The final review may be suspended pending the submission of additional information by the ~~responsible party~~ owner or operator, or a remediation contractor acting on behalf of an owner or operator. ~~Any additional information submitted by the Responsible party owner or operator at the request of the board staff may be forwarded to the department for its final review, if the department's review is required to determine whether the work was actual and necessary.~~

~~(2)~~ (3) ~~Applications~~ Claim forms that have been reviewed as complete at least 60 days prior to a scheduled board meeting will normally be considered by the board at that meeting. The reimbursement of claims for which authority to reimburse has been delegated under ~~(3)~~ (4) of this rule, is not subject to this procedure. The agenda for consideration

of ~~applications~~ claims at board meetings must follow the order in which ~~applications~~ claim forms were reviewed as complete and which are not reimbursed under ~~(3)~~ (4) of this rule.

(3) remains the same, but is renumbered (4).

~~(4)~~ (5) The recommendations of the ~~department and~~ board staff shall be mailed to each board member and to the ~~applicant~~ person submitting the claim at least 7 days prior to a board meeting which is scheduled to consider the ~~application~~ claim.

~~(5)~~ (6) The ~~responsible party~~ owner or operator may appear before the board and make a statement ~~on~~ regarding the ~~responsible party's application~~ claim and ~~on~~ the board staff's recommendations. Any other interested party may also make a statement. The board may establish a fair and reasonable limit on the time allowed for oral presentations. The board shall thereafter consider the ~~application~~ claim and may grant it in whole, in such part as may to the board seem proper, or may deny the ~~application~~ claim. Reasons for partial or total denials or disallowed expenses must be stated in the claim reimbursement summary contained in the file, and must be mailed to the ~~responsible party~~ owner or operator within 10 days of the board's decision. The minutes of a board meeting must reflect the sequence of actions taken on ~~applications~~ claims.

~~(6)~~ (7) An ~~responsible party~~ owner or operator dissatisfied with the denial or disallowance of all or any part of the ~~application~~ claim may request a formal hearing. This request, with a specification of the grounds for disagreement with the board's decision, must be filed in writing with the board within 15 days of the receipt of the board's determination by the ~~responsible party~~ owner or operator. Upon receiving such request, the presiding officer of the board may appoint a hearing examiner to supervise any discovery and prehearing matters and to conduct the hearing, either at a subsequent meeting of the board or outside a board meeting, subject to 2-4-621, MCA, as the appointment may specify.

~~(7)~~ (8) Any time periods specified in this rule may be extended by agreement between the board ~~or its staff~~ and the ~~responsible party~~ owner or operator.

AUTH: 75-11-318, MCA, Chapter 259, Laws of 1999
IMP: 75-11-309, MCA

17.58.337 THIRD-PARTY DAMAGES: PARTICIPATION IN ACTIONS AND REVIEW OF SETTLEMENTS (1) Any ~~potentially responsible party~~ owner or operator who is sued for damages resulting from a release shall notify the board within 1 week of being served with a summons and complaint. The ~~party~~ owner or operator shall also advise the board if any insurer is defending him, and the name of such insurer.

(2) Any ~~potentially responsible party~~ owner or operator who, prior to litigation, enters into negotiations with a

third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the board of such demand or negotiations.

(3) The board may review the conduct of any such litigation or negotiation. The board will not assume any legal costs incurred by the defendant but may participate in discovery or trial proceedings or settlement negotiations which bear on the determination of a plaintiff's damages. If the parties wish to employ a judge pro tempore under the provisions of 3-5-113, MCA, and consult with the board in the selection process, the board will consider participating in the compensation of the judge pro tempore.

(4) The board may review any settlement negotiations for the purpose of determining the dollar amount of bodily injury or property damages actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.339 CORRECTIVE ACTION EXPENDITURES: DOCUMENTATION (1) Charges claimed by the ~~responsible party~~ owner or operator pursuant to an approved corrective action plan must be documented as set forth in the instructions for the ~~application for reimbursement~~ claim form.

~~(2) The responsible party may also compensate a third party who undertakes action to mitigate damages to other third parties or their property which would be reimbursable under the Act. Corrective action taken by third parties must receive approval by the department and, to the extent necessary, must be reflected in the corrective action plan. The portion of this reimbursement allowed as an eligible cost must meet the actual, necessary, and reasonable standards applied by the board to all expenditures.~~

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.340 THIRD-PARTY DAMAGES: DOCUMENTATION (1) An ~~applicant's~~ owner or operator's payments for third-party damages pursuant to a judgment entered in a court shall include copies of the notice of entry of judgment, abstract of costs, and a declaration of the fees paid by the defendant to each attorney who appeared in the proceeding.

(2) An ~~applicant's~~ owner or operator's payments for third-party damages made by agreement in settlement of litigation shall include copies of the settlement agreement and such supporting documents as may be required under (4) of this rule.

(3) An ~~applicant's~~ owner or operator's payments for third-party damages made by agreement without reference to

litigation shall include copies of the settlement agreement and such supporting documents as may be required under (4) of this rule.

(4) The board may require a third party claiming bodily injuries to be examined by a physician and the physician's report submitted to the board. The board may require a third party claiming property damage to allow a property appraiser or claims adjuster retained by the board to enter upon the property, inspect it, and report to the board. Such examinations are more likely to be required if the ~~responsible party~~ owner or operator has not kept the board apprised of the course of litigation or settlement negotiations as required under ARM 17.58.337. If the ~~responsible party~~ owner or operator does not keep the board apprised of the course of litigation or settlement negotiations as required under ARM 17.58.337, the board may refuse to reimburse any portion of a settlement or judgment under the actual, necessary and reasonable standards applied by the board to all expenditures.

(5) remains the same.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

17.58.341 CONSULTANT LABOR CODES, TITLES, AND DUTIES

(1) ~~Any~~ Claims for services provided by a consultant/contractor, or subcontractor, including services of its employees, ~~for which reimbursement will be claimed,~~ must be categorized by ~~the consultant/contractor/subcontractor~~ labor code according to the ~~type of service contained in the board's "Consultant/Contractor Code List"~~ list of codes maintained by the board. This requirement does not apply to any service provided by an individual that does not closely approximate one of the categories in the board's list.

(2) A consultant/contractor/subcontractor may file with the board, and amend, not more than once a year (unless further amendment is approved by the ~~executive director~~ board staff), the rates at which it bills clients in Montana for the services described in the board's fee schedule list. Rate schedules and amendments must be maintained in confidence by and accessible only to the board staff, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure.

(3) and (4) remain the same.

(5) An ~~responsible party~~ owner or operator or consultant/contractor, or subcontractor may overcome the presumption that a rate is unreasonable by presenting evidence to the board as provided under ARM 17.58.336(5).

(6) Copies of the ~~board's "Fee Schedule List"~~ list, which establishes categories and codes of consultant/contractor/subcontractor services, may be obtained from the ~~executive director of the~~ board.

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

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

(a) through (j) remain the same.

(2) The following list indicates, by way of example and not limitation, types of charges that are presumed not eligible for reimbursement:

(a) through (3) remain the same.

(4) The presumptions made in (1) and (2) may be overcome by evidence that the costs were actually, necessarily and reasonably incurred in furtherance of the approved corrective action plan.

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

17.58.343 REVIEW AND DETERMINATION OF THIRD PARTY DAMAGE COSTS (1) All ~~"Applications for Reimbursement" of~~ claims for third party damages must be filed with the board. Upon receipt of the ~~application for reimbursement~~ claim, the board shall determine if the ~~application~~ claim is complete. ~~The board may forward the claim to the department for its review if the claim is based on environmental damage.~~ The board shall advise the ~~responsible party~~ owner or operator of any incompleteness or deficiency which appears on the ~~application~~ claim. The final review may be suspended pending the submission of additional information by the ~~responsible party~~ owner or operator.

~~(2) Applications reviewed as complete that are received by the board 90 days preceding a scheduled board meeting will normally be considered by the board. The reimbursement of claims for which authority to reimburse has been delegated under (3) of this rule is not subject to this procedure. The agenda for consideration of applications at board meeting will follow the order in which applications were reviewed as complete and which are not reimbursed under (3) of this rule .~~

(3) remains the same, but is renumbered (2).

~~(4)~~ (3) The recommendations of the board staff~~, and, if appropriate, the department,~~ must be mailed to each board member and to the ~~responsible party~~ owner or operator at least 7 days prior to the board meeting that is scheduled to consider the ~~application~~ claim.

~~(5)~~ (4) The ~~responsible party~~ owner or operator may appear before the board and make a statement on the ~~application~~ claim and on the recommendations. Any other interested party may also make a statement. The board may establish a fair and reasonable limit on the time allowed for oral presentations. The board shall thereafter proceed to consider the ~~application~~ claim and may grant it in whole, in such part as may seem proper, or may deny the ~~application~~

claim. Reasons for partial or total denial of disallowed expenses must be mailed to the ~~responsible party~~ owner or operator within 10 days of the board's decision. The minutes of the board meeting shall reflect the sequence of actions taken on ~~applications~~ claims.

~~(6)~~ (5) An ~~responsible party~~ owner or operator dissatisfied with the denial or disallowance of all or any part of the ~~application~~ claim may request a formal hearing. This request, with a specification of the grounds for disagreement with the board's decision, must be filed in writing with the board within 15 days of the receipt of the board's determination by the ~~responsible party~~ owner or operator. Upon receiving such request, the presiding officer of the board may appoint a hearing examiner to supervise any discovery and prehearing matters and to conduct the hearing, either at a subsequent meeting of the board or outside a board meeting, subject to 2-4-621, MCA, as the appointment may specify.

~~(7)~~ (6) Any time periods specified in this rule may be extended by agreement between the board or its staff and the ~~responsible party~~ owner or operator.

AUTH: 75-11-318, MCA, Chapter 259, Laws of 1999
IMP: 75-11-309, MCA

4. ARM 17.58.338 which can be found on page 17-7055 is proposed to be repealed.

AUTH: 75-11-318, MCA, Chapter 259, Laws of 1999
IMP: 75-11-309, MCA

5. The proposed amendments are necessary to implement House Bills 58 and 617, passed by the 1999 Legislature, a Montana Supreme Court decision and to clarify and simplify existing rules.

House Bill 58 (Chapter 420) Requirements:

Amendments to ARM 17.58.311, 17.58.323, 17.58.325, 17.58.327, 17.58.332, 17.58.334, 17.58.335, 17.58.336, 17.58.337, 17.58.339, 17.58.340, 17.58.341 and 17.58.343 are proposed to replace the terms "applicant", "responsible party", and "potentially responsible party" with the "owner or operator". The existing terms were used because in some instances, parties other than the owner or operator took responsibility for the cleanup of a release. For example, in some instances the property on which underground storage tanks were located was sold after the tanks were removed. In those cases, there being no tanks, the new owner of the property would not be eligible to receive reimbursement for the cleanup from the Petroleum Tank Release Compensation Fund. As House Bill 58 changed the statutory definition of "owner" to include parties that take title to property after a release occurs, the use of the terms "applicant", "responsible party", and "potentially responsible party" is no longer necessary or appropriate.

The proposed amendments will also allow the rules to more closely parallel the statute which only uses the term "owner or operator" to describe the parties eligible for reimbursement from the fund. For the same reason no alternatives to the term "owner or operator" were considered.

HB 58 also requires the Board, for the purposes of determining eligibility, to determine the applicable state and federal laws that pertain to the prevention and mitigation of petroleum releases. Amendments to ARM 17.58.326 are proposed to fulfill that obligation. The Board reviewed the entire Uniform Fire Code, the Montana Underground Storage Tank Act and Federal requirements to determine which rules and regulations should be considered when reviewing an eligibility application.

In determining what other laws and rules were applicable, the Board considered, as directed by the bill, whether compliance with a specific law or rule would prevent or mitigate a release of petroleum products from a petroleum storage tank.

Article 79 of the 1994 Uniform Fire Code (UFC) contains numerous regulations governing petroleum storage tanks, however, most are addressed to fire, rather than environmental concerns. The Board selected the following provisions of the UFC as most relevant to the prevention and mitigation of a release from a petroleum storage tank:

(a) Section 7901.11.3, which states that aboveground metallic piping subject to corrosive action shall be fabricated from noncorrosive materials or provided with corrosion protection, was selected because compliance with this requirement will reduce corrosion of the piping and thereby prevent releases of regulated substances;

(b) Section 7901.11.8, which states that aboveground piping joints shall be liquid tight and shall either be welded, flanged or threaded and that threaded joints shall be made up tight with a suitable thread sealant or lubricant was selected because compliance with this requirement ensures that piping is properly connected and thereby helps to prevent a release of regulated substances;

(c) Section 7902.1.8.2.1, which states that the design, fabrication and construction of tanks shall be in accordance with good engineering practice and nationally recognized standards, was selected because compliance with this requirement reduces the risk of a release;

(d) Section 7902.1.13.2, which states that tank foundations shall be designed to minimize uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation, was selected because compliance with this requirement reduces the risk of a release occurring from an aboveground storage tank; and

(e) Section 7902.3.6, which states that guard posts or other means shall be provided to protect aboveground storage tanks from vehicular damage, was selected because compliance with this requirement reduces the risk of a release occurring from an aboveground storage tank.

The Montana Fire Prevention and Investigation Bureau added Article 53 of the Uniform Fire Code and adopted it in Title 23, Chapter 7, Subchapter 3 of the Administrative Rules of Montana. Its provisions address the day-to-day operation of fuel dispensing stations. Among the provisions adopted by the Board as applicable to the eligibility determination are:

(a) Section 5301.5.1, which states that fuel dispensers shall be properly mounted on a minimum 6-inch high concrete island or other approved method, was selected because compliance with this requirement will reduce collisions between petroleum storage tanks and vehicles and thereby reduce the risk of a release;

(b) Section 5301.5.2, which states that fuel dispensers shall not be secured to the island using piping or conduit, was selected because compliance with this requirement will result in a more stable fuel dispenser that is less likely to be the source of a spill than a dispenser which is secured only by its piping;

(c) Sections 5301.5.3, which states that emergency shut down devices shall be provided for all fuel dispensers in locations approved by the chief, was selected because compliance with this requirement can significantly reduce the extent and magnitude of a release;

(d) Section 5302.4.1(1)(B), which states that fuel dispensing hoses shall be provided with a listed emergency breakaway device, was selected because compliance with this requirement can significantly reduce the extent and magnitude of a release;

(e) Section 5302.4.1(1)(C), which states that aboveground petroleum storage tanks shall be provided with overfill protection, was selected because compliance with this requirement can prevent overfills, one of the leading causes of releases, and could significantly lower the total number of releases of regulated substances.

The Board chose the following subchapters of ARM, Title 17, Chapter 56 because they are the rules adopted under the Montana Underground Storage Tank Act, 75-11-501, et seq., MCA, which are most related to the prevention and mitigation of a release of regulated substances:

(a) Subchapters 1 and 2, which address the installation of and design standards for underground storage tanks, were selected because improper design and installation of an underground storage tank is one of the leading causes of releases of regulated substances. Compliance with these requirements can significantly lower the chances of a release of regulated substances.

(b) Subchapter 3, which addresses spill and overfill requirements for underground storage tanks, was selected because compliance with these requirements can significantly lower the total number of releases of regulated substances.

(c) Subchapter 4, which addresses release detection requirements for underground storage tanks, was selected because compliance with these rules would in most instances provide early detection of a release and thereby reduce its

extent and magnitude.

(d) Subchapters 5 and 6, which address release reporting, initial response and corrective action requirements, were selected because compliance with the prompt reporting, initial response and proper corrective action requirements can significantly reduce the extent and magnitude of a release;

(e) ARM 17.56.701 and 17.56.702, to the extent that those rules require emptying of temporarily and permanently closed underground storage tanks, were selected because compliance with the tank emptying requirements can significantly reduce the extent and magnitude of a release.

House Bill 617 (Chapter 259) Requirements:

House Bill 617 restructures the membership of the Board, revises the authority of the Board and provides that the Department of Environmental Quality shall provide staff support to the Board.

The amendments to ARM 17.58.311(4), 17.58.336(4) and 17.58.343(4) and the repeal of ARM 17.58.338 are proposed in response to HB 617 which requires the Department of Environmental Quality to provide the Board with staff. Prior to the enactment of HB 617 the Board hired its own staff and interacted with the Department of Environmental Quality in reviewing corrective action plans. Under HB 617, the Department will handle both the cost and scientific review analyses of corrective action plans. Consequently, rules requiring coordination between the Department and the former Petroleum Tank Release Compensation Board staff are no longer necessary.

Alternatives to the proposed rule amendments are limited by the legislature's requirement that the Department supply the Board with staff.

Safeway v. Montana Petroleum Tank Release Compensation Board:

The amendment to ARM 17.58.312, which strikes that part of the rule requiring the tank to be "in place", is proposed in response to the Montana Supreme Court's decision in Safeway v. Montana Petroleum Tank Release Compensation Board, 281 Mont. 189, 931 P.2d 1327 (1997). That decision invalidated that part of the rule requiring the tank to be in place at the time of the discovery of the release in order for it to be eligible for reimbursement from the fund.

Because the Supreme Court declared the parts of the rules invalid, alternatives to the proposed amendments were not considered.

Clarifications and Simplifications:

In order to simplify the rules, amendments were made to ARM 17.58.101, 17.58.201, 17.58.301 and 17.58.302 that delete unnecessary language. ARM 17.58.101 has also been amended to

include language which clarifies the function of the Board to determine that reimbursed costs are necessary and reasonable. Similar language existed in ARM 17.58.338 and that is proposed for repeal because it required coordination between the Board staff and the Department that are now one and the same. In order to simplify and clarify existing Board rules, amendments were made to 17.58.312, 17.58.313, 17.58.323, 17.58.332, and 17.58.335 that change the term "tank" to "petroleum storage tank" because that term more accurately describes the vessel that is the focus of the Petroleum Storage Tank Cleanup Act.

The Board proposes amendment of ARM 17.58.325 in order to clarify the rule, to remove superfluous material and to remove part (3) of the rule and add it to a more logical location in ARM 17.58.336.

The Board proposes amendment of ARM 17.58.323, 17.58.325, 17.58.331, 17.58.332, 17.58.333, 17.58.334, 17.58.335, and 17.38.343 to eliminate the specific name of the various forms used in the eligibility and reimbursement process. The amendments would allow the Board to make changes to the forms without having to amend the rules each time the form's name is changed.

6. Concerned persons may submit their data, views or arguments concerning the proposed rules either in writing or orally at the hearing. Written data, views or arguments may also be submitted to Debbie G. Allen, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than July 29, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

7. James M. Madden, attorney for the Department, has been designated to preside over and conduct the hearing.

PETROLEUM TANK RELEASE COMPENSATION BOARD

by: *Tim Hornbacher*
TIM HORNBACHER, Chair

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 18, 1999.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.40.203, pertaining to wastewater operator certification rules	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 30, 1999, the Department proposes to amend ARM 17.40.203.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., on July 19, 1999, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rule proposed to be amended provides as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.40.203 CERTIFICATION OF OPERATORS (1) through (6)(a) remain the same.

(b) the department determines that the applicant has the education and experience that are necessary to operate the system, as defined in ARM ~~17.20.207~~ 17.40.207.

(7) through (10) remain the same.

AUTH: 37-42-202, MCA
IMP: 37-42-304 through 37-42-308, MCA

4. The change to ARM 17.40.203(6)(b) was made to correct a typographical error in the cross-reference. ARM 17.20.207 pertains to confidentiality of geothermal research in the Major Facility Siting Act. The correct citation, 17.40.207, refers to the education requirements of wastewater operators.

5. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than July 29, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along

with any written comments they have to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. A written request for hearing must be received no later than July 29, 1999.

7. If the Board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee 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 267 persons based on the fact that there are in Montana about 1,500 certified operators, 1,153 water or wastewater treatment systems and about 20 training providers.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Curt Chisholm for*
MARK A. SIMONICH, Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 18, 1999.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.101 and 17.56.304 pertaining to underground storage tank repairs	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. The Department of Environmental Quality will hold a public hearing on July 27, 1999, at 10 a.m. in the Lewis Room of the Phoenix Building, 2209 Phoenix, Helena, Montana, to consider the proposed amendment of the above-captioned rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., July 19, 1999, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rules proposed to be amended provide as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this ~~section~~rule and must be used in conjunction with those definitions in 75-10-403, MCA.

(1) through (53) Remain the same.

(54) "Repair" means to restore a damaged or leaking tank or UST system component ~~that has caused a release of product from the UST system~~ to the manufacturer's original design standards.

(55) through (68) Remain the same.

AUTH: 75-10-405, 75-11-319, MCA
IMP: 75-10-405, 75-11-302, MCA

17.56.304 REPAIRS ~~ALLOWED~~ (1) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances. Owners and operators must receive a permit from the department prior to making any repair of an UST system.

(2) Tanks not meeting the design or construction standards of the applicable code of practice adopted by reference in (4) of this rule may not be repaired and must be closed in accordance with ARM 17.56.702.

(3) ~~The r~~Repairs must meet the following requirements:

(a) Repairs to UST systems must be ~~properly~~ conducted in accordance with all applicable state, federal and local laws and regulations and ~~one of~~ the ~~following~~ applicable codes ~~of~~ of practice adopted by reference in ~~(2)~~ (4). ~~of this rule, developed by a nationally recognized association or an independent testing laboratory. Uniform Fire Code, Article 79, "Flammable and Combustible Liquids Codes"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."~~ If there is a conflict in the referenced codes, the more stringent and protective code shall apply.

(b) ~~Repairs to fiberglass reinforced plastic t~~Tanks ~~and steel fiberglass reinforced plastic composite~~ must be ~~made by~~ repaired according to the manufacturer's recommendation and under the supervision on site of ~~the~~ a manufacturer's authorized representatives or the tank manufacturer must certify that the repaired tank ~~and the manufacturer's authorized representative or the manufacturer must certify that the repaired tank~~ meets the manufacturer's design standards.

(c) The tank manufacturer must re-warranty the repaired tank for 10 years or the remainder of the original warranty period, whichever is longer.

(d) The department may require excavation of the tank to be repaired so that the outer wall of the tank may be inspected and tested for defects.

~~(c)~~(e) Metal pipe sections and fittings that are damaged or have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings ~~may~~ must be repaired in accordance with the manufacturer's specifications or ~~must~~ be replaced.

(f) Upon completion of the repair and before the UST system is placed in service the following tests must be performed:

~~(d)~~(i) ~~R~~repaired tanks and piping must be tightness tested in accordance with ARM 17.56.407(3) and 17.56.408(2) ~~upon completion of the repair or before the UST system is placed in service.~~; and

(ii) corrosion protection systems circuitry must be tested to ensure it is still functioning;

~~(e)~~(g) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with ARM 17.56.302(2) and (3) to ensure that it is operating properly.

~~(f)~~(h) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this rule.

~~(2)~~ (4) The department hereby adopts and incorporates by reference:

(a) ~~Uniform Fire Code, Article 79, "Flammable and Combustible Liquids" which sets forth the fire protection requirements where flammable and combustible liquids are stored or dispensed, and a copy of which may be obtained from Western Fire Chief's Association, 5360 South Workman Mill Road, Whittier, CA 90601~~ Underwriters Laboratories Standard 1316, 2nd revised ed. April 12, 1996, "Standard for Safety for Glass-Fiber-Reinforced Plastic Underground Storage Tanks" which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) ~~American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines" which sets forth standards for repairing regulated substance pipelines and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202)682-8375~~ Underwriters Laboratories Standard 1746, 2nd revised ed. September 24, 1998, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth design standards for cathodically protected steel underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) ~~American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks" which sets forth repairing steel UST tanks and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202)682-8375~~ American Society of Testing and Materials Standard D4021-92, (1992 edition) "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks" which sets forth design standards for FRP UST tanks and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017; ~~and~~

(d) ~~National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection" which sets forth repair of steel UST tanks and a copy of which may be obtained from National Leak Prevention Association, 7685 Fields Ertel Road, Cincinnati, OH 45241, (800)543-1838.~~ Steel Tank Institute "Specifications and Manual for External Corrosion Protection of Underground Steel Storage Tanks #STI-P3, STI-P3-99" (1999 edition) which sets forth design and installation standards of cathodically protected steel underground storage tanks and a copy of which may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265; and

(e) Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks F894-99" (1999 edition), which sets forth a minimum consensus standard for the fabrication, installation and repair of FRP clad/composite tanks and a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

4. The amendment of these rules is necessary because the present Department rules are, standing alone, inadequate to prevent releases from repaired underground storage tanks. These inadequacies resulted in the Department relying on the State Fire Marshal and local fire authorities to determine if an underground storage tank (UST) may be repaired. The fire marshals, relying on separate authority found in the 1994 Uniform Fire Code, had until recently disallowed repairs of steel tanks having corrosion holes.

The state fire marshal has now decided to reduce its level of involvement in issues relating to underground storage tanks. Accordingly, the Department must now amend its rules relating to repair of USTs to ensure that any repairs of USTs are conducted in a manner that ensures the protection of the public health and the environment.

Department rules are currently inadequate in that they adopt by reference a set of industry standards that are either out of date, ambiguous, or not protective of the public health and environment. The current Department rules also adopt by reference the Uniform Fire Code, which has been interpreted by the fire marshal to disallow the repair of any tank with holes. However, in the opinion of the Department, that interpretation is not clearly justified. It is therefore in the best interest of the public, licensed tank installers, liners and removers, and tank owners and operators for the Department to adopt new rules that set forth more clearly defined standards for repair and which provide better assurance that a repaired tank will be protective of the public health and the environment.

The Department has identified three alternatives:

(1) disallow any repair of USTs;

(2) allow repair of USTs that were installed to meet certain standards and that can be re-certified by the manufacturer; or

(3) allow repair of all USTs having corrosion holes if the number and placement of corrosion holes does not exceed specified limits.

Alternative 1 is more restrictive than necessary to protect the public health and the environment and would disallow repair of structurally sound USTs that may be in need of repair due to damage not related to generalized corrosion. Alternative 3 does not provide adequate protection of the

public health and the environment in that it would allow repair of USTs that do not meet current design specifications and that may have generalized corrosion. Alternative 2, while disallowing repair of tanks that have been subject to corrosion, would allow repair of structurally sound USTs. Alternative 2 would also provide the means to ensure that USTs being repaired will comply with the manufacturer's specifications following the repair.

Because the Department has proposed amending its repair standards to disallow repair of bare steel tanks and to require that the allowed repairs meet the manufacturer's design standards, it proposes to strike the following standards and codes:

Uniform Fire Code, Article 79, "Flammable and Combustible Liquids;" American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines;" American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection".

The Department proposes to adopt by reference the following standards for the design, construction, repair and installation of particular types of underground storage tanks because these industry standards are either the only standard or are the product of industry consensus:

(a) Underwriters Laboratories Standard 1316, "Standard for Safety for Glass-Fiber-Reinforced Plastic Underground Storage Tanks;"

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth design standards for cathodically protected steel underground storage tanks;

(c) American Society of Testing and Materials Standard D4021-92, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks" which sets forth design standards for FRP UST systems;

(d) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks" which sets forth design and installation standards of cathodically protected steel underground storage tanks; and

(e) Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks" which sets forth a minimum consensus standard for the fabrication of FRP clad/composite tanks.

5. Concerned persons may submit their data, views or arguments concerning the proposed rules either in writing or orally at the hearing. Written data, views or arguments may also be submitted to Debbie G. Allen, Paralegal, Department of Environmental Review, P.O. Box 200901, Helena, Montana,

59620-0901, no later than August 4, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. David Scrimm, attorney for the Department, has been designated to preside over and conduct the hearing.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Curt Chisholm for*
MARK A. SIMONICH, Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 18, 1999.

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

In the matter of the repeal of ARM 20.11.111 pertaining to state facility reimbursement	)))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 31, 1999, the Department of Public Health and Human Services proposes to repeal the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on July 12, 1999, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rule 20.11.111 as proposed to be repealed is on page 20-696 of the Administrative Rules of Montana.

AUTH: Sec. 53-1-403, MCA
IMP: Sec. 53-1-409, MCA

3. The department recently adopted new rules, amended and transferred, and repealed rules in ARM Title 20, chapter 11 pertaining to state facility reimbursement, in the Montana Administrative Register, issue number 12, page 1300. ARM 20.11.111 was inadvertently left out of the rules that were being noticed for repeal. This rule is no longer needed as the provisions of this rule were incorporated into ARM 37.2.707.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than July 29, 1999. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with

any written comments 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 July 29, 1999.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 61 based on the 612 individuals affected by rules covering state facility reimbursement.

Dawn Sliva
Rule Reviewer

Laurie Thomas
Director, Public Health and Human Services

Certified to the Secretary of State June 18, 1999.

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

In the matter of the amendment of ARM 2.43.403, 2.43.409, 2.43.418, 2.43.425, 2.43.430, 2.43.432, 2.43.437, 2.43.451, and 2.43.452, pertaining to membership, service credit, and service purchases in retirement systems administered by the Board and repeal of 2.43.434, 2.43.435, 2.43.438, 2.43.711, 2.43.713, 2.43.714, 2.43.715, and 2.43.716 pertaining to service purchases and to social security coverage for the employees of the state and its political subdivisions.	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons.

1. On May 6, 1999, the Public Employees' Retirement Board published a notice proposing to amend and repeal the above stated rules at page 932 of the 1999 Montana Administrative Register, Issue Number 9.

2. The Board amended and repealed the rules as proposed.

3. No comments were received.

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 June 14, 1999.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.3501, 4.12.3503, and 4.12.3504 relating to the grading of certified seed potatoes	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 22, 1999, the Montana Department of Agriculture published a notice of proposed amendment of ARM 4.12.3501, 4.12.3503, and 4.12.3504 relating to the grading of certified seed potatoes at page 677 of the 1999 Montana Administrative Register, Issue No. 8.

2. The department has amended the rules exactly as proposed.

3. No comments or testimony were received.

By: _____
Ralph Peck, Director
Montana Department of Agriculture

_____
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State June 18, 1999.

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees) NOTICE OF AMENDMENT OF ARM 8.8.2806 FEES

TO: All Concerned Persons:

1. On March 25, 1999, the Board of Athletics published a notice of public hearing on the proposed amendment of the above-stated rule at page 433, 1999 Montana Administrative Register, issue number 6.

2. The Board has amended the rule as proposed, but with the following changes:

"8.8.2806 FEES

(1)	Promoters/matchmakers	$ ~~1500~~ 500, plus bonding requirements
(2)	Boxers/kickboxers	~~40~~ 35
(3)	Wrestlers	~~40~~ 35

(4) and (5) will remain the same as proposed.

(6)	Seconds	~~40~~ 35

(7) through (9) will remain the same as proposed."

Auth: Sec. 23-3-405, 37-1-134, MCA; IMP, Sec. 23-3-405, 23-3-501, 37-1-134, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: One comment was received in support of the proposed amendments.

RESPONSE: The Board acknowledged the comment.

COMMENT NO. 2: One comment was received from Bill Chiesa, General Manager of Metro Park/Montana Fair. Mr. Chiesa specifically objected to the amount of the proposed fee increase for promoters/matchmakers from $250 to $1,500. Commentor stated he believes that this 500 percent one time increase is exorbitant, unusual and unfair.

RESPONSE: The Board acknowledged receipt of the comment. However, the Board is required to cover its costs of operation. It has been nearly five years since the Board has increased its fees. The Board has encountered large operational cost increases during that period of time. In consideration of the comment however, the Board has reduced the proposed promoter fee from $1,500 to $500 as shown above.

COMMENT NO. 3: One comment was received from Kevin McCarl at the hearing. Mr. McCarl is a boxing referee and judge, and feels that raising the fees, especially the promoter/matchmaker is exorbitant. Commentor stated his concern that the proposed increase in fees will result in less activity and, therefore, less revenue for the Board.

RESPONSE: See response to Comment No. 2 above.

BOARD OF ATHLETICS
GARY LANGLEY, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 18, 1999.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees and statement by permit holders	))))	CORRECTED NOTICE

TO: All Concerned Persons:

1. On March 25, 1999, the Board of Public Accountants published a notice of proposed amendment of the above-stated rules at page 463, 1999 Montana Administrative Register, issue number 6. On June 3, 1999, the Board published a notice of amendment of the above-stated rules at page 1203, 1999 Montana Administrative Register, issue number 11.

2. The new section of ARM 8.54.410 was numbered (11) in the original notice and was adopted as proposed. That subsection should have been numbered (12) and the Board has numbered it as such in the replacement pages submitted for the June 30, 1999 filing date.

BOARD OF PUBLIC ACCOUNTANTS
CURTIS AMMONDSON, CPA, 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, June 18, 1999.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to unprofessional conduct and the adoption of a new rule pertaining to record-keeping standards	))))	NOTICE OF AMENDMENT OF ARM 8.64.508 UNPROFESSIONAL CONDUCT AND THE ADOPTION OF NEW RULE I (8.64.510) RECORD-KEEPING STANDARDS

TO: All Concerned Persons:

1. On April 8, 1999, the Board of Veterinary Medicine published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 565, 1999 Montana Administrative Register, issue number 7.

2. The Board did not adopt the proposed amendment to ARM 8.64.508. The Board adopted new rule I as proposed, but with the following changes:

"I (8.64.510) RECORD-KEEPING STANDARDS (1) The required standards of practice for veterinary medical record-keeping are as follows:

(a) through (g) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-1-319, 37-18-202, MCA; IMP, Sec. 37-1-131, 37-1-316, 37-1-319, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Two comments were received concerning matching the required period of time for retention of medical records to that period of time allowed for malpractice litigation.

RESPONSE: The members reviewed the malpractice statute with legal counsel and determined that the five-year malpractice time limit could be tolled if there is failure to disclose by the defendant. This would leave a potentially undetermined period of time for litigation. The members decided to retain the three-year records' retention requirement as that was the common time used by the other states reviewed.

COMMENT NO. 2: One comment was received requesting a change to the new rule to state that the records must be legible.

RESPONSE: The Board members responded that it was understood that medical records would have to be legible and that no change to the rule was necessary.

COMMENT NO. 3: Three comments were received stating that record-keeping standards would be a hardship on the busy, practicing veterinarian and that standards in this area are not needed.

RESPONSE: The Board responded that it has found that standards in this area are necessary and that these rules were carefully written to be as least burdensome as possible, yet still protect the veterinarian and the public.

COMMENT NO. 4: One commentor expressed concern about individual identification of multiple colts seen on a ranch or individual identification of cows in a large herd.

RESPONSE: The board responded that the rules already provide for identification by group, when appropriate, and that no change to the rules is necessary.

COMMENT NO. 5: Two comments were received protesting the placement of a violation of record-keeping standards in the definition of unprofessional conduct (ARM 8.64.508.)

RESPONSE: The Board agreed that as long as it is clear that the medical record rule is a standard of professional practice, it does not need to also be included in the definition of unprofessional conduct. The Board will not adopt the proposed amendment to ARM 8.64.508(14) and is amending new rule I as shown above.

BOARD OF VETERINARY MEDICINE
DON SMITH, DVM, PRESIDENT

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 18, 1999.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a rule pertaining to the administration of the 1999 Federal Community Development Block Grant (CDGB) Program	)))))	CORRECTED NOTICE

TO: All Concerned Persons:

1. On December 17, 1998, the Local Government Assistance Division published a notice of proposed adoption of a new rule at page 3245, 1998 Montana Administrative Register, issue number 24. On June 3, 1999, the Division published a notice of adoption of that rule at page 1204, 1999 Montana Administrative Register, issue number 11.

2. The new rule was numbered 8.94.3714 in the adoption notice, but should have been numbered 8.94.3715. The replacement pages for this rule were submitted for the June 30, 1999 filing date.

LOCAL GOVERNMENT ASSISTANCE DIVISION

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 18, 1999.

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

In the matter of the amendment of ARM 17.58.336, 17.58.342 and 17.58.343 pertaining to review and determination of claims and charges	NOTICE OF AMENDMENT (PETROLEUM BOARD)

TO: All Concerned Persons

1. On April 22, 1999, the Petroleum Tank Release Compensation Board published notice of public hearing on the proposed amendments outlined above at page 682 of the 1999 Montana Administrative Register, Issue No. 8.

2. The board has amended the following rules as proposed with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

17.58.336 REVIEW AND DETERMINATION (1) and (2) remain as proposed.

(3) The board may delegate to the ~~director of the department of environmental quality~~ board staff authority to process and order reimbursement of specified categories of claims upon receipt and review. Processing and reimbursement of such claims must be in accordance with procedures approved by the board. The ~~director of the department of environmental quality~~ board staff shall report the number of such claims and the amounts obligated or expended at the next meeting of the board.

(4) through (7) remain as proposed.

AUTH: 75-11-318, MCA, Chapter 259, Laws of 1999
IMP: 75-11-309, MCA

17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED (1) through (3)(b) remain as proposed.

(c) markups, not to exceed 7%, on subcontractor invoices when the subcontractor is furnishing labor (and incidental goods or supplies) on a project as part of the cleanup. Proof of payment by the contractor to the subcontractor must be submitted prior to board approval or ~~director~~ board staff approval, authorized under ARM 17.58.336(3). Subcontractor markup is allowed only when the subcontracted work was preapproved in a corrective action plan.

AUTH: 75-11-318, MCA, Chapter 259, Laws of 1999
IMP: 75-11-318, MCA

17.58.343 REVIEW AND DETERMINATION OF THIRD PARTY DAMAGE COSTS (1) and (2) remain as proposed.

(3) The board may delegate to the ~~director of the department of environmental quality~~ board staff authority to process and order reimbursement of specified categories of claims upon receipt and review. Processing and reimbursement of such claims must be in accordance with procedures approved by the board. The ~~director of the department of environmental quality~~ board staff shall report the number of such claims and the amounts obligated or expended at the next meeting of the board.

(4) through (7) remain as proposed.

AUTH: 75-11-318, MCA, Chapter 259, Laws of 1999
IMP: 75-11-309, MCA

3. The Board made changes to the proposed rule amendments based on concerns that the Board may not have authority to delegete its duties to the director of the Department of Enviornmental Quality.

4. No comments were received.

PETROLEUM TANK RELEASE COMPENSATION BOARD

by: *Tim Hornbacher*
TIM HORNBACHER, Chair

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 18, 1999.

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

In the matter of the adoption of rules I through XXV, and the repeal of ARM 46.10.303 and 46.10.307 pertaining to AFDC foster care	)))))	NOTICE OF ADOPTION AND REPEAL

TO: All Interested Persons

1. On May 6, 1999, the Department of Public Health and Human Services published notice of the proposed adoption and repeal of the above-stated rules at page 964 of the 1999 Montana Administrative Register, issue number 9.

2. The Department has repealed rules 46.10.303 and 46.10.307 as proposed.

3. The Department has adopted the rules I (37.49.101), II (37.49.102), III (37.49.106), IV (37.49.107), V (37.49.108), VI (37.49.112), VII (37.49.113), VIII (37.49.201), IX (37.49.204), X (37.49.301), XI (37.49.401), XII (37.49.404), XIII (37.49.405), XV (37.49.407), XVI (37.49.412), XVII (37.49.413), XVIII (37.49.414), XIX (37.49.501), XX (37.49.502), XXI (37.49.601), XXII (37.49.602), XXIII (37.49.606), XXIV (37.49.701) and XXV (37.49.704) as proposed.

4. The Department has adopted 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.

RULE XIV (37.49.406) IV-E ELIGIBILITY: DEEMING OF INCOME (1) remains as proposed.

(2) The income of the following individuals is deemed to be available to the filing unit:

(2)(a) remains as proposed.

(b) a sponsor of an alien for the 3 years immediately following the alien's entry into the United States; and

(c) a parent of a minor parent if the minor ~~parent~~ parent's child is the child placed in out of home care~~; and~~ .

~~(d) the spouse of a caretaker relative when the caretaker relative is included in the assistance unit and the spouse of a pregnant woman when the pregnant woman has no other eligible child in the home.~~

(3) through (3)(d) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201 and 53-6-131, MCA

5. The Department has thoroughly considered all

commentary received. The comments received and the department's response to each follow:

COMMENT: In Rule XIV (37.49.406) concerning the deeming of income, subsection (2)(c) incorrectly states that the income of the minor parent's parent is deemed if IV-E benefits are being sought for a minor parent. Also, subsection (2)(d) of that same rule erroneously provides that the income of the spouses is deemed in certain cases.

RESPONSE: The Department inadvertently stated that the income of the minor parent's parent is deemed when IV-E benefits are being sought for a minor parent. This is not consistent with the policy which has been applied for a number of years. On the contrary, when IV-E benefits are being sought for a minor parent, the income of the minor parent's parent is counted in full rather than being deemed. Subsection (2)(c) is being changed to provide that in cases where IV-E coverage is sought for the minor parent's child (not the minor parent), the income of the minor parent's parent (i.e., of the grandparent of the child for whom benefits are sought) is deemed. The latter policy is what the Department originally intended to express in this subsection.

Subsection (2)(d) of Rule XIV (37.49.406) mistakenly provides for deeming the income of a caretaker relative's spouse if the caretaker relative is included in the assistance grant and the income of a pregnant woman who has no other eligible children in the home. A similar provision was contained in the old AFDC rule on deeming of income on which Rule XIV (37.49.406) was modeled, ARM 46.10.512. This provision should not have been included Rule XIV (37.49.406) because such deeming is not applicable to foster care cases. In foster care cases, assistance is provided only for the child, not for the caretaker relative, so the provision for deeming the income of the spouse of a caretaker relative included in the grant, i.e., a caretaker relative receiving assistance for herself or himself, does not apply. Similarly, foster care assistance is not provided to an unborn child, so there is no need for a provision regarding the deeming of the income of a pregnant woman's spouse. Thus, subsection (2)(d) is being deleted to correct this error.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 18, 1999.

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

In the matter of the amendment of rules 46.12.572 and 46.12.573 pertaining to ambulatory surgical centers	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 6, 1999, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 944 of the 1999 Montana Administrative Register, issue number 9.

2. The Department has amended 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.

46.12.572 CLINIC SERVICES, COVERED PROCEDURES

(1) Ambulatory surgical center (ASC) services:

(a) are services that will be covered by medicaid if provided in an outpatient ASC setting incident to provision of physician or dental services to the patient where the services and supplies are furnished in the ASC on a physician's or dentist's order by ASC personnel under the supervision of ASC medical staff;

(b) are limited as provided by ARM 46.12.571(1) through 46.12.571(5) with the term clinic taken to mean ASC~~;~~.

~~(c) are limited to those procedures attributable to an ASC day procedure group as allowed at ARM 46.12.573(1) and are listed in the department's fee schedule for ASCs.~~

(2) through (4) remain as proposed.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

46.12.573 CLINIC SERVICES, REIMBURSEMENT ~~(1) Ambulatory surgical center services as defined in ARM 46.12.570(2) provided by an ASC will be reimbursed on a fee basis. A separate fee will be paid within each day procedure group (DPG) as specified in the DPG ambulatory surgery classification system developed by the Canadian institute for health information (CIHI). Payment for ambulatory surgical center services is a fee for each visit determined as follows:~~

~~(a) The department assigns a DPG to each medicaid procedure or service. The DPG system is an ambulatory surgery classification system that assigns patients to one of 66 groups according to the CPT 4 procedure codes.~~

~~(b) The department determines a fee for each DPG which reflects the estimated cost of ASC resources used to treat cases in that group relative to the statewide average cost of all medicaid cases. Fees for DPGs for ASC are specified in the~~

~~department's ASC fee schedule. The department hereby adopts and incorporates by reference the ASC fee schedule (July, 1999). A copy of the 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.~~

~~(c) Except as provided in (1)(d), the payment specified in (1)(b) is an all inclusive bundled payment per procedure or service which shall be deemed to cover all outpatient services provided to the patient, including but not limited to nursing, pharmacy, laboratory, imaging services, other diagnostic services, supplies and equipment and other ASC services. For purposes of ASC surgery services, a visit shall be deemed to include all ASC services related or incident to the ambulatory surgery visit that are provided the day before or the day of the ambulatory surgery event.~~

~~(d) Physician services are separately billable according to the applicable medicaid rules governing billing for physician services.~~

~~(e) For ASCs, any DPGs determined by the department to be unstable shall be reimbursed as a stop-loss payment. If the provider's net usual and customary charges are more than 400% or less than 75% of the fee specified in (1)(b), the DPG shall be deemed unstable and the net charges shall be paid at the statewide cost to charge ratio specified in (1)(h). For purposes of the stop-loss provision, the provider's netambulatory surgery charges are defined as the total usual and customary claim charges less charges for any noncovered services.~~

~~(f) If the department's ambulatory surgical center fee schedule described in (1)(b) does not assign a fee for a particular DPG, the DPG shall be reimbursed at the statewide average ambulatory surgical center cost to charge ratio specified in (1)(h).~~

~~(g) Ambulatory surgery services for which the CPT-4 procedure code is not included in the day procedure grouper described in (1)(a) shall be reimbursed at the statewide average ambulatory surgical center cost to charge ratio specified in (1)(h).~~

~~(h) The medicaid ambulatory surgical center statewide average cost to charge ratio equals .67.~~

~~(i) When multiple procedures are performed at the same time on the same patient, the first procedure listed shall be paid as provided at (1)(b), (1)(c), (1)(f) or (1)(g) as appropriate. Subsequent procedure codes shall be paid at 50% of the rate listed at (1)(b), (1)(c), (1)(f) or (1)(g) as appropriate.~~

(1) Ambulatory surgical center (ASC) services as defined in ARM 46.12.570(2) provided by an ASC will be reimbursed on a fee basis as follows:

(a) 100% of the medicare allowable amount for rural counties. For purposes of determining the medicare allowable amount for ASC services to medicaid recipients under this rule, the department hereby adopts and incorporates herein by

reference the methodology at 42 CFR part 416, subpart E (1997), and the schedule listing the allowable amounts for ASC services in rural counties found at Medicare Carriers Manual, section 5243. The cited authorities are federal regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the medicare program. Copies of the cited authorities may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, Montana 59620-2951.

(i) For purposes of applying the provisions of 42 CFR part 416, subpart E (1997), and the Medicare Carriers Manual, section 5243, any reference in such authorities to medicare, medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to medicaid, medicaid recipient, recipient, the department or the department, respectively.

(b) For ASC services where no medicare fee has been assigned, the fee is 77% of usual and customary charges.

(c) Except as provided in (1)(d), the payment specified in (1)(a) or (1)(b) is an all inclusive bundled payment per procedure or service which shall be deemed to cover all outpatient services provided to the patient, including but not limited to nursing, pharmacy, laboratory, imaging services, other diagnostic services, supplies and equipment and other ASC services. For purposes of ASC surgery services, a visit shall be deemed to include all ASC services related or incident to the ambulatory surgery visit that are provided the day before or the day of the ambulatory surgery event.

(d) Physician services are separately billable according to the applicable medicaid rules governing billing for physician services.

(e) When multiple procedures are performed at the same time on the same patient, the first procedure listed shall be paid as provided at (1)(a) or (1)(b) as appropriate. Subsequent procedures shall be paid at 50% of the amount provided at (1)(a) or (1)(b) as appropriate.

(2) and (3) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

3. The Department, in considering the comments received, has elected to do the following:
The Department originally proposed a 60% increase in rates to ASCs and using a day procedure grouping system with 66 groups of payments. Based on the comments of the ASCs, the Department has decided instead to pay at the Medicare ASC rural rate. Medicare presently pays ASCs by a grouper system with eight different groups of payments and at three regional rates: a rural rate for 54 counties; an urban rate for Cascade county; and an urban rate for Yellowstone county. The amounts paid under these three regional rates vary slightly, however the urban rates average only 4% more than the rural rate. By paying the Medicare rural rate to all ASC providers, the Department can: promptly implement a new payment system; administer it in an efficient

manner after implementation and assure it is in conformance with 42 CFR 447.321 which limits payments to the total paid for comparable services under Medicare. Federal Financial Participation (FFP) is not available for payments that exceed the amount that would be payable to providers in comparable circumstances under Medicare. Procedures which Medicare does not allow but Medicaid does, will be paid at 77% of the usual and customary charges. This is based on the rate paid by the Utah Medicaid ASC program.

The Department does not wish to penalize ASCs for innovative, cutting edge technologies available to them. Therefore the Department will not adopt the Medicare proposed schedule, which would limit ASCs to Medicare's approved procedures. Procedures allowable for Medicaid reimbursement will continue to be governed by ARM 46.12.571.

During the rulemaking process issues have come to the attention of Department staff which the Department agreed to study. Those issues are: the effects of the Yellowstone Community Health Care Plan on ASCs; physician incentives for ASCs; and 23-hour stays.

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Several Commentors welcomed the Department's review of the ambulatory surgical center program. The majority of comments involved the Department's rate increase. Some Commentors welcomed the proposed rate increase. However, most Commentors felt the rate increase was not enough for them to justify doing business with Medicaid. Some Commentors pointed to the Utah system, which pays ASCs 77% of charges. Some felt a system based on a percentage of costs would be best. Regardless, a fee based on 50% of the outpatient hospital fee was unacceptable to many Commentors.

RESPONSE: The Department acknowledges the Commentors' concerns regarding the rate increase. As a result, the Department contacted Utah's Medicaid program, which pays at the lesser of the Medicare rate or 77% of charges. 77% of charges is estimated to be the Medicare rate. Maximum utilization by Medicaid patients in the ASC setting was the reason cited by Utah officials to pay at that rate. The Department also contacted the Health Care Financing Administration (HCFA), who assured the Department that Montana is allowed to pay at the rural Medicare limit without risking federal sanction. Under 42 CFR 447.321, Medicaid is not allowed to pay more than Medicare. HCFA officials indicated that Medicare pays less than 100% of costs. Therefore, by paying at the Medicare rate, Montana Medicaid will pay ASCs less than 100% of costs.

The Montana Medicaid program presently has incomplete cost information for ASC services. Basing a rate on costs would be

impractical until complete cost data becomes available. The Department will undertake a plan to obtain cost information from ASCs. The Department will develop a cost report form for facilities to complete. These cost reports will not initially result in cost settlement. However, it will provide the Department with additional information concerning the ASC environment and will allow the Department to determine if it is feasible to cost settle in the future.

The plan Abt Associates prepared for the Department recommended that ASCs be reimbursed at 50% of the outpatient hospital rate. That equates to an average of 77.7% of the amount Medicare will pay. 42 CFR 447.321 prohibits State Medicaid programs from exceeding the amount Medicare pays for services. Due to overwhelming response from the ASC provider community against this plan, the Department has decided to not implement it.

The Department deems a fee based on 50% of the outpatient hospital rate unacceptable. Therefore, the Department has decided to adopt a fee schedule to pay at the Medicare ASC rural rate. For those procedures which Medicaid covers but Medicare doesn't, Medicaid will pay 77% of usual and customary charges. Paying at the Medicare ASC rural rate will allow Montana to assure HCFA that it is in conformance with 42 CFR 447.321. Blending the urban and rural rates was considered, but rejected because of concern that the Department could overpay on aggregate. The blended rate option was not favored by HCFA.

COMMENT #2: Several Commentors expressed concern that the fee paid for procedures is not applied uniformly at the same percentage of cost or charge among the 66 groups of the system or within the various groups.

RESPONSE: The proposed grouper system is based on the Montana Medicaid outpatient hospital grouper. That system was implemented in 1996. There are many similarities between hospitals and ASCs, however a few differences would have created inequities in some payment levels for the various procedures. This makes the outpatient fee schedule less than desirable for ASC use. Obtaining Montana ASC cost and charge information would allow the Department to better tailor a fee payment system.

COMMENT #3: One Commentor expressed concern about the possibility that the Department may adopt the Medicare proposed listing of approved procedures as the only procedures which Medicaid will pay for. The Commentor reasoned that restrictions placed on surgeons by the Medicare listing will move surgeries from ASCs to the outpatient hospital setting. In addition, the Commentor noted that some invasive or expensive surgeries are allowed under the proposed Medicare plan but some less invasive, less expensive, innovative or improved surgeries are not.

RESPONSE: The Department agrees with the Commentor. ARM 46.12.571 provides guidance to ASCs concerning which procedures may be performed at their facilities and paid by Medicaid. The Department does not wish to penalize ASCs for innovative, cutting edge technologies available to them. Therefore, at this time the Department will not adopt the proposed Medicare listing of approved procedures.

COMMENT #4: One Commentor expressed concern about the Department's Medicaid HMO pilot program with Yellowstone Community Health Care Plan. The Commentor stated that Medicaid recipients which are part of the Yellowstone Community Health Care Plan will receive all of their surgical procedures at an outpatient hospital except for those procedures not performed in a hospital setting. The Commentor argued that this would not be appropriate in every case.

RESPONSE: The Department acknowledges the Commentor's concern. This concern is directly related to ASCs but not to the proposed rules. The Department plans to investigate this concern and report its findings to the Commentor and to the Montana Association of Ambulatory Surgical Centers.

COMMENT #5: Several Commentors expressed concern that the Department should adopt physician incentives to schedule patient services in ASCs.

RESPONSE: The Department acknowledges the Commentor's concerns. The concerns are related to several groups including ASCs, hospitals, physicians and dentists but is not directly related to the proposed rules. The Department plans to investigate this concern and report its findings to the Commentors and the Montana Association of Ambulatory Surgical Centers.

COMMENT #6: One Commentor argued that the Department needs to consider the possibility of paying for 23-hour stays at ASCs. The Commentor went on to state this matter is gathering momentum on a national basis and that the states of Utah and Washington allow them now.

RESPONSE: The Department acknowledges the Commentor's concern. However, this matter is not directly related to the proposed rule changes. The Department plans to investigate this concern and report its findings to the Commentor and to the Montana Association of Ambulatory Surgical Centers.

5. These rule changes will be applied retroactive to July 1, 1999.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State June 18, 1999.

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

In the matter of the amendment of ARM 46.12.601, 46.12.602, 46.12.605 and 46.12.606 pertaining to medicaid dental services	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 6, 1999, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 955 of the 1999 Montana Administrative Register, issue number 9.

2. The Department has amended rules 46.12.601, 46.12.602, 46.12.605 and 46.12.606 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State June 18, 1999.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Amendment and Adoption of Rules Pertaining To Slamming	)))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Interested Persons

1. On February 25, 1999, the Department of Public Service Regulation, Public Service Commission (Commission) published a notice of the proposed amendment and adoption of rules pertaining to slamming at page 329 of the 1999 Montana Administrative Register, issue number 4.

2. The Commission has amended ARM 38.5.3802 as proposed. The Commission has amended ARM 38.5.3801 as proposed but with the following changes in response to comment:

38.5.3801 CHANGE IN TELECOMMUNICATIONS PROVIDER

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

(2) The independent third party may not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; may not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. Any letter of agency, electronic authorization or verbal authorization verified by an independent third party that does not conform with this rule is invalid. Documentation of valid verbal authorization must demonstrate compliance with each element required by (1)(c) above.

(3) and (4) same as proposed.

3. The Commission adopted new Rules I through IV (ARM 38.5.3815 through 38.5.3818) as proposed.

4. Entities providing written comments included: Montana Consumer Counsel (MCC); U S WEST Communications (USWC); Sprint; Ronan Telephone Company (RTC); the Telecommunications Resellers Association (TRA); and AT&T Communications of the Mountain States and MCI WorldCom (AT&T/MCI), which filed joint comments.

General Comments:

COMMENT NO. 1: USWC and MCC support the proposed amendments and adoption of new rules, citing the need to take steps to prevent slamming in the intraLATA toll market now that consumers may choose their intraLATA carriers.

RESPONSE: The Commission agrees.

COMMENT NO. 2: AT&T/MCI commented that they do not oppose the proposed rules but state the rules are not necessary because the new slamming rules of the Federal Communications Commission will be in effect when the Commission's emergency slamming rules expire. Thus, AT&T/MCI claim, Montana consumers will be afforded the slamming protections of the FCC's new rules, which these proposed rules mirror.

RESPONSE: Even though the proposed rules mirror the new FCC rules, it is necessary to adopt them in order to add them to the Commission's existing anti-slamming rules. The Commission enforces Montana's anti-slamming law and was authorized by the Legislature to adopt rules to implement that law. The law and existing rules differ in important respects from the FCC's rules. By adding the amended and new provisions to the existing rules, carriers and consumers will be able to find Montana's requirements for consumer protection against slamming in one place.

COMMENT NO. 3: AT&T/MCI suggested that, if the Commission believes it must adopt rules at this time, the current proposed rule language should be replaced with a statement deferring to the FCC slamming rules.

RESPONSE: The Commission rejects this suggestion because the Montana anti-slamming law and the Commission's rules to implement that law differ in important respects from the FCC rules.

COMMENT NO. 4: Sprint commented that the Commission's slamming rules should mirror the FCC's slamming rules and, for that reason, the Commission should not adopt these rules until the FCC's slamming rulemaking is complete, at which time it would be appropriate to adopt rules consistent with the FCC rules.

RESPONSE: The Commission disagrees that it should delay adopting consumer protections against slamming until the FCC proceeding is completed. The rules adopted herein provide important safeguards and should not be delayed. The Commission also disagrees that its slamming rules should be consistent with the FCC's rules. While these rules mirror the FCC's rules for verification of carrier changes and carrier freezes, Montana's anti-slamming law and the Commission's existing anti-slamming rules differ in important respects from the FCC's existing and proposed rules and provide stronger consumer protection.

COMMENT NO. 5: TRA suggests ARM 38.5.3801(2) would be strengthened to ensure independence of third party verification providers if it were further amended to include the provision contained in the FCC rules that prohibits the third party verifier from operating in the same physical location as the carrier or the carrier's marketing agent.

RESPONSE: The commission agrees and has added the provision.

COMMENT NO. 6: RTC opposes the first sentence of ARM 38.5.3801(3), which prohibits an executing carrier from verifying carrier change requests received from submitting carriers. According to RTC, its practice is to mail a verification letter to the subscriber after receiving a change request from an interexchange carrier, which the subscriber must sign and return to RTC prior to RTC executing the carrier change. RTC claims that a significant number of carrier change requests submitted by carriers have not been authorized by the subscriber. RTC states the rule provision will result in more slamming that could have been avoided if the company's simple direct verification was allowed to continue. RTC notes that the rule will adversely affect the company's reputation because subscribers who are slammed will often blame RTC due to their lack of understanding of the process.

RESPONSE: The Commission believes that local exchange companies like RTC that verify carrier change requests with their customers before executing the carrier changes have prevented slamming of those subscribers. However, the Commission concludes, as the FCC did when adopting the identical rule, that verification of carrier change requests by the executing carrier could be anticompetitive in a marketplace that includes the executing carrier's own toll and local service offerings. For that reason the Commission will not amend the proposed rules as suggested by RTC. The Commission suggests that one alternative to direct verification of carrier changes prior to executing a carrier change might be notification to the customer of the change in carriers after executing the carrier change request. This notification could be done by telephone or in writing, or could be accomplished by highlighting the carrier change on the subscriber's first phone bill after the change. (Highlighting of changes in service on subscriber phone bills is a requirement recently adopted by the FCC.) In this manner, the slam would not be prevented, but at least the subscriber would be made aware of the carrier change promptly and be able to take action to remedy the situation. Another alternative that can be effective against slamming is for the local phone company to offer carrier "freezes" to subscribers. A subscriber who requests a carrier freeze may not have his or her carrier choice changed unless the subscriber authorizes the local phone company to lift the freeze.

Dave Fisher, Chairman

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JUNE 17, 1999.

VOLUME NO. 48 OPINION NO. 4

CITIES AND TOWNS - Chief law enforcement administrator in commission-executive form of government;
LOCAL GOVERNMENT - Chief law enforcement administrator in commission-executive form of government;
MUNICIPAL GOVERNMENT - Chief law enforcement administrator in commission-executive form of government;
PEACE OFFICERS - Role of mayor as chief law enforcement administrator;
PUBLIC OFFICERS - Role of mayor as chief law enforcement administrator;
MONTANA CODE ANNOTATED - Sections 7-1-4144, 7-3-201, 7-3-203, 7-32-201, 7-32-216 to -219, 7-32-221, 7-32-231, 7-32-4103, 7-32-4105, 7-32-4108, 7-32-4109, 7-32-4113.

HELD: The mayor, not the chief of police, is the chief law enforcement administrator in a commission-executive form of local government.

June 17, 1999

Mr. Robert G. Olson
Cut Bank City Attorney
13 East Main
Cut Bank, MT 59427-0547

Dear Mr. Olson:

You have requested an Attorney General's Opinion on the following question:

> Who is the chief law enforcement administrator in a commission-executive form of local government: the mayor, or the chief of police?

The term "chief law enforcement administrator" appears in several statutory provisions of the Montana Code, but nowhere is the term defined by law. See Mont. Code Ann. §§ 7-1-4144, 7-2-216 to -219, 7-32-221, 7-32-231. The majority of these statutes referencing a "chief law enforcement administrator" deal with the service of reserve and auxiliary peace officers as those terms are defined in Mont. Code Ann. § 7-32-201(1), (5).

Pursuant to Mont. Code Ann. § 7-32-216, a reserve officer may serve as a peace officer "only on the orders and at the direction of the chief law enforcement administrator of the local government." A reserve officer may not carry a weapon while on assigned duty until authorized by the chief law enforcement administrator. Mont. Code Ann. § 7-32-217. As soon as the reserve officer is appointed by the chief law enforcement administrator, he or she is vested with the same powers, rights,

privileges, obligations, and duties as any other peace officer of this state. Mont. Code Ann. § 7-32-218. Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated by the administrator at any time. Mont. Code Ann. § 7-32-221. The chief law enforcement administrator is obligated to appoint a full-time law enforcement officer of the agency as a reserve force coordinator. Mont. Code Ann. § 7-32-219. Finally, Mont. Code Ann. § 7-32-231 directs that a local government may authorize auxiliary officers "only on the orders and at the direction of the chief law enforcement administrator of the local government."

Your question is whether, in a commission-executive form of local government, the foregoing duties are performed by the mayor or the chief of police. After comparing the respective positions, I conclude that the mayor is the chief law enforcement administrator in a commission-executive form of local government.

In the commission-executive form of government, the mayor is designated the chief executive officer of the city or town. Mont. Code Ann. § 7-3-201. In that role, the mayor is responsible for the day-to-day administration of the affairs of the municipality. Mont. Code Ann. § 7-3-203. The mayor also has general administrative and supervisory authority over the local police department. Mont. Code Ann. § 7-32-4103. The mayor is given the power to appoint all members and officers of the department, as well as the power to suspend or remove any member or officer on the force. Mont. Code Ann. §§ 7-32-4103, -4108. All members of the police force are appointed for probationary terms, subject to revocation by the mayor. Mont. Code Ann. § 7-2-4113(1). The mayor is responsible for making rules for the government, direction, management, and discipline of the police force. Mont. Code Ann. § 7-32-4103. Whenever the mayor deems temporary employment expedient for the police department, he or she has the authority to employ temporary assistance. Mont. Code Ann. § 7-32-4109.

The chief of police, on the other hand, is given charge and control of all police officers, but has no responsibility in connection with hiring and terminating officers or setting rules and regulations for the department. Mont. Code Ann. § 7-32-4105(1)(c). The chief has the same powers as a constable in the discharge of his or her duties. Mont. Code Ann. § 7-32-4105(2). The constable's duties are defined under certain provisions relating to the duties of a sheriff. See Mont. Code Ann. § 3-10-702. None of those sections provide authority for the chief of police to hire or fire officers or employees, or to make rules relating to the government, direction, management, or discipline of the police force. The chief's only duty in relation to the officers is to report neglect of duty or misconduct of officers to the council for its action. Mont. Code Ann. § 7-32-4105.

In light of these respective duties, I conclude that the mayor is the "chief law enforcement administrator" in a council-executive form of local government. The mayor is statutorily vested with responsibilities similar to those of the chief law enforcement administrator, while the chief of police is not. To bestow the title of chief law enforcement administrator upon the chief of police would require the chief to perform administrative functions which he or she is not otherwise authorized to do.

THEREFORE, IT IS MY OPINION:

The mayor, not the chief of police, is the chief law enforcement administrator in a commission-executive form of local government.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/ja/dm

BEFORE THE MONTANA BOARD OF MEDICAL EXAMINERS
MONTANA DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PETITION OF WILLIAM M. BATEY, M.D., AND ST. PETER'S HOSPITAL FOR A DECLARATORY RULING ON THE APPLICABILITY OF A.R.M.§ 8.28. 1809(20) TO THE FORMATION OF A JOINTLY OWNED GROUP MEDICAL PRACTICE	**PETITION FOR DECLARATORY RULING**

1. Petitioners' names and addresses are William M. Batey, M.D., 405 Saddle Dr., Helena, MT 59601, and St. Peter's Hospital, 2475 Broadway Ave., Helena, MT 59601.

2. Petitioners are planning the establishment of a joint venture for the practice of medicine in Helena Montana. The joint venture medical practice will be a formed as a limited liability company, a limited liability partnership or a corporation and will be owned in equal shares by a holding company consisting of physicians licensed to practice medicine in the State of Montana, of which Petitioner William M. Batey, M.D., will be a member, and by Petitioner St. Peter's Hospital or a wholly owned subsidiary of St. Peter's Hospital. The members of the physician holding company will all practice medicine as employees of the group medical practice. The joint venture medical practice will not be a licensed health care provider. It is clear under the regulations of the Board of Medical Examiners regarding unprofessional conduct that the participating physicians may practice medicine in joint venture with a hospital. However, the regulation on unprofessional conduct does not define the scope of joint venture allowed and it is not clear if the participating physicians may practice medicine as employees for a joint venture medical practice entity as described above without violating the regulation.

3. The regulation as to which Petitioners request a declaratory ruling is A.R.M.§ 8.28.1809(20) which provides that:

> In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 3, MCA:
>
> * * *
>
> (20) Except as provided in this subsection, practicing medicine as the partner, agent or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

* * *

(d) practicing medicine as the partner, agent or employee of, or in joint venture with, a hospital, medical assistance facility or other licensed health care provider; however,

(i) the partnership, agency, employment or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine, and

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship, and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action that the physician determines not to be in the patients best interest. . . .

4. The question presented for declaratory ruling by the Board of Medical Examiners is whether it is unprofessional conduct for a physician to practice medicine in a joint venture medical practice owned in equal shares by a physician holding company, the members of which are physicians practicing medicine as employees of the joint venture medical practice entity, and a hospital or a wholly owned subsidiary of a hospital. The joint venture medical practice entity would not be a licensed health care provider.

5. Petitioners contend that the practice of medicine in a group medical practice as described herein is not unprofessional conduct as defined in A.R.M. § 8.28.1809, because (i) the business relationship described is contemplated within the general description of the term "joint venture with a hospital" used in the exception to unprofessional conduct contained in subsection (20)(d) of the rule, and (ii) there would be clear and binding agreements between the group practice entity and each employed physician that the physician would be free to exercise his/her independent judgment in the practice of medicine, and the physician would not be required to refer any patient to a particular provider or supplier or take any other action not to be in a patient's best interest.

6. Petitioners request a declaratory ruling from the Board that it is not unprofessional conduct for physicians to practice medicine in a group medical practice as is described herein.

7. Petitioners know of the following parties who are similarly affected:

Name	Address
Charles Anderson, M.D.	2475 Broadway Ave., Helena, MT 59601
Mark Dietz, M.D.	2475 Broadway Ave., Helena, MT 59601
Earl E. Book, M.D.	33 Neill Ave., Suite 208, Helena, MT 59601
Robert M. Shepard, M.D.	820 N. Montana Ave., Helena, MT 59601
Richard P. Sargent, M.D.	820 N. Montana Ave., Helena, MT 59601
James N. Burkholder, M.D.	820 N. Montana Ave., Helena, MT 59601
David W. Lechner, M.D.	820 N. Montana Ave., Helena, MT 59601
Reginald J. O. Goodwin, M.D.	405 Saddle Drive, Helena, MT 59601
Sheri S. Howell, M.D.	405 Saddle Drive, Helena, MT 59601
Michael S. Strekall, M.D.	405 Saddle Drive, Helena, MT 59601
Kurt E. Werner, M.D.	405 Saddle Drive, Helena, MT 59601

Phillip Hess, M.D.	405 Saddle Drive, Helena, MT 59601
Kenneth V. Eden, M.D.	121 N. Last Chance Gulch, Helena, MT
Fred C. Olson, M.D.	121 N. Last Chance Gulch, Helena, MT
Lee V. Harrison, M.D.	121 N. Last Chance Gulch, Helena, MT
Jay L. Larson, M.D.	121 N. Last Chance Gulch, Helena, MT
Jeanne John Brandt, M.D.	121 N. Last Chance Gulch, Helena, MT
Susan A. Askin, M.D.	121 N. Last Chance Gulch, Helena, MT
Steven J. Mest, M.D.	121 N. Last Chance Gulch, Helena, MT
David Souvenir, M.D.	121 N. Last Chance Gulch, Helena, MT

Dated this 17th day of February, 1999.

William M. Batey, M.D.

Robert W. Ladenburger, President
St. Peter's Hospital

MONTANA BOARD OF MEDICAL EXAMINERS

DEPARTMENT OF COMMERCE, STATE OF MONTANA

IN THE MATTER OF THE PETITION OF WILLIAM M. BATEY, M.D., AND ST. PETER'S HOSPITAL FOR A DECLARATORY RULING ON THE APPLICABILITY OF A.R.M. RULE 8.28.1809(20)(SIC, FOR 8.28.423(20)) TO THE FORMATION OF A JOINTLY OWNED GROUP MEDICAL PRACTICE	**DECLARATORY RULING**

The Montana Board of Medical Examiners ("Board") has considered the Petition for Declaratory Ruling filed by William M. Batey, M.D., and St. Peter's Hospital ("Petitioners"), the oral and written statements by representatives of Petitioners, independent counsel retained by the Board at the expense of St. Peter's Hospital, and other documents pertaining to the Petition. The Board, in two regularly scheduled, public meetings, has thoroughly discussed the issues raised by the Petition, always bearing in mind the Board's first and greatest obligation to protect the public.

After due deliberation, the Board finds that:

(1) The Board has jurisdiction to issue a declaratory ruling on the subject raised by Petitioners in their Petition, under Mont. Code Ann. Sections 2-4-501, *et seq.*;

(2) Petitioners have standing to present the Petition for declaratory ruling;

(3) The joint venture relationship that is particularly described by Petitioners in their Petition dated February 17, 1999

and supporting documents is not in clear violation of the statute and rule defining "unprofessional conduct" for Montana-licensed physicians, namely Mont. Code Ann. Section 37-3-316 and Admin. Rules of Mont. Rule 8.28.423(2).

Accordingly, the Board hereby **GRANTS** the Petition for Delaratory Ruling that **"[I]t is not unprofessional conduct for physicians to practice medicine in a group medical practice as . . . described [in the Petition]."**

MONTANA BOARD OF MEDICAL EXAMINERS

Dated: June , 1999

LAWRENCE R. MCEVOY, PRESIDENT

NOTICE OF FUNCTIONS OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Taxation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1999. This table includes those rules adopted during the period April 1, 1999 through June 30, 1999 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 March 31, 1999, 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 1998 and 1999 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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