

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF ATHLETICS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 8.8.2902, ) AMENDMENT  
8.8.3105, 8.8.3107, 8.8.3202, )  
and 8.8.3401 pertaining to female)  
contestants, downs, fouls, hand- )  
wraps and officials )

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 5, 2001, the Board of Athletics proposes to amend the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Athletics no later than 5:00 p.m., on April 16, 2001, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Athletics, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2393; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolath@state.mt.us.

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

8.8.2902 FEMALE CONTESTANTS (1) ~~No applicant shall be contracted for or engaged in a contest between a male and a female.~~ All bouts shall be scheduled for no more than 10 rounds with each round lasting two minutes and one minute between rounds.

(2) ~~Contests between females will be limited to four rounds of two minutes duration.~~ Female boxers shall use no facial cosmetics and have their hair secured with soft and non-abrasive material.

(3) ~~Custom-fitted mouthpieces must be used of the same variety required of male participants.~~ The weight classes shall be the same as used by male boxers.

(4) ~~Ten-ounce gloves will be worn for boxing contests.~~ Female boxers shall wear breast protectors and groin protectors that are both properly fitted and a mouthpiece is also required.

(5) ~~A breast protector is mandatory, to be used as a binder.~~ Female boxers weighing up to 154 pounds shall use 8 oz. gloves and female boxers weighing over 154 pounds shall use 10 oz. gloves, properly fitted.

(6) ~~Hair must be secured so that it will not interfere with the vision or safety of either contestant.~~ All female

boxers must provide a negative pregnancy test prior to each bout.

~~(7) Each contestant shall provide herself with two uniforms consisting of contrasting color, body shirt, blouse and shorts. No leotards or other such costume is permissible.~~

~~(8) Contestants must sign, in addition to the contract, an addendum indicating that to the best of their knowledge, they are not pregnant and that the contest will not take place during a menstrual period.~~

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

~~(10) Contestants must make minimum use of cosmetics.~~

(11) will remain the same but be renumbered (8).

~~(12) Only experienced referees shall be assigned to control the contests.~~

Auth: Sec. 23-3-405, MCA

IMP: Sec. 23-3-405, MCA

REASON: The Board is proposing the amendments to this rule to bring the rule into compliance with the Association of Boxing Commission's Guidelines.

8.8.3105 DOWN (1) through (10) will remain the same.

(11) If a boxer is knocked down after two minutes and 50 seconds of the round, the bell will not sound until he gets up. If he does not get up before the count of 10, he will lose by KO. The boxer will be saved by the bell cannot save a boxer only in any the last round.

Auth: Sec. 23-3-405, MCA

IMP: Sec. 23-3-405, MCA

REASON: The Board is proposing the amendments to this rule to bring the rule into compliance with the Association of Boxing Commission's Guidelines.

8.8.3107 FOULS (1) through (10) will remain the same.

~~(11) If a foul occurs in the first round, and the contestant cannot continue, the referee will declare a technical draw.~~ If any accidental foul occurs before the completion of four rounds and the injured boxer cannot continue, the fight will be declared a technical draw. If the accidental foul occurs after the completion of four rounds and the fouled boxer cannot continue, a technical decision shall be rendered by the judges and the boxer ahead on points shall be declared the winner. Partial rounds shall be scored by the judges. If a boxer is accidentally fouled and can continue, the referee must stop the action and inform the board representative and both boxers that the foul is the result of an accidental foul. If in the later rounds the injury has worsened as a result of legal blows, and the injured boxer cannot continue, a decision shall be rendered by going to the score cards. Partial rounds shall be scored.

Auth: Sec. 23-3-405, MCA  
IMP: Sec. 23-3-405, MCA

REASON: The Board is proposing the amendments to this rule to bring the rule into compliance with the Association of Boxing Commission's Guidelines.

8.8.3202 HANDWRAPS (1) ~~Handwraps shall not be more than a total of 6 feet of one inch wide surgical tape (tape cannot be torn into narrow strips). The use of water, or any liquid or other material on the bandage shall be prohibited. Handwraps shall be restricted to no more than 20 yards of soft gauze not more than two inches wide held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide for each hand. The use of adhesive tape over the knuckles is strictly prohibited. The tape shall not cover any part of the knuckles when the hand is clenched to make a fist. The use of water or any other liquid or material on the tape is strictly prohibited.~~

~~(2) One winding of surgeons adhesive tape, not over one inch wide, shall be placed directly on the hand to protect the part of the hand near the wrist. The tape may cross the back of the hand twice, but shall not extend within one inch of the knuckles when the hand is clenched to make a fist.~~

~~(3) Contestants shall use soft surgical bandage, not over 2 inches wide, held in place by not more than 2 feet of surgeons adhesive tape for each hand.~~

~~(4) One 10 yard role of 2-inch gauze shall complete the wrapping of each hand.~~

(2) All bandages handwraps shall be adjusted in the dressing room in the presence of a board representative and both contestants. Either contestant may waive his privilege of witnessing the bandaging of his opponent's hands.

Auth: Sec. 23-3-405, MCA  
IMP: Sec. 23-3-405, MCA

REASON: The Board is proposing the amendments to this rule to bring the rule into compliance with the Association of Boxing Commission's Guidelines.

8.8.3401 OFFICIALS REQUIRED (1) will remain the same.

(2) Officials will be paid by the promoter for room and board and mileage, in addition to their fee for officiating.

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

Auth: Sec. 23-3-405, MCA  
IMP: Sec. 23-3-404, 23-3-405, 23-3-501, MCA

REASON: The Board is proposing the amendment to this rule to clarify what expenses the promoter is to provide for Board appointed officials.

4. Concerned persons may submit their data, views or

arguments concerning the proposed actions in writing to the Board of Athletics, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolath@state.mt.us to be received no later than 5:00 p.m., May 3, 2001.

5. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Athletics, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolath@state.mt.us to be received no later than 5:00 p.m., May 3, 2001.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be nine based on the 90 licensees in Montana.

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

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

BOARD OF ATHLETICS  
GARY LANGLEY, CHAIRMAN

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

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

Certified to the Secretary of State, March 26, 2001.



BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.56.402, ) ON PROPOSED AMENDMENT  
8.56.409, 8.56.602, 8.56.602A, )  
8.56.602C and 8.56.607 pertaining) )  
to applications, fee schedule, )  
permit application types, )  
practice limitations, permit )  
examinations and permit fees )

TO: All Concerned Persons

1. On May 9, 2001, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Radiologic Technologists no later than 5:00 p.m. on April 30, 2001, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolrts@state.mt.us.

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

8.56.402 APPLICATIONS (1) Radiologic technologist Applications shall be made on printed forms provided by the board office and signed by the applicant, with the signature acknowledged before a notary public.

(2) through (5)(a) will remain the same.

(b) current ARRT wallet card which shall reflect eligibility for the specific license and specialty area requested;

(c) through (e) will remain the same.

(6) The board defines a multicredentialed radiologic technologist as a radiologic technologist who has been certified by the appropriate credentialing agencies in more than one discipline and/or specialty area within the radiologic sciences.

(a) An applicant with appropriate credentialing in more than one discipline or specialty must indicate the specialty and provide the appropriate credential in the specialty area on the application. The license of a person qualified in more than one specialty area shall identify all areas of specialization.

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

Auth: Sec. 37-14-202, MCA  
IMP: Sec. 37-14-302, 37-14-303, 37-14-304, 37-14-305,  
37-14-306, MCA

8.56.409 RADIOLOGIC TECHNOLOGIST FEE SCHEDULE

- (1) through (a) will remain the same.  
(b) Application fee - radiologic technologist and/or specialty area(s) 60  
(c) will remain the same.  
(d) Renewal license fee - radiologic technologist and/or specialty area(s) 50  
(e) through (g) will remain the same.

Auth: Sec. 37-1-101, 37-1-134, 37-14-202, 37-14-310, MCA  
IMP: Sec. 37-1-134, 37-14-303, 37-14-310, MCA

8.56.602 PERMIT APPLICATION - TYPES (1) through (2)(a) will remain the same.

(b) students who have completed six months of a 24-month board approved x-ray course and passage of the general exam and category exams; or

~~(b)~~ (c) students who have completed 12 months of a 24-month board approved x-ray course and passage of the general exam.

(3) Pursuant to 37-14-301(1), MCA, a permit is required for specialty areas of radiologic technology. The education requirements for individuals practicing radiography limited to specific areas of the human body must be equivalent to the educational standards recognized by the national accreditation and certification agencies. Radiologic technology is the term that describes the medical disciplines and specialties that use ionizing and nonionizing radiation for diagnostic medical imaging, interventional procedures and radiation therapy. Specialty permits in radiologic technology include:

(a) a mammography modality permit. Only individuals credentialed in mammography by the American registry of radiologic technologists (ARRT) or equivalent are allowed to perform mammography examinations and procedures. The mammographer uses radiation to produce images for screening or diagnostic procedures for detection of breast disease. These individuals also provide breast health education.

(b) a magnetic resonance (MR) modality permit. Only individuals credentialed in magnetic resonance by the ARRT or equivalent are allowed to perform magnetic resonance examinations. The magnetic resonance technologist is a member of the newest specialty within the profession. MR technologists use radio waves, magnetic fields and a computer to produce images of the body tissues. They also may inject the patient with a material that assists in visualizing the images produced.

(c) a cardiovascular-interventional imaging modality permit. Only individuals credentialed in cardiovascular-

interventional technology by the ARRT, cardiovascular credentialing international (CCI) or equivalent are allowed to perform cardiovascular-interventional procedures. The cardiovascular-interventional technologist uses radiation to produce images to aid in the diagnosis and/or treatment of vascular disease or other abnormalities, such as coronary artery disease. These individuals may inject the patient with a material that assists in visualizing the images produced.

(d) a computed tomography modality permit. Only individuals credentialed in computed tomography by the ARRT or equivalent are allowed to perform diagnostic and interventional computed tomography procedures. The computed tomography technologist uses radiation and a computer to produce cross-sectional images of the body. These individuals also may inject the patient with a material that assists in visualizing the images produced.

(e) a bone mineral densitometry modality permit. Only individuals credentialed by the ARRT, the international society for clinical densitometry, or equivalent in bone mineral densitometry are allowed to perform bone mineral densitometry examinations. Bone densitometry technologists use a special type of x-ray equipment to measure bone mineral density at a specific anatomical site (usually the wrist, heel, spine or hip) or to calculate total body bone loss due to osteoporosis, to track the rate of bone loss over a specific period of time and to estimate the risk of fracture.

(f) a nuclear medicine modality permit. Only individuals credentialed in nuclear medicine by the ARRT, nuclear medicine technology certification board (NMTCB) or equivalent are allowed to perform nuclear medicine procedures. The nuclear medicine technologist administers radioactive materials (radiopharmaceuticals) to produce images for diagnosis of various disorders. Radiopharmaceuticals also may be used to treat diseases such as thyroid cancer.

(g) a medical dosimetrist modality permit. Only individuals credentialed in medical dosimetry by the medical dosimetry credentialing board or equivalent are allowed to perform medical dosimetry procedures. Medical dosimetrists determine how much radiation will be delivered to a tumor site. Under the supervision of a medical physicist, they calculate and generate radiation dose distributions in accordance with the treatment plan developed by the radiation oncologist. Medical dosimetrists use their knowledge of physics, anatomy and radiobiology to design optimal treatments that apply an effective dose to the targeted area while sparing normal tissue that surrounds it.

(h) a radiation oncology modality permit. Only individuals credentialed in radiation therapy by the ARRT or equivalent are allowed to perform radiation therapy. The radiation therapist helps manage the radiation treatment of the patient with cancer and some benign conditions. This management includes daily treatment, patient support and treatment planning.

(3) through (5) will remain the same but be renumbered (4) through (6).

Auth: Sec. 37-1-131, 37-14-202, 37-14-306, MCA  
IMP: Sec. 37-14-306, MCA

8.56.602A LIMITED PERMITS - PRACTICE LIMITATIONS

(1) will remain the same.

Auth: Sec. 37-14-306, MCA  
IMP: Sec. 37-14-306, MCA

8.56.602C LIMITED PERMIT EXAMINATIONS (1) through (3) will remain the same.

(4) Applicants may review their examination papers with administrative staff ~~for at the board office at the Division of Professional and Occupational Licensing, 111 North Jackson, Helena, Montana 59620.~~

(5) through (8) will remain the same.

Auth: Sec. 37-1-131, 37-14-202, 37-14-306, MCA  
IMP: Sec. 37-14-306, MCA

8.56.607 PERMIT FEE SCHEDULE (1) through (2) will remain the same.

- |   |    |
|---|----|
| (a) <u>Limited permit</u> <del>G</del> general exam | 15 |
| (b) <u>Limited permit</u> <del>E</del> each section | 15 |
- (3) through (7) will remain the same.

Auth: Sec. 37-1-134, 37-14-202, 37-14-306, 37-14-310, MCA  
IMP: Sec. 37-1-134, 37-14-303, 37-14-305, 37-14-306, 37-14-309, 37-14,310, MCA

REASON: The board is proposing the amendments to these rules to outline the application and licensure requirements for specialty areas of radiologic technology. Section 37-14-101, MCA, provides that the practice of radiologic technology affects the public health, safety and welfare and that it is necessary to regulate and control such practice in the public interest. Section 37-14-301(1), MCA provides that no person may perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter. Section 37-14-202(6), MCA provides that performance of x-ray procedures means the involvement of any portion of an x-ray procedure. Section 37-14-301(3), MCA provides that an individual who is not licensed or authorized under another licensing act, may not perform any of the activities listed in 37-14-301, MCA. These statutes are explicit in their intent. It is the opinion of the Board, based on these statutes that specialty areas of radiologic technology, whether medical, diagnostic or therapeutic, which are not otherwise licensed or covered by the exemptions provided in 37-14-301, MCA, must be licensed under this chapter. ARM 8.56.409 and 8.56.607 are being

amended for clarification and do not change the current fees. ARM 8.56.602A is being amended for clarification of the catchphrase.

As an example for clarity of permit types, if you are currently licensed as a radiologic technologist and you also have been credentialed to perform modality areas, your radiologic technologist license will have the added modality specialties printed on the license. There would be no additional fee. You would need to notify the Board office of the modality area. If you do not qualify for a radiologic technologist license, but have been credentialed to perform services in modality areas, you will need to apply for a modality permit and show proof of your modality area. You would pay the permit application fee and certificate fee.

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 Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolrts@state.mt.us and must be received no later than the close of the hearing. If comments are submitted in writing, the Board requests that the person submit eight copies of their comments.

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

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

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

BOARD OF RADIOLOGIC TECHNOLOGISTS  
JANE CRISTMAN, CHAIRMAN

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

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

Certified to the Secretary of State, March 26, 2001.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.94.3806 ) ON PROPOSED AMENDMENT  
pertaining to submission and )  
review of applications under )  
the 2000-2001 Treasure State )  
Endowment Program (TSEP) )

TO: All Concerned Persons

1. On April 26, 2001, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Local Government Assistance Division will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Local Government Assistance Division no later than 5:00 p.m., on April 20, 2001 to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Local Government Assistance Division, 1424 Ninth Avenue, Helena, Montana 59620; telephone (406) 444-2781; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4482; e-mail to [rweddle@state.mt.us](mailto:rweddle@state.mt.us).

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

8.94.3806 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS UNDER THE 2000-2001 TREASURE STATE ENDOWMENT PROGRAM (1) through (2)(d) will remain the same.

(e) general requirements for TSEP applications; and

(f) application review process; and

(g) guidelines for applying for matching grants for preliminary engineering work.

(3) will remain the same

Auth: Sec. 90-6-710, MCA

IMP: Sec. 90-6-710, MCA

**REASON:** It is reasonably necessary to amend this rule because local government entities must have these application guidelines before the entities may apply to the department for matching grants to be used for preliminary engineering work.

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 Local Government Assistance Division, 1424 Ninth Avenue, Helena, Montana, 59620; by facsimile to (406) 444-4482; or e-mail to

rweddle@state.mt.us to be received no later than 5:00 p.m., May 3, 2001.

5. Richard M. Weddle 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 all Local Government Assistance Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Local Government Assistance Division, 1424 Ninth Avenue, Helena, Montana 59620 or by phone at (406) 444-2781, or may be made by completing a request form at any rules hearing held by the agency.

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

LOCAL GOVERNMENT ASSISTANCE DIVISION

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

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

Certified to the Secretary of State March 26, 2001.



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )  
of ARM 17.8.102, 17.8.103, )  
17.8.302, 17.8.602, 17.8.702, )  
17.8.902, and 17.8.1002, )  
pertaining to incorporation by )  
reference of current federal )  
statutes and regulations into )  
air quality rules )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

(Air Quality)

TO: All Concerned Persons

1. On May 10, 2001, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of rules pertaining to the incorporation by reference of current federal statutes and regulations into current air quality rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., May 1, 2001, to advise us of the nature of the accommodation that you need. Contact the Board 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.

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~1999~~ 2000 edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference refers to the ~~1988~~ 1994 edition of the USC and Supplement ~~¶ 5 (1993)~~ (2000);

(c) remains the same.

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~1999~~ 2000, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA  
IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (l) remain the same.

(m) section ~~7412(b)(1)~~ 112(b)(1) of the Federal Clean Air Act, 42 USC 7401, et seq., which contains a list of substances designated as hazardous air pollutants;

(n) ~~ARM 17.54.1101, Title 17, chapter 53, subchapter 10,~~ which ~~defines the class of activities subject to regulation~~ sets forth the rules, pursuant to under 75-10-405(2)(f)(e) and 75-10-406, MCA, relating pertaining to boilers or industrial furnaces;

(o) remains the same.

(p) ~~ARM Title 17, chapter 54 53,~~ subchapter ~~3 5,~~ which ~~set sets~~ sets forth the rules pertaining to the identification and listing of hazardous waste.

(2) through (4) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) through (c) remain the same.

(d) ~~ARM Title 17, chapter 54 53,~~ subchapter ~~3 5,~~ which ~~set sets~~ sets forth the rules pertaining to the identification and listing of hazardous waste;

(e) The Standard Industrial Classification Manual, 1987, executive office of the president, office of management and budget, (US government printing office stock number 1987 O-185-718), which sets forth a system of industrial classification and definition based upon the composition and structure of the economy; and

(f) 40 CFR Part 63, specifying emission standards for hazardous air pollutant source categories including the final rules published at ~~64 FR 31897 on June 14, 1999, "National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry", to be codified at 40 CFR Part 63, Subpart LLL; and at 64 FR 30193 on June 4, 1999, "National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting", to be codified at 40 CFR Part 63, Subpart TTT; 66 FR 3179 on January 12, 2001, "National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills", to be codified at 40 CFR 63, subpart MM.~~

(2) through (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.602 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference ~~40 CFR Part 261,~~ ARM Title 17, chapter 53, subchapter 5, identifying and defining hazardous wastes.

(2) A copy of ~~40 CFR Part 261~~ ARM Title 17, chapter 53, subchapter 5, is available for public inspection and copying

at the Department of Environmental Quality, 1520 E. 6th Ave.,  
PO Box 200901, Helena, MT 59620-0901.

(3) and (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA  
IMP: 75-2-203, MCA

17.8.702 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) through (f) remain the same.

(g) Section 112(b) of the Federal Clean Air Act, 42 USC 7401, et seq., listing hazardous air pollutants.

(2) through (4) remain the same.

AUTH: 75-2-111, 75-2-204, MCA  
IMP: 75-2-211, 75-2-215, MCA

17.8.902 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (d) remain the same.

(e) section ~~7503~~ 173 of the Federal Clean Air Act, 42 USC 7401, et seq., which establishes permit requirements for permit programs in nonattainment areas; and

(f) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA  
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1002 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (d) remain the same.

(e) section ~~7503~~ 173 of the Federal Clean Air Act, 42 USC 7401, et seq., which establishes permit requirements for permit programs in nonattainment areas; and

(f) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA  
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

4. The rationale for each proposed amendment is provided below.

The Board proposes to amend ARM 17.8.102 to update the incorporations by reference by adopting the most recent editions of the United States Code, the Code of Federal Regulations, and the Administrative Rules of Montana. These proposed amendments will allow the Department to follow the most recent editions of federal statutes and regulations and state administrative rules.

The amendments to ARM 17.8.302(1)(f) are proposed to incorporate by reference the federal National Emission

Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills. These standards are maximum achievable control technology (MACT) standards, which are source category-specific emission and control equipment standards for sources of air pollution that emit hazardous air pollutants. The United States Environmental Protection Agency (EPA) adopted these standards on January 12, 2001. The policy of the Montana legislature has been for the state to maintain primacy of its environmental regulation programs, and it is necessary for the state to adopt the most recent edition of the Code of Federal Regulations and the new MACT standards to maintain its delegation of authority from EPA and primacy to enforce the air toxics program.

Section 75-2-207, MCA, of the Clean Air Act of Montana prohibits the Board from adopting a rule that is more stringent than comparable federal regulations or guidelines unless the board has conducted a public hearing and made certain written findings supporting the more stringent state standard. The Board is not proposing more stringent standards because it does not believe that a more stringent standard is warranted.

The amendments to ARM 17.8.103(1)(m), 17.8.702(1)(g), 17.8.902(1)(e) and 17.8.1002(1)(e) are proposed to make minor corrections to citation references to the federal Clean Air Act.

The proposed amendments to ARM 17.8.103(1)(n) and (p), 17.8.302(1)(d) and 17.8.602(1) and (2) are needed to update references to the Department's rules concerning hazardous waste, in light of the Department's recent adoption of substantial revisions to, and renumbering of, those rules and to correct a reference to Section 75-10-405, MCA.

The amendments to ARM 17.8.302(1)(e) and 17.8.902(1)(e), and the additional amendment to 17.8.1002(1)(e) are proposed to add the word "and" which was unintentionally omitted from the original rule proposal, but is necessary to connect the conjunctive phrases.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than 5 p.m., May 18, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via e-mail addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m., by May 18, 2001.

6. Kelly O'Sullivan has been designated to preside over and conduct the hearing.

7. The Department 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: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Department of Environmental Quality.

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

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
Joe Gerbase, Chairperson

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State March 20, 2001.

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

In the matter of the ) NOTICE OF PUBLIC HEARING  
amendment of Montana's ) ON PROPOSED AMENDMENT OF  
prevailing wage rates, ) PREVAILING WAGE RATES-  
pursuant to ARM 24.16.9007 ) NON-CONSTRUCTION SERVICES

TO: All Concerned Persons

1. On April 27, 2001, at 10:00 a.m., a public hearing will be held in Room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider proposed amendment of the above-captioned rule. The Department proposes to incorporate by reference the 2001 non-construction services rates.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 20, 2001, to advise us of the nature of the accommodation that you need. Please contact the Office of Research and Analysis, Job Service Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2992; TTY (406) 444-0532; fax (406) 444-2638.

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

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

- (1) Remains the same.
- (a) through (e) Remain the same.
- (f) The current non-construction services rates are contained in the ~~1999~~ 2001 version of "The State of Montana Prevailing Wage Rates-Non-construction Services" publication.
- (2) and (3) Remain the same.

AUTH: 18-2-431 and 2-4-307, MCA  
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-422, and 18-2-431 through ~~18-2-432~~, MCA

REASON: Pursuant to 18-2-402, MCA, the Department is updating the standard prevailing wages for non-construction services occupations. The Department updates the prevailing wages for these non-construction services occupations every two years. There is reasonable necessity to amend the prevailing wages for non-construction services, which were last updated in 1999. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

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

data, views, or arguments may also be submitted to:

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

so that they are received by not later than 5:00 p.m., May 4, 2001.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., May 4, 2001. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

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

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

8. The Department proposes to make the amendments effective July 1, 2001.

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

/s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

/s/ MIKE FOSTER  
Mike Foster, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 26, 2001.



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

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 37.40.905,	)	AMENDMENT
37.83.802, 37.83.811,	)	
37.83.812, 37.83.825,	)	
37.85.406, 37.86.105,	)	
37.86.610, 37.86.705,	)	
37.86.1406, 37.86.1706,	)	
37.86.1806, 37.86.2005,	)	
37.86.2207, 37.86.2605,	)	NO PUBLIC HEARING
37.86.4413, 37.88.206,	)	CONTEMPLATED
37.88.306, 37.88.606,	)	
37.88.907 pertaining to	)	
medicaid cross-over pricing	)	

TO: All Interested Persons

1. On May 5, 2001, the Department of Public Health and Human Services proposes to amend the above-stated rules.

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 need to request an accommodation, contact the department no later than 5:00 p.m. on April 19, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.40.905 HOME DIALYSIS FOR END STAGE RENAL DISEASE, REIMBURSEMENT (1) Reimbursement for equipment shall be the lesser of the following:

(a) the provider's usual and customary charges which are reasonable; or, or the amount allowable by medicare.

(b) the medicaid established fee for that service.

~~(2) remains the same.~~

AUTH: Sec. 53-6-113, MCA

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

37.83.802 QUALIFIED MEDICARE BENEFICIARIES, DEFINITIONS

(1) through (11) remain the same.

(12) "Medicare allowable rate" means the reasonable charge for the medical service reimbursable under medicare Part B. and is the lowest of:

~~(a) the provider's customary charge;~~

- ~~(b) the medicare prevailing charge; or~~
- ~~(c) the provider's actual or billed charge.~~
- (13) through (19) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-6-101 and 53-6-131, MCA

37.83.811 QUALIFIED MEDICARE BENEFICIARIES, COVERAGE AND REIMBURSEMENT OF DEDUCTIBLES AND COINSURANCE FOR MEDICARE SERVICES ALSO COVERED BY FULL MEDICAID (1) through (2) remain the same.

- ~~(3) Reimbursement for services of:~~
  - ~~(a) Subsections (1)(a) through (e) above is the medicare deductibles and coinsurance.~~
  - ~~(b) Subsections (1)(f) through (k) above is the lowest of:~~
    - ~~(i) the provider's submitted charge;~~
    - ~~(ii) the medicare allowed rate; or~~
    - ~~(iii) the medicaid fee or rate.~~
- ~~(4) Reimbursement from medicaid may not exceed an amount which would cause total payment to the provider from both medicare and other third party payors and medicaid to be greater than the medicare allowable charge or rate.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-6-101 and 53-6-131, MCA

37.83.812 QUALIFIED MEDICARE BENEFICIARIES, PAYMENT FOR CHIROPRACTIC SERVICES AS MEDICARE SERVICES NOT COVERED BY FULL MEDICAID (1) remains the same.

- (2) Reimbursement for chiropractic services is the lowest of:
  - (a) the provider's submitted charge; or
  - ~~(b) the medicare allowed rate; or~~
  - ~~(c) (b) the medicaid fee for the service.~~
- ~~(3) The medicaid fee for this service is the medicare prevailing fee effective on July 1, 1989.~~
- (4) remains the same in text but is renumbered (3).

AUTH: Sec. 53-6-101 and 53-6-131, MCA  
IMP: Sec. 53-6-101 and 53-6-131, MCA

37.83.825 QUALIFIED MEDICARE BENEFICIARIES, PAYMENTS TO PROVIDERS (1) and (a) remain the same.

- (2) Payment in full, except as otherwise provided in (2)(a) below, for services provided to medicaid qualified medicare beneficiaries, is the medicaid payment as determined under ARM 37.83.811, and 37.83.812 and 37.85.406 plus the qualified medicare beneficiary's copayment as provided for in ARM 37.83.826. A provider may not collect any amount from the person which is in excess of payment in full even if that payment is less than the medicare insurance deductibles and coinsurance. Where a person is eligible for medicaid under both medicaid qualified medicare beneficiary and another medicaid category, a provider must accept the medicaid payment as payment

in full.

(a) remains the same.

(3) Subject to the requirements of this rule, the Montana medicaid program pays the lowest of the following for qualified medicare beneficiary services:

(a) the provider's usual and customary charge for the service; or

(b) the appropriate medicaid allowed amount as provided in ARM 37.85.406(18).

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

IMP: Sec. 53-6-101 and 53-6-131, MCA

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) Providers must submit clean claims to medicaid within the latest of:

(a) through (c) remain the same.

(2) For purposes of this section rule:

(a) through (17) remain the same.

(18) Except as otherwise provided in the rules of the department which pertain to the method of determining payment rates for claims of recipients who have medicare and medicaid coverage (cross-over claims), the medicaid allowed amount for medicare covered services is:

(a) for facility based providers who generally bill on the UB-92 billing form, for covered medical services the full medicare co-insurance and deductible as defined by the medicare carrier;

(i) exception for inpatient ancillary services with medicare Part B coverage only (no medicare Part A) or FOHCs: medicare payments for these services are treated as third party payments and are offset against the medicaid payment;

(b) for medical providers who generally bill on the HCFA-1500 billing form, for covered medical services the lower of:

(i) the medicare co-insurance and deductible (if not met); or

(ii) the medicaid fee less the amount paid by medicare for the same service, not to exceed the medicaid fee for that service;

(c) for mental health services that are subject to the medicare psychiatric reduction, the lower of:

(i) the medicaid allowed amount; or

(ii) the medicare allowed amount, less the medicare paid amount;

(d) for services to recipients eligible to receive both medicare and medicaid benefits, an amount not to exceed the medicare allowed amount in instances where the medicaid fee is higher than the medicare allowable.

(19) For all purposes of this rule, the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged to all payers.

(20) Reimbursement from medicaid may not exceed an amount which would cause total payment to the provider from both medicaid and all other payers to exceed the medicaid fee.

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131 and 53-6-141, MCA

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) through (2)(b) remain the same.

~~(c) for services provided to persons who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

(3) through (b) remain the same.

(4) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "J" and "Q" codes is either according to a fee schedule established by the department and updated at least annually based upon the Montana estimated acquisition cost or maximum allowable cost, as defined in ARM ~~37.82.102~~ 37.86.1101 or the provider's usual and customary charge, whichever is lower. No dispensing fee is paid to physicians.

(a) The maximum allowable cost limitation shall not apply in those cases where the physician certifies in their own handwriting that in their medical judgment a specific brand name drug is medically necessary for a particular patient. Acceptable certification statements are "brand necessary" or "brand required-". A check-off box on a form or a rubber stamp is not acceptable.

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

37.86.610 THERAPIES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana medicaid program pays the following for therapy services:

(a) through (a)(ii) remain the same.

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.86.705 AUDIOLOGY SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana medicaid program pays the following for audiology services:

(a) through (a)(ii) remain the same.

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.86.1406 CLINIC SERVICES, REIMBURSEMENT (1) through (2) remain the same.

(3) Public health department services are reimbursed at the lowest of the following:

~~(a) the medicare maximum allowable rates as determined by the medicare explanation of benefits;~~

~~(b) (a) the fees established by the public health department; or~~

~~(c) (b) reimbursement for either physician services, provided in accordance with the methodologies described in ARM 37.85.212 and 37.86.105, or mid-level practitioner services, provided in accordance with the methodologies described in ARM 37.85.212 and 37.86.205.~~

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

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

37.86.1706 FAMILY PLANNING SERVICES, REIMBURSEMENT

(1) Reimbursement for family planning services is as follows:

(a) and (b) remain the same.

(c) for local delegate agencies the lowest of the following ~~medicare fee~~, the provider's usual and customary charge for this service or the department's fee schedule.

(2) The fees in the department's fee schedule for the local delegate agencies are for each item or procedure the average of the charges for that item or procedure submitted by the delegate agencies during the preceding fiscal year. The adjustments to the fee schedule based upon the annual averaging may not exceed the adjustment for family planning services authorized by the legislature for that fiscal year. The fees in the fee schedule for services provided by physicians or mid-level practitioners may not exceed the fees available for those services set forth in ARM 37.86.105 or 37.86.205 and 37.86.212.

(3) remains the same.

AUTH: Sec. 53-6-113, MCA

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

37.86.1806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services are as follows:

(a) Subject to the requirements of this rule, the department will pay the lowest of the following for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services ~~not also covered by medicare for the recipient~~:

(i) and (ii) remain the same.

~~(b) Subject to the requirements of this rule, the department will pay the lowest of the following for prosthetic~~

~~devices, durable medical equipment, medical supplies and related maintenance, repair and services which are also covered by medicare for the recipient:~~

~~(i) the provider's usual and customary charge for the item;~~

~~(ii) the department's fee schedule maintained in accordance with the methodology described in ARM 37.86.1807(2); or~~

~~(iii) the amount allowable for the same item under medicare.~~

(c) through (f) remain the same in text but are renumbered (b) through (e).

(2) through (7) remain the same.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2005 OPTOMETRIC SERVICES, REIMBURSEMENT

(1) Subject to the requirements of this rule, the Montana medicaid program pays the following for optometric services:

(a) through (a)(ii) remain the same.

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement for medicare and medicaid shall not exceed the medicaid fee for the service.~~

AUTH: Sec. 53-6-113, MCA

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT

(1) Reimbursement for an EPSDT service, except as otherwise provided in this rule, is the lowest of the following:

(a) the provider's usual and customary charge for the service; or

~~(b) the amount allowable for the same service under medicare if the service is also covered by medicare for the recipient; or~~

~~(c) (b) the reimbursement determined in accordance with the methodologies provided in ARM 37.85.212 and 37.86.105 except for the by-report method.~~

(2) through (10) remain the same.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) Except as provided in (3), the department pays the lowest of the following for ambulance services:

(a) the provider's usual and customary charge for the service; or

~~(b) the amount allowable for the same service under medicare; or~~

(c) (b) the amount listed in the department's fee schedule.

(2) through (4) remain the same.

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

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

37.86.4413 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT FOR OTHER PROVIDER-BASED ENTITIES AND FOR INDEPENDENT ENTITIES (1) through (9) remain the same.

~~(10) For crossover claims, the medicaid payment will be:~~

~~(a) for RHC crossover claims, up to the full amount of the medicare allowable charge, including applicable medicare deductibles and coinsurance, less any applicable medicaid copayment amount and any other third party payments in addition to medicare; and~~

~~(b) for FQHC crossover claims, the difference between the medicare payments for the visit and the FQHC's medicaid all-inclusive rate per visit applicable to the service determined in accordance with (2) through (9), less any applicable medicaid copayment amount and any other third party payments in addition to medicare.~~

(11) through (12)(b)(iii) remain the same in text but are renumbered (10) through (11)(b)(iii).

(c) The interim rates determined under this rule are temporary rates and are subject to adjustment and settlement as provided in ~~(12)~~ (11)(b) and ARM 37.86.4420 upon retrospective determination of the provider's all-inclusive core and other ambulatory service rates per visit as provided in (2) through (9).

(12)(d) through (13) remain the same in text but are renumbered (11)(d) through (12).

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.88.206 LICENSED CLINICAL SOCIAL WORK SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana medicaid program pays the following for licensed clinical social worker services:

(a) through (a)(ii) remain the same.

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

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

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

37.88.306 LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana medicaid program pays the following for licensed professional

counselor services:

(a) through (a)(ii) remain the same.

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

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

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

37.88.606 LICENSED PSYCHOLOGIST SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Subject to the requirements of this rule, the Montana medicaid program pays the following for licensed psychologist services:

(a) through (a)(ii) remain the same.

~~(b) For patients who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

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

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

37.88.907 MENTAL HEALTH CENTER SERVICES, REIMBURSEMENT

(1) Medicaid reimbursement for mental health center services shall be the lowest of:

(a) the provider's actual (submitted) charge for the service;

~~(b) the amount of medicare deductible and coinsurance for services provided to persons who are eligible for both medicare and medicaid. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service;~~

~~(c) (b) the department's medicaid fee for the service as specified in the department's medicaid mental health fee schedule.~~

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

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

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

3. In these rules, the Department is proposing revision of the Medicare cross-over pricing methodology. In general, the proposed amendments only affect claims for mental health services and claims with Medicare deductibles. The Department's current methodology is acceptable for claims that have Medicare coinsurance because the reimbursement amounts result in the same payment. Therefore, the proposed rules would not affect those claims.

The proposed amendments would conform Medicare cross-over pricing methodology to regulations promulgated by the Health Care Financing Administration (HCFA) at 42 CFR 447.15, which limit participation in the Medicaid program to providers who



accept, as payment in full, the amounts paid by the Department plus any deductible, coinsurance or copayment required by the State Medicaid Plan. The proposed rule changes are necessary to preserve federal financial participation in the Montana Medicaid programs under the Balanced Budget Act of 1997 (Pub. Law No. 105-33) and sections 1902(n) and 3909 of the Social Security Act.

Medicare and Medicaid cross-over claims are claims for medical services in which both the Medicare and Medicaid programs are potentially liable because the recipient of medical services is entitled to Medicare and is also (a) eligible for Medicaid; (b) eligible for the Qualified Medicare Beneficiary program (QMB); or (c) eligible for both QMB and Medicaid. QMB is a program under which Medicaid pays the recipient's Medicare premiums, coinsurance and deductibles. A Medicaid recipient may be required to pay a Medicaid copayment as provided in ARM 37.85.204.

The proposed amendments are necessary to accommodate the processing of claims for mental health services by the Department for dates of service beginning July 1, 1999. On that date, the Department's contract with Montana Community Partners for Mental Health Managed Care terminated and the duty to process claims for mental health services for Medicaid recipients and certain other eligible low-income individuals returned to the Department.

Under current rules, when a recipient is eligible for both Medicare and Medicaid, Montana Medicaid reimburses the lowest of: (a) the provider's actual submitted charge for the service; (b) the amount payable by Medicare for the same service (which is generally less than the Medicaid allowable amount); or (c) the Department's Medicaid fee for the specific service. To meet HCFA compliance criteria, the Department must reimburse up to the provider's charge or the Medicare or Medicaid maximum allowable limit (rate), as defined at ARM 37.83.802(12), whichever is less.

The alternative to the proposed amendments would be to ignore HCFA compliance criteria and risk loss of federal financial participation. Maintenance of disparate Medicaid and Medicare rates for mental health services and claims with Medicare deductibles could possibly risk loss of provider participation. The Department finds this alternative unacceptable.

The Department estimates the fiscal effect of these rules amendments will be an increase of \$57,000.00 per annum in over all Medicaid expenditures. This is not a significant rate increase, and the Department anticipates no measurable change in provider participation as a result of these rules. Approximately 3,143 Montana Medicaid recipients are also eligible for Medicare or QMB payments.

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 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 5, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. 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 5:00 p.m. on May 5, 2001.

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 32 based on the 3,143 individuals covered by Medicaid and Medicare or who are QMBs also covered by Medicaid.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State March 26, 2001.

BEFORE THE BOARD OF COSMETOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT,  
of rules pertaining to the ) ADOPTION AND REPEAL  
general practice of cosmetology, )  
schools, instructors applica- )  
tions, examinations, electrology )  
schools, electrolysis, sanitary )  
standards for electrology salons,)  
and sanitary rules for beauty )  
salons and cosmetology schools )  
and the adoption of a new rule )  
pertaining to aiding and )  
abetting unlicensed practice and )  
the repeal of rules pertaining )  
to renewals, booth rental )  
license applications, walls and )  
ceilings, doors and windows and )  
ventilation )

TO: All Concerned Persons

1. On December 21, 2000, the Board of Cosmetologists published a notice of the proposed amendment, adoption and repeal of rules pertaining to the Board of Cosmetologists at page 3437, 2000 Montana Administrative Register, issue number 24. The hearing was held January 23, 2001.

2. The Board has amended ARM 8.14.402, 8.14.604, 8.14.606, 8.14.607, 8.14.608, 8.14.609, 8.14.611, 8.14.612, 8.14.613, 8.14.803, 8.14.804, 8.14.805, 8.14.807, 8.14.812, 8.14.813, 8.14.814, 8.14.817, 8.14.820, 8.14.823, 8.14.902, 8.14.903, 8.14.905, 8.14.1204, 8.14.1207, and 8.14.1215, adopted NEW RULE I (ARM 8.14.404), and repealed ARM 8.14.403, 8.14.818, 8.14.1202, 8.14.1203 and 87.14.1205 exactly as proposed. The Board has amended ARM 8.14.601, 8.14.603, 8.14.801, 8.14.802, 8.14.816, 8.14.1201, 8.14.1206, 87.14.1208, 8.14.1211, and 8.14.1212, with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.14.601 APPLICATION FOR SCHOOL LICENSE (1) through (5) remain the same as proposed.

(6) The school shall submit all changes, deletions and new school policies, procedures and rules to the board ~~for approval prior to the school's implementation of these policies, procedures and rules~~ annually with the school renewal form.

(7) through (10) remain the same as proposed.

8.14.603 SCHOOL OPERATING STANDARDS (1) through (4) remain the same as proposed.

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

(6) through (19) remain the same as proposed.

8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE

(1) through (9) remain the same as proposed.

(10) Pursuant to 37-31-305(2)(b)(ii), MCA, the board defines "~~immediately before taking the teacher's examination~~" as the last day of employment as a cosmetologist, manicurist or esthetician being not more than 90 days prior to taking the teacher's examination and "3 continuous years" as "full-time employment" as of not less than 32 hours per week.

8.14.802 LICENSE EXAMINATIONS (1) remains the same as proposed.

(2) Applicants who have graduated from a course of study in cosmetology, manicuring, esthetics or electrology must apply and take the appropriate examination within ~~three~~ five years of the applicant's graduation date from the licensed school or course.

(3) through (14) remain the same as proposed.

8.14.816 SALONS/BOOTH RENTAL - COSMETOLOGY, MANICURING OR ESTHETICS (1) through (4)(a) remain the same as proposed.

(b) ~~one covered wet sanitizer consisting of one covered disinfectant~~ of suitable size and depth and containing a sufficient amount of approved sanitizing agent for complete immersion of all implements, tools and equipment. Non-covered cleansers and ~~disinfectants~~ sanitizing agents may be used, provided that the cleansing and ~~disinfecting solution~~ sanitizing agent is changed after each use.

(c) through (g) remain the same as proposed.

(5) All residential cosmetology, manicuring or esthetic salons shall have outside entrances. Any entrances into the residence shall have a self-closing door. This door must be latched during business hours. Residential salons licensed after ~~March~~ April 1, 2001 shall have their own separate restroom within the confines of the salon that is not available for the personal use of the residents.

(6) All salons licensed after ~~March~~ April 1, 2001, must have restroom facilities within the confines of the salon.

(7) through (12) remain the same as proposed.

8.14.1201 SANITATION FOR FACILITIES (1) For salons licensed prior to April 1, 2001, ffloor surfaces in the working area, dispensary area and restroom facility of the establishment must be of a washable, non-absorbent material. Wooden floors may be acceptable if they have a water-proof finish.

(2) remains the same as proposed.

(3) Effective ~~March~~ April 1, 2001, in the case of any new establishment, change of location or ownership of an existing establishment, the use of carpeting in the work area, dispensary area and restroom facilities is prohibited and a non-porous hard surface must be provided.

8.14.1206 RESTROOM FACILITIES (1) Every establishment must provide restroom facilities, including a hand washing basin for its ~~employees~~ practitioners and clients in a convenient location.

(2) Hand washing instructions ~~must~~ shall be posted above ~~the sink~~ in each restroom used by ~~employees as follows:~~ all practitioners directing them to wash their hands before returning to work.

~~(a) "Employees must thoroughly wash their hands and the exposed portions of their arms with anti-bacterial soap and water before providing services to each client and after smoking, drinking, eating and using the restroom."~~

(3) through (5) remain the same as proposed.

(6) Single service sanitary towels or a workable hot air blower is required. The use of a communal ~~or cloth~~ towel is prohibited.

(7) and (8) remain the same as proposed.

(9) Effective ~~March~~ April 1, 2001, any new establishment, change in ownership or change of location, must provide suitable restroom facilities for clients and ~~employees~~ practitioners within the confines of the establishment. In the case of a residential establishment, clients may not walk through any living area of the residence to get to the restroom.

8.14.1208 HANDWASHING FACILITIES (1) Handwashing facilities, other than in the restroom, shall be convenient to the work area, including hot and cold running water, connected to an approved sewer. ~~Employees~~ Practitioners shall wash their hands after using the restroom and before and after touching each client.

(a) through (2) remain the same as proposed.

8.14.1211 SANITIZING AGENTS (1) through (3) remain the same as proposed.

(4) Alcohol used at 70% or more strength can be used as a sanitizer (at least 20 minutes for contact time). ~~It is non-corrosive to metal tools.~~

8.14.1212 STORAGE AND HANDLING OF TOOLS AND EQUIPMENT

(1) through (3) remain the same as proposed.

(4) A sanitary neck strip or towel shall be used to keep hair clippings and capes from coming in contact with the client's neck, unless a freshly laundered cape is used for each client.

(5) through (10) remain the same as proposed.

(11) Single service disposable cups are to be used for all clients unless the establishment is licensed as a food purveyor by the department of public health and human services in accordance and in compliance with all state and county regulations.

3. The Board received nine written comments and ten persons testified at the hearing. The comments received and the Board's responses are as follows:

#### 8.14.402 UNPROFESSIONAL CONDUCT

COMMENT NO. 1: One commentor stated that 37-1-316, MCA should be published in the law books and requested that the Board provide information of unprofessional behavior to the salons and schools regarding licensees to protect their reputation in the state.

RESPONSE: The Board acknowledged the comment and stated that 37-1-316, MCA is published in the Board of Cosmetologists' law and rule book. The Board also stated that the salon/school owners may conduct their own background check on the people they hire and they can obtain information from the Board regarding disciplinary actions that are open to the public.

COMMENT NO. 2: One commentor testified concerning (1)(y) and stated that estheticians needed to analyze the skin so that they could determine what products to use. The commentor also stated that acne is defined as a medical condition in some books while others state that it is not a medical condition and requested that some clarification be made to this subsection.

RESPONSE: The Board acknowledged the comment and stated that estheticians and cosmetologists may analyze the skin and that they provide services, not "treatment", "healing", or "correction". They may not provide services that go beyond the upper layer of skin, i.e. the stratum corneum. Physicians have contended that acne is a medical condition, therefore the specific "treatment" of acne is not within a cosmetologist's or esthetician's scope of practice. Acne is viewed by the board as a medical condition and can only be treated by physicians.

#### 8.14.601 APPLICATION FOR SCHOOL LICENSE

COMMENT NO. 3: One commentor was concerned with the time it would take for the Board to approve changes to the school's rules and policies if each change, however small, had to be approved by the Board, which may be cumbersome to schools and prevent immediate need for policy change.

RESPONSE: The Board acknowledged the comment and stated that the reason they were requiring that the rules and policies be

submitted to the Board was to ensure that there is no conflict between school policies and Board laws and rules. It is, however, the school's obligation to make sure they are in compliance with state laws and rules. The Board amended (6) to delete the requirement of having Board approval before the new policies could be implemented and required that new, deleted or changed policies be submitted to the Board annually during the renewal cycle.

COMMENT NO. 4: One commentor testified in opposition to the Board licensing of courses and further testified in opposition to the requirement for schools to have a \$5,000 bond with the state named as the beneficiary. The commentor feels that the students can go to court to get their money back if the school does not refund tuition. The commentor also stated that there are no criteria to establish what a financially stable school is and felt that if the board is going to check the financial stability of a school they need to establish criteria to determine financial stability.

RESPONSE: The Board acknowledged the comment and stated that it is within the authority of the Board to license courses as provided by 37-31-311(2), MCA.

The \$5,000 bond is required by statute at 37-31-311(8), MCA. Naming the Board as the beneficiary has been a Board policy and is authorized by 37-31-311(8), MCA. The rule is being amended for clarification that the beneficiary is to be the Board for insurance vendors issuing the bond. The Board has the responsibility, upon a school closure, to determine, through student claims, what tuition was prepaid and unearned. The Board then provides documentation to the insurance company and collects the bond on behalf of the claimants. If the \$5,000 bond does not cover the claims, the Board has the responsibility to divide the bond prorata among the students making claims for prepaid tuition.

The Board is authorized to adopt rules for the proper conduct of schools by 37-1-311(7), MCA. ARM 8.14.601 does not require or mandate "audited" financial statements - only submission of a financial report prepared by a CPA. The Department of Education requires audited financial statements for an accredited school. NACCUS requires a financial statement. Students cannot obtain financial aid if the school isn't accredited. The accredited schools may submit the audited financial statements to avoid duplication and cost. The non-accredited schools will be required to submit financial statements if the Board requests it. New schools must submit a financial statement with their application.

COMMENT NO. 5: One commentor expressed a concern as to who would be critiquing class instruction curriculum and lesson plans and if there would be some guidelines that they could go by before their curriculum was reviewed.

RESPONSE: The Board acknowledged the comment and stated that Board inspectors or a Board designee with appropriate credentials would be critiquing class instruction curriculum and lesson plans. For example, the Board administrator or inspectors may be assigned to review a Montana law and rule class or a licensed cosmetology instructor not associated with the school may audit a cosmetology course. The required curriculum is described in rule. In order for licensees to become licensed instructors they have to know how to develop curriculum and make lesson plans. There are instruction books available as well.

COMMENT NO. 6: One commentor testified regarding the financial report requirement and wanted clarification as to whether it was to be an audited financial statement or unaudited. The commentor is concerned with the cost of an audited financial statement and suggested that the schools have the option of submitting a financial report or putting up a bond big enough to cover the students' losses if the school closes and the students don't get the instruction that they paid for.

RESPONSE: The Board acknowledged the comment and stated that (7) does not require an audited financial statement. It requires a financial report prepared by a CPA. The audit authorized by (8) is an audit that would be performed at the Board's request and expense. The bond is established by statute and therefore the board does not have the flexibility to make the bond bigger to cover all of the students' losses in the event of a school closure.

COMMENT NO. 7: One commentor objected to a business audit by the Board stating that it was a tax issue not a board issue.

RESPONSE: The Board acknowledged the comment and referenced the response to Comment Nos. 4 and 6.

#### 8.14.603 SCHOOL OPERATING STANDARDS

COMMENT NOS. 8 and 9: Two commentors testified in connection with (5) that according to NACCUS regulations the school keeps the original contract and the student gets a copy. The commentor also asked for clarification on (7) as to what was expected, i.e., is this a daily record of how much time each student spends on each service, is it a daily or monthly requirement, does it get kept in the student's file or submitted to the board? The commentor also requested clarification on whether the time was to be submitted based on a 100 digit clock or 60 minute clock. The commentor requested clarification of (12) because the student's services are checked by an instructor in a one-on-one demonstration before the patron leaves the building. This occurs on the clinic floor, not the classroom.



**RESPONSE:** The Board acknowledged the comment and following discussion voted to amend (5) to provide that both the student and the school have original contracts.

With regard to (7) the Board is requiring that records be accurate and verifiable on a daily basis, such as 8 hours or 7 hours and 30 minutes. The school is required to track the number of hours each student spends in each curriculum area in order to meet curriculum requirements. The monthly hour sheet and the withdrawal form are the only documents the school is required to submit to the board regarding verifiable hours for each student. The other documentation regarding tracking hours and curriculum is to be kept in the student's file.

With regard to (12) the Board stated that the clinic floor is considered a "practical" classroom. In connection with (8)(b), the board's policy adopted during a Board meeting in 1997 was mailed to all schools that required clock hours be submitted in hours and minutes.

**COMMENT NO. 10:** One commentor testified that students should not be registered with the Board as the statute does not require registration of students. The commentor requested clarification on whether time keeping is to be reported in minutes or rounded to the nearest quarter hour. With regard to (14) the commentor felt that all cosmetology training prior to licensure is basic training.

**RESPONSE:** The Board acknowledged the comment and stated that pursuant to 37-31-203(4), MCA the board is clearly authorized to adopt rules for the regulation and instruction of apprentices and students as well as school operations and conduct under 37-31-311, MCA. Subsection (8)(b) requires that monthly hour calculations be submitted in hours and minutes. The minimum requirement for a time keeping system is to be capable of rounding attendance to the nearest quarter hour. If the school is rounding to the nearest "one minute" the school exceeds the requirement under (8)(b). Subsection (14) provides the number of hours that a student is required to complete before performing any services on members of the public.

**COMMENT NO. 11:** One commentor testified that the students needed the basic training whether they work on mannequins or willing students. The commentor was concerned about the requirement of esthetics students not working on the public for 150 hours because they needed to see different skin types and learn to analyze skin.

**RESPONSE:** The Board acknowledged the comment and felt that it would take 150 hours of basic training in theory, demonstrations, etc. before the student would be ready to work safely on the public. They also stated that students can use each other to analyze skin types. The Board also stated that

for each course of study in the school, the basic training requirement is the same proportionately due to the safety and sanitation risks for that course and is less than one quarter of the total hours required for each course.

COMMENT NO. 12: One commentor asked for clarification of the phrase "capable of rounding attendance to the nearest quarter hour."

RESPONSE: The Board acknowledged the comment and referenced the response to Comment Nos. 8 through 10.

#### 8.14.606 STUDENT REGISTRATION

COMMENT NO. 13: Two commentors stated that it was almost impossible for them to get the withdrawal papers into the Board in three days. The commentors cited the example of a student who doesn't show up for several days and it is later determined to be a withdrawal. In these instances the last day of attendance is the official date of withdrawal. The commentors also asked why the Board needs the grades of withdrawing students.

RESPONSE: The Board acknowledged the comment and stated that most of the schools are meeting the requirement. The Board needs to know that the student has withdrawn once the school has been advised of the withdrawal. The Board suggests that the school amend their policy regarding what they term the date of withdrawal. The purpose of the rule is to prevent the school from punishing the student for withdrawing and transferring to another school by withholding the withdrawal papers for several days, weeks or months as has happened in the past. The Board needs the grades of withdrawing students so that the Board can provide the student's grade information to the school the student is transferring to. This will allow the transferring school to better evaluate the student's needs and assist in contracting, estimating course completion date and determining the cost of tuition. As a note, this rule has been in effect since December of 1997. The current amendment is for housekeeping purposes only.

COMMENT NO. 14: One commentor felt that students shouldn't have to register. The commentor also felt that three days was not a sufficient amount of time to send in withdrawal papers. The commentor felt that students should be allowed to come into the school and work on mannequins to see if they want to be in school. The commentor felt it was a waste of time to send in grades of students who drop out and that the grades of students transferring could be sent when the student transfers.

RESPONSE: The Board acknowledged the comment and referenced the response to Comment Nos. 10 and 13.

COMMENT NO. 15: One commentor disagreed with sending in grades for withdrawing students stating that they didn't care what the students did before, just what they do in their school.

RESPONSE: The Board acknowledged the comment and referenced the response to Comment No. 13 and added that students should be completing the course of study within the school's guidelines for satisfactory progress and standards for graduation.

8.14.612 TRANSFER POLICIES - RECRUITMENT - FIELD TRIPS

COMMENT NO. 16: One commentor stated that the amendment regarding field trips put too much restriction on the school and stifles another form of education.

RESPONSE: The Board acknowledged the comment and stated that field trips have to apply to some area of the curriculum in order to be counted as hours towards the student's training. The Board added that this is not a substantial change to the current rule that was adopted in December of 1997. Subsection (5) was amended to clarify the Board's original intent.

COMMENT NO. 17: One commentor voiced an objection to the three day requirement for notifying the Board with regard to the transfer or withdrawal of students.

RESPONSE: The Board acknowledged the comment and referenced the response to Comment No. 13 above.

8.14.613 INSTRUCTIONAL SPACE AND FACILITIES

COMMENT NO. 18: One commentor testified in opposition to the requirement that salons and schools be separated as long as the student work is done in the school and the salon work is done in the salon.

RESPONSE: The Board acknowledged the comment and stated that this amendment offers further clarification of the existing rule and is pursuant to statute at 37-31-311(9), MCA.

8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE

COMMENT NO. 19: One commentor objected to the students receiving pass/fail grades and the actual score not being released. The commentor also felt that "immediately" should be defined as it means 90 days in some cases and something different in others.

RESPONSE: The Board acknowledged the comment and stated the reason the rules are reported as pass/fail is because the scores are reported by the testing agency to the Board office in a "scaled form" that does not equate to the actual score and would cause confusion for the students. However, the

scaled scores are released to the schools in the form of quarterly and annual school reports from NIC for curriculum development and evaluation purposes.

Subsection (10) does define "immediately" as used in 37-31-305(2)(b)(ii) and has been further amended for clarification.

COMMENT NO. 20: One commentor stated that as a state agency anyone has a right to know the information they are looking for (examination results) and stated that the Board can't withhold information.

RESPONSE: The Board acknowledged the comment and stated that because of an individual's right to privacy the names with their scores cannot be released without specific permission of the candidates. The information is released to the schools in a quarterly and annual report for curriculum development and evaluation purposes.

#### 8.14.802 LICENSE EXAMINATIONS

COMMENT NO. 21: One commentor wanted clarification on how the temporary permits work if a graduate is allowed three years to take an exam; when can the candidate apply for the temporary permit, immediately after graduation or three years from graduation?

RESPONSE: The Board acknowledged the comment and stated that the person can only get one temporary permit when they register for an exam. If the exam is not taken within the 90 days, the temporary permit will expire in accordance with 37-1-305, MCA and they will not be eligible for a second 90 day permit upon re-registration for subsequent exam. They can apply to take the exam any time in the three (amended to five in this adoption notice) years and no earlier than 90 days before the exam.

COMMENT NO. 22: One commentor wanted clarification on what curriculum a student who failed the examination was required to study for the 200 hours of additional training required. The commentor also felt that a student who went to school and could verify their hours should be able to use those hours and not be limited to three years.

RESPONSE: The Board acknowledged the comment and stated if the exam candidate fails the examination, the exam candidate will receive a strength/weakness report from the testing vendor. The strength/weakness report indicates the candidate's areas of weakness and strength relating to the exam and scope. The school can make its own determination as to what areas the exam candidate needs additional curriculum work to enable the candidate to pass the exam within the 200 hour requirement. The Board further stated the reasons for not dictating a specific 200 hour curriculum is to give the

schools flexibility to tailor the course for each failed candidate. The Board discussed the suggestion to not limit the time in which they had to take the exam to three years. The Board amended the requirement to five years to be in conformity with the matriculation date established by ARM 8.14.822.

8.14.803 APPLICATIONS FOR EXAMINATION - TEMPORARY PERMITS

COMMENT NO. 23: One commentor stated that since the Board had adopted a rule providing that if a person takes the TABE exam they can become a licensed cosmetologist, this should be stated in this rule as well.

RESPONSE: The Board acknowledged the comment and stated that in 37-31-304(3)(a), MCA the Board is required to adopt, by rule, procedures for granting an exception. ARM 8.14.803 deals with the application process and that qualifications are found in statute and do not need to be repeated in rule.

8.14.812 DUPLICATE LICENSES

COMMENT NO. 24: One commentor objected to the board requiring a fee for a duplicate license and restricting the licensee from making photocopies of the license for posting requirements.

RESPONSE: The Board acknowledged the comment and stated that the fee is charged to cover cost of administration, including postage, staff time in printing the licenses and mailing. There is no prohibition against copying a license for purposes other than the posting requirement. A photocopied license cannot be used to comply with the requirement to post the license in public view in establishments. This requirement is to eliminate the likelihood of fraud.

COMMENT NO. 25: One commentor testified in support of the amendments under ARM 8.14.812.

RESPONSE: The Board acknowledged the comment and thanks the commentor for the support.

8.14.813 LAPSED LICENSE

COMMENT NO. 26: One commentor stated that there is no room for lapsed licenses and that an expired license cannot go into a lapsed status. The commentor stated that you can renew an expired license for ten years.

RESPONSE: The Board acknowledged and denied the comment and stated that the lapsed license requirement is a department statute, i.e. 37-1-141, MCA, which gives the three year limitation to renew a lapsed license without re-examining.

The Board further explained that "expired license" is a term found in the Department rule, ARM 8.2.208 Renewal of Licenses.

8.14.816 SALONS/BOOTH RENTAL - COSMETOLOGICAL

COMMENT NO. 27: One commentor testified in connection with (4)(b) and stated that disinfectant and sanitizer do not go together and felt the amendment was vague and ambiguous.

RESPONSE: The Board accepted the comment and following discussion, amended (4)(b) for clarification. The term "disinfectant" is changed to "sanitizing agent."

COMMENT NO. 28: One commentor stated that the rule needs to provide that tools, implements or any working surface should be disinfected while hands and skin can be sanitized.

RESPONSE: The Board acknowledged the comment and stated that sanitized or sanitizing is defined in the Board's rule under New Rule I, MAR Notice No. 8-14-54.

COMMENT NOS. 29 and 30: Two commentors stated that requiring a bathroom within the confines of every salon is too restrictive and that it is not cost effective for small salons with one operator if the salon owner is sharing facilities in a building with other businesses.

RESPONSE: The Board acknowledged the comment and stated that salon owners can apply for a variance if they meet the standards prescribed in ARM 8.14.821 and have restrooms available to their clients in a convenient location. The Board further acknowledged that the need for restroom facilities in salons and schools was essential. Many salons have not been providing convenient and adequate restrooms and have required clients to exit the building to the outside in order to find restroom facilities. Many salon owners complain about sharing restroom facilities with other businesses and claim that the facilities are unsanitary and don't meet Board standards.

8.14.817 BOOTH RENTAL LICENSES - APPLICATIONS

COMMENT NO. 31: One commentor felt that the requirement to have a separate booth license for each location is only about money. The commentor also objected to the requirement that booth licenses are not transferable and felt that if the salon ownership changes the booth renters should not have to have new booth rental licenses.

RESPONSE: The Board acknowledged the comment and stated that booth licenses are required by statute and cannot be eliminated by rule. The Board further stated that because booth rental licenses are issued and tied to the salon, a change in ownership changes the status of the salon making it necessary for the booth rental licenses to be changed as well.

The Board rejected the suggestion to have transferable booth rental licenses.

COMMENT NO. 32: One commentor testified that booth renters should be treated the same as salons with the same requirements.

RESPONSE: The Board acknowledged the comment and stated booths and salons are not the same. Booth renters operate in a space in the salon and it is not practical to require that booth renters have all the same equipment required for salons. Booth renters may only work in a licensed salon.

#### 8.14.1201 SANITATION FOR FACILITIES

COMMENT NOS. 33-35: Three commentors objected to the restriction against carpeting in salons and stated that carpeting could be sanitized and was just as clean as a hard surface floor; that it was not practical in a day spa where they require disposable slippers. One commentor felt that hard wood floors or linoleum is a cold environment and they want to provide a warm environment for their customers. One commentor felt that carpeting minimizes sounds and provides a more conducive environment for a spa business.

RESPONSE: The Board acknowledged the comments and stated that (1) provides that the floor surface in the work area be of non-porous material. Chair mats made of non-porous materials can be used in the work areas over carpeting to meet the requirements of this rule. There is no restriction against carpeting entryways, reception areas, hallways, massage rooms, etc. The only areas of the salon that need to have non-porous material on the floors are areas that use chemicals or may have body fluid spillage.

#### 8.14.1206 RESTROOM FACILITIES

COMMENT NOS. 36 and 37: Two commentors felt that the language required by (2)(a) was excessive and would take up too much room.

RESPONSE: The Board accepted the comments and following discussion amended the rule to revert to the previous language and changing "employees" to "practitioners" to cover all licensees, students, booth renters and salon owners.

COMMENT NO. 38: One commentor felt that students should be required to wash their hands as well and that mechanical ventilation is not necessary if you have non-mechanical ventilation.

RESPONSE: The Board acknowledged the comment and stated that the first part of the comment was covered in response to Comment Nos. 36 and 37 and further stated that variations of

non-mechanical ventilation would not be appropriate for all situations/weather conditions, etc. The Board will still require mechanical ventilation for public health and safety.

COMMENT NO. 39: One commentor stated that there are too many laws and rules and felt that washing up to his elbows was too much. The commentor also questioned how the Board was going to monitor compliance.

RESPONSE: The Board acknowledged the comment and stated that the comment was covered in response to Comment Nos. 36 and 37.

COMMENT NO. 40: Jeannie Worsech, Board Administrator for the Board of Cosmetologists recommended that the word "employees" be changed to read "All persons servicing members of the public" in order to cover all licensees, students and booth renters.

RESPONSE: The Board acknowledged the comment and, as addressed in the response to Comment Nos. 36 and 37, has changed the term "employees" to "practitioners".

COMMENT NO. 41: One commentor requested clarification that bathroom cabinets do not have to be kept locked if they only contain disposable hand towels and bathroom tissue and do not contain chemicals or salon preparations. The commentor supports the amendment requiring that bar soap not be used.

RESPONSE: The Board acknowledged the comment and stated that (4) provides that the closet or cabinet has to be locked if it is storing chemicals or salon preparations. If the storage cabinets in restrooms only contain hand towels, toilet paper, etc. then they do not need to be locked. Storage of chemicals such as Draino, bathroom cleansers, color or perm solutions do require locking cabinets.

#### 8.14.1208 HANDWASHING FACILITIES

COMMENT NO. 42: One commentor agreed with the addition of a waterless anti-bacterial hand sanitizer as an alternative to hand washing and asked if the product needs to say hand sanitizer or anti-bacterial or both.

RESPONSE: The Board acknowledged the comment and stated that the product can say either hand sanitizer, anti-microbial or anti-bacterial or both.

#### 8.14.1211 SANITIZING AGENTS

COMMENT NOS. 43-45: Three commentors objected to the use of alcohol as a disinfectant. One stated that alcohol was a sanitizer not a disinfectant and another stated that alcohol will rust metal tools. One commentor stated that the rule



doesn't state whether it's isopropyl or ethyl alcohol and that alcohol is not a stable chemical.

RESPONSE: The Board acknowledged the comment and stated that textbooks refer to alcohol as a sanitizing agent and the medical profession continues to use alcohol as a sanitizing agent. The Board is not saying that licensees have to use alcohol, just that it is a sanitizing agent. Either isopropyl (70%) or ethyl (99%) alcohol can be used in accordance with the manufacturer's directions. The Board deleted the wording that refers to metal tools not being corroded by alcohol.

COMMENT NO. 46: One salon owner stated that their salon uses alcohol for sanitization of shears and questioned whether or not instant sanitizers of spray or foam could be used and if so if the board had a list of approved instant sanitizers.

RESPONSE: The Board acknowledged the comment and stated that if the instant sanitizer meets the sanitation standards set forth in (1) and (2) it can be used.

COMMENT NO. 47: One commentor stated that 70% alcohol can be corrosive to some tools, but that 99% alcohol cannot cause metal to break down and suggested the use of denaturated alcohol.

RESPONSE: The Board acknowledged the comment and referenced its response to Comment Nos. 43 through 45.

COMMENT NO. 48: Richard Prince, VP of Scientific Affairs of Microgen, Inc. is the owner of EPA registered products and has submitted a written comment stating that they have received EPA cleared efficacy claims against HIV and human HBV and that the NIC had modified its health and safety standards and endorsed the usage of quaternary ammonium disinfectants. Mr. Prince requested information as to whether the Montana Board of Cosmetologists concurs with the NIC determination.

RESPONSE: The Board acknowledged the comment and stated that if the product meets the sanitation standards set forth in (1) and (2) it can be used. The Board concurred with NIC recommended standards for sanitation.

#### 8.14.1212 STORAGE AND HANDLING OF TOOLS AND EQUIPMENT

COMMENT NO. 49: One commentor stated that neck strips and towels aren't necessary if the capes are laundered after each use. The commentor also suggested that the board consider glasses and cups that are nondisposable if they are cleaned in an appropriate way such as using a dishwasher.

RESPONSE: The Board acknowledged the comment and stated that it has amended (4) to provide that neck strips and towels are to be used unless a freshly laundered cape is used for each

client. The Board further stated that following discussion it had amended (11) to provide an exception for establishments licensed as food purveyors by the state Department of Public Health and Human Services. Licensees can contact their county health department for requirements and licensing information.

COMMENT NO. 50: One commentor testified in opposition to the requirement to use disposable cups.

RESPONSE: The Board acknowledged the comment and referenced its response to Comment No. 49.

COMMENT NO. 51: One commentor testified in opposition to the requirement to use disposable cups and suggested that the board allow the salons to follow the same procedures as restaurants and bars using disinfectants and allowing the glasses/cups to drip dry.

RESPONSE: The Board acknowledged the comment and referenced its response to Comment No. 49.

COMMENT NO. 52: One commentor asked, in connection with (2), if the salons needed a dust free cabinet for cosmetologist aprons (protective/water impervious) and wanted to know what the Board's rule was on laundering of protective wear used by licensees. The commentor also stated that client capes should be laundered after each use and agreed with the requirement not to put clips or other tools in pockets or attach them to aprons. The commentor also suggested that reusable items that are washed in a dishwasher be allowed for beverages. The commentor supported the Board's efforts to ensure that salons are safe and sanitary.

RESPONSE: The Board acknowledged the comment and stated that ARM 8.14.1215(1) requires practitioners to wear clean, professional attire. In connection with the comment regarding reusable items, the Board referenced its response to Comment No. 49.

COMMENT NO. 53: One commentor suggested storing implements in 99% alcohol rather than a clean dry closed container.

RESPONSE: The Board acknowledged the comment and stated that the Board feels it is appropriate to store implements in 99% alcohol, but added that if the implements and tools were removed and not immediately used, the storage of the clean sanitized implements and tools needs to be in a clean dry closed container.

8.14.1215 PERSONAL HYGIENE OF PERSONNEL

COMMENT NOS. 54 and 55: Two commentors wanted clarification of "professional attire".

RESPONSE: The Board acknowledged the comments and stated that this portion of the rule was not addressed in the proposed amendments and therefore the Board cannot address it at this time.

COMMENT NOS. 56 and 57: Two commentators stated that they felt that independent businesses were being stifled with regulations and that the rules needed to be simplified.

RESPONSE: The Board acknowledged the comments and stated that their responsibility was to protect the public health, safety and welfare and they feel the rules, as amended, are necessary to achieve this purpose.

NEW RULE I AIDING AND ABETTING UNLICENSED PRACTICE

COMMENT NOS. 58 and 59: Two commentators testified in opposition to the proposed new rule. One commentator stated that as long as each person has their individual license that should be enough and felt that the board was trying to make money by requiring the booth license.

RESPONSE: The Board acknowledged the comments and stated that booth rental licenses are required by statute and cannot be eliminated by rule. The Board further stated that there was a need for clarification of the department's unprofessional conduct statute, 37-1-316(2), MCA for aiding, abetting and permitting unlicensed practice, since a majority of the complaints the Board receives is for violations of this statute and unlicensed practice.

BOARD OF COSMETOLOGISTS  
WENDELL PETERSON, CHAIRMAN

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

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

Certified to the Secretary of State, March 26, 2001

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT
of rules pertaining to )	AND ADOPTION
license seal, safety and )	
welfare of the public, )	
performance of services in )	
areas of competence, conflicts )	
of interest, avoidance of )	
improper solicitation of )	
professional employment and )	
the adoption of rules )	
pertaining to direct super- )	
vision, the definition of )	
responsible charge, an intro- )	
duction to the rules on )	
professional conduct and the )	
issuance of public statements )	

TO: All Concerned Persons

1. On October 26, 2000, the Board of Professional Engineers and Land Surveyors published a notice of proposed amendment and adoption of rules pertaining to the Board of Professional Engineers and Land Surveyors at page 2784, 2000 Montana Administrative Register, issue number 20. The hearing was held November 16, 2000.

2. The Board has amended ARM 8.48.1203 and 8.48.1205 and adopted NEW RULE I (ARM 8.48.1111), NEW RULE II (ARM 8.48.1112), NEW RULE III (ARM 8.48.1201A) and NEW RULE IV (ARM 8.48.1113) exactly as proposed. The Board did not adopt the amendments to ARM 8.48.802.

3. The Board has amended ARM 8.48.1202 and 8.48.1206 with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC  
PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

(1) In the performance of professional duties that are within the scope of the licensee's assigned responsibilities, licensees shall recognize their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.

(2) and (3) remain the same as proposed.

8.48.1206 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT (1) and (2) remain the same as proposed.

(3) The licensee shall accurately represent to a prospective or existing client or employer the licensee's qualifications and scope of ~~their~~ the licensee's responsibility in connection with work for which they are claiming experience.

4. The Board received 16 written comments and four persons testified at the hearing. The comments received and the Board's response are as follows:

8.48.802 LICENSE SEAL

COMMENT NO. 1: Several persons objected to the prohibited use of electronic signatures. The commentators pointed out that we are in an electronic world and not being able to use electronic seals would inhibit business. Other persons questioned the multiple discipline stamping requirements.

RESPONSE: The Board discussed the comments regarding banning of electronic signatures and the current practices in the engineering business. The Board voted to table the proposed changes to this section until the next board meeting and to get input from the National Society of Professional Engineers, Montana Department of Transportation, Consulting Engineers Council of Montana, National Council of Examiners for Engineering and Surveying, Montana Association of Registered Land Surveyors and American Society of Civil Engineers.

8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

COMMENT NO. 2: One commentator questioned the requirement of licensees reporting violations to the Board.

RESPONSE: The Board feels that licensees have an obligation to report violations when noticed and voted to leave the amendment as proposed.

COMMENT NO. 3: One commentator suggested changing the wording of (1) to add at the beginning, "In the performance of professional duties that are within the scope of the licensees assigned responsibilities, licensees ..." to incorporate the title of the section into the actual written rule.

RESPONSE: The Board accepted the comment and voted to amend the rule accordingly.

COMMENT NO. 4: A written comment was received questioning the elimination of the words "reviewed or prepared by" from (2). The commentator felt that this was an attempt by large design firms to create more business for themselves.

RESPONSE: The Board disagreed with the comment and stated that requiring licensees to sign and stamp the plans indicates

to the public who is in "responsible charge" which is defined by New Rule II. This requirement applies to large as well as small firms.

8.48.1203 PERFORMANCE OF SERVICES ONLY IN AREAS OF COMPETENCE

COMMENT NO. 5: A written comment was received regarding the use of "verifiable experience" when describing that licensees shall only perform work in their area of competence. The commentor requested that the word "verifiable" be eliminated from the proposed amendments.

RESPONSE: The Board acknowledged the comment and stated that the word "verifiable," although somewhat restraining, requires that the licensee be able to verify competency in a discipline if requested by the Board. This alleviates the necessity for testing each licensee in all disciplines.

COMMENT NO. 6: A written comment was received questioning the elimination of the word "reviewed" from (2). The commentor felt that this was an attempt by large design firms to create more business for themselves.

RESPONSE: The Board disagreed with the comment and stated that requiring licensees to sign and stamp the plans indicates to the public who is in "responsible charge" which is defined by New Rule II. This requirement applies to large as well as small firms.

COMMENT NO. 7: One commentor questioned the use of the term "responsible charge" as used in this section. The commentor felt that this limited the review by local engineers of designs done elsewhere.

RESPONSE: The Board acknowledged the comment and stated that the engineer who signs and stamps a document must be in responsible charge of that particular work.

8.48.1206 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT

COMMENT NO. 8: A written comment was received stating that the use of the term "their" in (2) is confusing as to whom it is referring. The commentor was unsure if it was the licensee or the employer/client.

RESPONSE: The Board accepted the comment and stated that they would amend the proposed rule to change the word "their" to "the licensee's."

COMMENT NO. 9: One commentor questioned the use of the word "experience" at the end of (3). The commentor felt that the word competence or capability would better describe the requirement.

RESPONSE: The Board acknowledged the comment and stated that if felt the word "experience" was adequate.

NEW RULE I DIRECT SUPERVISION

COMMENT NO. 10: One commentor stated that the words "after the fact review" should be replaced by the words "except where the depth and extent of review can be considered as a sufficient familiarity with the plans by the reviewer that they can seal them under the definition of [NEW RULE II] (1)(b)."

RESPONSE: The Board proposed this definition of "direct supervision" to alleviate any misunderstandings about responsible charge. After the fact reviews or plan stamping conflicts with the responsible charge requirements. Direct supervision and responsible charge are interrelated.

NEW RULE II RESPONSIBLE CHARGE

COMMENT NO. 11: Two written comments were submitted questioning responsible charge in connection with the approval of designs done remotely or pre-engineered designs.

RESPONSE: The Board stated that the proposed rule requires a licensee to sign and stamp the designs or surveys indicating that he or she is the person in responsible charge and the person ultimately responsible for the designs or surveys.

COMMENT NO. 12: One commentor asked what was meant by "a reasonable period of time" in the phrase "the licensee must be physically present or through the use of communication devices, can be available in a reasonable period of time."

RESPONSE: The Board stated that it was addressing this issue and in the near future will propose a definition of "reasonable period of time" in connection with the use of branch and project offices.

NEW RULE III INTRODUCTION

COMMENT NO. 13: One commentor asked what was meant by "complete." In addition, the commentor felt that the terms accurate and truthful were redundant and truthful should be eliminated. Finally, the commentor stated that the use of the term "objective" was inappropriate because some decisions are necessarily subjective but are not less appropriate.

RESPONSE: The Board stated that "complete" information would require the licensees to relay what they know, this would include letting others know if something is proprietary information. Accurate information is what you may know at the time and could change, while truthful information is simply telling the truth. The Board felt that the term "objective"

is appropriate. The Board adopted the rule as proposed.

NEW RULE IV ISSUANCE OF PUBLIC STATEMENTS

COMMENT NO. 14: Three comments were submitted relating to limiting a person's free speech. One commentator stated that the term "truthful" should be replaced by the term "professional."

RESPONSE: The Board stated that it is not attempting to limit free speech, but instead is informing licensees that when making public statements as professionals, they shall do so in an ethical manner. "Truthful" and "professional" are not synonymous and the Board feels that all public statements should be truthful.

BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
WARREN SCARRAH, CHAIRMAN

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

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

Certified to the Secretary of State, March 26, 2001.



BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of rules pertaining to )  
definitions and licensure )  
requirements )

TO: All Concerned Persons

1. On October 26, 2000, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment of rules pertaining to the Board of Social Work Examiners and Professional Counselors at page 2791, 2000 Montana Administrative Register, issue number 20. The hearing was held November 21, 2000.

2. The Board has amended ARM 8.61.401 and 8.61.1201 exactly as proposed.

3. The Board received three written comments. The comments received and the Board's response are as follows:

COMMENT NO. 1: One commentor felt that allowing 50% of the 3000 hours of work experience in the counseling setting would compromise the integrity of the licensed clinical professional counselor (LCPC) licensure and weaken the status of the LCPC. The commentor stated that licensed clinical social workers (LCSW) do not count practicum time toward their licensing.

RESPONSE: The Board thanked the commentor for the comment and stated that the 3000 supervised experience hours have remained the same. Only the content of those hours is being further defined in the rule amendment. The law specifies that a minimum of 1500 hours must be post-degree which allows for up to 1500 hours to be earned pre-degree. This has not changed. The rule amendment specifies the content of the 3000 hours, i.e. one hour of face-to-face supervision for every 15 hours of practice for pre-degree, 1000 hours of direct client contact and no more than 250 hours from group sessions.

COMMENT NO. 2: One commentor stated his support of the proposed amendment and suggested the addition of "to include diagnostic testing and" after the word assessments in ARM 8.61.501(5)(a) because clinical social workers are trained in diagnostic testing, however Medicaid will not pay for diagnostic testing provided by LCSW's.

RESPONSE: The Board stated that its rules clearly allow the licensees to provide this service. DPHHS rules would need to be amended to allow Medicaid payment for diagnostic testing done by LCSW's.

COMMENT NO. 3: A comment was received from Colleen Murphy, MSW, LCSW, Executive Director of the Montana Chapter National Association of Social Workers stating that MT-NASW supports an addition to ARM 8.61.401, the definition of social work practice, to include assessment and diagnosis and suggested the addition of adaptive social functioning to the end of (5)(b).

RESPONSE: The Board thanked Ms. Murphy for her comments and support and stated that further study would be needed to see if there is a necessity and/or statutory authority for the additional language she proposed.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
RICHARD SIMONTON, PRESIDENT

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

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

Certified to the Secretary of State, March 26, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the repeal of )  
ARM 17.8.323, pertaining to ) NOTICE OF REPEAL  
sulfur oxide emissions from )  
primary copper smelters ) (AIR QUALITY)

TO: All Concerned Persons

1. On December 7, 2000, the Board published a notice of public hearing on the proposed repeal of the above-stated rule at page 3327, 2000 Montana Administrative Register, issue number 23. A public hearing was held on January 23, 2001.
2. The Board has repealed ARM 17.8.323, as proposed.
3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
Joe Gerbase, Chairman

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State March 20, 2001.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of amendment ) CORRECTED NOTICE  
of ARM 32.6.712 as it relates ) OF AMENDMENT  
to food safety and inspection )  
service (meat and poultry) )

TO: All Concerned Persons

1. On March 22, 2001, the board of livestock published a notice at page 448, 2001 Montana Administrative Register, Issue Number 6 of the amendment of ARM 32.6.712 as it relates to food safety inspection service (meat and poultry).

2. The reason for the correction is that in the notice of proposal, the earmarking changes contained an error. The renumbering of (1) through (35) should have been changed to (a) through (ai) instead of (ah). The corrected rule amendment reads as follows:

32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY) (1) remains as amended.

(1) through (35) remain the same but are renumbered (a) through (ai).

(2) remains as amended.

AUTH: 81-9-220, MCA

IMP: 81-9-220, MCA

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges  
Marc Bridges, Exec. Officer,  
Board of Livestock  
Department of Livestock

By: /s/ Bernard A. Jacobs  
Bernard A. Jacobs, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State March 28, 2001.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of rules pertaining )  
to fees and tests for yield )  
and drawdown )

TO: All Concerned Persons

1. On December 21, 2000, the Department of Natural Resources and Conservation published notice of the proposed amendment of ARM 36.21.415 fee schedule, and 36.21.664 tests for yield and drawdown at page 3504, 2000 Montana Administrative Register, Issue Number 24.

2. The agency has amended ARM 36.21.664 exactly as proposed and amended ARM 36.21.415 as proposed with the following changes from the original proposal. Stricken matter is interlined, new matter is underlined.

36.21.415 FEE SCHEDULE

(1) through (2)(c) remain the same as proposed.

(3) Renewal

(a) through (c) remain the same as proposed.

(d) Contractor/monitoring well ~~300.00~~ 275.00

constructor

(e) Monitoring well constructor/~~300.00~~ 275.00

water well driller

(f) through (8) remain the same as proposed.

AUTH: 37-42-202, MCA

IMP: 37-43-302, MCA

3. The following comment was received and appears with the agency's response:

COMMENT 1: The Montana Water Well Drillers Association opposes the increase in licensing fees. The fee increase proposed is a 100 percent increase and is one of the highest license fees in Montana. The Association would like to see the cost of the water well inspector be shared by the well owner. If and when funding is established from other sources, then the license fees could be reduced.

RESPONSE 1: License fees have not been increased since approximately 1986 and expenses have increased since then. The Board is required to set fees to cover the cost of the inspection and licensing program. The Board recognized that the proposed fee could be modified slightly to make the fees more balanced among the licensees yet meet the present and future expenses to the year 2009. The expenses of the Board are already supplemented by not charging for secretarial and field

staff support by the Water Resources Division of the Department of Natural Resources and Conservation. The program is already supplemented approximately 15% by a general fund appropriation that would include ground water users in the state. If and when additional funds become available then the fee can be adjusted.

/s/ Donald D. MacIntyre  
Don MacIntyre  
Rule Reviewer

/s/ Arthur R. Clinch  
Bud Clinch  
Director

Certified to the Secretary of State March 26, 2001.

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

In the matter of the adoption	)	CORRECTED NOTICE OF
of rules I through XVII and	)	ADOPTION, AMENDMENT AND
the amendment of ARM	)	TRANSFER
37.86.105, 37.86.2206,	)	
37.86.2207, 37.86.2801,	)	
37.86.3001, 37.86.3005,	)	
37.86.3502, 37.86.3702,	)	
37.88.901, 37.88.905,	)	
37.88.906, 37.88.907,	)	
37.88.1106, 37.88.1116,	)	
46.20.103, 46.20.106,	)	
46.20.114, 46.20.117 and the	)	
transfer of Title 46, Chapter	)	
20 pertaining to Mental	)	
Health Services	)	
	)	

TO: All Interested Persons

1. On October 26, 2000, the Department of Public Health and Human Services published notice of the proposed adoption, amendment and transfer of the above-stated rules at page 2889 of the 2000 Montana Administrative Register, issue number 20, and on January 11, 2001 published notice of the adoption, amendment and transfer on page 27 of the 2001 Montana Administrative Register, issue number 1.

2. This corrected notice is being filed to correct a clerical error in ARM 37.86.3005.

3. The rule is corrected as follows:

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) and (2) remain as proposed.

(a) All facilities will be reimbursed for services subject to (2) on an interim basis during the facility's fiscal year. The interim rate will be a percentage of usual and customary charges (billed charges). The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report, necessary to determine the cost to charge ratio, the provider's interim rate will be 60% of its usual and customary charges (billed charges).

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

4. The correction in this notice is the result of a typographical error made by the Department in the previous rulemaking notice relating to ARM 37.86.3005. The Department added text to subsection (2)(a) in its proposal notice but inadvertently missed underlining the new text. The text is not substantive but was included to clarify that the Department was specifying billed charges.

5. All other rule changes adopted and amended remain the same.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State March 26, 2001.



VOLUME NO. 49

OPINION NO. 1

ADMINISTRATIVE LAW AND PROCEDURE - Deference given to agency interpretation unless incorrect;  
HEALTH - Use of physical agent modalities by occupational therapists;  
LICENSES, PROFESSIONAL AND OCCUPATIONAL - Scope of occupational therapy practice;  
STATUTORY CONSTRUCTION - Construing intent of legislature;  
STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;  
MONTANA CODE ANNOTATED - Title 37, chapter 24, sections 1-2-101, 37-11-101(11), -102(7), -104(2), -106, -106(1), -106(1)(b), 37-24-103, -103(5), -103(5)(k), -103(7), -103(8);  
OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 3 (1991).

HELD: Occupational therapists are not authorized by Montana law to perform iontophoresis.

March 12, 2001

Mr. Lon Mitchell  
Board Counsel  
Board of Occupational Therapists  
Montana Department of Commerce  
P.O. Box 200513  
Helena, MT 59620-0513

Dear Mr. Mitchell:

You have requested my opinion on the following question, which I have rephrased as follows:

Are occupational therapists authorized by Montana law to employ iontophoresis?

It is my opinion that they are not.

I write this opinion under the assumption that the parties agree to the following definition: Iontophoresis means a process whereby topical medications are applied through the use of electricity. See Mont. Code Ann. § 37-11-106(1)(b).

#### I. BACKGROUND

This request for an Attorney General's Opinion arises out of a declaratory ruling by the Montana Board of Occupational Therapists (Board). The Board concluded that "iontophoresis as a physical agent modality is within the scope of practice for appropriately licensed occupational therapists within the state

of Montana." The Montana Chapter of the American Physical Therapy Association (PT Association), objected to the conclusion of the Board. The Board and the PT Association have agreed to defer to an Opinion of the Attorney General.

As a general rule, an administrative agency's interpretation of a statute under its domain should receive deference unless there are compelling indications that the Board's interpretation is incorrect. See Christenot v. Department of Commerce, 272 Mont. 396, 400, 901 P.2d 545, 548 (1991). My conclusion in this case is that the Board's interpretation is incorrect. I reach this conclusion relying primarily on the following: (1) the statutes governing physical therapy define topical medication and authorize its application and administration, whereas the occupational therapy statutes are silent on the subject; and (2) the statutes governing physical therapy define iontophoresis and expressly authorize its use, whereas the occupational therapy statutes contain no similar definition and authorization.

## II. STATUTORY SCHEME GOVERNING PHYSICAL AND OCCUPATIONAL THERAPISTS

Analysis of the statutes governing physical therapists and occupational therapists is instructive.

### A. Applicable physical therapy statutes

The Montana legislature first sought to regulate the profession of physical therapy in 1961. The governing statutes are now codified in Mont. Code Ann. title 37, chapter 11. The definition of physical therapy is found at Mont. Code. Ann. § 37-11-101(7):

"Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, *prescribed topical medications*, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(Emphasis added.)

Mont. Code Ann. § 37-11-101(11) defines topical medications and states in relevant part, "'Topical medications' means medications applied locally to the skin." Section 37-11-104(2) establishes the boundaries of physical therapy treatment. It states:

Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

Section 37-11-106 governs application and administration of topical medications; § 37-11-106(1)(b) provides that "[a] licensed physical therapist may apply or administer topical medications by: . . . *iontophoresis, a process whereby topical medications are applied through the use of electricity.*" (Emphasis added.)

B. Applicable occupational therapy statutes

The Montana legislature sought to regulate the practice of occupational therapy some 24 years after it enacted legislation governing the practice of physical therapy. The regulations governing the practice of occupational therapy are codified in title 37, chapter 24. The definition of occupational therapy is found at Mont. Code Ann. § 37-24-103(5):

"Occupational therapy" means the use of purposeful activity and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition. The practice encompasses assessment, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

. . . .

The section then goes on to list authorized occupational therapy interventions, including employment of "physical agent modalities." Mont. Code Ann. § 37-24-103(5)(k). Section 37-24-103(7) defines physical agent modalities:

"Physical agent modalities" means *those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity.* Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices.

Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

(Emphasis added.)

### III. LEGAL ANALYSIS

In 1991, the legislature amended the statutes governing physical therapy specifically to authorize licensed physical therapists to apply and administer topical medications. The definition of topical medications is found at Mont. Code Ann. § 37-11-101(11); they are defined as "medications applied locally to the skin" and include "only medications listed in 37-11-106(2) for which a prescription is required under state or federal law." Mont. Code Ann. § 37-11-106 specifically authorizes the methods and standards with which physical therapists must comply when applying or administering topical medications. It provides:

*37-11-106. Application and administration of topical medications -- prescription, purchasing, and record-keeping requirements.* (1) A licensed physical therapist may apply or administer topical medications by:

- (a) direct application;
- (b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or
- (c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

- (a) bactericidal agents;
- (b) debriding agents;
- (c) anesthetic agents;
- (d) anti-inflammatory agents;
- (e) antispasmodic agents; and
- (f) adrenocortico-steroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacists under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.

Section 37-11-106 defines the methods of application a physical therapist may use and lists the topical medications a physical therapist may administer. Subsection (1) sets forth the three ways a licensed physical therapist may apply or administer topical medications: direct application, iontophoresis or phonophoresis. Subsection (1)(b) defines iontophoresis as "a process whereby topical medications are applied through the use of electricity." Section 37-11-106 clarifies that topical medications applied or administered by a physical therapist must be prescribed by a licensed medical practitioner authorized to prescribe such medication. Finally, the section requires that any physical therapist who applies or administers topical medications must comply with appropriate record-keeping requirements.

The statutes governing the practice of occupational therapy are silent on the subject of application and administration of topical medications. Mont. Code Ann. § 37-24-103 provides the relevant definitions governing occupational therapy. Unlike § 37-11-106, § 37-24-103 does not provide a definition of topical medications, nor does it list application or administration of topical medications as an authorized occupational therapy intervention.

The distinction between the scope of practice for occupational therapists and physical therapists is significant. When interpreting the statutes governing occupational and physical therapists, I must do so in accordance with the intent of the legislature. State v. Christensen, 265 Mont. 374, 376, 877 P.2d 468, 469 (1994).

The legislature amended the physical therapy statutes in 1991 to define topical medications and authorize their application and administration. The occupational therapy statutes were also amended in 1991 to allow the use of superficial heat and cold, and again in 1993 to specifically authorize use of physical agent modalities. The legislature did not, in either of these instances, grant occupational therapists the authorization to apply or administer topical medications.

Therefore, it is my opinion that the legislature did not intend to grant occupational therapists such authorization. The legislature is presumed to have full knowledge of existing laws. Theil v. Taurus Drilling Ltd. 1980-II, 218 Mont. 201, 207, 710 P.2d 33, 36 (1985). Had the legislature intended to extend occupational therapists' scope of practice to include iontophoresis it would have made a corollary authorization allowing occupational therapists to apply and administer topical medications.

It has been suggested that, while there is no express authorization for occupational therapists to use iontophoresis, it falls under Mont. Code Ann. § 37-24-103(7)'s definition of physical agent modalities. That section provides in relevant part:

"Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity.

Mont. Code Ann. § 37-24-103(7).

I do not agree with the argument that iontophoresis falls under § 37-24-103(7)'s definition of physical agent modalities. While the definition of physical agent modalities does include the use of electricity, there is no reference to the application or administration of topical medications. The definition of iontophoresis found at § 37-11-106, which the PT Association urges is proper, as well as the definition used by the Board in its declaratory ruling and the definitions found in the professional literature submitted by Montana Occupational Therapy Association contemplate the delivery of topical medication through the use of electricity.

When interpreting the language of a statute, deference should be granted to the plain meaning of the words used. Sherner v. Conoco, Inc., 2000 MT 50, ¶ 35, 298 Mont. 401, 995 P.2d 990. It is my opinion, based on a reading of the plain language of the statutes governing occupational therapists, that the authorization of occupational therapists to use electricity in their practice does not encompass the procedure of iontophoresis which, by both parties' proposed definitions, involves the application and administration of topical medications.

THEREFORE, IT IS MY OPINION:

Occupational therapists are not authorized by Montana law to perform iontophoresis.

Very truly yours,

/s/ Mike McGrath  
MIKE McGRATH  
Attorney General

mm/ans/jym

BEFORE THE MONTANA STATE ELECTRICAL BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition )  
for declaratory ruling on the )  
clarification of low voltage ) DECLARATORY RULING  
electrical communication or )  
signal equipment, whether )  
parking lot or street lighting )  
are covered by electrical code )  
and which electrical code is )  
applicable )

TO: All Concerned Persons

1. On September 7, 2000, the Montana State Electrical Board published a Petition for Declaratory Ruling in the above entitled matter at page 2433, 2000 Montana Administrative Register, issue number 17.

2. Hearing on the matter was held October 11, 2000 before F. Lon Mitchell, Hearing Examiner. The time for allowing additional comments was extended until November 10, 2000 by Notice published at page 2780, 2000 Montana Administrative Register, issue number 20.

3. At its regularly scheduled board meeting on January 4-5, 2001, the Board considered all submitted and written comments as well as formal testimony, then issued its Declaratory Ruling.

4. Written comments were received from 48 persons and 29 persons testified at the hearing.

ISSUE I

5. Clarification of low voltage electrical communication or signal equipment.

SUMMARY OF COMMENTS

COMMENT NO. 1: All comments received were opposed to requiring persons who install low-voltage wiring to be licensed. Testimony was received that "fiber-optic, data wiring and other low-voltage wiring does not fall within the intent of the law and rules."

COMMENT NO. 2: One commentor stated that granting the Petition for Declaratory Ruling would have a detrimental effect on the telecommunications industry in Montana and suggested that a task group be put together to look at licensure for telecommunications contractors or workers.

COMMENT NO. 3: One commentor stated that alarm systems are low voltage and their installation does not present any safety

hazard. The commentor strongly objected to the inclusion of alarm systems under the authority of the electrical board as security system installers are already licensed under the Board of Private Security Patrol Officers and Investigators.

COMMENT NO. 4: One commentor stated that low voltage wiring regulation would adversely affect many livelihoods and create a serious adverse effect on the public because much could not be done in out-lying areas where licensed electricians are not that prevalent. The commentor was concerned that heating and cooling system installation, telephone and computer installations, satellite systems and even appliance installation would be affected. The commentor stated that this work represents very little risk to the public and any improvement to the public is not justified by the additional financial burden that would be placed on the public and the businesses engaged in this work.

COMMENT NO. 5: One commentor stated that the National Electrical Code and the Occupational Safety and Health Administration as well as other standards address low voltage wiring and establish guidelines that licensed electrical technicians are not normally required when working with voltages that do not exceed nominal 50 volts direct current or nominal 30 volts alternating current.

COMMENT NO. 6: One commentor stated that school systems would be adversely affected if this petition is granted as many school systems perform their own data connections and wiring.

#### ANALYSIS

6. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

7. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page 2433, 2000 Montana Administrative Register, Issue No. 17.

#### DECLARATORY RULING

8. The Montana State Electrical Board has no authority to issue a low voltage license. This includes the individuals who are involved in telecommunications. The Board determined that low voltage is considered to be 90 volts or less. Low voltage installers also have the right to run raceways incidental to their installation to be used strictly as a physical protector to the wires therein.



ISSUE II

9. Whether parking lot or street lighting are covered by electrical code.

SUMMARY OF COMMENTS

COMMENT NO. 7: A representative from Montana Power Company stated that this declaratory ruling process did not apply to signal equipment and stated that parking lot or street lighting are covered by the National Electrical Code because this issue has already been resolved in a "complaint process."

COMMENT NO. 8: A representative from the Montana Department of Transportation testified that the "installation, alteration, or repair of electric signal equipment" has been exempt from licensure requirements and that the Department of Transportation is in conformance with all applicable sections of the National Electrical Code.

COMMENT NO. 9: Several commentors stated that street lighting and parking lot lighting operated by a public utility must be covered by licensure.

COMMENT NO. 10: One commentor stated that "only licensed journeyman electricians should do signal equipment, street lighting and parking lot lighting."

COMMENT NO. 11: One commentor stated that "a graded approach should be taken." Parking lot and street lighting should be covered and as regards low-voltage, each type of system should be graded.

ANALYSIS

10. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

11. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page 2433, 2000 Montana Administrative Register, Issue No. 17.

DECLARATORY RULING

12. The installation or repair of traffic control lights, highway lights or street lights owned by the State of Montana or a municipality would be exempt under Section 37-68-103(1), MCA. However, the electrical service of these installations requires licensure as an unlimited contractor, which requires a master electrician of record.

ISSUE III

13. Which electrical code is applicable?

SUMMARY OF COMMENTS

COMMENT NO. 12: Several comments were received stating that the Board should regulate all electrical work under the auspices of the National Electrical Code.

ANALYSIS

14. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

15. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page 2433, 2000 Montana Administrative Register, Issue No. 17.

DECLARATORY RULING

16. The only electrical code that the Montana State Electrical Board operates under is the National Electrical Code and is the code that is referred to in the Board's statutes and rules. The National Electrical Code is the only code that the Board uses to regulate the industry.

MONTANA STATE ELECTRICAL BOARD  
TODD STODDARD, CHAIRMAN

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

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

Certified to the Secretary of State, March 26, 2001.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE  
Interim Committees and the Environmental Quality Council

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

Business and Labor Interim Committee:

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

Education Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

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

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

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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 December 31, 2000. This table includes those rules adopted during the period January 1, 2001 through March 31, 2001 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 December 31, 2000, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2000 and 2001 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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