

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of New Rules I) ADOPTION OF PROPOSED RULES
through XX, pertaining to)
the formation and regulation)
of captive insurance)
companies)

TO: All Concerned Persons

1. On January 3, 2002, at 10:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of New Rules I through XX pertaining to the formation and regulation of captive insurance companies.

2. The State Auditor's Office 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 office no later than 5:00 p.m., December 21, 2001, to advise us as to the nature of the accommodation needed. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

3. The proposed new rules will provide as follows:

RULE I PURPOSE (1) The purpose of these rules is to set forth the financial and reporting requirements which the commissioner deems necessary for the regulation of captive insurance companies, as authorized by 33-28-206, MCA.

AUTH: 33-28-206, MCA
IMP: 33-28-102, MCA

RULE II DEFINITIONS For purposes of these rules:
(1) "Company" means captive insurance company or companies, unless otherwise specified.

AUTH: 33-28-206, MCA
IMP: 33-28-101, MCA

RULE III ORGANIZATIONAL EXAMINATION (1) In addition to processing the application, the commissioner may perform an organizational investigation or examination before an applicant is licensed as a captive insurance company. This investigation or examination may consist of a general survey of the applicant's corporate records, including but not limited to:

- (a) its charter, bylaws and minute books;
- (b) verification of capital and surplus;
- (c) verification of principal place of business;
- (d) determination of assets and liabilities; and
- (e) a review of such other factors, as the commissioner deems necessary.

AUTH: 33-28-206, MCA
IMP: 33-28-102, MCA

RULE IV ADDITIONAL SECURITY (1) If the commissioner deems that the financial condition of the company warrants additional security, he may require the company to deposit through the office of the Montana state auditor in the manner described in 33-2-604, MCA, cash or securities approved by the commissioner or, alternatively, to furnish the commissioner a clean irrevocable letter of credit issued by a bank chartered by the state of Montana or by a member of the bank of the federal reserve system and approved by the commissioner.

(2) The company may receive interest or dividends from the deposit, or exchange the deposits for other of equal value with the prior approval of the commissioner.

(3) If the company discontinues business, the commissioner shall return the deposit only after the commissioner is satisfied that all obligations of the company have been discharged.

AUTH: 33-28-206, MCA
IMP: 33-28-104, MCA

RULE V REINSURANCE (1) A captive insurance company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following conditions:

(a) no credit is allowed for reinsurance if the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer;

(b) no credit shall be allowed, as an asset or deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer;

(c) reinsurance must be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing the reinsurance; and

(d) the commissioner may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.

AUTH: 33-28-206, MCA
IMP: 33-28-203, MCA

RULE VI INSURANCE MANAGERS AND INTERMEDIARIES (1) No person shall, within the state of Montana, act as a manager, broker, agent, salesperson, or reinsurance intermediary for a company without the authorization of the commissioner. Application for such authorization must be in the form prescribed by the commissioner.

AUTH: 33-28-206, MCA
IMP: 33-28-102, MCA

RULE VII CHANGES IN DIRECTORS - RESTRICTIONS ON FEES AND GIFTS (1) Each company must report to the commissioner within 30 days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director.

(2) No director, officer, or employee of a company may, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this rule shall inure to and be recoverable by the company.

AUTH: 33-28-206, MCA
IMP: 33-28-102, MCA

RULE VIII CONFLICT OF INTEREST (1) Each company must prepare and adopt a conflict of interest statement for officers, directors and key employees. This statement must disclose that the individual does not have outside commitments, personal or otherwise, that would inhibit the individual's duty to further the interests of the company.

(2) The conflict of interest statement need not preclude an individual from being a director or officer of more than one insurance company.

(3) The disclosure statements must be filed annually with the company's board of directors.

AUTH: 33-28-206, MCA
IMP: 33-28-102, MCA

RULE IX ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC COMPANY (1) No person, other than the issuer shall make a tender offer of or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly

(or by conversion or by exercise of any right to acquire) be in control of the company.

(2) No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner.

(3) In considering an application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishing a company in these rules and Title 33, part 28, MCA.

AUTH: 33-28-206, MCA
IMP: 33-28-105, MCA

RULE X CHANGE IN BUSINESS AND OTHER INFORMATION (1) A company must have prior approval of the commissioner in order to change the nature of the business stated in the company's plan of operation filed with the commissioner.

(2) Any change in any other information which was filed with the application must be filed with the commissioner, but does not require prior approval of the commissioner.

AUTH: 33-28-206, MCA
IMP: 33-28-102, MCA

RULE XI ANNUAL AUDIT (1) Each company must have an annual audit by an independent certified public accountant, authorized by the commissioner and must file the audited financial report with the commissioner on or before June 30 of each year for the period ending December 31 of the immediately preceding year.

(2) The annual audit report is considered part of the company's annual report of financial condition, except with respect to the date by which it must be filed with the commissioner.

(3) The annual audit must contain the following information:

- (a) opinion of the independent certified public accountant;
- (b) report of evaluation of internal controls;
- (c) the accountant's letter of qualifications;
- (d) financial statements; and
- (e) certification of loss reserves and loss expense reserves by an actuary approved by the commissioner.

AUTH: 33-28-206, MCA
IMP: 33-28-107, MCA

RULE XII THE OPINION OF THE CERTIFIED PUBLIC ACCOUNTANT

(1) Financial statements of the company furnished pursuant to these rules must be examined by a certified public accountant in accordance with generally accepted auditing standards.

(2) The opinion of the certified public accountant must cover all years presented.

(3) The opinion must be addressed to the company on the stationary of the accountant showing the address of issuance, must bear the original manual signatures and must be dated.

AUTH: 33-28-206, MCA
IMP: 33-28-107, MCA

RULE XIII REPORT OF EVALUATION OF INTERNAL CONTROLS

(1) Each company shall file with the commissioner a report that includes an evaluation, in accordance with generally accepted auditing standards, of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records. The evaluation must include, but is not limited to, those controls governing the system of authorization and approval and separation of duties.

AUTH: 33-28-206, MCA
IMP: 33-28-107, MCA

RULE XIV ACCOUNTANT'S LETTER (1) The accountant who prepares the annual opinion for the company, must furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(a) that the accountant is independent with respect to the company and conforms to the standard of the profession as contained in the Code of Professional Ethics and pronouncements of the American institute of certified public accountants and pronouncements of the financial account standards board;

(b) the general background and experience of the staff engaged in the audit including the experience in auditing captives or other insurance companies;

(c) that the accountant understands that the audited annual report and the accountant's opinion will be filed with the commissioner;

(d) that the accountant consents and agrees to make available for review by the commissioner the working papers as described in [New Rule XIX]; and

(e) that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing in the American institute of certified public accountants.

AUTH: 33-28-206, MCA
IMP: 33-28-107, MCA

RULE XV FINANCIAL STATEMENTS (1) The financial statements which must be filed annually with the commissioner must include the following:

(a) balance sheet;

(b) statement of gain or loss from operations;

(c) statement of changes in financial position;

(d) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and
(e) notes to the financial statements.

(2) The notes to the financial statement shall be those required by generally accepted accounting principles, and shall include:

(a) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner; and

(b) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

AUTH: 33-28-206, MCA

IMP: 33-28-107, MCA

RULE XVI CERTIFICATION OF LOSS RESERVES AND LOSS EXPENSE RESERVES

(1) The annual audit report must include an opinion of the adequacy of the company's loss reserves and loss expense reserves. The individual who certifies the adequacy of the reserves must be approved by the commissioner and shall be a fellow of the casualty actuarial society, a member in good standing of the American academy of actuaries, or an individual who has demonstrated competence in loss reserve evaluation to the commissioner.

(2) The certification must be in a form which the commissioner deems appropriate.

AUTH: 33-28-206, MCA

IMP: 33-28-107, MCA

RULE XVII DESIGNATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT

(1) Each company, within 90 days after receiving its license, shall report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit as required by these rules.

AUTH: 33-28-206, MCA

IMP: 33-28-107, MCA

RULE XVIII NOTIFICATION OF ADVERSE FINANCIAL CONDITION

(1) A company must require the certified public accountant to immediately notify in writing an officer and all members of the board of directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required by 33-28-107, MCA.

(2) The company must furnish the notice to the commissioner within five days of the receipt of the notice from the accountant.

AUTH: 33-28-206, MCA
IMP: 33-28-107, MCA

RULE XIX AVAILABILITY AND MAINTENANCE OF WORKING PAPERS OF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) Each company shall require the independent certified public accountant to make available for review by the commissioner the working papers prepared in the conduct of the audit of the company.

(2) The company shall require that the accountant retain the audit working papers for a period of not less than five years after the period covered by the report.

(3) The commissioner's review of the working papers is considered an investigation during the course of which the papers shall remain confidential. The company shall require the independent certified public accountant to provide photocopies of any of the working papers which the commissioner requests. The photocopies may be retained by the commissioner.

(4) The term "working paper" as used in this rule includes, but is not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and employees of the accountant in the conduct of the examination of the company.

AUTH: 33-28-206, MCA
IMP: 33-28-107, MCA

RULE XX REVOCATION OF THE COMPANY'S LICENSE (1) The commissioner may revoke the license of a company in accordance with 33-28-108, MCA, including but not limited to the following reasons:

(a) if the company has not commenced business in accordance with its plan of operation within two years of being licensed;

(b) if the company ceases to do business in or from within the state of Montana;

(c) at the request of the company; or

(d) for any other reason as described in 33-28-109, MCA.

(2) Prior to revoking the license pursuant to (1)(a) or (b) of this rule, the commissioner shall give the company notice in writing of the grounds for revocation of the license, and shall afford the company an opportunity to object in writing within 30 days after receipt of the notice. The commissioner shall take into consideration the company's written objections and, if the license is revoked, serve the order of revocation upon the company.

AUTH: 33-28-206, MCA
IMP: 33-28-109, MCA

4. REASONABLE NECESSITY STATEMENT: New Rules I through XX are necessary in order to implement Title 33, part 28, MCA,

concerning the formation and regulation of captive insurance companies.

5. 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 Pamela Weitz, Paralegal, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to pweitz@state.mt.us, and must be received no later January 5, 2002.

6. Elizabeth L. Griffing has been designated to preside over and conduct the hearing.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to pweitz@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ Angela Caruso
Angela Caruso
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on November 26, 2001.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED
proposed amendment of)	AMENDMENT
ARM 10.55.601 relating to)	
accreditation standards and)	
procedures)	
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Concerned Persons

1. On January 10, 2002, the Board of Public Education proposes to amend ARM 10.55.601 relating to accreditation standards and procedures.

2. The Board of Public Education 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 Public Education no later than 5:00 p.m. on December 27, 2001 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, Executive Secretary, Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail smeloy@bpe.montana.edu.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

10.55.601 ACCREDITATION STANDARDS: PROCEDURES

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

(b) By May 1, ~~2002~~ 2003, the district trustees shall file their adopted five-year comprehensive education plan with the office of public instruction and make their plan available to employees and the public.

(c) through (7) remain the same.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, 20-3-106, 20-7-101, MCA

4. Statement of Reasonable Necessity: The Board of Public Education finds it reasonable and necessary to extend the deadline for school districts to file their individualized five-year educational plans. Those most affected are the districts themselves as some have reported to the Board that the extension is necessary to make their plans comprehensive as well as efficacious.

5. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to Steve Meloy, Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to

smeloy@bpe.montana.edu to be received no later than 5:00 p.m. on January 3, 2002.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Steve Meloy, Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu. The comments must be received no later than 5:00 p.m. on January 3, 2002.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 45 persons based on 453 school districts in the State of Montana.

8. The Board of Public Education 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 Board of Public Education rulemaking. Such written request may be mailed or delivered to the Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

9. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State November 26, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 17.30.201 pertaining to) PROPOSED AMENDMENT
water quality permit and)
authorization fees) (WATER QUALITY)

TO: All Concerned Persons

1. On January 3, 2002 at 10:00 a.m. the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule pertaining to water quality permit and authorization fees.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., December 17, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386, or email the Board Secretary at "ber@state.mt.us".

3. The rule proposed to be amended reads as follows, stricken matter interlined, new matter underlined:

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) The purpose of this rule is to establish fee schedules for use in determining fees to be paid to the department under 75-5-516, MCA. Fees to be paid are the sum of the fees in the applicable schedules. There are ~~3~~ three types of fees imposed under this rule:

- (a) a permit application fee, (Schedule I);
- (b) a degradation authorization fee, (Schedule II); and
- (c) an annual permit fee (Schedule III).

(2) ~~(a)~~ A person who applies for a permit, certificate, license, notice of intent or other authorization required by rule under 75-5-201, 75-5-301 or 75-5-401, MCA, or for a modification or renewal of any of these authorizations, shall pay to the department a permit application fee as determined under ~~(3)(a)~~ (5) and ~~(c)~~ of this rule.

~~(b)~~ (3) A person whose activity requires an application to degrade state waters under 75-5-303, MCA, and subchapter 7 of this chapter shall submit a degradation authorization fee with the application, as determined under ~~(3)(b)~~ and ~~(c)~~ (6) of this rule.

~~(c)~~ (4) A person who holds a permit, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401, MCA, shall pay to the department an annual permit fee as determined under ~~(3)(d)~~ (7) of this rule.

~~(3)(a)(i)~~ (5) ~~The permit application fee is the sum of the fees for the applicable parts or subparts listed in this subsection. Payment of the permit application fee is due upon~~

~~submittal of the application. The fee schedule for new or renewal applications for a Montana pollutant discharge elimination system permit under subchapter 11 or 13 of this chapter, a Montana ground water pollution control system permit under subchapter 10 of this chapter, or any other authorization under 75-5-201, 75-5-301 or 75-5-401, MCA, or rules promulgated under these authorities, is set forth below as schedules I.A, I.B and I.C+. Payment of the permit application fee is due upon submittal of the application. For new applications under Schedules I.A or I.B, the annual fee from Schedule III for the first year must also be paid at the time of application.~~

~~Schedule I
Application Fee per Discharge Point,
Point Source, or Source at the Facility~~

Publicly owned treatment works (POTW) or other domestic wastewater or potable water treatment plant	
Without significant industry *	\$ 250
With significant industry *	\$1000
 Industrial	
Individual storm water/ground water/pit water	\$1000**
Noncontact cooling water	\$ 400
Wastewater:	
 With any carcinogenic or toxic or radioactive substance at a level >50% long-term (chronic) standard	\$5000
 Wastewater without any carcinogenic substance at a level >50% long-term (chronic) standard	\$2500
 General Permits	
Feed lots, fish farms, suction dredges, construction dewatering, ARM 17.30.637(3)(a) authorizations	\$ 200
 Produced water, cleanups, gravel washing, industrial stormwater, construction stormwater	 \$ 400

~~* "Significant industry" means the POTW has a pretreatment program or receives discharge from a significant industrial user as defined in ARM 17.30.1402.~~

~~** Multiple stormwater water points are limited to a maximum of 5 points.~~

The following tables replace the interlined text shown in existing (3)(a)(i) above.

Schedule I.A Application Fee for Individual Permits

Category	Amount ⁽¹⁾
Publicly owned treatment works - major	\$4,000
Privately owned treatment works - major	4,500
Publicly owned treatment works - minor	1,000
Privately owned treatment works - minor	2,500
Ground water, domestic wastes	1,200
Ground water, industrial or other wastes	1,500

⁽¹⁾ Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

Schedule I.B Application Fee for General Permits

Category	Amount ⁽¹⁾
Concentrated animal feeding operation, greater than 1,000 animal units	\$ 450
Concentrated animal feeding operation, less than 1,000 animal units	300
Construction dewatering	300
Fish farms	300
Produced water	450
Suction dredge	250
Sand and gravel	450
Domestic sewage treatment lagoon	500
Disinfected water	500
Petroleum cleanup	500
Storm water associated with construction, residential (single family dwelling)	250
Storm water associated with construction, commercial or public	450
Storm water associated with industrial activities	500
Storm water associated with mining, oil and gas	500
Storm water municipal separate storm sewer system (MS4)	1,500
Ground water remediation or dewatering	700
Ground water potable water treatment facilities	700
Other general permit, not listed above	400

⁽¹⁾ Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

Schedule I.C Application Fee for Other Activities

Category	Amount ⁽¹⁾
Short-term water quality standard, turbidity "318 authorization"	\$150
Short-term water quality standard, remedial activities and pesticide application "308 authorization"	250
Storm water no exposure certification	100
Storm water construction waiver	100
Federal Clean Water Act section 401 Certification	Varies ⁽²⁾
Review plans and specification to determine if permit is necessary, pursuant to 75-5-402(2), MCA	½ Applicable Fee
Major amendment	Application Fee
Minor amendment, includes transfer of ownership	200

⁽¹⁾ Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

⁽²⁾ Minimum fee is \$350, or 1% of gross value of proposed project, not to exceed \$10,000.

~~(ii) (a) An application fee for multiple discharge points is not required if there are multiple discharge points from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments, or result in multiple or variable (flow dependent) effluent limits or monitoring requirements.~~

~~(iii) An applicant for a minor permit modification that does not require public notice and will decrease or not change the impact of the discharge to state waters is not required to pay a fee under this section (3)(a).~~

(b) If a resubmitted application contains substantial changes causing significant additional review, the department may require an additional application fee to be paid before any further review is conducted. The additional fee must be calculated in the same manner as the original fee, and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified in (10) below.

~~(b) (6) The degradation authorization fee is the sum of the fees for the applicable parts or subparts listed in this subsection. The fee schedule for new or renewal authorizations to degrade state waters under subchapter 7 of this chapter is set forth in Schedule II. Payment of the degradation authorization fee is due upon submittal of the~~

applications. If an application for authorization to degrade state waters is denied, the department shall return any portion of the fee that it does not use to review the application. ~~The fee schedule for new or renewal authorizations to degrade state waters under subchapter 7 of this chapter is set forth in Schedule II, as follows:~~

~~Schedule II
Review of Authorizations to Degrade~~

~~Domestic Sewage Treatment or Potable
Water treatment plant _____ \$2500~~

~~Industrial Activity Reviews
With any carcinogenic or toxic or
radioactive substance at a level
>50% (chronic) standard _____ \$5000
Without any carcinogenic or toxic or
radioactive substance at a level
>50% (chronic) standard _____ \$2500~~

~~Subdivisions
1-9 lots _____ \$ 120/lot
10+ lots _____ \$ 200/lot
(maximum fee) _____ \$5000/subdivision~~

The following table replaces the interlined text shown in existing (3)(b) above.

Schedule II. Review of Authorizations to Degrade

Category	Amount
Domestic sewage treatment	\$2,500 ⁽¹⁾
Industrial activity	5,000 ⁽¹⁾
Subdivision, 1-9 lots	120/lot
Subdivision, 10+ lots	200/lot ⁽²⁾

⁽¹⁾ Per outfall, limited to a maximum of five falls.

⁽²⁾ Maximum fee is \$5,000 per subdivision.

~~(e)~~ (a) For purposes of ~~(a)~~ (5) and ~~(b)~~ (6) above, if a resubmitted application or petition contains substantial changes potentially causing additional or different sources of pollution that require the application or petition to be reviewed again, the department may require an additional application fee to be paid before any further substantive review. The additional fee must be calculated in the same manner as the original fee, and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified under ~~(e)~~ (10) below.

~~(d)(i) (7) The annual permit fee is the sum of the fees for the applicable parts or subparts listed in this subsection set forth in Schedules III.A and III.B. No annual fee is required for activities listed in Schedule I.C under (5) of this rule. This subsection (i) must be used to determine the total annual fee, unless the minimum fee determined under (ii) below is a higher amount. The annual permit fee is determined by applying Schedule III to the facility under permit:~~

~~Schedule III
Average Discharge Flow Rate Fee
Per Million Gallons of Wastewater Discharged Per Day on an
Average Annual Basis, per Point Source Discharge~~

~~POTW or Other Domestic
Sewage or Potable Water Treatment Plant
Without significant industry \$2000
With significant industry \$2500~~

~~Industrials
Individual storm water/ground water/pit water \$2000*
Noncontact cooling water \$ 500
Wastewater:~~

~~With any carcinogenic or toxic or
 radioactive substance at a level
 >50% long-term chronic standard \$2500
Wastewater without any carcinogenic
or toxic or radioactive substance
at a level >50% long-term chronic
standard \$2000~~

~~General Permits
Feed lots, fish farms, suction dredges,
construction dewatering, construction
stormwater* \$ 250~~

~~Produced water, cleanups, gravel
washing, industrial stormwater \$2000~~

~~* Multiple stormwater points are limited to the 5 points yielding the highest fees.~~

~~(ii) The minimum annual permit fee to be charged per discharge point or point source at a facility regardless of the wastewater flow is set forth in Schedule IV, as follows:~~

~~Schedule IV
Minimum Annual Fee per Discharge
Point or Point Source~~

~~POTW or Other Domestic Sewage
or Potable Water Treatment Plant~~

~~Without significant industry~~ \$ 250
~~With significant industry~~ \$1000

Industrials

~~Individual storm water/ground water/pit water~~ \$1000
~~Noncontact cooling water~~ \$ 250

Wastewater:

~~With any carcinogenic or toxic or
radioactive substance at a level
>50% long term chronic standard~~ \$2500

~~Wastewater without any carcinogenic or
toxic or radioactive substance at a level
>50% long term chronic standard or with
"No Discharge" permit requirements~~ \$1000

General Permits

~~Feed lots, fish farms, suction dredges,
construction dewatering, construction
stormwater~~ \$ 250
~~Produced water, cleanups, gravel
washing, industrial stormwater~~ \$ 400

The following tables replace the interlined text shown in (3)(d)(i) above.

Schedule III.A Annual Fee for Individual Permits

Category	Minimum Fee ⁽¹⁾	Fee Per Million Gallons of Effluent per Day (MGD)
Publicly owned treatment works - major	\$2,000	\$2,500
Privately owned treatment works - major	3,000	3,000 ⁽²⁾
Publicly owned treatment works - minor	1,000	2,500
Privately owned treatment works - minor	750	3,000 ⁽²⁾
Ground water, domestic wastes	750	3,000
Ground water, industrial or other wastes	1,500	3,000 ⁽²⁾

⁽¹⁾ Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

⁽²⁾ Except \$750 per MGD if effluent is noncontact cooling water.

Schedule III.B Annual Fee for General Permits

Category	Amount ⁽¹⁾
Concentrated animal feeding operation, greater than 1,000 animal units	\$300

Concentrated animal feeding operation, less than 1,000 animal units	250
Construction dewatering	250
Fish farms	250
Produced water	450
Portable suction dredges	200
Sand and gravel production	450
Domestic sewage treatment lagoon	500
Disinfected water	450
Petroleum cleanup	450
Storm water associated with construction, residential (single family dwelling)	NA
Storm water associated with construction, commercial or public	450
Storm water associated with industrial activities	650
Storm water associated with mining, oil and gas	650
Storm water municipal separate storm sewer system (MS4)	650
Ground water remediation or dewatering	450
Potable water treatment facilities	450
Other general permit, not listed above	350

(1) Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.

(iii) (a) A facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and is in compliance with other permit requirements, using the previous year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions in annual fee of up to 25% may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their permit effluent limitations. The annual average of the percentage of use of each parameter limit will be used to determine an overall percentage. A new permittee is not eligible for fee reduction in its first year of operation. A permittee with a violation of any effluent limit during the previous year is not eligible for fee reduction.

(iv) remains the same, but will be renumbered (b).

(4) (8) If a person assessed a fee under (3) of this rule fails to pay the fee within 90 days after the due date for payment, the department may:

(a) and (b) remain the same.

(5) remains the same, but is renumbered (9).

(6)(a) (10) Persons assessed a fee under (3) of this rule, may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination. The appeal to the board must include a written statement detailing the reasons why the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(b) (a) If part of the department's fee assessment is not in dispute in an appeal filed under (a) (10) above, the undisputed portion of the fee must be paid to the department upon written request of the department.

(c) remains the same, but is renumbered (b).

AUTH: 75-5-516, MCA

IMP: 75-5-516, MCA

REASON: The Montana Water Quality Act requires that the Board of Environmental Review adopt fees that are sufficient to recover the cost of issuing permits, licenses and other authorizations issued by the Department, as well as the administrative costs of operating the program, including monitoring, inspections, compliance assistance and enforcement. In addition to the 10 full time employees (FTEs) in the permits program, the fees fund staff in the Enforcement Division and in the Planning, Prevention and Assistance Division.

Fees are due on March 1 of each year to support the fiscal year (the prior July 1 to the following June 30). For example, bills due March 1, 2002, will support FY2002 (July 1, 2001 to June 30, 2002). If adopted by the Board, the proposed fees would be used by the Department in January 2002 when it prepares bills for FY2002.

The proposed fees would generate \$479,225 in increased funds for the program in FY2002, for a total FY2002 program funding of \$982,553. The Department estimates that several hundred permittees would be affected, including holders of existing permits and applicants for new permits and authorizations.

The current fee rules were adopted by the Board in January 1994. In 1996 the Department implemented a computer-based system to track and monitor the fee program. In 1998 the Department requested that the Board amend fees to cover increased program costs. Concurrently, however, voters adopted a citizen initiative (CI-75) that made it questionable whether the Board could adopt the fee amendments. No action was taken in 1998, and the Department used a budget surplus to fund the program. The surplus has been eradicated at a rate of about \$300,000 per year and is no longer available.

The current fee proposal is necessary to incorporate components of the 1998 proposal together with budget adjustments passed by the 2001 legislature, including four additional full time employees (FTEs). In addition to increasing revenue, the proposed fee amendments are necessary to simplify the fee schedule tables, to institute fees for activities such as short-term water quality standards and pesticide authorizations, and to institute fees for upcoming revisions to the construction stormwater permit process (Notices of Intent as established by the 2001 legislature and Phase II stormwater regulations as mandated under the federal Clean Water Act). The proposed amendments delete differential fees for publicly owned treatment works. In 1994, when

current fees were adopted, the Department had proposed to assume delegation from the U.S. Environmental Protection Agency under the federal Clean Water Act to administer the pretreatment program. Since that time, these plans have been dropped.

Under the fee rules, permit fees are assessed in three different categories: application fees, which are paid at the time of application for a new permit or every five years for renewals; degradation authorization fees; and annual fees. The proposed amendments contain significant increases in application fees and annual fees, as described below.

The proposed increases to application fees are shown in the new Schedules I.A, I.B, and I.C. The increases are necessary to cover the cost of reviewing and processing applications, developing effluent limits, and informing the public and other agencies of these activities. Since 1994 the complexity of issuing a wastewater discharge permit has increased exponentially. Some of the factors that must be addressed in issuing a permit include: development of total maximum daily loads (TMDLs); compliance with the federal court order in Friends of the Wild Swan v. EPA (CV 97-35-M-DWM, District of Montana, Missoula Division); delineation of mixing zones; and compliance with nondegradation requirements, pretreatment requirements, the Montana Environmental Policy Act (MEPA), and additional requirements for public noticing permits and other activities. These additional requirements have resulted in a 2 to 3-year delay in issuing and renewing permits. The additional FTEs are intended to help alleviate this situation.

The proposed increases to annual fees are shown in the new Schedules III.A and III.B. Annual fees cover the cost of administering permits during their 5-year term. Permit administration includes: review and recording of monthly discharge monitoring reports (DMR); assessing compliance; issuing violation notices; conducting annual inspections; and collecting water quality samples. In many cases, the annual fee was not sufficient to cover the Department's cost for analytical services alone. The proposed annual fees are necessary to cover all of the costs of permit administration. The proposed deletion of the former Schedule IV is a formatting change only, and the provisions of the former Schedule IV are incorporated in the new Schedules III.A and III.B.

In 1998 the Board's ground water regulations were modified to require a discharge permit for new, modified, or non-compliant public wastewater systems. No additional funding or staff resources were added to address the additional workload. The existing fees do not cover the cost of developing and tracking these permits. Therefore, the proposed amendments contain significant fee increases for this category. These increases are necessary to address the additional analysis and monitoring expenses associated with ground water. Individual ground water permit fees have been included with surface water fees.

Finally, the Board is proposing fees for other activities, including section 308 authorizations to exceed water quality standards for pesticide application and emergency remedial activities, and section 318 water quality standards for turbidity. The number of 308 authorizations has increased significantly as a result of the Federal Ninth Circuit Court of Appeals ruling that determined a National Pollutant Discharge Elimination System (NPDES) permit was necessary for these activities. A significant amount of staff resources has been dedicated to this issue. The proposed fees are necessary to cover these costs.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either orally or in writing 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, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us", to be received no later than 5:00 p.m. January 3, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

7. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

8. The Board 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 that 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 Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

Jim Madden
JIM MADDEN, Rule Reviewer

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

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

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of new Rules I through IV and)	ON PROPOSED ADOPTION,
the amendment of ARM)	AMENDMENT AND REPEAL
37.8.101, 37.8.103 through)	
37.8.106, 37.8.109 and)	
37.8.110, 37.8.116, 37.8.126,)	
37.8.301 through 37.8.303,)	
37.8.310, 37.8.601, 37.8.801)	
and 37.8.802, 37.8.804 and)	
37.8.816 and the repeal of)	
37.8.309 and 37.8.602)	
pertaining to vital)	
statistics)	

TO: All Interested Persons

1. On January 9, 2002, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of 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 or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2002, 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 adopted provide as follows:

RULE I DEFINITIONS In addition to the definitions contained in 50-15-101, MCA, the following definitions apply to this chapter:

(1) "Amendment" means alteration of any item on the face of a vital record after it is on file with the department or in a county clerk and recorder's office.

(2) "Authorized certifier" means, in relation to a certified copy of a vital record, either a county clerk and recorder or a person designated by the department to issue certified copies on its behalf.

(3) "Certified copy" means a document copied or electronically extracted from a vital record filed with the department or from a duplicate copy of that record filed with a county clerk and recorder and that is printed on the

department's security paper and contains an attestation by an official designated by the department that the document is a true and correct copy of the information contained in the original vital record.

(4) "Certifying official" means an individual authorized to issue a certified copy of a vital record by the department's office of vital statistics or a county clerk and recorder.

(5) "Literal format" means, in regard to a date, the name of the month spelled out, the numerical day of the month, and the numerical four-digit year, e.g., January 1, 1998.

(6) "Next of kin" means the spouse, parents, adult children, and adult brothers and sisters of a registrant and any other person declared next of kin by a court of competent jurisdiction.

(7) "Registrant" means an individual for whom a vital record is completed and filed, including, for example, the decedent on a death certificate, the person for whom a birth certificate is filed, the husband and wife on a divorce record, and the bride and groom on a marriage record.

AUTH: Sec. 50-15-102 and 50-15-103, MCA

IMP: Sec. 50-15-101 and 50-15-103, MCA

RULE II APPLICATION FOR COPY OF VITAL RECORD (1) Each application for a certified copy of a vital record must be in writing and contain the applicant's name, signature, address and the purpose for which the certified copy is needed.

(2) For a certified or non-certified copy of a birth record, in addition to the requirements of (1) above, the request must include:

- (a) the registrant's full name and date of birth;
- (b) the place (town or rural location and county) of birth;
- (c) the mother's full maiden name (first, middle and last);
- (d) the father's full name, if available; and
- (e) the applicant's relationship to the registrant.

(3) For a certified or non-certified copy of a death record, in addition to the requirements of (1) above, the application must include:

- (a) the registrant's full name;
- (b) the date of death; and
- (c) the county of death.

AUTH: Sec. 50-15-102, 50-15-103 and 50-15-121, MCA

IMP: Sec. 50-15-103 and 50-15-121, MCA

RULE III CONTENTS OF CERTIFIED AND NON-CERTIFIED COPIES (1) Each certified copy of a vital record issued in Montana must include:

- (a) the date the copy is issued;
- (b) the name of the authorized certifier;
- (c) the signature of the authorized certifier or a facsimile approved by the certifier; and

(d) the seal (raised or embossed) of the issuing agency or office.

(2) Each certified birth record must include, in addition to the items in (1) above:

(a) the given name(s) of the registrant;

(b) the surname of the registrant along with any generational identifiers present on the original filed document such as Jr., Sr., etc.;

(c) the date of birth, in literal format (e.g., January 1, 1990);

(d) county of birth;

(e) sex;

(f) the date the original record was filed, in literal format; and

(g) the names of the registrant's parents. If the father's name is not included on the filed document, the phrase "NOT RECORDED" must be displayed on the certified copy where the father's name would normally appear.

(3) Each certified death record must include, in addition to the items in (1) above:

(a) the given name(s) of the registrant;

(b) the surname of the registrant along with any generational identifier present on the original filed document such as Jr., Sr., etc.;

(c) the date of death in literal format;

(d) the date of birth in literal format;

(e) the county of death;

(f) the sex; and

(g) the date the record was filed, in literal format.

(4) Non-certified copies of a certificate must:

(a) be printed on white non-security paper;

(b) at the top of the certificate, be stamped "FOR INFORMATIONAL PURPOSES ONLY";

(c) not contain a raised seal or any statement that will certify the copy as true; and

(d) not be signed.

AUTH: Sec. 50-15-102, 50-15-103 and 50-15-121, MCA

IMP: Sec. 50-15-103, 50-15-121 and 50-15-122, MCA

RULE IV FORMAT AND PAPER REQUIREMENTS FOR CERTIFIED COPIES

(1) With the exception noted in (2) below, effective [1 year after the effective date of this rule], all certified copies of birth, death, and fetal death records must be issued on paper that contains the following security features:

(a) sensitized security paper;

(b) background security design;

(c) copy-void pantograph;

(d) consecutive numbering;

(e) prismatic printing;

(f) complex colors; and

(g) watermark.

(2) A certified copy may be issued on non-secure paper only if the copy contains a tamper-proof seal and all of the

information, signatures, and seals required by [Rule III]. Any alternate method of issuing a certified copy must be approved by the department, in writing, before its official use.

(3) Each certified copy of a vital record issued in Montana must contain the heading "STATE OF MONTANA" centered at the top of the copy, and, if issued by a county clerk and recorder, a centered heading naming the county of issuance immediately below the "STATE OF MONTANA" heading.

(4) Each certified copy of a vital record issued in Montana must contain the following certification and issuance statements at the bottom:

This certifies that this document is a true duplication of the original information on file with the Department of Public Health and Human Services.	Signature or facsimile typed name Certifying official's title
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AUTH: Sec. 50-15-102, 50-15-103 and 50-15-122, MCA
IMP: Sec. 50-15-121, 50-15-122 and 50-15-123, MCA

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

37.8.101 REGISTRARS, GENERAL (1) The department shall provide to each county clerk and recorder the name, address and telephone number of the local registrars in that county.

~~(2) Every local registrar shall designate a deputy registrar to act when the registrar is unavailable. The registrar shall report the name, address and phone number of his deputy to the department and to the county clerk and recorder. Registrars shall report changes in such information to the department and to the county clerk and recorder.~~

(2) Each local registrar shall submit to the department and the county clerk and recorder the name, address, and telephone number of at least one proposed deputy registrar, who may function as a deputy after receiving written authorization from the department to do so. The deputy registrar may function as registrar when the registrar is unavailable.

(3) Each registrar must report to the department and the county clerk and recorder any change in the name, address, or telephone number for the registrar or the deputy registrar.

(4) Before resigning or retiring as registrar, a registrar must send the department notification of the fact and a recommendation for a replacement. A resignation or retirement will be effective the last day of the month the notification is received by the department. The appointment of a replacement registrar will be effective the first day of the month after the replacement receives the appointment letter.

~~(3)~~ (5) On the fifth day of every month, the each local registrar shall must mail to the department all original

~~certificates, (birth, death, and fetal death) certificates which were filed with the registrar him during the previous month to the department.~~

AUTH: Sec. 50-15-102 and 50-15-103, MCA
IMP: Sec. 50-15-103, 50-15-104, 50-15-105 and 50-15-109,
MCA

37.8.103 PRESERVATION OF COPIES OF RECORDS (1) After a local registrar has received, numbered, and signed a death, birth, or fetal death certificate, ~~and filed the registrar shall file~~ the original ~~and one copy~~ with the department and ~~one copy with the county~~ as required by 50-15-109, MCA, ~~the .~~ The local registrar shall must retain a triplicate copy of each paper certificate, which shall must be filed ~~so as~~ to be easily accessible for reference.

(2) A registrar must retain for two years each copy of a paper certificate recorded in accordance with 50-15-109, MCA. After ~~2 two~~ years from the date filed, the local registrar may request written permission from the department ~~written permission~~ to destroy the triplicate copy of the certificates. ~~At the termination of his office, the local registrar shall deliver his records to his successor, or to such person as the department may designate.~~

(3) Triplicate copies may not be destroyed unless the department gives written permission to do so.

(4) Submission to and acceptance of an electronic image of a birth, death, or fetal death certificate by the department through the department's approved electronic registration system constitutes an official filing of a record. All certified paper copies generated from electronically filed records must be accepted as though they contain all required signatures.

(5) When leaving the position of local registrar, the outgoing registrar must deliver all records to the succeeding registrar or to another person designated by the department.

AUTH: Sec. 50-15-102 and 50-15-103, MCA
IMP: Sec. 50-15-102, 50-15-103, 50-15-109 and 50-15-124,
MCA

37.8.104 CERTIFICATES UNFADING, PERMANENT AND LEGIBLE AUTHORIZED FORMAT FOR SUBMISSION OF A VITAL RECORD (1) ~~All birth, death, and fetal death certificates must be typed or plainly written in unfading black ink. All required signatures must be written in unfading black ink. If the writing is so poor as to be unintelligible to the local registrar or if the entries are not dark enough to photograph satisfactorily, the registrar shall notify the person making the report that it is unacceptable, and shall take the same action taken when a proper report is not made.~~

(1) All marriage license applications and birth, death, fetal death, and marriage certificates must be submitted on forms provided or authorized by the department.

(2) Each vital record application and certificate must be

typed or plainly written in unfading black ink that is legible on all copies or must be completed using computer printers that produce dense and legible characters in black. The characters entered onto these forms must be adequate for high quality reproduction of all parts of the forms by microfilming or photocopying.

(3) If the preparation of a certificate or application is so poor as to make the reading of the form difficult or if the entries are not dark enough to reproduce satisfactorily, the registrar shall notify the person who submitted the certificate or application that it is unacceptable. The person who filed the certificate or application must prepare and file a new certificate or application within 10 days after receipt of the notification.

AUTH: Sec. 50-15-102 and 50-15-103, MCA
IMP: Sec. 40-1-107, 50-15-102, 50-15-103, 50-15-121 and 50-15-124, MCA

37.8.105 PRESERVATION OF OLD RECORDS (1) Employees of the department, for purposes of making old or faded records suitable for microfilming, or photocopying may:

(a) trace those parts of the record which that are too dim to be microfilmed; or

(b) retype the record on a separate form and microfilm the retyped copy. The original record must be maintained for purposes of reference. ; or

(c) copy the original vital record and trace those parts of the record that are too dim to be microfilmed.

(2) If (1)(b) or (c) above are employed, the original record must be retained for reference purposes.

(c) In no case may the department or any of its employees change the substance or contents of any record. If, because the original record is illegible, the substance or content cannot definitely be determined, such illegible portions must not be retraced, and if a copy is retyped, the retyped copy shall indicate those portions of the original which were illegible.

(3) In no case may the department or any of its employees change the substance or contents of any vital record.

(4) If the original vital record is illegible and the substance or content cannot definitely be determined, illegible portions must not be retraced, and, if retyped, the copy shall indicate those portions of the original that were illegible.

AUTH: Sec. 50-15-102 and 50-15-103, MCA
IMP: Sec. 50-15-102 and 50-15-103, MCA

37.8.106 CORRECTION AFFIDAVITS AMENDMENT OF VITAL RECORDS

(1) An affidavit for correction of a birth or death certificate must include the following information:

(a) the file number of the record to be amended and the name of the person appearing on the record;

(b) the date and place of birth or death;

(c) the specific items on the record which are to be

~~changed, including both the information as presently shown, and the true information.~~

~~(d) relationship of affiant to the child or deceased;~~

~~(e) certification by affiant that all affected parties concur in the amendments, and that the affiant assumes the responsibility of furnishing proof of the corrected items.~~

(1) Any requested or ordered amendment to a filed vital record must be submitted in writing to the department's office of vital statistics for processing. On receipt of a request or court order, the department shall immediately notify the appropriate county clerk and recorder to suspend certification of the affected record until the department issues a letter of correction.

(2) With the exception noted in (4), a filed original vital record must be amended by placing a line through the information to be amended and typing the new information above the line. Electronic records must be amended by overlaying the new information on all electronic images of the record used for certified copies. Any certified copy issued in the state after an amendment will be marked "ALTERED".

(3) The documentation that justifies the alteration of a vital record must be made available upon request to any person receiving a certified copy.

(4) In the case of adoption, establishment of paternity, or legitimation, a new certificate, which does not indicate that it was altered, will replace the original birth certificate. In order to establish the replacement certificate, the department must be provided with a certified copy of the certificate of adoption, a certified copy of the final order of adoption, a certified copy of the court order establishing paternity, or an acknowledgment of paternity signed by both parents and notarized. The child's name, as it appears on the original certificate, the child's date of birth, and, if available, the county of birth must also be provided.

(5) Except in the cases cited in (4) above, amendment of a registrant's given names or surnames on a birth certificate may be made only if the department receives a certified copy of an order from a court of competent jurisdiction. The court order or request that directs the name change must include the registrant's name as it appears on the certificate, the registrant's date of birth, and, if available, the county of birth, parents' names including mother's maiden name, and information sufficient to locate and identify the record to be altered. If the order from the court directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was altered.

(6) The sex of a registrant as cited on a certificate may be amended only if the department receives a certified copy of the order of a court of competent jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the

birth certificate and the full name to which it is to be altered. Any certified copy issued after the amendment must indicate it was altered.

(7) In cases other than those cited in (4) through (6) above, the department may amend any portion of a vital record if a requestor submits a correction affidavit that includes the following:

(a) the name of the registrant or registrants appearing on the record;

(b) the date and place of birth, death, or fetal death, or date and place of marriage or marital termination;

(c) the specific items on the record that are to be changed, including the information as presently shown and the correct information;

(d) the relationship of the affiant to the registrant;

(e) certification by the affiant that all affected parties concur in the change(s), and that the affiant assumes the responsibility of supplying irrefutable proof that the changes are correct. If not all parties agree to the change(s), an order of a court of competent jurisdiction directing that the change(s) be made is required;

(f) the names and addresses of the concurring affected parties referred to in (7)(e); and

(g) the notary's statement, signature, and seal.

(8) Any subsequent change to information previously altered through this process will require an order of a court of competent jurisdiction.

AUTH: Sec. 50-15-102, 50-15-103, 50-15-204 and 50-15-223,
MCA
IMP: Sec. 50-15-102, 50-15-103, 50-15-204 and 50-15-223,
MCA

37.8.109 REGISTRAR'S MONTHLY STATEMENT OF RETURNS CERTIFICATES FILED (1) To facilitate and to insure proper accounting, local registrars shall ~~make~~ submit to the department a monthly statement of ~~returns certificates filed~~ on or before the fifth day of each month on blanks blank forms supplied by the department and shall retain ~~a carbon copy copies~~ for their own files. The statement must indicate the number of births, deaths, and fetal deaths ~~reported for that~~ certificates filed in the registrar's county during the prior month and forwarded to the department. If none were ~~reported~~ filed, the statement must so indicate.

AUTH: Sec. 50-15-102 and 50-15-103, MCA
IMP: Sec. 50-15-102, 50-15-107 and 50-15-109, MCA

37.8.110 PAYMENT OF FEES TO LOCAL REGISTRARS (1) The department shall certify to the treasurer of each county the number of births, deaths, and fetal deaths registered in such county, with the names of the local registrars, and the amounts due them. Such certifications must be made annually unless in the opinion of the department it is desirable to make them more

often.

~~(2) Effective January 1, 1982, registrars Registrars will be are entitled to a payment of \$1 per certificate or monthly report filed. The first such payment must be made following the department's certification to the counties in February, 1983.~~

AUTH: Sec. 50-15-102 and 50-15-103, MCA

IMP: Sec. 50-15-102 and 50-15-107, MCA

37.8.116 FEES FOR COPIES AND RESEARCH CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) ~~The fee is \$10 for each certified copy of a birth, death, or fetal death certificate issued by the bureau of records and statistics for a certified copy (photocopy or computer-produced) of a birth certificate, a death certificate, a fetal death certificate, an acknowledgment of paternity, or a delayed birth registration is \$12 for the first copy of a specific request and \$5 for each additional copy of the same record requested at the same time as the first copy.~~

~~(2) The department shall charge a fee of \$10 for each hour or fraction thereof spent by bureau personnel, for file searches made at the request of any person per name for a record search within any period of five years or less. If the record is not located, the fee will not be refunded. If the request is for more than five years, an additional fee of \$1 per year over the first five years will be charged.~~

~~(3) The fee for providing record information for statistical or administrative purposes as allowed by law is \$5 for each five-year period per name.~~

~~(4) The fee to process a finalized adoption or a rescission of an adoption is \$25. A certified copy of the new certificate will be provided.~~

~~(5) The fee to open a court ordered sealed file is \$25.~~

~~(6) The fee for filing a delayed registration of a vital record is \$25. A certified copy of the delayed certificate will be provided to the person filing the delayed registration.~~

~~(7) The fee for amending or correcting a vital record after one year from the date of filing is \$15. A certified copy of the amended record will be provided to the person requesting the amendment or correction.~~

~~(8) The fee for a search of the putative father registry is \$10 per name.~~

~~(9) The fee to provide electronic copies of index files is \$25 per monthly update and \$25 for an annual update.~~

~~(10) The fee for producing aggregate statistics is \$25 per hour for programming and processing if that processing takes more than half an hour's work on existing programs.~~

~~(11) The fee for a disinterment permit is \$5. The local registrar shall collect the fee, \$2 of which must be remitted to the department.~~

~~(12) Overpayment of a required fee received in the office of vital statistics will be refunded if in excess of \$5, and any overpayment of less than \$5 will be refunded, if the applicant requests it in writing within one year after the payment to the~~

department.

AUTH: Sec. 50-15-102, 50-15-103 and 50-15-111, MCA
IMP: Sec. 42-2-218 and 50-15-111, MCA

37.8.126 ACCESS TO RECORDS (1) ~~The department hereby adopts the following statement of policy to guide the department in handling requests for access to vital statistics records and information. This statement of policy is made in recognition of the public's constitutional right of access to documents (Article II, Sec. 9, Montana Constitution), the right of individual privacy (Article II, Sec. 10, Montana Constitution), and the provisions of Title 50, chapter 15, part 1, MCA.~~

~~(2) Subject to the provisions of (3) of this rule, the department of public health and human services may, in its discretion:~~

~~(a) disclose information from its vital statistics records to any federal, state, county or municipal agency which requires such information in order to fulfill duties enjoined upon it by law;~~

~~(b) permit the use of statistical data contained in vital statistics records for the purposes of scientific, sociological, epidemiological and other similar research.~~

~~(3) Unless disclosure is otherwise authorized by law, the department shall restrict access to vital statistics information so as to prevent identification of individuals.~~

(1) Anyone who submits a completed state or county application may obtain a certified copy of a death certificate. If a death certificate lists the cause of death as "pending autopsy" a certified copy may not be issued.

(2) The following people may obtain a certified copy of a birth record:

(a) a registrant, upon establishing their identity to the satisfaction of the certifying official;

(b) a spouse, child, or parent of a registrant to whom the requested record pertains, upon establishing their identity and relationship to the registrant to the satisfaction of the certifying official;

(c) an individual having legal guardianship of the registrant, upon submitting a copy of a legal document showing establishment of the guardianship;

(d) an individual who needs a certified copy to protect their personal or property rights, upon submitting a notarized or certified document that states that the applicant is required to obtain a certified copy in order to protect the applicant's personal or property rights; or

(e) an authorized representative of the registrant, or an authorized representative of the spouse, child, parent or legal guardian of a registrant, upon establishing their identity to the satisfaction of the certifying official.

(3) The following may not receive a copy, certified or uncertified, of a registrant's birth records:

(a) a former spouse whose marriage to the registrant was terminated through divorce, annulment, or invalidation and who

has subsequently remarried; or

(b) a natural parent of an adopted child when the parent does not have custody of that child.

(4) Anyone who requests a birth certificate of an individual who was born 30 years or more earlier will be issued a non-certified copy of the certificate.

(5) A clerk of the district court may issue a certified copy of a marriage or marital termination record to anyone listed in (2) above after receiving a completed application for the record and establishing the identity of the requestor and the requestor's relationship to the registrant(s).

(6) A certifying official may not file, issue, or certify a copy of a vital record from another state or country.

(7) Unless authorized by the department, a county certifying official may not provide a copy, certified or otherwise, of a birth certificate in the official's custody to another county's certifying official for filing.

AUTH: Sec. 50-15-103, 50-15-113 and 50-15-122, MCA
IMP: Sec. 50-15-113, 50-15-121 and 50-15-122, MCA

37.8.301 CERTIFICATE OF BIRTH (1) — A certificate of birth for every child born in Montana should be made and filed within 10 days after the date of birth. The certificate must be filed by the attending physician or midwife, or if there is no attending physician or midwife, by a parent of the child, or other person in attendance at the birth. If no one who was in attendance at the birth is available, the local registrar may complete the certificate if he is able to ascertain with reasonable certainty the relevant information. A copy of the form to be used may be obtained from the department. It should be noted that the lower half of the form contains confidential information primarily for statistical purposes, and is never certified as part of the birth certificate except upon request by a person or agency meeting the standards of 50-15-112 and 50-15-113, MCA.

(2) A certificate of live birth must include the following information:

(a) name, date and hour of birth and sex of child, and name and location of hospital or other place of birth;

(b) name, address, age and place of birth of parents;

(c) certification by parent and person in attendance at birth of the foregoing information.

(3) The certificate must also include the following confidential information, which shall appear only on the department's copy of the certificate:

(a) race, ancestry, and educational background of parents;

(b) whether the mother's blood was tested and her pregnancy history, including date of last normal menses, month of pregnancy in which prenatal care began, number of prenatal visits, whether this was a multiple birth, risk factors for this pregnancy, including whether mother was married, obstetric procedures, complications of labor and/or delivery, abnormal conditions of the newborn, and clinical estimate of gestation;

~~(c) history of past pregnancies of mother; and
(d) Apgar score, congenital anomalies of child, weight at birth, type of prophylactic used in eyes, whether mother or infant were transferred for medical care, and name and location of other facility.~~

(1) A certificate of birth for every child born in Montana must be completed and filed within 10 calendar days after the date of birth.

(2) If a birth occurs in a health care facility, the certificate must be filed by the attending physician, physician's designee, the person in charge of the health care facility, or the designee of that person.

(3) If a birth occurs en route to a health care facility, the person in charge of the health care facility or that person's designee must prepare and file the birth certificate in accordance with 50-15-221(3), MCA.

(4) With the exception of a birth that occurs en route to a health care facility, if a birth occurs somewhere other than in a health care facility, a birth certificate must be prepared and filed by the person indicated by 50-15-221(4), MCA, along with a signed and notarized affidavit stating:

(a) the state and county of the birth;

(b) the name of the person or persons, if any, in attendance at the birth;

(c) the child's given names and surname, sex, hour, date, and place of birth; and

(d) the father's full name, if available, and the mother's full maiden name.

(5) If no one in attendance at the birth is available, the local registrar will comply with 50-15-202, MCA, and complete the certificate using information obtained with reasonable certainty.

(6) All births must be filed using either a paper or an electronic image of the most current Montana certificate of live birth form provided by the department.

(7) The information in the section of a birth certificate labeled "information for medical and health use only" is provided to the department only, and is neither considered to be nor certified as part of the legal birth certificate.

(8) All dates must be in literal format (e.g., January 1, 2000, instead of 1-1-00).

AUTH: Sec. 50-15-102, MCA

IMP: Sec. 50-15-102, 50-15-103, 50-15-109, 50-15-112, 50-15-113, 50-15-201, 50-15-202 and 50-15-221, MCA

37.8.302 PARENTAL TO REVIEW OF BIRTH CERTIFICATE INFORMATION

(1) Before the a mother who recently gave birth in or en route to a health care facility leaves a hospital the facility in which a the birth has occurred, the health care facility administrator or the administrator's authorized designee of the hospital shall present a completed birth certificate to a parent of the child for review as to the correctness of so they may verify the information contained in

the birth certificate. When the parent agrees that the information is correct, the The parent shall sign the certificate after the words "I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief." If the information is not correct, the birth certificate must be redone with the correct information and presented again to the parent for signature.

(2) A parent's informational copy (not a certified copy) of the birth certificate will must be given to the parent at the time he or she signs the certificate.

(3) If a birth occurs outside of a health care facility, the person responsible for certifying the live birth and filing the birth certificate under the provisions of 50-15-221(4), MCA, must fulfill the same duties as those specified in (1) and (2) above for a health care facility administrator.

AUTH: Sec. 50-15-102, MCA

IMP: Sec. 50-15-102, 50-15-103, 50-15-108, 50-15-109 and 50-15-221, MCA

37.8.303 DELAYED BIRTH RECORDS CERTIFICATE (1) Any person born in the state of Montana whose birth was not properly recorded at the time of birth within one year after the birth may file and receive a delayed birth certificate of delayed birth registration if the requirements of this rule are met.

~~(2) A delayed birth record is one registered 6 months or more after the birth occurred.~~

~~(3) A child 6 months to 12 years old may have his birth registered on sworn statement of the mother or other person who was in attendance at the birth, or as a delayed birth registration outlined in (4) below. If no one who was present at the birth is available, the local registrar may complete the certificate if he is able to ascertain with reasonable certainty the relevant information.~~

~~(4)(a) To register a birth 12 years or older, at least 3 documents, no two of which may be of the same type, will be required which prove date and place of birth and names of parents. First consideration will be given to older documents, preferably 5 years or older. No more than one affidavit will be accepted, unless it is for a child and it would be unreasonably difficult to obtain 3 documents. In this case, 2 affidavits based on personal knowledge will be accepted.~~

~~(b) A certificate of delayed birth registration establishes proof of the date of birth, place of birth and parentage by documentary evidence. The face of the certificate must include name of person being registered; date and place of birth; sex; father's name, race, birthyear and birthplace; mother's maiden name, race, birthyear and birthplace.~~

~~(c) Photostatic copies of documents will be accepted. Affidavits from notary publics that they have examined documents will not be accepted in lieu of the documents or photo-static copies thereof. Altered documents will not be accepted.~~

(2) The birth must be filed on a Montana delayed birth registration form available from the department.

(3) The person filing the form must submit to the department documents proving the applicant's name, the date and place of birth, and the applicant's parents' names. Documentation of the name of the applicant and the date and place of birth must be supported by at least the following:

(a) if the record is filed within five years after the date of birth, either a health care facility record created at the time of birth and two pieces of documentary evidence meeting the requirements of (4) below or, if a health care facility record is not available, three pieces of such documentary evidence; or

(b) if the record is filed five years or more after the date of birth, three pieces of documentary evidence meeting the requirements of (5) below.

(4) For any person under the age of five, the documents must be dated at least one year before the date of the application or within the first year of birth.

(5) Any document submitted in evidence for any person five years of age or older must be dated at least five years before the date of application or within three years after the date of birth.

(6) No two of the documents submitted as evidence may be from the same source and only one document may be a sworn affidavit. A sworn affidavit must state the date and place of birth of the applicant, establish the age of the affiant and the fact that the affiant was present at the birth, and be signed by a person who is at least 10 years older than the applicant for the delayed birth certificate.

(7) Of the documents that are not sworn affidavits, at least one must establish the place, month, day, and year of birth; one must establish the town or county and state of birth; and they must establish the full names of both parents, including the mother's maiden name.

(8) Only official copies of documents will be accepted. Affidavits from notary publics that they have examined documents will not be accepted in lieu of official documents. Altered documents will not be accepted.

~~(5) The certificate of delayed birth registration, with abstracted proofs, will not be valid and cannot be filed until final approval is made by the department or its designated agents. Prior to October 1, 1981, a fee of \$2 will be charged for registering a delayed birth record; except that when a certified copy is requested at time of registering a delayed record, then no charge for the registration will be made. Effective October 1, 1981, the fee for registering a delayed birth record will be \$3.~~

(9) If an application for a delayed birth certificate is incomplete or does not meet the department's issuance criteria, as listed above, the department shall notify the applicant of:

(a) the problem(s);

(b) the procedures necessary to rectify the problem(s);
and

(c) the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed birth

certificate.

(10) If, after notification, the application is not actively pursued for a period of 180 days, the application and supporting documents will be returned to the applicant and a new fee, application, and supporting documentation will be required to reapply.

AUTH: Sec. 50-15-102 and 50-15-204, MCA
IMP: Sec. 50-15-103 and 50-15-204, MCA

37.8.310 CERTIFICATE OF ADOPTION (1) A certificate of adoption must include the following information:

(a) the child's name (before adoption), sex, date and place of birth, and names of natural parents;

(b) name, ~~race,~~ date and place of birth and residence of adoptive parents at the time of the child's birth adoption;

(c) the name of the child as set forth in the adoption decree;

(d) name and address of the attorney or agency handling the adoption;

(e) if this is a stepparent adoption or single parent adoption, indication of that fact; and

~~(e)~~ (f) certification by the clerk of a district court.

(2) Once a registrar has been notified of an adoption, the registrar must send all original birth documents to the department within 30 days.

AUTH: Sec. 50-15-102 and 50-15-303, MCA
IMP: Sec. 50-15-102, 50-15-303 and 50-15-311, MCA

37.8.601 MARRIAGE APPLICATIONS AND LICENSES (1) In addition to the information required by 40-1-107, MCA, The the marriage license application form must contain the following information, which must be reported to the department:

~~(a) name, age, sex, address, date and place of birth, race and education of each party;~~

~~(b) number of previous marriages of either party, the name of the former spouse, and the date and place of termination of such marriages;~~

~~(c) (a) the names and places of birth of the parents of each party;~~

~~(d) (b) the date and place of the present marriage, the name of the officiant, and whether it was will be a religious or civil ceremony.~~

(2) ~~The marriage license application form must contain the following information, which is not reported to the department:~~

~~(a) names and birth dates of children of whom both parties are the parents, born prior to the making of the application, unless the parent-child relationship has been terminated;~~

~~(b) indicate whether the parties are related to each other, and if so, the relationship.~~

(3) The marriage license application form must also contains contain the following information, for the benefit of local officials:

- (a) whether prior applications were rejected, and if so, why;
- (b) whether either party is under the influence of intoxicating liquor or narcotic drugs;
- (c) the future address and telephone number of the parties;
- (d) the certification by the parties of the foregoing information; and
- (e) signature of the judge where required, and notarization by the clerk of court.

AUTH: Sec. 50-15-102, MCA

IMP: Sec. 40-1-107, 50-15-102, 50-15-103 and 50-15-301, MCA

37.8.801 DEATH CERTIFICATE (1) ~~Every death certificate must include the following information:~~

~~(a) decedent's name, sex, age, date of birth, race and ancestry, city and state or (if not the United States) country of birth, marital status, social security number, usual occupation, education, history of military service, residence, date and location of death, and hospital or other institution in which death occurred;~~

~~(b) names of decedent's parents and surviving spouse;~~

~~(c) name and address of person supplying information;~~

~~(d) location, manner and date of disposition of body and name, address, signature, and license number of person in charge of disposition;~~

~~(e) certifications by attending physician or coroner indicating hour of death and date and time of pronouncement of death, whether an autopsy was performed, and whether the autopsy findings were available prior to completion of the cause-of-death item on the certificate;~~

~~(f) details of manner and cause of death, including illness, accident, homicide or suicide, date and place and type of injury, and whether the death was referred to the coroner.~~

(1) A certificate of death for each death that occurs in Montana must be completed and filed using a current Montana certificate of death form.

(2) Death certificate forms may be obtained from the department or printed using commercial computer software that produces the approved form. Each consists of an original and 2 copies.

(3) The person in charge of final disposition of a dead body must file a properly completed death certificate with the local registrar of the county where the death occurred either:

(a) within 10 calendar days after the date the death occurs or is first discovered; or

(b) within 2 working days after the cause of death is certified on the death certificate, whichever date is later.

(4) The registrar must file the original of a completed death certificate with the department, retain a copy, and file the remaining copy with the county clerk and recorder.

(3) The person in charge of final disposition of the dead

body shall present the death certificate to the physician, advanced practice registered nurse, or coroner for cause of death certification within three working days after being notified of the death or receiving the authorization for removal, transportation, and final disposition of a dead body, which ever occurs first.

(4) The certifying physician, advanced practice registered nurse, or coroner shall complete and return the death certificate to the person in charge of final disposition of the body within 48 hours of receipt. If the cause of death certification is pending autopsy results, then the cause of death must be listed as "pending autopsy results". When the final results are received, they must be sent to the department using a correction affidavit.

(5) The certifying physician, advanced practice registered nurse, or coroner may only certify and amend the date of death, time of death, place of death, or cause of death data. A certifying physician, advanced practice registered nurse, or coroner aware of errors in the demographic data must notify the person in charge of final disposition of the body of any errors.

(6) The person in charge of final disposition of a body may only certify the demographic data on the death certificate. The person in charge of final disposition of a body aware of errors in the cause of death data must notify the certifying physician or coroner of the error.

(7) Within 10 calendar days after the date of the death or the date it was first discovered, the person in charge of final disposition of a body must file a properly completed death certificate with the local registrar of the county where the death occurred.

AUTH: Sec. 50-15-102, 50-15-103 and 50-15-403, MCA
IMP: Sec. 50-15-109, 50-15-124, 50-15-403 and 50-15-405,
MCA

37.8.802 FETAL DEATH CERTIFICATE (1) Every A fetal death certificate must state the following information:

~~(a) the name and location of the hospital, date and hour of delivery, and sex of fetus;~~

~~(b) name, address and signature of person certifying the above information;~~

~~(c) name, address and age of mother, and name and age of father;~~

~~(d) cause of fetal death, specifying significant conditions of fetus and mother, physician's estimate of gestation, whether fetus died before or during labor or delivery, and whether an autopsy was performed;~~

~~(e) name and address of mortuary and name of person in charge of disposition;~~

~~(f) confidential information for medical and health use only, including race, ancestry, education and occupation of parents, date of last normal menses, month of pregnancy in which prenatal care began, number of prenatal visits, whether it was a multiple birth, weight of fetus, complications of labor and~~

~~delivery, concurrent illnesses or conditions, congenital anomalies of fetus, prior pregnancy history of the mother, and risk factors for this pregnancy including whether the mother was married and whether the mother's blood was tested. be completed and filed as specified in 50-15-403, MCA, using a Montana certificate of fetal death form.~~

~~(2) Fetal death certificate forms may be must be obtained from the department. Each consists of an original and 2 copies.~~

~~(3) The person in charge of final disposition of a dead fetus must file a properly completed fetal death certificate with the local registrar of the county where the death occurred either:~~

~~(a) within 10 calendar days after the date the death occurs or is first discovered; or~~

~~(b) within 2 working days after the cause of death is certified on the fetal death certificate, whichever date is later.~~

~~(4) The registrar must file the original of a completed fetal death certificate with the department, retain a copy, and file the remaining copy with the county clerk and recorder.~~

(3) The person in charge of final disposition of the body of a fetus shall present the fetal death certificate to the physician, advanced practice registered nurse, or coroner for cause of death certification within three working days after being notified of the death or receiving the authorization for removal, transportation, and final disposition of a dead body, whichever occurs first.

(4) The certifying physician, advanced practice registered nurse, or coroner shall complete and return the fetal death certificate to the person in charge of final disposition of the fetal body within 48 hours after receiving the certificate. If the cause of fetal death is pending autopsy results, then the cause of death on the certificate must be listed as "pending autopsy results". When the final results are received, they must be sent to the department using a correction affidavit.

(5) The certifying physician, advanced practice registered nurse, or coroner may only certify and amend the date, hour, and place of delivery; cause of death data; or medical and health information on a fetal death certificate. A certifying physician, advanced practice registered nurse, or coroner who is aware of any error in the demographic data must notify the person in charge of final disposition of the body of the fetus of the error.

(6) The person in charge of final disposition of the body of a fetus may only certify the demographic data on the fetal death certificate. The person in charge of final disposition of the body of a fetus who is aware of an error in the cause of death data must notify the certifying physician, advanced practice registered nurse, or coroner of the error.

(7) Within 10 calendar days after the date of the fetal death or the date it was first discovered, the person in charge of final disposition of the body of the fetus must file a properly completed fetal death certificate with the local registrar of the county where the death occurred.

AUTH: Sec. 50-15-102 and 50-15-124, MCA
IMP: Sec. 50-15-102, 50-15-109, 50-15-124, 50-15-403 and
50-15-405, MCA

37.8.804 COURT ORDER REQUIRED, WHEN ORDERED FILING OF BIRTH OR DEATH CERTIFICATE (1) ~~Whenever a local registrar is requested to complete a death certificate in a case where the body has not been found, the registrar may not complete the death certificate unless he is presented with an order of a court of competent jurisdiction declaring that the death has occurred and setting forth the circumstances thereof.~~

(1) Only a Montana or federal court of competent jurisdiction may order a birth or death certificate issued for a birth or death that occurred within Montana.

(2) A local registrar may not complete a court ordered birth certificate. The court order must be submitted directly to the department's vital statistics office, whereupon a certificate will be prepared and placed on file.

(3) A local registrar may not complete a court ordered death certificate. The court order must be submitted directly to the local coroner, who will prepare and file the certificate with the department's vital statistics office.

(4) When a court order from a Montana or federal court of competent jurisdiction directs the preparation and filing of a birth certificate, the information necessary to complete the certificate must be specified in the order.

(5) When a death is legally presumed but not confirmed, as in the case where the body has not been found, a death certificate may be filed only by the order of a Montana district or federal court of competent jurisdiction directing the local coroner to prepare and file a death certificate with the department and specifying the information necessary to complete the certificate.

AUTH: Sec. 50-15-102 and 50-15-103, MCA
IMP: Sec. 50-15-204 and 50-15-404, MCA

37.8.816 DISINTERMENT PERMITS (1) ~~A disinterment permit must include the following information:~~

~~(a) decedent's name, sex, date of death, age at death, and place of death;~~

~~(b) cause of death, whether the body was embalmed, and the means of transportation of the body;~~

~~(c) present and proposed places of interment;~~

~~(d) name and address of person in charge of disinterment;~~

~~(e) reason for disinterment, name, address, relationship and signature of person requesting disinterment;~~

~~(f) endorsement by local registrar;~~

~~(g) date, place and manner of re-interment or other final disposition of body.~~

(1) A disinterment permit must be completed and filed using a department disinterment permit form.

(2) Disinterment permit forms are available from the local registrar and will be provided to the registrar by the

department.

~~(2)~~ (3) The disinterment request for disinterment must be made by the decedent's next of kin ~~of the deceased~~, by court order, or by a public official authorized by law to make such a request. The endorsement on the permit must indicate the source of authority for the request and reasonable cause for the disinterment.

~~(3)~~ (4) The permit consists of 5 five copies distributed as follows:

(a) the original copy must accompany the body for use by the receiving cemetery or crematory;

(b) a copy must be retained by the cemetery where the disinterment occurs, by the applicant to whom the permit is issued, and by the local registrar; and

(c) a copy must be sent to the department.

~~(4) For each permit issued, the local registrar shall collect a fee of \$5, \$2 of which must be remitted to the department.~~

(5) To facilitate and assure proper accounting, the department may issue pre-numbered permit forms to local registrars as required.

AUTH: Sec. 50-15-102 and 50-15-407, MCA

IMP: Sec. 50-15-407, MCA

4. The rule 37.8.309 as proposed to be repealed is on page 37-1405 of the Administrative Rules of Montana.

AUTH: Sec. 50-15-102, MCA

IMP: Sec. 50-15-103 and 50-15-109, MCA

The rule 37.8.602 as proposed to be repealed is on page 37-1436 of the Administrative Rules of Montana.

AUTH: Sec. 50-15-102, MCA

IMP: Sec. 50-15-103, 50-15-302 and 50-15-303, MCA

5. The proposed new rules, rule amendments, and rule repeals are necessary for the following reasons:

Proposed new Rule I

Rule I is needed to define terms used in association with the administration of Montana's vital records system and in these rules that are not already defined in 15-15-101, MCA.

Proposed new Rule II

Rule II is necessary to protect the confidentiality of the vital records by allowing only those individuals authorized by 50-15-121(1), MCA, to get copies. 50-15-121, MCA, adopted in 1995, states that "the department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter". This rule does so, requiring the information to be

provided that will ensure that the requestor is authorized to receive the record and that the correct record is identified and released.

Proposed new Rules III and IV

50-15-122(1), MCA, requires rules be adopted that provide adequate standards of security and confidentiality for vital records. Proposed Rules III and IV establish the criteria for content and format necessary to prevent fraud as the law requires, for both certified and non-certified copies. The standards established in those rules are also those recommended by the federal National Center for Health Statistics. Therefore, failure to follow those standards would leave Montana out of synch with those utilized nationally by other state custodians of vital statistics. In addition, 50-15-124, MCA, expressly authorizes the department to follow the recommendations of the National Center for Health Statistics in the interest of uniformity in the nationwide system of vital statistics.

ARM 37.8.101, 37.8.103, and 37.8.104

50-15-104, MCA, states that the department shall appoint and supervise local registrars. The amendments to the above three rules are necessary to provide additional standards experience over the years has shown to be advisable for the appointing and supervising of local registrars. More specific reasons for the proposed changes to those rules follow below.

ARM 37.8.101

The wording in ARM 37.8.101(2) is being changed to refer to deputy registrars in the plural in order to reflect more closely what is authorized in 50-15-105, MCA, which also refers deputies in the plural. The amendments also are needed to clarify the role of a deputy and how changes in registrars and deputies are approved and tracked. In addition, to carry out the mandate of 50-15-104, MCA, that the department supervise local registrars, subsection (3) was added to ARM 37.8.101 to allow for a smooth transition when a registrar is replaced. The transition at the end of the month provides a logical break and allows for easier accounting of the documents each registrar processed, an accounting that is necessitated by 50-15-107, MCA, which requires payment to the registrar for certificates and report filed by the registrar. As an alternative, the department considered having each registrar (the retiring and the new) report the amount of forms processed during the turnover month, but that alternative was rejected because of accounting reconciliation difficulties.

ARM 37.8.103 and 37.8.104

Most of the changes to ARM 37.8.103 and 37.8.104 are to clarify

the current rules and the duties of the registrar and do not change the substance of the existing rules. The addition of new subsection (4) to ARM 37.8.103 allows for the use of electronic filing methods, as authorized by 50-15-124, MCA, and the use of new technology such as computers, printers, and copiers when submitting applications. Also, 50-15-123, MCA, states, "...reproductions [of vital records] when certified and approved by the department must be accepted as the original records". Since a paper copy generated from an electronically filed form contains no signatures, subsection (4) of ARM 37.8.103 eliminates uncertainty about the acceptability of electronically filed documents by providing that copies of those documents are equivalent to copies of paper certificates with signatures.

ARM 37.8.105

The rule needs to be amended to recognize that preservation of old records may entail using photocopying as well as microfilm. The rest of the proposed changes are strictly editing changes, for clarification of the text.

ARM 37.8.106

This rule, as it currently reads, covers amendments of birth and death certificates alone. Since 50-15-204(3), MCA, requires the department to adopt rules establishing the circumstances under which all vital records, not just birth and death certificates, "may be corrected or amended and the procedure to correct or amend those records", the rule needs to be greatly expanded to comply with that mandate. The provisions proposed as amendments are those necessary to allow legitimate changes while carefully protecting the integrity of vital records. In addition, with certain carefully prescribed exceptions when the right to privacy clearly demands it, the rule requires clear notice on the face of a record that it has been altered. Finally, whereas the existing rule mentions only an affidavit of correction as the mechanism for initiating a change in a vital record, the proposed amendments recognize court-ordered amendments, as well as defining the circumstances under which a court order will be required because of the importance of the change.

ARM 37.8.109

The proposed changes to this rule are primarily for the purpose of clarification rather than substantive in nature, with the exception of deletion of the requirement that carbon copies of certificates be kept. That change is necessary because carbon copies are currently rarely used.

ARM 37.8.110

This rule, concerning payment of fees to registrars, needs to be amended to eliminate a now useless effective date and to clarify that the registrar gets a fee for filing a monthly report

indicating no certificates were filed that month, as well as a fee for each certificate filed.

ARM 37.8.116

The proposed amendments revise and add to the fees for copies, research, and other services provided by the department. The current fees were established in 1992. In 1995, amendments to 50-15-111, MCA, greatly expanded the types of services for which the department is to charge fees, which are to be set by rule. 42-2-218(2), MCA, authorizes the new fee set for a putative father search. Using the number of requests for vital statistics services during state fiscal year 2000 as a base, the fiscal impact of the fee changes is set out below.

Fiscal Impact of Fee Changes

Service	Number of Requests FY 2000	Current Fees	Proposed Fee Impact
Issuance	11,465	\$114,650	\$115,062
Adopt	575	\$5,750	\$14,375
Genealogy	595	\$5,950	\$5,100
Paternity	120	\$1,200	\$1,200
Court ordered	156	\$1,560	\$2,340
Correction	359	\$3,590	\$5,385
Seal open	87	\$870	\$2,175
Putative	30	\$300	\$300
Delay	24	\$312	\$600
Legitimization	26	\$260	\$260
Disinterment	11	\$22	\$22
Total	13,437	\$134,464	\$146,819

ARM 37.8.126

This rule, governing access to vital records, presently allows release of information to governmental agencies and for research purposes, in addition to releases allowed by law. In 1995, 50-15-122, MCA, was enacted. That statute empowers the department to adopt more extensive criteria for access, which the proposed amendments do. Subsection (1) is necessary to prevent issuance of a certified copy of a death certificate before the cause of death is settled. Subsections (2) and (3) are necessary to prevent misuse of birth certificates by specifying who should

not and who legitimately can get a certified copy of a birth record. Subsection (4) recognizes that the law allows anyone to get a birth certificate copy so long as the registrant is at least 30 years old, while still ensuring against its fraudulent use by preventing issuance of a certified copy. Subsection (5) is needed to establish who has the right to get certified copies of records of marriage or marital termination. Subsections (6) and (7) limit what a certifying official may file or issue in order to assure compliance with the National Association for Public Health Statistics and Information Systems interstate agreement that states, "...in no instance may a registration area issue certified copies or abstracts of vital records received from another registration area". Therefore, since the State of Montana is a registration area, any vital record or certificate from another state or country may not be filed, issued, or certified by a Montana official, and a county certifying official may not issue a birth certificate copy of a certificate filed in someone else's county.

ARM 37.8.301

ARM 37.8.301 is being revised to reflect and conform to the changes required by the 1995 enactment of 50-15-221, MCA, as well as the changes in the national standard for such certificates from the federal National Center for Health Statistics that will take effect in January, 2003. The proposed revisions to this rule would accommodate now the change in the national standard so that the rule will not have to be rewritten later to do so.

ARM 37.8.302

Because 50-15-221(8), MCA states that "[e]ither parent of the child, or another informant, shall verify the accuracy of the personal data to be entered on the certificate", the proposed amendments to ARM 37.8.302 necessarily lay out the procedure to be used to ensure the verification is completed and who is responsible for seeing that it is done, depending upon where the birth occurs.

ARM 37.8.303

The proposed revisions to ARM 37.8.303 are needed to comply with the 1995 changes to 50-15-204, MCA, which change the time limit for filing a delayed birth certificate and direct the department to establish rules governing the filing of a delayed birth certificate. The fee portion of the rule is proposed to be removed because a fee for issuance of a delayed birth certificate is proposed to be added instead to the general fee rule, ARM 37.8.116.

ARM 37.8.310

The proposed changes to this rule are a response to the passage of 50-15-311, MCA, in 1995, which added requirements concerning

adoptions. That statute requires that a "certificate of adoption...contain information necessary to establish a new certificate of birth for the person adopted". The proposed revision to ARM 37.8.310 modifies the information needed in order to comply with the law. The word "race" in (1)(b) is being deleted because it is not necessary to establish a new birth certificate. The adoptive parents' residence is being changed to reflect more appropriately their residence at the time of the adoption rather than the time of the child's birth. The added requirement that stepparent or single parent adoptions be indicated is necessary to reflect the fact that such adoptions are becoming more common. Finally, the deadline required by new subsection (2) is needed to facilitate the timely processing of adoptions.

ARM 37.8.601

ARM 38.8.601 is being amended to eliminate duplication of statutory language already in 40-1-107, MCA, as required by the Montana Administrative Procedure Act. Also, the inclusion in the rule's history of 50-15-301, MCA, is proposed to be deleted because it has always concerned marriage certificates, not marriage license applications, the latter being the subject matter of the rule.

ARM 37.8.801

This rule is being revised in part to allow electronically generated forms to be used for the eventual electronic filing of death certificates. New subsections (3) through (7) clarify the duties and periods for filing a death certificate, removing the ambiguity in the current rule regarding the authority and responsibilities of the person in charge of final disposition and the coroner. Existing subsection (4) is being deleted because its requirements are already covered in ARM 37.8.101. References to the certifiers of cause of death are amended to include advanced practice registered nurses, as mandated by the 2001 Legislature (Ch. 258). Finally, clarifying language has been added about who is responsible for certifying and amending the information on the certificate, in order to eliminate past confusion on the point.

ARM 37.8.802

Changes parallel to those made to ARM 37.8.801 (death certificates) are also proposed for ARM 37.8.802, concerning fetal death certificates, for the same reasons.

ARM 37.8.804

The changes to ARM 37.8.804 are needed to clarify who can issue a court order for a birth or death certificate in Montana, as well as to establish the information such orders must provide to the department in order for the latter to properly file a birth

or death certificate. The amendments also establish who is responsible for the filing of court ordered birth or death certificates and remove any responsibility from the local registrar. The changes in fact reflect and clearly establish as requirements the procedures already currently in use.

ARM 37.8.816

ARM 37.8.816 is being changed because some of the informational elements that used to be required on a disinterment permit are no longer needed. These revisions will allow for permit form revisions without requiring the rule to be changed as well. It is proposed to also require a statement of reasonable cause for the disinterment in order to add assurance that the disinterment is justified. Finally, the fee provision is to be removed from this rule because it has been proposed to be added to ARM 37.8.116, the general fee rule, thereby consolidating within one rule all of the fees related to vital records.

ARM 37.8.309

ARM 37.8.309 is proposed for repeal because it unnecessarily repeats and sometimes contradicts the language of 50-15-221, MCA.

ARM 37.8.602

Because this rule simply restates the statutory language in 50-15-302, MCA, it is not needed and is proposed for repeal.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 17, 2002. 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.

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

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State November 26, 2001.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 42.31.501,) ON THE PROPOSED AMENDMENT
42.31.502, 42.31.504, and)
42.31.510 relating to retail)
communications excise tax)

TO: All Concerned Persons

1. On January 9, 2002, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment ARM 42.31.501, 42.31.502, 42.31.504, and 42.31.510 relating to retail communications excise tax.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, Helena, Montana.

2. The Department of Revenue 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 Department of Revenue not later than 5:00 p.m., December 20, 2001, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.31.501 DEFINITIONS The following definitions apply to terms used in this sub-chapter:

~~(4)~~(1) "Internet revenue" is revenue generated from the activity of providing internet access and on-line services by an internet service provider. On-line services do not include any use of any such capability for the management, control, or operation of a telecommunications system, or the management of a telecommunications system.

(1)(2) "Related services" for telecommunications excise tax purposes, means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications through, but not limited to, operator and information services, directory assistance, call waiting, call forwarding, caller ID, call rejection, last call return, priority call, speed calling, three-way calling, voice messaging, continuous redial and line blocking.

(3) "Sales price" is defined in 15-53-129, MCA, and sales price shall include federal subscriber line charges and other federally authorized charges and fees collected but not remitted to a federal governmental entity by the telecommunications

carrier and to retail telecommunications installation and activation charges made after June 30, 2001.

~~(2)(4)~~ "Telecommunications" for telecommunications excise tax purposes, means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

~~(3)(5)~~ "Two-way transmission" for telecommunications excise tax purposes, means all forms of telecommunications except those forms of telecommunications that are only capable of one-way transmission and are not related services as defined in ~~(1) above~~ (2).

AUTH: Sec. 15-53-104 and 15-53-155, MCA

IMP: Sec. 15-53-101, 15-53-104, 15-53-111, 15-53-129, 15-53-145 and 15-53-147, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.501 to define terms used in the sub-chapter. The additional language shown in (1) regarding online services is referenced in the Internet Tax Freedom Act of November 15, 2001. New section (3) is required because of changes made by SB 494 (2001).

42.31.502 TAXPAYER RECORDS (1) and (2) remain the same.

(3) Telecommunications service providers must separately account for nontaxable revenue items. If no separate accounting for nontaxable items is provided, the imposition of the retail telecommunications excise tax will apply to the total revenue.

(4) Wholesale exemption certificates or wholesale contracts must support exempt wholesale revenues.

AUTH: Sec. 15-53-155, MCA

IMP: Sec. 15-53-150, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.502 for audit purposes. New subsection (3) is necessary to advise taxpayers that they are required to maintain separate records for taxable and nontaxable items. This requirement will assist the department in verifying proper taxation of the items.

Subsection (4) is necessary to ensure supporting documentation for wholesale exemption certificates and wholesale contracts are available. The department when conducting compliance reviews and audits will review these documents.

42.31.504 WHO MUST COLLECT THE TAX COLLECTION OF TAX AND HEARING RIGHTS (1) remains the same.

(2) A telecommunications service provider has the right to request a hearing on a tax liability as provided in 15-1-211, MCA, and ARM 42.2.613 through 42.2.621, effective December 17, 1999. Copies of appeal form CVR-01 may be obtained by contacting the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

(3) and (4) remain the same.

~~(5) Telecommunications services are not taxable if they are offered by an exempt telecommunications service provider.~~

(6) remains the same but is renumbered (5).

AUTH: Sec. 15-53-155, MCA

IMP: Sec. 15-1-211, 15-1-701, 15-53-130, 15-53-137, 15-53-138, and 15-53-139, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.31.504 to correct the catchphrase and add a reference to the form that may be obtained if a taxpayer seeks an appeal on an assessment. Subsection (5) is being deleted because it is confusing and is not necessary.

42.31.510 PENALTY AND INTEREST (1) remains the same.

AUTH: Sec. 15-53-104 and 15-53-155, MCA

IMP: Sec. 15-1-216, 15-53-101, 15-53-104, and 15-53-111, 15-53-145, and 15-43-147, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.31.510 to add two additional implementing cites.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than January 11, 2002.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. 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.

7. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State November 26, 2001

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 42.22.104)
relating to motor vehicles)
and special mobile equipment) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 18, 2002, the department proposes to amend ARM 42.22.104 relating to motor vehicles and special mobile equipment.

2. The Department of Revenue 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 Department of Revenue no later than 5:00 p.m. on December 17, 2001, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax number (406) 444-3696; e-mail address canderson@state.mt.us.

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

42.22.104 TREATMENT OF MOTOR VEHICLES AND SPECIAL MOBILE EQUIPMENT (1) ~~Motor vehicles with a rated capacity of 1 ton or less, equipment attached to motor vehicles 1 ton or less, and Special mobile equipment excluded from the definition of situs property are as defined in ARM 42.22.101 is to be locally assessed.~~

(2) ~~Motor Vehicles over 1 ton with or without equipment attached are exempt and shall pay a fee in lieu of tax, 61-3-529 and 61-3-561, MCA.~~

(3) ~~Each centrally assessed company having equipment defined in (1) shall provide the department with a statement showing a description and the total market value for each piece of equipment. The market value shall be the value shown on the automobile, truck, equipment attached to the vehicle, or special mobile equipment registration, Montana vehicle registration, or other tax payment receipt. Companies with prorated vehicles shall provide the department with the total number of miles traveled in and out of the state of Montana, a description and the market value for each vehicle. Companies that license fleet vehicles with the Montana motor carrier services (MCS) division will use the value for each piece of equipment determined by (MCS) as the market value to report to the department. This statement is to be filed at the same time the report required by ARM 42.22.105 is filed.~~

(4) Companies that license fleet vehicles with the Montana motor carrier services (MCS) division will provide the net book value for each vehicle licensed by the MCS. This statement is to be filed at the same time the report required

by ARM 42.22.105 is filed.

~~(4)~~(5) Each centrally assessed company having equipment defined in (2), (3), or (4) shall provide the department with the net book value for each piece of equipment as of January 1 each year. Companies with prorated vehicles shall provide the department with the total number of miles traveled in and out of the state of Montana, a description and the net book value for each vehicle.

~~(5)~~(6) The department of revenue may, at any time, ask for verification of the reported equipment's ~~market value~~ registration from the county, other agencies, other states or the company. This verification may be, but is not limited to, supplying the department with copies of each vehicle's Montana registration form. Omission of any requested information may result in loss of or a partial deduction for the equipment.

~~(6)~~(7) The total net book value for equipment defined in (2), (3), and (4) shall be deducted on a market to cost basis from the state allocated value, as defined in ARM 42.22.111. The market to book ratio shall be determined by dividing the system or unit market value after deduction of the exempt intangible personal property by the system net book value after deduction of the exempt intangible personal property.

~~(7)~~(8) The total market value for equipment defined in (1) is deducted from the state allocated value, as defined in ARM 42.22.111, to determine the amount of the state allocated value to be allocated under the provisions of ARM 42.22.122.

AUTH: Sec. ~~15-23-107~~ and 15-23-108, MCA

IMP: Title 15, chapter 23, part 1, and ~~15-23-101~~, 61-3-529, and 61-3-561, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.104 to implement statutory changes made by the passage of HB 540 of the 1999 Legislative Session, which resulted in Voter Initiative 115, passed by the voters in 2000. The initiative changed the reporting requirements and how we deduct the value of licensed vehicles. The department used to use a value based system and now it uses a fee based system. The amendments are necessary to ensure that companies receive a market value deduction for their vehicles.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than January 3, 2002.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than January 3, 2002.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. An electronic copy of this Proposal Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Proposal Notice 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.

8. The Department of Revenue 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 notice regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State November 26, 2001

BEFORE THE STATE BOARD OF COUNTY PRINTING
DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of ARM Title 8, Chapter 91)
pertaining to the State Board)
of County Printing)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the State Board of County Printing is transferred from the Department of Commerce to the Department of Administration. In order to implement that legislation, the above-stated rules are transferred to the Department of Administration ARM Title 2, Chapter 67.

2. The Department of Administration has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.91.101	2.67.101	Organization of Board
8.91.201	2.67.201	Incorporation of Model Rules
8.91.301	2.67.301	Power and Duties of Board
8.91.302	2.67.302	County Commissioners to Contract for County Legal Advertising
8.91.303	2.67.303	Official Publications and Legal Advertising
8.91.304	2.67.304	Schedule of Prices

3. The transfer of rules is necessary because this program was transferred from the Department of Commerce to the Department of Administration by the 2001 legislature by Chapter 483, Laws of Montana 2001.

By: /s/ Steve Bender
STEVE BENDER, Acting Director
Department of Administration

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State November 15, 2001.

BEFORE THE STATE LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of ARM Title 8, Chapter 127)
pertaining to the State)
Lottery Commission)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the State Lottery Commission is transferred from the Department of Commerce to the Department of Administration. In order to implement that legislation, the above-stated rules are transferred to the Department of Administration ARM Title 2, Chapter 63.

2. The Department of Administration has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.127.101	2.63.101	Organizational Rule
8.127.201	2.63.201	Procedural Rules
8.127.202	2.63.202	Citizen Participation
8.127.203	2.63.203	Definitions
8.127.204	2.63.204	General Provisions
8.127.401	2.63.401	Retailer Places of Sale
8.127.402	2.63.402	Retailer Residency
8.127.403	2.63.403	Retailer Applications
8.127.404	2.63.404	Retailer Required Rule Reading
8.127.405	2.63.405	Retailer Electronic Funds Transfer
8.127.406	2.63.406	Retailer Bonding
8.127.407	2.63.407	Retailer Commission
8.127.408	2.63.408	Retailer Duties
8.127.601	2.63.601	License Application Fee
8.127.602	2.63.602	Provisional License
8.127.603	2.63.603	Display of License
8.127.604	2.63.604	License Locations
8.127.605	2.63.605	Expiration of License
8.127.606	2.63.606	Duplicate Licenses
8.127.607	2.63.607	Business Changes
8.127.608	2.63.608	Assignment or Transfer of License Prohibited
8.127.609	2.63.609	Change of Location
8.127.610	2.63.610	License Renewal
8.127.611	2.63.611	Revocation or Suspension of License
8.127.612	2.63.612	Temporary Licenses
8.127.613	2.63.613	Endorsement
8.127.801	2.63.801	Electronic Funds Transfer
8.127.1001	2.63.1001	Sale of Instant Tickets

8.127.1002	2.63.1002	Instant Ticket Price
8.127.1003	2.63.1003	Instant Ticket Marking
8.127.1004	2.63.1004	Instant Tickets - Retailer
8.127.1005	2.63.1005	Notification of Lost, Damaged, or Stolen Tickets or Equipment
8.127.1006	2.63.1006	Instant Ticket Returns
8.127.1007	2.63.1007	Sales Staff Incentive Plan
8.127.1201	2.63.1201	Prizes
8.127.1202	2.63.1202	Instant Ticket Winner Redemptions

3. The transfer of rules is necessary because this program was transferred from the Department of Commerce to the Department of Administration by the 2001 Legislature by Chapter 483, Laws of Montana 2001.

By: /s/ Steve Bender
STEVE BENDER, Acting Director
Department of Administration

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of November 15, 2001.

BEFORE THE BURIAL PRESERVATION BOARD
DEPARTMENT OF ADMINISTRATION
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of ARM Title 8, Chapter 128)
pertaining to Burial)
Preservation Board)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Burial Preservation Board is transferred from the Department of Commerce to the Department of Administration. In order to implement that legislation, the above-stated rules are transferred to the Department of Administration ARM Title 2, Chapter 65.

2. The Department of Administration has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.128.101	2.65.101	Organizational Rule
8.128.102	2.65.102	Protection of Site
8.128.103	2.65.103	Notice and Reporting Requirements
8.128.104	2.65.104	Field Review
8.128.105	2.65.105	Removal of Remains or Burial Materials
8.128.106	2.65.106	Disposition of Remains and Burial Materials
8.128.107	2.65.107	Permits for Scientific Analysis
8.128.108	2.65.108	Reports and Burial Registry

3. The transfer of rules is necessary because this program was transferred from the Department of Commerce to the Department of Administration by the 2001 Legislature by Chapter 483, Laws of Montana 2001.

By: /s/ Steve Bender
STEVE BENDER, Acting Director
Department of Administration

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State November 15, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)
of NEW RULES I through III,)
the amendment of ARM 17.4.501,)
17.4.502, 17.20.301,)
17.20.302, 17.20.801,)
17.20.802, 17.20.803,)
17.20.805, 17.20.807,)
17.20.811, 17.20.817,)
17.20.818, 17.20.901,)
17.20.907, 17.20.929,)
17.20.1301, 17.20.1302,)
17.20.1311, 17.20.1418,)
17.20.1426, 17.20.1501,)
17.20.1502, 17.20.1503,)
17.20.1504, 17.20.1509,)
17.20.1511, 17.20.1512, and)
17.20.1604, and the repeal of)
ARM 17.20.101 through)
17.20.108, 17.20.501 through)
17.20.506, 17.20.701 through)
17.20.704, 17.20.812,)
17.20.816, 17.20.902 through)
17.20.906, 17.20.908 through)
17.20.911, 17.20.1201 through)
17.20.1203, 17.20.1303,)
17.20.1309, 17.20.1310,)
17.20.1401 through 17.20.1405,)
17.20.1408 through 17.20.1412,)
17.20.1415 through 17.20.1417,)
17.20.1419 through 17.20.1421,)
and 17.20.1601 through)
17.20.1603, pertaining to)
regulation of energy)
generation or conversion)
facilities and linear)
facilities)

NOTICE OF ADOPTION,
AMENDMENT AND REPEAL

(MAJOR FACILITY SITING)

TO: All Concerned Persons

1. On October 11, 2001, the Board of Environmental Review published a notice of the proposed adoption, amendment and repeal of the above-stated rules at page 1874, 2001 Montana Administrative Register, issue number 19.

2. The Board has adopted, amended and repealed the rules exactly as proposed. The new rules will be numbered I (17.20.1506), II (17.20.1507) and III (17.20.1605).

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

John F. North
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 26, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.8.505 pertaining to)
air quality operation fees)

NOTICE OF AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On August 9, 2001, the Board of Environmental Review published a notice of public hearing on the proposed amendment of the above-stated rule at page 1391, 2001 Montana Administrative Register, issue number 15. The notice included two alternatives addressing this issue: one proposed by the Department of Environmental Quality (Alternative I); and the other proposed by a representative of several facilities affected by the rule (Alternative II). The hearing was held on September 13, 2001.

2. The Board has amended ARM 17.8.505 as proposed in Alternative II, with the following changes, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (4) remain the same as proposed.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is an administrative fee of \$400, plus ~~{an amount not to exceed \$21.50}~~ \$16.93 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

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

3. The following comments were received and appear with the Board's responses:

COMMENT 1: One regulated entity commented that capping the maximum amount paid by larger facilities gives them an unfair market advantage over smaller low emitting power generation facilities.

RESPONSE 1: The Board agrees that capping the maximum fee paid by a facility shifts the burden of costs to facilities emitting fewer pollutants. This provides a competitive advantage to larger generating facilities. While these fees are only a modest part of total facility operating costs, a shift in cost responsibility in excess of \$250,000 annually is not insignificant.

COMMENT 2: A representative of seven regulated entities commented that the fee cap reduces the incentive to reduce emissions once the maximum is reached, because the amount paid per ton then decreases as emissions increase.

RESPONSE 2: The Board agrees that fees based upon the amount of emissions provide an incentive to a facility to

reduce emissions in order to reduce its costs. The Board believes this is consistent with the statute authorizing collection of "an annual fee based on actual emissions." Section 75-2-220(2) (MCA 2001). A fee cap eliminates the incentive for a larger facility to minimize increased emissions and provides no positive incentive to reduce emissions already in excess of the capped amount.

COMMENT 3: The same industry representative who submitted Comment No. 2 commented that the fee cap is inequitable because it applies to a single facility - Pennsylvania Power & Light (PP&L), Colstrip - at the cost of all other facilities in Montana. The commenter stated that this result is inequitable and, in effect, results in different fee charges per ton of pollutant based on the size of the facility. The commenter stated that, as the Department's air quality program costs rise, fee increases are borne by all fee payers except PP&L, Colstrip.

RESPONSE 3: The Board agrees that the minimum administrative fee and the fee cap, in effect, result in charging different size classes of facilities different amounts per ton of pollutants emitted. Although regulatory resource demands do not increase in direct proportion to increases in emissions, there is an inequity in substantially raising the fees of numerous smaller facilities to reduce the responsibility of a single large pollution source. This disproportionate impact or subsidy could increase significantly with the closure of other permitted facilities. For example, ASARCO alone previously paid in excess of \$200,000 in annual fees. The imposition of a cap would redistribute this entire cost to other facilities, in proportion to their emissions, except for the PP&L, Colstrip facility.

COMMENT 4: The same industry representative who submitted Comment Nos. 2 and 3 commented that the amount of the fee cap was set arbitrarily and does not reflect regulatory resource demands, unlike the minimum administrative fee, which does.

RESPONSE 4: The Board agrees that the fee cap does not accurately represent the amount of resources expended by the Department in regulating PP&L, Colstrip. The fee cap was first adopted when the air quality fee structure was changed from a tiered system to a flat fee system. One rationale for the fee cap at that time was to maintain the Colstrip fee contribution at approximately the same level. However, this was a transitional measure and not based upon an actual cost analysis. Fees have been increased for other facilities to meet higher costs for the program. There is no persuasive rationale for permanently shielding the single largest source of emissions from sharing in any additional cost responsibility.

COMMENT 5: PP&L, Montana, commented that the cap on air quality operation fees provides a measure of equity in the services that the Department provides to specific facilities.

RESPONSE 5: The Board disagrees with PP&L, Montana's comment. The Board recognizes that the cost of regulatory oversight of specific facilities is not solely dependent upon or proportionate to increased emissions. For example, the minimum administrative fee imposed on all permitted facilities recognizes that oversight of even smaller facilities imposes a regulatory cost. However, the statutory provision described in the Response to Comment 2 identifies actual emissions as a specific criteria in setting annual fees. While the primary purpose of these fees is to meet necessary regulatory expenses of the Department, creating the proper incentives (or disincentives) for reduced (or increased) emissions is also an important consideration. A cap provides the wrong incentives and unnecessarily shifts a significant financial burden to other permitted facilities.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State November 26, 2001.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
of ARM 17.20.1607 and the) REPEAL
repeal of ARM 17.20.1608 and)
17.20.1701 through 17.20.1706)
pertaining to centerline) (MAJOR FACILITY SITING)
approval for linear facilities)

TO: All Concerned Persons

1. On October 11, 2001, the Board of Environmental Review published a notice of the proposed amendment and repeal of the above-stated rules at page 1945, 2001 Montana Administrative Register, issue number 19.

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

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

John F. North
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 26, 2001.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.13.306, pertaining to)
continuing education)
requirements)

TO: All Concerned Persons

1. On June 7, 2001, the Board of Clinical Laboratory Science Practitioners published notice of the proposed amendment of the above-stated rule at page 914 of the 2001 Montana Administrative Register, Issue Number 11.

2. A public hearing was held in Helena on July 5, 2001, but no members of the public appeared to present testimony. Written comments, however, were received by the Board prior to the closing of the comment period.

3. After consideration of the comments, the Board has amended ARM 8.13.306 exactly as proposed.

4. The Board received written comments from seven individuals and a comment signed by nine individuals. The comments received and the Board's responses are as follows:

Comment 1: All of the comments were opposed to the proposed amendment reducing from 14 to 7 the number of hours of continuing education credits that could be carried over. Reasons, when specified, generally alleged that it was difficult for labs to remain adequately staffed when there is an annual continuing education requirement. The cost of attending continuing education was also mentioned by a number of commenters.

Response 1: The Board believes that it is important for licensees to have at least an annual exposure to continuing education in order to maintain professional competency. The Board notes that the number of annual credits required is not increasing, only that the amount of carry-over is being reduced, and that there is no increase in the number of hours that licensees need to fulfill their continuing education requirements.

Comment 2: A number of commenters suggested that the proposed amendment serves to "penalize" licensees who attend continuing education programs that provide more than the minimum hours, or that the proposed amendment would discourage licensees from attending meetings where a large number of credits could be earned.

Response 2: The Board notes that 14 hours annually is the Montana Administrative Register

minimum amount of continuing education that is needed for licensees to maintain their professional competency. The Board's rule in no way restricts licensees from attending as many hours of continuing education as a licensee desires or thinks appropriate, as long as the licensee fulfills the minimum requirement.

Comment 3: A commenter suggested that decreasing the number of carry-over credits available would not improve the quality of laboratory science.

Response 3: The Board respectfully disagrees with the commenter, and believes that the public health, safety and welfare is better protected when all licensees obtain at least 7 hours of continuing education each year.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
KAREN McNUTT, CHAIRPERSON

By: /s/ WENDY KEATING
Wendy J. Keating,
Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

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

In the matter of the amendment) NOTICE OF AMENDMENT,
of ARM 8.18.402, 8.18.404,) ADOPTION AND REPEAL
8.18.406, 8.18.407, 8.18.408,)
8.18.409, and 8.18.413, the)
adoption of new rules pertaining)
to definitions, licensee)
responsibilities, electrical)
contractor licensing, licensure)
by reciprocity of renewal or)
endorsement, and renewal, and)
the repeal of ARM 8.18.403 and)
8.18.411, pertaining to general)
responsibilities and licensure)
of out-of-state applicants)

TO: All Concerned Persons

1. On June 7, 2001, the Montana State Electrical Board published notice of the proposed amendment, adoption and repeal of the above-stated rules at page 916 of the 2001 Montana Administrative Register, Issue Number 11.

2. A public hearing was held in Helena on July 23, 2001. Written comments were also received by the Board prior to the closing of the comment period.

3. After consideration of the comments received, the Board has amended ARM 8.18.404, 8.18.406, 8.18.407, 8.18.408, 8.18.409 and 8.18.413 exactly as proposed.

4. After consideration of the comments received, the Board has amended ARM 8.18.402 as proposed, but with the following changes: (deleted material stricken, new material in ALL CAPS)

8.18.402 ELECTRICIAN APPLICATIONS AND RENEWALS (1) The practical experience requirement set forth in 37-68-304, AND 37-68-305 and ~~37-68-314~~, MCA, shall be of such nature as is satisfactory to the board.

~~(a)~~ The board will only accept electrical experience in the construction field. Maintenance work, as defined in [New Rule I] which is exempt under ~~37-69-103~~ 37-68-103, MCA, will not be accepted towards fulfillment of the practical experience requirement.

(2) through (5) Same as proposed.

AUTH: 37-1-131 and 37-68-201, MCA

IMP: 37-68-103, 37-68-201, 37-68-302, 37-68-304 and 37-68-305, MCA

5. After consideration of the comments received, the Montana Administrative Register

Board has adopted five new rules exactly as proposed:

NEW RULE I (8.18.414) DEFINITIONS

NEW RULE II (8.18.415) LICENSEE RESPONSIBILITIES

NEW RULE III (8.18.416) ELECTRICAL CONTRACTOR LICENSING

NEW RULE IV (8.18.417) LICENSURE BY RECIPROCITY OR ENDORSEMENT

NEW RULE V (8.18.418) RENEWALS

6. After consideration of the comments received, the Board has repealed ARM 8.18.403 and 8.18.411 exactly as proposed.

7. The Board received comments from four persons. The comments received and the Board's responses are as follows:

Comment 1: A representative of a local union commented that he agreed with almost all of the changes, with the exceptions of comment 2 and 3 below.

Response 1: The Board acknowledges the expression of support for the proposed changes.

Comment 2: Two commenters felt that the proposed changes to ARM 8.18.402(3) would not be right for the industry because it would allow someone who ran a residential shop for five years to all of a sudden be able to test for a master's license and bid on large commercial or industrial projects. It was suggested that the experience should be a combination and not an either/or.

Response 2: The Board acknowledges the comment but rejects the suggestion for change based upon an Attorney General's opinion and a Hearing Examiner's Findings of Fact in a contested case that the Board comply with statutory requirements. Section 37-68-304, MCA, does not restrict the experience to any level of project and states that the applicant must have experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power. The rule clarifies that an applicant can obtain the required experience in any work that was performed.

Comment 3: A commenter objected to the proposed changes to ARM 8.18.413 which would not allow for the screening panel to consider anonymous complaints. He suggested that there are times when an employee of a company, in order to protect their job, would have to file an anonymous complaint, or if they did sign one, they could possibly be retaliated against and terminated from employment.

Response 3: The Board rejects the comment. Section 37-1-316(15), MCA, provides that unprofessional conduct includes "the interference with an investigation or disciplinary proceedings by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed." In addition, it is hard to determine actual facts in anonymous complaints and most often such complaints involve animosity between competitors.

Comment 4: A representative of a public utility commented that the proposed changes to ARM 8.18.402(1) do not recognize the type of work performed by an electric meter man, substation electrician, or other positions. It requested clarification as to what is considered to be experience in the construction field.

Response 4: The Board acknowledges the comment and is amending that section in order to properly state that the practical experience under 37-68-304 and 37-68-305, MCA, applies to experience in the construction field and does not apply to maintenance work. The Board, by amending that rule, acknowledges that 37-68-314, MCA, does not give it discretion if an applicant for a residential or journeyman electrician has worked in the electrical field for 10 years and is considered by his employer to be capable and qualified to take the examination.

Comment 5: Two commenters expressed concern regarding proposed New Rule II and requested a broader statement to recognize the ability of the public utilities' highly-qualified journeyman, substation electricians, meter men, and journeyman lineman.

Response 5: The Board rejects the request for a broader statement. Section 37-68-301, MCA, requires a license to engage in electrical work and does not permit or allow persons not properly licensed to conduct electrical work.

Comment 6: A commenter stated that the definition of "full-time employment" in NEW RULE I does not adequately require that the responsible electrician be actually working for the contractor performing the duties identified in the definition.

Response 6: The Board believes that the definition of "responsible electrician" contained in subsection (4) of NEW RULE I makes it clear that the full-time employment of the responsible electrician is employment by the contractor whose work the electrician is responsible for.

Comment 7: The Board's staff notes that the citation of 37-68-103, MCA in subsection (1) of ARM 8.18.402 contains a typographic error.

Response 7: The Board has corrected the citation.

MONTANA STATE ELECTRICAL BOARD
TODD STODDARD, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating,
Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.20.402, 8.20.403, and)
8.20.412, pertaining to fees,)
examinations - pass/fail)
point and minimum testing and)
recording procedures)

TO: All Concerned Persons

1. On May 24, 2001, the Board of Hearing Aid Dispensers published notice of the proposed amendment of the above-stated rules at page 819 of the 2001 Montana Administrative Register, Issue Number 10. On August 8, 2001, the Board published an amended notice regarding the public hearing on the proposed amendment of the above-stated rules at page 1412 of the 2001 Montana Administrative Register, Issue Number 15.

2. A public hearing was held in Helena on September 12, 2001, but no members of the public appeared to present testimony. No written comments were received by the Board prior to the closing of the comment period.

3. The Board has amended the rules exactly as proposed.

BOARD OF HEARING AID DISPENSERS
DAVID KING, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating,
Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM Title 16, Chapter 10,)
subchapters 1, 3, 4 and 5)
pertaining to food and drug)
standards)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, food, public accommodations and consumer safety is transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services, Title 37.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.10.101	37.110.101	Food Standards
16.10.301	37.110.301	Definitions
16.10.302	37.110.302	Preconstruction Review
16.10.303	37.110.303	Preliminary Inspection
16.10.304	37.110.310	Food Supplies
16.10.305	37.110.311	Milk and Milk Products
16.10.306	37.110.312	Frozen Desserts
16.10.307	37.110.318	Shellfish
16.10.308	37.110.319	Meat and Meat Products
16.10.309	37.110.320	Poultry and Poultry Products
16.10.310	37.110.321	Bakery Products
16.10.311	37.110.323	Eggs and Egg Products
16.10.312	37.110.330	Food Protection
16.10.313	37.110.331	Temperature Requirements
16.10.314	37.110.332	Food Preparation
16.10.315	37.110.333	Food Storage
16.10.316	37.110.340	Display and Service
16.10.317	37.110.341	Transportation
16.10.318	37.110.342	Toxic Materials
16.10.319	37.110.347	Employee Requirements
16.10.320	37.110.348	Equipment and Utensils--: Composition, Placement, Cleaning, Sanitizing and Storage
16.10.322	37.110.350	Water Supply
16.10.323	37.110.351	Sewage Disposal
16.10.324	37.110.352	Plumbing
16.10.325	37.110.353	Toilet and Lavatory Facilities
16.10.326	37.110.354	Waste Disposal

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16.10.327	37.110.355	Vermin Control
16.10.328	37.110.360	Floors, Walls and Ceilings
16.10.329	37.110.361	Lighting and Ventilation
16.10.330	37.110.362	Dressing Rooms and Lockers
16.10.331	37.110.363	Cleaning of Premises
16.10.332	37.110.364	Live Animals and Birds--: Prohibited on Premises
16.10.333	37.110.370	Inspections
16.10.334	37.110.371	Minimum Performance Requirements for Local Health Authorities
16.10.401	37.110.401	Definitions
16.10.402	37.110.402	Sampling --, Hearing --, Disposal
16.10.403	37.110.405	Food, Beverage and Ingredient Requirements--: General
16.10.404	37.110.406	Perishables
16.10.405	37.110.407	Milk and Milk Products
16.10.406	37.110.410	Nonperishable-Food Machines
16.10.407	37.110.411	Single-Service Containers
16.10.410	37.110.412	Machine Location
16.10.411	37.110.413	Machine Construction--: Exterior
16.10.412	37.110.414	Machine Construction--: Interior
16.10.413	37.110.420	Water Supply
16.10.414	37.110.421	Waste Disposal
16.10.415	37.110.422	Transportation
16.10.416	37.110.427	Employee Requirements
16.10.417	37.110.428	Inspections
16.10.418	37.110.429	Minimum Performance Requirements for Local Health Authorities
16.10.504	37.110.801	Drinking Water
16.10.505	37.110.802	Ice
16.10.506	37.110.805	Common Carriers
16.10.507	37.110.810	Minimum Performance Requirements for Local Health Authorities

3. The transfer of rules is necessary because this program was transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State November 26, 2001.

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM Title 16, Chapter 10,)
subchapters 6 through 9, 10,)
13 and 15 pertaining to)
public accommodations)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, public accommodations is transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services, Title 37.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.10.630	37.111.101	Definitions
16.10.631	37.111.104	Preconstruction Review
16.10.632	37.111.105	Existing Building--: Change of Use
16.10.633	37.111.106	Licensure, Renewal, and Inspection
16.10.634	37.111.107	Physical Requirements
16.10.635	37.111.115	Water Supply System
16.10.636	37.111.116	Sewage System
16.10.637	37.111.121	Laundry Facilities
16.10.638	37.111.122	Housekeeping and Maintenance
16.10.639	37.111.123	Swimming and Bathing Areas
16.10.640	37.111.124	Food Service Requirements
16.10.641	37.111.117	Solid Waste
16.10.642	37.111.130	Guest Registration
16.10.643	37.111.135	Minimum Performance Requirements for Local Health Authorities
16.10.701	37.111.201	Definitions
16.10.701A	37.111.202	Incorporation by Reference
16.10.702	37.111.205	Layout Plan Review
16.10.702A	37.111.206	Layout Plan--: Water Supply Requirements
16.10.702B	37.111.207	Layout Plan--: Sewage System Requirements
16.10.703	37.111.211	Licensure
16.10.704	37.111.212	Inspections and Compliance Requirements
16.10.706	37.111.215	Water Supply--: Ongoing Requirements
16.10.707	37.111.216	Sewage System
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3. The transfer of rules is necessary because this program was transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State November 26, 2001.

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM Title 16, Chapter 10,)
subchapter 16 pertaining to)
minimum sanitation)
requirements for tattooing)

TO: All Interested Persons

1. Minimum sanitation requirements for tattooing is transferred from the Department of Health and Environmental Sciences, Title 16, to the Department of Public Health and Human Services, Title 37.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.10.1601	37.112.101	Tattooing: Definitions
16.10.1605	37.112.105	Tattooing: Tattoo Shop Requirements
16.10.1606	37.112.106	Tattooing: Work Room Requirements
16.10.1607	37.112.107	Tattooing: Utensils and Supplies
16.10.1612	37.112.112	Tattooing: Hepatitis B Vaccination
16.10.1613	37.112.113	Tattooing: Sterilization Requirements
16.10.1614	37.112.114	Tattooing: Ultrasonic Cleaning Unit
16.10.1620	37.112.120	Tattooing: Skin Preparation
16.10.1622	37.112.122	Tattooing: Pattern Transfer
16.10.1624	37.112.124	Tattooing: Tattoo Application
16.10.1626	37.112.126	Tattooing: Aftercare
16.10.1628	37.112.128	Tattooing: Colors, Dyes and Pigments
16.10.1630	37.112.130	Tattooing: Handling and Disposal of Infectious Material
16.10.1635	37.112.135	Tattooing: Client Record
16.10.1636	37.112.136	Tattooing: Consent Form
16.10.1640	37.112.140	Tattooing: Restrictions and Prohibitions
16.10.1643	37.112.143	Tattooing: Operation
16.10.1646	37.112.146	Tattooing: Inspection and Enforcement

3. The statutory authority to develop minimum sanitation requirements for tattooing was adopted during the 1995 Legislature by 1995 Laws of Montana, Chapter 324. During the same legislative session, the duties and authorities of the

Department of Health and Environmental Sciences pertaining to public health were transferred to the Department of Public Health and Human Services by the 1995 Legislature by Laws of Montana 1995, Chapter 546.

The minimum sanitation requirements for tattooing were adopted into Title 16, chapter 10, with the existing food, public accommodations and safety rules because at that time as it had not yet been established how or where the rules for the new Department were going to be consolidated into the new Title 37. As a part of the process of consolidation, these rules are now being transferred into Title 37.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State November 26, 2001.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (42.19.1301)and)
New Rule II (42.19.1302))
relating to the purchase of)
tax sale certificates)

TO: All Concerned Persons

1. On October 11, 2001, the department published notice of the proposed adoption of New Rule I (42.19.1301) and New Rule II (42.19.1302) relating to the purchase of tax sale certificates on property in Montana at page 1996 of the 2001 Montana Administrative Register, issue no. 19.

2. No comments were received regarding these rules.

3. The department has adopted New Rule I (42.19.1301) as proposed.

4. The department amended New Rule II (42.19.1302) with the following changes:

NEW RULE II (42.19.1302) FORM (1) remains the same.

(2) Form number Cotreas-1, DOR-439, dated ~~6-01~~ 10-01, titled "Notice of Pending Assignment" will be used by all county treasurers in Montana to comply with the requirements of the law.

(3) The form DEVELOPED ON 10-01 AND provided by the county treasurers appears as follows:

MONTANA
COTREAS-1
REV. 10-01

NOTICE OF PENDING ASSIGNMENT
(Pursuant to 15-17-212 and 15-17-323, MCA)

THIS NOTICE IS VERY IMPORTANT with regard to the purchase of the Tax Sale Certificate, which _____ County holds on the following property. If the delinquent taxes are not paid in full within 2 WEEKS from the date of this notice, an assignment of Tax Sale Certificate will be purchased. THIS COULD RESULT IN THE LOSS OF YOUR PROPERTY LISTED BELOW.

Please direct any questions to the _____ County Treasurer, or telephone (406) _____.

PLEASE FILL IN THE FOLLOWING INFORMATION:

Owner of record:

Mailing address of owner of record:

Legal description:

Parcel number:

Geocode(s):

Date of notice:

Signature of Interested Assignee

~~Cetreas-1~~
~~6-01~~
DOR 439

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-17-212 and 15-17-323, MCA

5. The department adopts the rule with the amendments listed above.

6. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The department strives to make the electronic copy of this Adoption Notice 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State November 26, 2001

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 1.2.419)
regarding scheduled dates)
for the Montana Administrative)
Register)

TO: All Concerned Persons

1. On October 25, 2001, the Secretary of State published a notice of proposed amendment of the above-stated rule at page 2130 of the Montana Administrative Register, Issue No. 20.

2. The Secretary of State has amended ARM 1.2.419 as proposed.

3. No comments or testimony were received.

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 26th day of November 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.

Economic Affairs 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 and Local Government 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 and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2001. This table includes those rules adopted during the period October 1, 2001 through December 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 September 30, 2001, 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.

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