ISSUE NO. 21

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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NOTICE SECTION

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

In the matter of the adoption of NEW RULES I through XII pertaining to Funeral Insurance Rules	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 29, 2007, at 10:00 a.m., the State Auditor and Commissioner of Insurance will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The State Auditor and Commissioner of Insurance will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 23, 2007, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

NEW RULE I PURPOSE (1) The purpose of these rules is to establish specific rules to regulate funeral insurance, including but not limited to the licensing of producers, form review, financial reporting, and consumer protection.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-17-201, 33-17-211, 33-17-212, 33-17-213, 33-17-214, 33-17-219, 33-17-220, 33-17-231, 33-17-236, 33-17-401, 33-17-405, 33-17-406, 33-17-407, 33-17-409, 33-17-411, 33-17-1001, 33-17-1002, 33-17-1003, 33-17-1004, 33-17-1005, 33-17-1101, 33-17-1102, 33-17-1103, 33-17-1203, 33-17-1205, 33-20-1501, 33-20-1502, MCA

NEW RULE II SCOPE (1) These rules shall apply to:
(a) all life insurance policy forms delivered or issued for delivery, marketed, used, or designated as intended for use in this state as funeral insurance;
(b) any solicitation, negotiation, or sale of funeral insurance occurring within this state;
(c) reporting by funeral insurance issuers; and
(d) the licensing of specialized funeral insurance producers.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-17-201, 33-17-211, 33-17-212, 33-17-213, 33-17-214, 33-17-219, 33-17-220, 33-17-231, 33-17-236, 33-17-401, 33-17-405, 33-17-406, 33-17-407, 33-

17-409, 33-17-411, 33-17-1001, 33-17-1002, 33-17-1003, 33-17-1004, 33-17-1005, 33-17-1101, 33-17-1102, 33-17-1103, 33-17-1203, 33-17-1205, 33-20-1501, 33-20-1502, MCA

NEW RULE III APPLICABILITY OF OTHER RULES (1) Funeral insurance is defined in 33-20-1501, MCA, as a type of life insurance, and all rules pertaining to life insurance shall apply to funeral insurance unless funeral insurance is specifically exempted. In the event of any inconsistency between these rules and other rules pertaining to life insurance, these rules shall govern.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-17-201, 33-17-211, 33-17-212, 33-17-213, 33-17-214, 33-17-219, 33-17-220, 33-17-231, 33-17-236, 33-17-401, 33-17-405, 33-17-406, 33-17-407, 33-17-409, 33-17-411, 33-17-1001, 33-17-1002, 33-17-1003, 33-17-1004, 33-17-1005, 33-17-1101, 33-17-1102, 33-17-1103, 33-17-1203, 33-17-1205, 33-20-1501, 33-20-1502, MCA

NEW RULE IV DEFINITIONS For the purposes of [NEW RULES I through XII], the following definitions apply:

(1) "Authorized agent" means a person legally entitled to order the final disposition, including burial, cremation, entombment, donation to medical science, or other means, of human remains.

(2) "Excess beneficiary" means the person designated in the funeral insurance policy or certificate to receive any amount of the funeral insurance proceeds that exceed the cost of the funeral goods and services provided to the insured.

(3) "Funeral goods and services" means personal property sold, or provided, and services provided in connection with a funeral or at the final disposition of human remains.

(4) "Funeral insurance" is a type of life insurance as defined in 33-20-1501, MCA. Funeral insurance may be purchased by making a one time payment of premium or by paying premium in installments. Funeral insurance may be issued on a group or individual basis. Annuity contracts and viatical settlement agreements are not funeral insurance and may not be used as funeral insurance.

(5) "Funeral insurance policy forms" means every policy, certificate, enrollment form, application form, printed rider, endorsement form, disclosure form, policy summary, or other document which purports to grant funeral insurance or effect a transaction of funeral insurance.

(6) "Funeral insurance proceeds" means the amount payable as stated in the funeral insurance policy forms upon the death of the insured. Funeral insurance proceeds are also known as the death benefit.

(7) "Insurable interest" has the same meaning as in 33-15-201, MCA.

(8) "One-time payment of premium" means a single premium payment is made and the funeral insurance is fully paid up with no further premium payments required.

(9) "Person" means an individual or a business entity.

(10) "Preneed funeral arrangement" means an arrangement made with a person licensed under Title 37, chapter 19, parts 3 and 4, MCA, by the intended recipient of the funeral goods and services on that individual's own behalf, or by an authorized agent on the individual's behalf prior to the death of the individual. Preneed funeral arrangements are governed by Title, 37, chapter 19, MCA, and the rules promulgated to implement that chapter.

(11) "Primary beneficiary" means the person designated in the funeral insurance to receive the funeral insurance proceeds intended by the applicant or insured, if not one in the same, to fund a preneed funeral arrangement or to pay for funeral goods and services for the insured. The primary beneficiary may, but need not, be a person licensed under Title 37, chapter 19, parts 3 and 4, MCA.

(12) "Specialized funeral insurance producer" means a person who holds a current specialized funeral insurance producer license.

(13) "Specialized funeral insurance producer license" means a life insurance producer license that is issued only to persons also licensed under Title 37, chapter 19, parts 3 and 4, MCA.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-17-201, 33-17-211, 33-17-212, 33-17-213, 33-17-214, 33-17-219, 33-17-220, 33-17-231, 33-17-236, 33-17-401, 33-17-405, 33-17-406, 33-17-407, 33-17-409, 33-17-411, 33-17-1001, 33-17-1002, 33-17-1003, 33-17-1004, 33-17-1005, 33-17-1101, 33-17-1102, 33-17-1103, 33-17-1203, 33-17-1205, 33-20-1501, 33-20-1502, MCA

NEW RULE V LICENSING OF SPECIALIZED FUNERAL INSURANCE PRODUCERS (1) No person shall solicit, negotiate, or sell funeral insurance unless that person is properly licensed and appointed as a life insurance producer or as a specialized funeral insurance producer.

(2) Any person applying for a specialized funeral insurance producer license shall apply in a form approved by the commissioner. The commissioner may require a supplement to a standardized license application, or a separate license application for persons also licensed under Title 37, chapter 19, parts 3 and 4, MCA.

(3) Any person who wishes to obtain a specialized funeral insurance producer license shall disclose to the commissioner whether the person is currently licensed as funeral director, undertaker, mortician, or mortuary under Title 37, chapter 19, parts 3 and 4, MCA. Additionally, applicants shall disclose whether they have ever had such an application denied, or whether a disciplinary action has ever been taken against such a license, and the outcome of the disciplinary proceeding.

(4) Any nonresident applicant who holds a funeral director, undertaker, mortician, mortuary, or similar license, by whatever name called, in another jurisdiction must first become licensed as a funeral director, undertaker, mortician, or mortuary under Title 37, chapter 19, parts 3 and 4, MCA, before the commissioner will consider an application for a specialized funeral insurance producer license.

(5) If the Board of Funeral Service, provided for in 2-15-1743, MCA, suspends, revokes, or terminates the license of a funeral director, undertaker, mortician, or mortuary, the specialized funeral insurance producer license and any appointments will automatically terminate. The funeral director, undertaker,

mortician, or mortuary must notify the commissioner with ten days after a suspension, revocation, or license termination by the Board of Funeral Service.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-17-201, 33-17-211, 33-17-212, 33-17-213, 33-17-214, 33-17-219, 33-17-220, 33-17-231, 33-17-236, 33-17-401, 33-17-405, 33-17-406, 33-17-407, 33-17-409, 33-17-411, 33-17-1001, 33-17-1002, 33-17-1003, 33-17-1004, 33-17-1005, 33-17-1101, 33-17-1102, 33-17-1103, 33-17-1203, 33-17-1205, 33-20-1501, 33-20-1502, MCA

NEW RULE VI REPORTING BY ISSUER (1) Every issuer of funeral insurance in this state shall report in a form or manner approved by the commissioner. The commissioner may require a supplement to the insurer's annual statement.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-2-701, 33-2-705, 33-20-1501, MCA

NEW RULE VII FUNERAL INSURANCE POLICY FORMS (1) In addition to the filing and approval requirements in statute and rule for life insurance policy forms, funeral insurance issuers must file the following with the commissioner for review and prior approval:

(a) solicitation materials; and

(b) disclosure forms.

(2) In addition to complying with the rules governing life insurance, funeral insurance policy forms must clearly and conspicuously:

(a) be identified as funeral insurance;

(b) list any and all exclusions or other conditions under which the funeral insurance will not pay the death benefit; and

(c) allow the insured, or applicant, if the applicant has an insurable interest in the life of the insured, to designate a primary beneficiary and an excess beneficiary.

AUTH: 33-1-313, 33-1-501, 33-20-1503, MCA
IMP: 33-1-501, 33-20-1501, 33-20-1502, MCA

NEW RULE VIII BENEFICIARY DESIGNATION (1) Funeral insurance policy forms must clearly and conspicuously allow the insured, or applicant, if the applicant has an insurable interest in the life of the insured, to designate a primary beneficiary and an excess beneficiary.

(2) If an excess beneficiary is not designated and the primary beneficiary is a funeral director, mortician, mortuary, or undertaker, the funeral insurance policy forms shall clearly and conspicuously provide that any funeral insurance proceeds that exceed the cost of funeral goods and services provided will be paid to the insured's estate.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-1-501, 33-20-1501, 33-20-1502, MCA

NEW RULE IX RIGHT TO RETURN POLICY (1) Each funeral insurance policy and certificate delivered or issued for delivery in this state must clearly and conspicuously provide to the insured the right to return the policy or certificate to the funeral insurance issuer within 30 days of delivery of the policy or certificate and to receive an unconditional full refund of all premium and other consideration paid on it.

(2) The funeral insurance issuer must refund the premium and other consideration paid within 30 days of receiving the refund request.

(3) A funeral insurance policy or certificate returned pursuant to this rule is void from the beginning.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-1-501, 33-20-1501, 33-20-1502, MCA

NEW RULE X UNINTENTIONAL LAPSE (1) Each issuer offering funeral insurance with premium payable in installments shall, as a protection against unintentional lapse, comply with the following:

(a) No funeral insurance policy or certificate shall be issued until the issuer has received from the applicant either a written designation of at least one individual who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one individual who is to receive the notice of termination in addition to the insured. Designation shall not constitute acceptance of any liability by the third party for any goods or services provided to the insured. The form used for the written designation must clearly and conspicuously provide space for listing at least one individual. The designation shall include each individual's full name and home address. In the case of an applicant who elects not to designate an additional individual, the waiver shall state:

(i) "Protection against unintended lapse." I understand that I have the right to designate at least one individual other than myself to receive notice of lapse, or termination of this funeral insurance policy or certificate for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect not to designate an individual to receive this notice."

(b) No funeral insurance policy or certificate shall lapse or be terminated for nonpayment of premium unless the issuer, at least 30 days before the effective date of the lapse or termination, has given notice to those individuals designated pursuant to (1) at the address provided for purposes of receiving notice of lapse or termination.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-1-501, 33-20-1501, 33-20-1502, MCA

NEW RULE XI REQUIRED DISCLOSURES (1) In addition to any disclosures required for life insurance by statute or rule, the funeral insurance issuer shall develop clear and conspicuous written disclosures, regarding the following information:

(a) that a life insurance product is involved, or is being used to fund a preneed funeral arrangement;

(b) whether the cumulative premium paid may exceed the face amount of the funeral insurance policy or certificate and, if so, the length of time until the cumulative premium paid exceeds the face amount of the policy or certificate;

(c) the nature of the relationship among the soliciting producer, the provider of the funeral goods and services, and any other person that will or may profit from the transaction;

(d) that a sales commission, or other form of compensation, is being paid in connection with the sale of the funeral insurance and the identity of the persons who will receive it;

(e) that the funeral insurance issuer, insurance producer, or specialized funeral insurance producer may not require that the applicant, or insured, designate a specific beneficiary, including, but not limited to a funeral director, mortician, mortuary, or undertaker;

(f) the relationship of the funeral insurance to the funding of the preneed funeral arrangement and the nature and existence of any guarantees in relation to the preneed funeral arrangement including an itemized list of the funeral goods and services which are applied or contracted for in the preneed funeral arrangement and all relevant information concerning the price of the same and whether price is guaranteed or to be determined at the time of need;

(g) the impact on the preneed funeral arrangement of:

(i) changes in the funeral insurance policy, including, but not limited to, changes in the assignment, beneficiary designation, or use of the proceeds;

(ii) penalties to be incurred by the applicant or insured as a result of failure to make premium payments; and

(iii) penalties to be incurred or monies to be received as a result of cancellation or surrender of the funeral insurance.

(h) an explanation of any entitlements or obligations which arise if there is a difference between the funeral insurance proceeds and the amount actually needed to fund the preneed funeral arrangement;

(i) any penalties or restrictions, regarding either geographic restrictions, or the inability of the provider of the funeral goods and services identified in the preneed funeral arrangement to perform, on the delivery of funeral goods and services, or the guaranteed elements in the preneed funeral arrangement;

(j) whether the provider of funeral goods and services will accept assignments of funeral insurance and preneed funeral arrangements sold by any other properly licensed person;

(k) that after the death of a person who at any time received Medicaid benefits, a funeral director, mortician, mortuary, undertaker, or other person, including but not limited to the decedent's spouse, heir, devisee, or personal representative, who is the beneficiary of funeral insurance in excess of $5,000 in value designated to pay for the disposition of the Medicaid recipient's remains and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the Department of Public Health and Human Services within 30 days following the receipt of the funeral insurance death benefit. The funds must be paid to the Department of Public Health and Human Services regardless of any

provision in a written contract, insurance policy, or other agreement entered into on or after January 1, 2008, directing a different disposition of the funds. Funds paid to the department under these rules are not considered to be property of the deceased Medicaid recipient's estate, and the provisions of 53-6-167, MCA, do not apply to recovery of the funds by the department;

(l) that the funeral goods and services may also be purchased prior to death by making payment directly to a provider of funeral goods and services, licensed under Title 37, chapter 19, MCA, who would hold the funds in trust for the benefit of the purchaser under Title 37, chapter 19, MCA;

(m) that a discount from the current price of funeral goods and services will not be offered, or provided, as an inducement to purchase or assign funeral insurance; and

(n) that cancellation of a preneed funeral arrangement will not cancel, or otherwise invalidate the funeral insurance policy.

(2) If any of the disclosures in (1) cannot be determined until the time of application, the life insurance producer or specialized funeral insurance producer shall complete the disclosure information specific to that funeral insurance transaction.

(3) The funeral insurance issuer will provide the disclosures in (1) to the applicant at the time application is made and prior to accepting any premium. Receipt of these disclosures must be acknowledged in writing by the applicant.

(4) The disclosures and a copy of the written acknowledgment must also be provided when the funeral insurance policy or certificate is delivered.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-20-1501, 33-20-1502, 33-20-1503, MCA

NEW RULE XII PROHIBITIONS (1) The sale of funeral insurance may not be conditioned on:

(a) the applicant or insured designating a specific beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker;

(b) the applicant or insured agreeing to assign the funeral insurance proceeds to a funeral director, mortician, mortuary, or undertaker; or

(c) the applicant or insured making or entering a preneed funeral arrangement.

(2) A discount from the current price of funeral goods and services may not be offered or provided as an inducement to purchase, or assign funeral insurance.

AUTH: 33-1-313, 33-20-1503, MCA
IMP: 33-18-208, 33-20-1501, 33-20-1502, 33-20-1503, MCA

STATEMENT OF REASONABLE NECESSITY: In 2007, Senate Bill 276 (SB 276) was enacted which established funeral insurance as a type of life insurance. SB 276 also revised the prohibition against funeral directors, morticians, mortuaries, and undertakers from selling life insurance to allow these persons to sell a type of funeral insurance and created a new specialized funeral insurance producer license.

These rules are reasonably necessary for the Insurance Department of the State Auditor's Office to implement SB 276 and to protect the public welfare in regard to the solicitation, negotiation, and sale of funeral insurance. The rules address the licensing of specialized funeral insurance producers, the filing and approval of funeral insurance policy forms, the annual reporting by funeral insurance issuers, and the solicitation, negotiation, and sale of funeral insurance.

NEW RULE I is necessary to state the purpose of these rules.

NEW RULE II is necessary to identify the scope of these rules.

NEW RULE III is necessary to advise that all rules pertaining to life insurance will pertain to funeral insurance except where funeral insurance is specifically exempted. It is also necessary to provide that in the event of any inconsistency between these rules and other rules pertaining to life insurance, these rules shall govern.

NEW RULE IV sets out definitions which are necessary to clarify the meaning of terms used in these rules.

NEW RULE V pertains to licensing of specialized funeral insurance producers. SB 276 permits Montana licensed funeral directors, morticians, mortuaries, and undertakers to obtain a restricted insurance producer license to sell a type of funeral insurance. To fit within the existing insurance producer licensing system, it is necessary to identify that license as a specialized funeral insurance producer license. To aid the department in licensing determinations, it is necessary for applicants to disclose their license status under Title 37, chapter 19, MCA, and whether any such license has been denied or disciplined.

Since a current license under Title 37, chapter 19, MCA, is required for licensure as a specialized funeral insurance producer, the suspension, revocation, or termination of a license issued under Title 37, chapter 19, MCA, necessarily results in termination of the specialized funeral insurance producer license. The automatic license termination will protect the public by expediting license termination which helps to ensure that only qualified persons are acting as specialized funeral insurance producers. Requiring notice to the commissioner of the suspension, revocation, or termination of a license issued under Title 37, chapter 19, MCA, is necessary to protect the public to help ensure that producer licensing records maintained by the commissioner are accurate.

NEW RULE VI pertains to reporting to the commissioner by issuers of funeral insurance. Life insurance issuers submit an annual report to the commissioner. However, since SB 276 established funeral insurance as a type of life insurance, it is necessary for life insurers to separate out funeral insurance information from the annual report for the commissioner to identify funeral insurance volume and to aid the commissioner in monitoring and ensuring compliance with Montana law regarding funeral insurance.

NEW RULE VII pertains to funeral insurance policy forms. Since SB 276 establishes funeral insurance as a type of life insurance, the requirements for life insurance policy forms will apply. However, this rule is necessary to protect the public by identifying and imposing additional form approval and content requirements specific to funeral insurance policy forms. The form approval requirements are necessary to help ensure that the solicitation materials and disclosure forms comply with Montana law. The content requirements are necessary to ensure that consumers have information regarding exclusions, designation of a primary beneficiary and an excess beneficiary, and the payment of the death benefit. These requirements will protect the public by providing information necessary for consumers to make better informed decisions about purchasing funeral insurance and designating a primary beneficiary and an excess beneficiary.

NEW RULE VIII pertains to beneficiary designation. Provided that the required insurable interest under 33-15-201, MCA, is met, the beneficiary may use the funeral insurance proceeds for any purpose. This might allow a funeral director, mortician, mortuary, or undertaker designated as beneficiary to retain any death benefit that exceeds the cost of the funeral goods and services provided. This rule is necessary to protect the public by: clearly providing for the designation of a primary beneficiary and an excess beneficiary to allow and facilitate the insured, or applicant, if the applicant has an insurable interest, to direct the payment of any death benefit that exceeds the cost of the funeral goods and services provided; and requiring that if an excess beneficiary is not designated and the primary beneficiary is a funeral director, mortician, mortuary, or undertaker, any funeral insurance proceeds that exceed the costs of the funeral goods and services provided will be paid to the insured's estate.

NEW RULE IX provides that funeral insurance may be returned within 30 days for an unconditional full refund which must be paid within 30 days of receiving the refund request. The period of time during which an unconditional full refund is available is commonly called a "free look." Purchasers of funeral insurance are likely to be elderly or in poor health and therefore are a vulnerable group of consumers. Requiring a 30 day free look is necessary to help protect consumers by allowing a sufficient amount of time for consumers to carefully review the funeral insurance purchase themselves and with a trusted family member or advisor to determine whether the purchase is in his or her best interests.

NEW RULE X pertains to unintentional lapse of the funeral insurance. This rule is necessary to protect funeral insurance purchasers from unintentional lapse by providing for prior notice to another individual, designated by the applicant, of the pending lapse and termination of the funeral insurance. Purchasers of funeral insurance are likely to be elderly or in poor health and may become unable to act in response to a notice of lapse and termination. Requiring notice to another individual designated by the applicant will help to avoid unintentional lapse of the funeral insurance.

NEW RULE XI requiring certain disclosures is necessary to protect the public by adequately informing prospective purchasers about the funeral insurance including

payment of the death benefit, whether the cumulative premium payments may exceed the face amount of the funeral insurance policy or certificate, possible Medicaid reimbursement, and the relationship between the funeral insurance and preneed funeral arrangement and the effect of changes in one on the other.

Disclosure that a commission is paid and the relationship among the soliciting producer, the provider of the funeral goods and services, and any other person that will or may profit from the transaction is necessary to inform consumers about any conflicts of interest so that consumers may better be able to protect themselves.

Disclosures regarding possible limitations in funding a preneed funeral arrangement by purchasing funeral insurance are necessary to protect the public. Such disclosures include explanations of any entitlements or obligations should the funeral insurance proceeds differ from the amount of the preneed funeral arrangement, whether the prices of items in a preneed funeral arrangement are guaranteed or not, and any penalties or restrictions in regard to a preneed funeral arrangement. The disclosures will provide information needed by consumers to determine whether the funeral insurance purchase and preneed funeral arrangement is in his or her best interests.

Additionally, disclosure that other methods to pay for funeral goods and services or to fund a preneed funeral arrangement are available is necessary to protect the public. Informing consumers that other funding methods are available will help each consumer to decide whether purchasing funeral insurance is the best option for him or her.

Requiring a written acknowledgement by the consumer is necessary to protect the public and also the issuer of funeral insurance and the life insurance producer or the funeral insurance producer. A written acknowledgement demonstrates that the disclosures were made.

Requiring that a copy of the disclosures and the signed acknowledgment be provided again when the funeral insurance policy or certificate is delivered is necessary to ensure that the purchaser has this information when reviewing the policy or certificate during the free look period to assist in determining whether the funeral insurance purchase is in his or her best interests.

NEW RULE XII pertains to prohibitions. This rule is necessary to protect the public from exploitation and steering to a particular provider of funeral goods and services. Purchasers of funeral insurance are likely to be elderly or in poor health and therefore are a vulnerable group of consumers. Prohibitions against requiring a specific beneficiary designation or assignment would protect consumers.

Funeral insurance is a separate contract from a preneed funeral arrangement and may be purchased without making or entering a preneed funeral arrangement. Further, a preneed funeral arrangement can be funded by methods other than the purchase of funeral insurance. This rule is necessary to protect the public from

steering and exploitation by not allowing the sale of funeral insurance to be conditioned on the making or entering of a preneed funeral contract.

Funeral insurance is a type of life insurance under 33-20-1501, MCA, and subject to the prohibition against inducements in the sale of life insurance at 33-18-208, MCA. This rule is necessary to provide specific guidance to specialized funeral insurance producers, who will also be funeral directors, morticians, mortuaries, or undertakers and may also be entering a preneed funeral arrangement funded by the funeral insurance, and insureds that discounts from the current price of funeral goods and services may not be offered as an inducement to purchase funeral insurance.

4. 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 Jennifer L. Massman, Staff Attorney, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail jmassman@mt.gov, and must be received no later than 5:00 p.m., December 7, 2007.

5. Jennifer L. Massman, Staff Attorney of the State Auditor's Office and Commissioner of Insurance, has been designated to preside over and conduct this hearing.

6. The department maintains a list of concerned 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 for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601, or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on September 19, 2007.

/s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

/s/ Janice S. VanRiper
Janice S. VanRiper
Deputy Insurance Commissioner
State Auditor/Commissioner of Insurance

Certified to the Secretary of State October 29, 2007

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.99.401, 8.99.404, 8.99.501, 8.99.502, 8.99.504, 8.99.505, 8.99.509, and 8.99.511 pertaining to microbusinesses	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 29, 2007, at 1:00 p.m, the Department of Commerce will hold a public hearing in Room 226 at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Quinn Ness, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2758; TDD (406) 841-2702; fax (406) 841-2731; or e-mail quness@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.99.401 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) remains the same but is renumbered (20).

(1) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

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

~~(3)~~ (17) "Microbusiness" means a legal for profit or nonprofit Montana business with fewer than ten full-time equivalent employees and annual gross revenues of less than ~~$500,000~~ $1,000,000.

~~(4)~~ (18) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state of Montana to provide management training, technical assistance, and access to capital for the startup or expansion of microbusinesses. Microbusiness development corporations are certified by the department to provide management training, technical assistance, and loans to microbusinesses, as provided in 17-6-408, MCA. Microbusiness development corporations may apply for and, if approved by the department, be awarded a development loan for establishing a revolving loan fund from which loans are made directly by the certified microbusiness development corporation to

microbusinesses, or loans made directly by banks to qualified microbusinesses are guaranteed by the microbusiness development corporation.

(5) remains the same but is renumbered (16).

(5) "Deposit account" means a demand, checking, time, savings, or passbook account maintained with a federally insured bank.

(6) remains the same but is renumbered (21).

(7) "Development loan funds" means the cash proceeds of a development loan and the portion of the revolving loan fund directly provided by the development loan.

~~(7)~~ (8) "Direct loan program" means a program in which ~~makes direct loans to microbusinesses.~~ a certified MBDC uses development loan funds for establishing a revolving loan fund from which loans are made directly by the certified MBDC to microbusinesses under the provisions of 17-6-401, MCA, et seq.

~~(8)~~ (14) "Loan guarantee program" means a program ~~with development loan funds on deposit with a lending institution as guarantee against loss for loans which that institution makes directly to microbusinesses which have been screened, trained and/or counseled and qualified by the MBDC~~ in which a certified MBDC uses development loan funds for establishing a revolving loan fund from which loans made directly by banks to qualified microbusinesses are guaranteed under the provisions of 17-6-401, MCA, et seq.

(9) remains the same but is renumbered (2).

(9) "Federally insured bank" means a bank that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

~~(10)~~ (6) "Development loan" means money loaned to a certified MBDC by the department for the purpose of ~~making microbusiness loans~~ establishing a revolving loan fund from which loans are made directly to microbusinesses, or loans made directly by banks to qualified microbusinesses are guaranteed under the provisions of 17-6-401, MCA, et seq.

(11) remains the same but is renumbered (10).

(11) "Funded loan loss reserve" means cash reserved for the purpose of self-insuring the MBDC for the cost of loan losses. The funded loan loss reserve shall only be used for covering the cost of loan losses when a loan is charged off. After a loan is charged off, all loan funds recovered by the MBDC shall be credited and deposited to the funded loan loss reserve and revolving loan fund bank account. The funded loan loss reserve (cash) is held in the revolving loan fund bank account and is not available for lending to microbusinesses or for payment of revolving loan fund operating expenses. Funded loan loss reserve cash may be generated from revolving loan fund income.

(12) remains the same but is renumbered (29).

(12) "Investment bank account" means the deposit account in which department development loan funds, MBDC matching loan funds, and funded loan loss reserve funds may be deposited or transferred to, from the revolving loan fund bank account, for the sole purpose of generating investment income on idle revolving loan fund assets. The investment bank account is a time deposit account maintained with a federally insured bank.

(13) remains the same but is renumbered (28).

(14) remains the same but is renumbered (22).

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

~~(16)~~ (15) "Management training" means business-related training in a group setting~~.~~ performed for the benefit of microbusinesses and their principals.

~~(17)~~ (27) "Technical assistance" means business-related consultation in a one-to-one setting~~.~~ performed for the benefit of microbusinesses and their principals.

(18) remains the same but is renumbered (13).

(19) remains the same but is renumbered (26).

(19) "Principals" means members, officers, directors, and other individuals directly involved in the operation and management (including setting policy) of a legal entity.

(23) "Revolving loan fund" means all assets obtained through or related to a department development loan and MBDC matching loan funds that are recorded by the MBDC in a separate accounting ledger and which are accounted for along with related liabilities, revenues, and expenses, separate from the MBDC's other assets and financial activities.

(24) "Revolving loan fund bank account" means the deposit account in which revolving loan fund assets that are obtained through or related to a department development loan, MBDC matching loan funds, and the income earned or derived from the operation of the revolving loan fund are deposited by the MBDC.

(25) "Revolving loan fund income" means the proceeds from interest, fees, and any other income earned or derived from the operation of the revolving loan fund.

AUTH: 17-6-406, MCA
IMP: 17-6-406, 17-6-408, MCA

REASON: It is necessary for the department to amend ARM 8.99.401 in order to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-402, 17-6-403, 17-6-406, 17-6-407, and 17-6-408, MCA. In addition, the amendment to section (3) clarifies the eligibility of nonprofit businesses, as requested by the MBDCs. It should be noted that the amendments provide for the definition, description, and/or clarification of the amendments to ARM 8.99.504. Finally, the amendments clarify the requirements and procedures for securing department development loans as required by 17-6-406 and 17-6-407, MCA, and Article 9 of the Uniform Commercial Code (UCC).

The 1998 revisions to Article 9 of the UCC, now in effect in Montana (2001) and every state in the United States and the District of Columbia, brought within the scope of Article 9 for the first time, security interests in deposit accounts as original collateral. Security interests in deposit accounts as original collateral in commercial transactions are today being granted using the provisions of Article 9 as setting forth the rules governing the attachment, perfection, priority, and enforcement of the security interests.

Control of a deposit account under Article 9 is achieved in one of three ways. Two are very straightforward. Under one method, if the secured party is the depositary bank, the secured party automatically has control. Under a second method, if the

secured party is the depositary bank's customer with respect to the deposit account, the secured party has control. There is also a third method for a secured party to achieve control. Under that method, the debtor, the secured party, and the depositary bank must have "agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing the disposition of the funds in the deposit account without further consent of the debtor". Accordingly, when the secured party is not the depositary bank and it is not desirable or practical for the secured party to become the bank's customer with respect to the deposit account, the secured party must, to have control over the deposit account, obtain a tripartite agreement in a signed writing or other authenticated record that the depositary bank will follow the secured party's instructions directing the disposition of the funds in the deposit account without the debtor's further consent. This tripartite agreement is commonly referred to as a "deposit account control agreement". Therefore, the most practical method for the department to perfect its lien as directed by 17-6-407, MCA, and Article 9 of the UCC is for the department to require revolving loan fund and investment deposit accounts and corresponding account control agreements.

Therefore, there is reasonable necessity to amend ARM 8.99.401 to clarify and implement the requirements, processes, and procedures for establishing and maintaining the required deposit accounts and corresponding account control agreements to perfect the department's lien as directed by 17-6-406 and 17-6-407, MCA, and Article 9 of the UCC.

8.99.404 CERTIFICATION OF MICROBUSINESS DEVELOPMENT CORPORATIONS

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

(g) Evidence of sufficient operating income~~.~~ generated from the proposed revolving loan fund and/or provided from other income sources of the applicant to ensure the successful operation and management of the revolving loan fund.

(h) through (4) remain the same.

AUTH: 17-6-406, MCA
IMP: 17-6-408, MCA

REASON: It is necessary for the department to amend ARM 8.99.404 in order to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406, 17-6-407, and 17-6-408, MCA.

8.99.501 DEVELOPMENT LOAN - CRITERIA (1) The criteria used by the department to make development loans to a certified MBDC will include the criteria required for certification as ~~an~~ a MBDC as set forth in ARM 8.99.404 plus the following additional requirements:

(a) legally binding commitment(s) for MBDC operating income other than earned income from the revolving loan fund; and

(b) legally binding commitment(s) for MBDC matching loan funds.

(2) remains the same.

(3) The department will consider the following in determining the amount of a development loan awarded to a MBDC:

(a) financial stability and sources and sufficiency of operating income generated from the proposed revolving loan fund and/or provided from other income sources of the MBDC;

(b) remains the same.

(c) expertise and, where applicable, performance of the MBDC in the management of a revolving loan fund; ~~and~~

(d) geographic and rural-to-urban balance in distribution of program funds~~.~~;

(e) the amount of nondepartment derived funds contributed to the revolving loan fund by the certified MBDC in addition to the required matching loan funds; and

(f) the feasibility of the financial projections for the revolving loan fund provided by the certified MBDC, taking into account market size and activity, historic loan volume, and financial performance of the certified MBDC.

(4) A development loan will not be extended to a certified MBDC unless:

(a) there is adequate assurance of repayment of the development loan based on the fiscal and managerial capabilities of the certified MBDC;

(b) the amount of the development loan together with the required MBDC matching loan funds and other funds available is adequate to achieve the purposes for which the development loan is made; and

(c) any delinquent debt to the federal government or the state of Montana by the MBDC is satisfied. Development loan funds may not be used to satisfy the debt.

AUTH: 17-6-406, MCA
IMP: 17-6-406, 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.501 in order to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406, 17-6-407, and 17-6-408, MCA.

In addition, new subsection (3)(e) would provide the MBDCs with the opportunity to provide more matching funds than what is required under 17-6-407, MCA, and allows the department to consider this in determining the amount of a development loan awarded to a MBDC.

8.99.502 DEVELOPMENT LOAN - APPLICATION PROCESS (1) The MBDC may apply for a development loan by submitting an application to the department on a form provided by the department. The application shall contain:

(a) a description of all outstanding ~~obligations~~ notes payable and long term debt of the MBDC including copies of all ~~notes and contracts payable and a complete description of all collateral pledged as security~~ loan agreements, promissory notes, and security agreements for said notes and ~~contracts~~ long term debts;

(b) through (3) remain the same.

(4) Certified MBDCs that have an outstanding development loan principal balance may apply for additional development loan funds provided that:

(a) at least 80 percent of the certified MBDC's total outstanding principal balance of the development loan is currently loaned out to eligible microbusinesses;

(b) the outstanding microbusiness loan receivables of the certified MBDC's revolving loan fund are generally sound; and

(c) the MBDC is in compliance with all applicable statutes, administrative rules, and loan agreements with the department.

AUTH: 17-6-406, MCA
IMP: 17-6-406, 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.502 in order to clarify the development loan application process and requirements and to maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406 and 17-6-407, MCA.

8.99.504 DEVELOPMENT LOAN - TERMS (1) Development loans shall be renewable at intervals of no more than four years. If the department requires or agrees to restructure a development loan to expedite the repayment of the loan, the term of the restructured loan shall provide for the repayment of the restructured loan in an efficient and prudent manner and shall not exceed eight years.

(2) Development loans shall require, at a minimum, the payment of interest on a quarterly basis.

~~(2)~~ (3) The loan agreement shall require that the MBDC provide ~~classroom~~ management training~~,~~ and pre~~-~~loan and post~~-~~loan ~~consulting and~~ technical assistance as described in the MBDCs application for certification.

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

~~(4)~~ (5) The loan agreement will require fidelity bonding of all MBDC employees having access to development loan funds~~.~~ as follows:

(a) a fidelity blanket position bond insuring the MBDC in an amount equal to or greater than the total outstanding indebtedness of the MBDC that has been issued by the department to the MBDC under the authority of the Microbusiness Development Act is acceptable to the department in meeting the fidelity bond requirement. "Fidelity blanket position bond" refers to a fidelity bond where blanket coverage is granted for all employees in the regular service of the MBDC during the term of the bond. The bond is issued for a fixed sum and each employee of the MBDC is covered up to the full amount of the bond.

(6) The initial department development loan to a certified MBDC shall not exceed the maximum amount the certified MBDC can reasonably be expected to lend to eligible microbusinesses, in an effective and sound manner, within two years after loan closing. After two years from the closing of the initial development loan, at least 70 percent of the total principal balance of the certified MBDC's development loan shall be loaned out to eligible microbusinesses. The loan out rate shall be calculated as follows: total revolving loan fund microbusiness loan receivables multiplied by .86, divided by the total development loan principal balance outstanding.

(7) On a quarterly basis, all MBDCs shall report, in writing, the total revolving loan fund microbusiness loan receivables and the resulting loan out rate to the

department. If the reported loan out rate falls below the 70 percent loan out rate standard for a 12 month period, the MBDC shall return the excess funds to the department by the fifth day following the end of the next calendar year quarter. The dollar amount of development loan funds equivalent to the difference between the actual percentage of development loan funds loaned out and the 70 percent loan out rate standard is referred to as "excess funds". If excess funds are returned by the MBDC to the department, a certified MBDC may apply for additional development loan funds in the future, provided that the certified MBDC meets the requirements established in ARM 8.99.502.

(8) All development loan funds received by a MBDC and all MBDC matching loan funds are assets of the revolving loan fund. For as long as any part of a development loan to a MBDC remains unpaid, the MBDC shall maintain the revolving loan fund. The MBDC may transfer additional assets into the revolving loan fund. The receivables created by making loans to eligible microbusinesses, the MBDC's security interest in collateral pledged by microbusinesses, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the revolving loan fund are assets of the revolving loan fund.

(9) The portion of the revolving loan fund that consists of development loan funds shall only be used for making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that consists of MBDC matching loan funds shall only be used for securing the development loan and/or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that includes revolving loan fund income may be used for development loan debt service, reasonable revolving loan fund administrative costs approved by the department, funded loan loss reserves, or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq.

(10) The MBDC shall submit a budget to the department which forecasts revolving loan fund income and expenses. The amount removed from the revolving loan fund shall not exceed the amount in the MBDC's budget that is approved by the department. Revolving loan fund income may be used to create and maintain a funded loan loss reserve. The MBDC shall create and maintain a funded loan loss reserve that is equal to six percent of the total outstanding microbusiness loan receivables. The funded loan loss reserve may be accumulated over the initial two years of the development loan. The funded loan loss reserve shall be maintained for as long as any part of a development loan to a MBDC remains unpaid. The department in consideration of, but not limited to, MBDC audits and loan loss and delinquency records may require additional revolving loan fund income be used for increasing the funded loan loss reserve.

(11) The MBDCs shall follow generally accepted accounting principles (GAAP) to identify and record revolving loan fund assets and to prepare, present, and report revolving loan fund financial statements (balance sheet and income statement) as follows:

(a) the MBDC shall maintain a separate accounting ledger for the revolving loan fund;

(b) each MBDC shall provide the department with a copy of an annual organization wide audit that is prepared by an independent certified public accountant that is licensed by the state of Montana; and

(c) the department shall procure the services and direct the activities of an independent certified public accountant that is licensed by the state of Montana to prepare an annual audit of each MBDC, which includes the verification of each MBDC's compliance with all the requirements specific to the microbusiness finance program.

(12) All department development loan funds, MBDC matching loan funds, and all proceeds from interest, fees, and any other income earned or derived from the operation of the revolving loan fund shall be deposited in the revolving loan fund bank account. For as long as any part of a development loan to a MBDC remains unpaid, the MBDC shall maintain the revolving loan fund bank account as follows:

(a) the revolving loan fund bank account is a separate demand deposit account in a federally insured bank. All moneys deposited in such bank account shall be money of the revolving loan fund. No other moneys of the MBDC shall be commingled with such money;

(b) all development loan funds, MBDC matching loan funds, and all revolving loan fund income shall be deposited into the revolving loan fund bank account;

(c) the MBDC may transfer additional cash into the revolving loan fund bank account;

(d) loans to eligible microbusinesses are advanced from the revolving loan fund bank account; and

(e) all revolving loan fund expenses that are approved by the department are paid from the revolving loan fund bank account.

(13) Department development loan funds, MBDC matching loan funds, and funded loan loss reserve funds may be transferred to the investment bank account from the revolving loan fund bank account. The investment bank account is a separate time deposit account, which pays interest for a fixed term not to exceed one year, in a federally insured bank. All moneys deposited in such bank account shall be money of the revolving loan fund. No other moneys of the MBDC shall be commingled with such money. The investment bank account does not include accounts that are evidenced by a certificated instrument. All interest earnings generated from the investment account shall be deposited in the investment account. All withdrawals or transfers from the investment bank account shall be deposited in or transferred to the revolving loan fund bank account.

(14) Security for all development loans to MBDCs shall be sufficient to ensure repayment of the development loan. The MBDC's operating income, financial condition, and management ability will also be considered. The certified MBDC shall execute a promissory note, development loan agreement, and security agreement with the department. Security for all development loans to MBDCs shall include, but shall not be limited to, a pledge by the MBDC of all assets now in or hereafter placed in the revolving loan fund. The MBDC shall covenant that, in the event the MBDC's financial condition deteriorates or the MBDC takes action detrimental to prudent revolving loan fund operation or fails to take action required of

a prudent lender, as determined by the department, the MBDC shall provide additional security, execute any additional documents, and undertake any reasonable acts the department may request to protect the department's interest. In addition to normal security documents, a first lien interest in the MBDC's revolving loan fund bank account and investment bank account shall be accomplished by control agreements satisfactory to the department. The control agreement does not have to require department signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the bank account to the department and subordinate any liens it may have against the MBDC bank account.

AUTH: 17-6-406, MCA
IMP: 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.504 in order to clarify the development loan terms and the requirements and procedures for accounting, auditing, and securing department development loans as required by 17-6-406 and 17-6-407, MCA, and Article 9 of the UCC and to maintain consistency with the intent of the Microbusiness Development Act. Finally, it should be noted that the MBDCs requested the amendment which provides for the use of a "fidelity blanket position bond" in satisfying the program's fidelity bond requirements.

8.99.505 DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS

(1) MBDC ~~M~~matching loan funds, in the ratio of at least $1 from the MBDC for each $6 of development loan funds provided by the department, must be provided in cash.

(2) The ~~development loan agreement between the department and a MBDC must specify account(s), or type of account(s), into which~~ full amount of the MBDC's cash matching funds must be deposited in the revolving loan fund bank account before the development loan proceeds are deposited by the department in revolving loan fund bank account, ~~may be disbursed to the MBDC,~~ except that, when the MBDC presents a legally binding commitment for cash matching funds from a federal agency contingent only upon disbursement of the development loan, the development loan may be disbursed prior to deposit of that committed federal portion of the cash matching funds.

(3) remains the same

(4) All development loan and MBDC matching loan funds not invested in microbusiness loans must be deposited and maintained in~~:~~ the revolving loan fund bank account or the investment bank account at all times.

~~(a) direct obligations of, or obligations guaranteed as to principal and interest by, the United States which mature within 15 months from the date of investment; or~~

~~(b) repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by the United States. The securities must be maintained in a custodial account at a federally insured institution; or~~

~~(c) certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or~~

~~(d) deposit account in a federally insured institution; or~~

~~(e) a checking account in a federally insured institution; or~~

~~(f) a reasonable petty cash fund.~~

~~(g) deposit of funds in excess of the insured amount is allowed only if the institution meets the definition of "well capitalized" in accordance with the regulations of the federal deposit insurance corporation.~~

~~(5) All and all receivables held by MBDCs pursuant to the authority of the Microbusiness Development Act in cash, cash deposits or investments other than microbusiness loans or guarantee funds must be pledged as collateral to secure the development loan.~~

~~(6) A MBDC must provide the department with senior security interest in the full amount of all microbusiness loans made from development loan and matching funds.~~

~~(7)~~ (5) ~~In the case that proceeds from a development loan are used to establish a revolving loan fund, from which loans are made directly to microbusinesses,~~ MBDC matching loan funds must be deposited, invested, and lent together with the development loan proceeds, in the ratio of at least $1 from the MBDC for each $6 of development loan funds provided by the department, and must be used for only those purposes for which the development loan fund proceeds are used, as defined in 17-6-407~~(5)~~, MCA.

~~(8) In the case that an MBDC establishes both a revolving loan fund and a guarantee fund, matching loan funds must be allocated between the guarantee fund and the revolving loan fund in the same proportion that development loan proceeds are allocated between the guarantee fund and the revolving loan fund.~~

~~(9)~~ (6) ~~In the case that proceeds from a~~ All development loan proceeds shall be ~~are~~ used ~~in whole or in part~~ to establish a ~~guarantee~~ revolving loan fund~~, with which the MBDC guarantees loans made by financial institutions to microbusinesses, the following additional requirements apply:~~ from which loans made directly by the MBDC to microbusinesses and/or loans made directly by banks to qualified microbusinesses are guaranteed.

~~(a) t~~The guarantee agreement between the ~~financial institution~~ bank and the MBDC must be approved by the department~~ prior to the placement of development loan proceeds in a guarantee fund;~~

~~(b) the MBDC must provide the department with a first lien against receivables of the MBDC generated by assignment by the financial institution to the MBDC, or purchase from the financial institution by the MBDC, of microbusiness loans;~~

~~(c) the MBDC must provide the department with no less than a second lien against the guarantee fund established with development loan proceeds.~~

AUTH: 17-6-406, MCA
IMP: 17-6-406, MCA

REASON: It is necessary for the department to amend ARM 8.99.505 in order to clarify the requirements and processes relative to the statutorily required MBDC matching loan funds and to maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406 and 17-6-407, MCA. In addition, the

sections of ARM 8.99.505 that conflicted with the proposed amendments to ARM 8.99.401 and 8.99.504 are stricken.

8.99.509 ADMINISTRATIVE ACCOUNT ~~(1) The microbusiness administrative account into which interest from development loans and other program income is deposited may accumulate an operating reserve equivalent to 12 months of program administrative expenses.~~

~~(2)~~ (1) Money in the department's administrative account may be transferred to the development loan account or be used to pay the costs of the program, as per 17-6-407, MCA.

AUTH: 17-6-406, MCA
IMP: 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.509 in order to clarify the requirements and processes relative to the department's administrative account. In addition, the MBDCs have strongly encouraged the department to maintain a relatively consistent development loan interest rate. This amendment will allow the department to increase its budget time horizon to support this request.

8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) Microbusiness loan applicants will be required to certify to the MBDCs, that the applicants are eligible borrowers as defined in 17-6-403 and 17-6-407~~(5) and (6)~~, MCA.

(2) remains the same.

(3) The ~~dollar value of all microbusiness loans having repayment terms of more than five years may not exceed 15% of the total dollar value of all microbusiness loans made by an MBDC.~~ repayment term of any individual microbusiness loan receivable in the revolving loan fund shall not exceed eight years.

(4) remains the same.

(5) A single loan to a microbusiness shall not exceed $100,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one principal of the microbusiness holds more than a 20 percent equity share shall not exceed $100,000.

(6) Development loan funds may not be used to refinance a delinquent or nonperforming loan or a portion of a delinquent or nonperforming loan held by a bank, financing company, or the MBDC. Any delinquent debt by the microbusiness loan applicant or any of its principals shall cause the applicant to be ineligible to receive a loan from development loan funds. Development loan funds may not be used to satisfy any delinquency.

(7) Eligible uses of the cash proceeds of a microbusiness loan by a microbusiness include:

(a) business and industrial acquisitions;

(b) business construction, conversion, enlargement, repair, modernization, or development;

(c) purchase of equipment, leasehold improvements, machinery, or supplies; and

(d) start-up operating costs and working capital.

AUTH: 17-6-406, MCA
IMP: 17-6-406, 17-6-407, MCA

REASON: It is necessary for the department to amend ARM 8.99.511 in order to clarify the relevant statutes and the requirements and processes relative to the eligibility and the terms and conditions of microbusiness loans. It should be noted that the MBDCs have strongly encouraged the department to amend ARM 8.99.511 to allow for longer microbusiness loan repayment terms. The amendment is also necessary to clarify and maintain consistency with the intent of the Microbusiness Development Act and the language of 17-6-406 and 17-6-407, MCA.

4. 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: Quinn Ness, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2758; fax (406) 841-2731; or e-mail qness@mt.gov, and must be received no later than 5:00 p.m., December 7, 2007.

5. Marty Tuttle, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State October 29, 2007.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.502, 17.56.507, 17.56.604, 17.56.607, and 17.56.608, and the adoption of New Rule I pertaining to reporting and numbering petroleum releases	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On November 28, 2007, at 10:30 a.m., a public hearing will be held in Room 112, 1100 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department 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 no later than 5:00 p.m., November 19, 2007, to advise us of the nature of the accommodation that you need. Please contact Mike Trombetta, Bureau Chief, Hazardous Waste Site Cleanup Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 841-5045; fax (406) 841-5050; or e-mail mtrombetta@mt.gov.

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

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the Remediation Division of the department and the implementing agency or to the 24-hour Disaster and Emergency Services officer available at telephone number (406) 841-3911 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (i) remain the same.

(j) analytical results from ~~contaminated~~ soil~~s~~ samples that exceed ~~50~~ 200 milligrams per kilogram for extractable petroleum hydrocarbons (EPH).

(2) remains the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The amendment at (1)(j) will increase the soil EPH level triggering the requirement to report a suspect release from greater than 50 milligrams per kilogram to greater than 200 milligrams per kilogram. This amendment is necessary

to incorporate revisions to Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) adopted at ARM 17.56.507. As explained in the reason for the amendment to ARM 17.56.507, the updated EPH level reflects new Risk Based Screening Levels (RBSLs) calculated to address unacceptable risk, while not requiring further corrective action that results in little increased protection to human health and the environment. RBCA adopts default Risk-based Screening Levels (RBSLs) to determine if a release has occurred at a site. These default RBSLs apply to the entire soil column and always apply in the absence of adequate information at a potential release site. Upon the effective date of these rules, the 200 ppm screening level for soil EPH compounds will be used to determine whether a suspect release is present. Soil samples exceeding the 200 ppm EPH screening level must be fractionated to determine whether an RBSL is exceeded.

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains the same.

(b) Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) (October ~~2003~~ 2007);

(c) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) is a document published by the Montana Department of Environmental Quality, Remediation Division. Risk-based Screening Levels (RBSLs) listed in RBCA are used to evaluate whether concentrations of listed contaminants pose an unacceptable risk to public health or the environment given generic assumptions about the contaminated media and exposure scenarios. The levels in RBCA have been recently revised.

The 2007 revisions to RBCA incorporate revisions to the RBSLs contained in RBCA (October 2003 edition). The proposed revisions to RBCA fall into six categories: (1) updates to the application of volatilization factors. DEQ is now utilizing the same approach as EPA Region 9 for its preliminary remediation goals (PRGs). Volatilization factors are applied to those chemicals having a Henry's Law constant greater than 10^{-5} (atm-m^3/mol) and a molecular weight less than 200 g/mole; (2) updates to the calculation of dermal factors related to soil exposure; (3) updates of toxicity factors for some of the petroleum fractions as well as toluene; (4) minor corrections and changes to the direct contact spreadsheets based upon current guidance and policy; (5) updates related to Department Circular DEQ-7 including recalculation of RBSLs based on the risk of soil contaminants leaching to ground water; and (6) addition of RBSLs for lead scavengers ethylene dibromide (EDB) and 1,2 dichloroethane (1,2 DCA). Lead scavengers were added to leaded gasoline to help volatilize tetraethyl lead to prevent it from fouling internal combustion engines. EDB and 1,2 DCA may still be found in leaded aviation gasolines. EDB and 1,2 DCA are carcinogens and are persistent in the environment.

These revisions to RBCA require cleanup of petroleum releases to RBSLs which address unacceptable risks to human health and the environment. Because current information suggests that higher RBSLs for some compounds are still protective of human health and the environment, many of the revised RBSLs are less conservative than levels adopted in the October 2003 RBCA, and will result in resolution of some petroleum releases where further expenditure would result in little increased protection for public health, safety, or the environment.

This amendment is necessary to incorporate the updated levels so that owners and operators of petroleum storage tanks and the department can properly evaluate the potential risk a release poses to public health or the environment without conducting a complete site-specific risk assessment. Additionally, RBCA is updated regularly as new information becomes available. Once the updated version of RBCA goes into effect, the prior versions are not available to the public. It is necessary to adopt the latest version of RBCA to avoid confusion over the applicable screening levels that trigger release reporting.

Copies of RBCA, with the proposed revisions may be obtained by contacting Mike Trombetta, Hazardous Waste Site Cleanup Bureau, Bureau Chief, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, (406) 841-5000; or at http://deq.mt.gov/rem/hwc/rbca/LinksTOC.asp.

17.56.604 REMEDIAL INVESTIGATION (1) and (2) remain the same.

(3) A remedial investigation generally is an expanded site assessment more detailed in scope than the initial response and abatement measures under ARM 17.56.602, which must define the nature, extent, and magnitude of contamination and identify threats to public health, welfare, and to the environment. A remedial investigation work plan must be submitted to the department prior to implementation by the owners and operators. The department shall submit a copy of a work plan from any owner or operator who is or may be seeking reimbursement to the appropriate local government office with jurisdiction over corrective action of the release. The office shall respond with any comments within 15 days of receipt of the plan and the department shall approve or disapprove the plan within 15 days of receipt from the local government. The following information is required to complete the remedial investigation:

(a) through (e) remain the same.

(f) technical conclusions, which must be stated with reasonable professional certainty and under the standard of care applicable, must include at least:

(i) remains the same.

(ii) current extent of and potential for the release (determined with field or laboratory analytical detection equipment) in or through the following media:

(A) remains the same.

(B) free product; ~~aerial~~ areal extent;

(C) through (4) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The amendment to (3)(f)(ii)(B) is necessary to correct the intended meaning of the rule by replacing the word "aerial" with the word "areal." This amendment is not substantive, but will correct the mistaken use of the word "aerial," which did not make sense in the context of the rule.

17.56.607 RELEASE CATEGORIZATION (1) through (3) remain the same.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment. The following requirements must also be met before a release may be categorized as resolved:

(a) remains the same.

(b) risks to human health, safety, and the environment from residual contamination at the site have been ~~elevated~~ evaluated using methods listed in (4)(b)(i) or (ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed 1×10^{-5}, to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:

(i) through (9)(g) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The amendment to (4)(b) is necessary to correct the intended meaning of the rule by replacing the word "elevated" with the word "evaluated." This amendment is not substantive, but will correct the mistaken use of the word "elevated," which did not make sense in the context of the rule.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular ~~WQB~~ DEQ-7, "Montana Numeric Water Quality Standards" (~~January 2004~~ February 2006);

(b) remains the same.

(c) Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) (October ~~2003~~ 2007); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (February 2006), is a document published by the Montana Department of Environmental Quality, Planning, Prevention, and Assistance Division, Water Quality Standards Section and adopted by the Board of Environmental Review. Department Circular DEQ-7 contains numeric water quality standards and trigger values for

contaminant levels in surface and ground waters. The standards and trigger values contained in Department Circular DEQ-7 are designed to protect the current and future use of surface and ground waters in the state of Montana. Department Circular DEQ-7 is used by DEQ as a regulatory standard for cleanup levels of listed contaminants in state waters.

Department Circular DEQ-7 is updated regularly as new information becomes available. It is necessary to amend ARM 17.56.608 to adopt the latest version of Department Circular DEQ-7 because a petroleum storage tank release cannot be resolved until contaminant concentrations in impacted waters are reduced to levels below numeric standards listed in Department Circular DEQ-7.

Seventy-three water quality standards were revised in the February 2006 update to Department Circular DEQ-7. Most significant for remediation of petroleum release sites are revised standards for Polycyclic Aromatic Hydrocarbons (PAHs) including: Benz[a]anthracene; Benzo[b]fluoranthene; Benzo[k]fluoranthene; Chrysene; Dibenz[a,h]anthracene; and Indeno[1,2,3-cd]pryrene.

The revisions to Department Circular DEQ-7, reflected in the October 2007 RBCA, required recalculation of Risk-based Screening Levels (RBSLs) in Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA). The revised RBSLs are based on the risk of soil contaminants leaching to ground water.

The adoption of the revised Department Circular DEQ-7 is necessary to ensure that water quality standards relied upon for cleanup of petroleum releases are consistent with the standards adopted by the board. It is necessary to adopt the latest version of Department Circular DEQ-7 so owners and operators can identify accurate risks posed from petroleum storage tank releases. Once the updated version of Department Circular DEQ-7 goes into effect, the prior versions are not available to the public. It is necessary to adopt the latest version of Department Circular DEQ-7 to avoid confusion over the applicable cleanup standards for petroleum releases.

The revisions to RBCA adopted in this rule and the reasons for them are summarized in the reason for ARM 17.56.507.

4. The proposed new rule provides as follows:

NEW RULE I NUMBERING PETROLEUM RELEASES (1) The department shall assign each confirmed petroleum release from a petroleum storage tank a unique identification number. Except as provided in (2), from the date of discovery of a confirmed release of petroleum from a petroleum storage tank at a facility, all contamination from petroleum storage tanks subsequently discovered through any investigative or corrective action in response to the previously confirmed and numbered release pursuant to subchapter 5 or 6, is considered "one release" and part of the previously confirmed and numbered release.

(2) Under the following circumstances the department shall confirm a separate release and assign another release identification number to petroleum contamination from a petroleum storage tank at a facility that has a previously confirmed and numbered release:

(a) when a separate release from a petroleum storage tank is discovered at a facility and, based on substantial evidence, the department finds the release began

after the department categorized all earlier confirmed releases at the facility as resolved in accordance with ARM 17.56.607(4);

(b) when, based on substantial evidence, the department finds that there is a separate release of petroleum from a petroleum storage tank at a facility that began after any previously confirmed and numbered release was discovered; or

(c) when additional contamination from a petroleum storage tank is discovered and, based on substantial evidence, the department finds that the contamination originated from a petroleum storage tank or tanks at a different facility than the facility where the previously confirmed and numbered release occurred.

(3) For the purposes of this rule only, "facility" means any one or a combination of petroleum storage tanks that are located on contiguous property and owned and operated as a single business by the same person(s), at the time a confirmed release is discovered. A facility does not include petroleum storage tanks used in different businesses, or owned by different persons, and connected through permanent or temporary piping used to transfer petroleum products from one business to another at the time a confirmed release was discovered.

(4) "Petroleum storage tank" has the meaning provided in 75-11-302, MCA.

(5) The department may rescind a release number if the department determines that the release should not have been confirmed. This determination must be based on substantial evidence upon which the department may conclude that the release did not occur, that the contamination did not exceed standards cited in ARM 17.56.506, or that the contamination does not meet the criteria set forth in (2) and should have been attributed to an earlier confirmed release that has been assigned a release number.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-308, 75-11-309, 75-11-505, MCA

REASON: New rule I describes the way that the department assigns unique release identification numbers to petroleum releases. The methodology in this rule adopts, in department administrative rules, the informal guidelines for release identification that the department has operated under since 1989. The department determined that it was necessary to formalize these guidelines in order to ensure their consistent application and to give the regulated community notice of the department's process for determining and identifying petroleum releases. Except as provided in (2), under (1), all petroleum contamination from petroleum storage tanks at a facility found during investigation and cleanup of a confirmed and numbered release is considered part of the previously confirmed and numbered release.

Section (2) clarifies when the department may assign a new release number to a petroleum release from petroleum storage tanks at a facility with an earlier, confirmed release. Under (2), an additional release number may be assigned at a facility with a previously confirmed release in the limited circumstances where the new release occurred after the earlier release has been resolved, when a new release from petroleum storage tanks begins after the date the active release was discovered, or when petroleum contamination is found to originate from a different facility. Under this rule, historic contamination found at a facility where a release has previously been confirmed will not be considered a new or separate release. All

historic contamination discovered at a facility during investigative and corrective actions to address a confirmed release are attributed to, and incorporated within, the previously confirmed release. This is consistent with insurance industry practice to consider all contamination discovered during a site investigation to be "one occurrence" or "one release."

New rule I defines the terms "facility," at (3), and "petroleum storage tank," at (4). It is necessary to define these terms in the rule to assist the department and the public in interpreting and applying the proposed rule.

Section (5) describes when the department may rescind a release number. The department determined it is necessary to formally adopt, in administrative rules, the process for rescinding release numbers in order to ensure consistent application and provide notice to the regulated community.

5. 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 Kirsten Bowers, Special Assistant Attorney General, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 841-5021; fax (406) 841-5050; or e-mail to kbowers@mt.gov, no later than December 6, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Kirsten Bowers, attorney, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

/s/ Richard H. Opper
RICHARD H. OPPER, Director

Certified to the Secretary of State, October 29, 2007.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.156.1306 professional conduct and standards of professional practice	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 10, 2007, the Board of Medical Examiners (board) proposes to amend the above-stated rule.

2. The Department of Labor and Industry (department) 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 Medical Examiners (board) no later than 5:00 p.m., on December 3, 2007, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdmed@mt.gov.

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

24.156.1306 PROFESSIONAL CONDUCT AND STANDARDS OF PROFESSIONAL PRACTICE (1) remains the same.

(2) A licensee who demonstrates appropriate education and experience may engage in the practice of diabetes education as defined and credentialed by the American Dietetic Association and the American Association of Diabetes Educators.

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

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-201, 37-25-301, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to acknowledge the practice of diabetes education. Diabetes educators are licensed nutritionists who have master's level advanced education in this field and have been credentialed by a national organization. While educating diabetic patients on the management of diabetes through diet and nutrition is an integral part of the practice of nutritionists, the board is amending this rule now in response to requests by Montana health care facilities for clarification regarding these credentialed licensees. The board is amending the implementation cites to accurately reflect all statutes implemented through this rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdmed@mt.gov, to be received no later than 5:00 p.m., December 7, 2007.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdmed@mt.gov. The comments must be received no later than December 7, 2007.

6. If the Board of Medical Examiners receives requests for a public hearing on the proposed amendment from either 10 percent 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 24 persons based on approximately 243 licensed nutritionists.

7. An electronic copy of this Notice is available through the department and Board of Medical Examiners site on the World Wide Web at www.medicalboard.mt.gov. The department strives to make the electronic copy of this 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Medical Examiners 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, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-

0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdmed@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

BOARD OF MEDICAL EXAMINERS
DR. ARTHUR FINK, DO, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 29, 2007

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.204.401 fees, 24.204.404 permit fees, 24.204.408 applications, and 24.204.511 examinations	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 29, 2007, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Radiologic Technologists (board) no later than 5:00 p.m., on November 21, 2007, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrts@mt.gov.

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

24.204.401 FEE SCHEDULE (1) Fees shall be transmitted by money order, ~~or~~ electronic payment, or check payable to the Board of Radiologic Technologists. The board assumes no responsibility for loss in transit of such remittances. All fees are nonrefundable.

(a) Application fee - radiologic technologist (includes ~~issuance of~~ temporary permit if requested) $60

(b) Original ~~certificate~~ license fee 30

(c) and (d) remain the same.

AUTH: 37-1-131, 37-1-134, 37-14-202, MCA
IMP: 37-1-134, 37-1-141, 37-14-305, 37-14-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule to facilitate the state of Montana's on-line renewal process, which allows for credit card and e-check processing. In the future, the board anticipates the use of a virtual cashier for credit card payments of application fees. The board is also amending this rule to simplify grammar and change "certificate" to the proper term "license."

24.204.404 PERMIT FEES

(1) remains the same.
(2) State ~~C~~combined examination fee and reexamination fee 15
(3) Original ~~certificate~~ license fee 40
(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-134, 37-14-202, 37-14-306, MCA
IMP: 37-1-134, 37-1-141, 37-14-305, 37-14-306, MCA

REASON: The board is amending this rule to clarify that the combined examination is a state administered examination and for consistency among all references to the examination in board rule. It is also reasonably necessary to amend this rule to change "certificate" to the proper term "license."

24.204.408 RADIOLOGIC TECHNOLOGISTS APPLICATIONS

(1) Applications shall be made on printed forms provided by the department and signed by the applicant~~, with the signature acknowledged before a notary public~~.

(2) The application must be ~~typed or legibly written in ink~~ complete, accompanied by the appropriate fee(s), and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 14, MCA, and rules promulgated thereunder.

(3) through (5)(b) remain the same.

(c) original ~~certificate~~ license fee; and either:

(d) through (6) remain the same.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-302, 37-14-305, MCA

REASON: The department has determined and the board agrees that the requirement for applications to be notarized is not necessary. In anticipation of and to further facilitate the online submission of license applications, the board will no longer require the signature or content to be notarized on any application. The board is also amending this rule to change "certificate" to the proper term "license."

24.204.511 PERMIT EXAMINATIONS (1) remains the same.

(2) In addition to the ARRT limited scope core examination, ~~40-hour~~ 88-hour course graduates shall complete a module examination for selected anatomic regions in which the applicant desires to be permitted.

(a) and (b) remain the same.

(3) "State ~~C~~combined examination" as used in this rule means the examination consisting of abdomen (AB), gastrointestinal tract (GI) (postfluoroscopy films only), and hip and pelvis examinations.

(4) Applicants may review their state combined examination with administrative staff for the board at the board office or at an approved site designated by the board.

(5) A nonrefundable fee will be assessed for the combined examination. After failing the combined examination, the applicant will be required to submit another state combined examination retake fee.

(6) remains the same.

(7) Student permit applicants (having completed two semesters or its equivalent from a radiologic technology program accredited by a mechanism recognized by the ARRT) are only required to take the ARRT limited scope core examination. If student permit applicants ~~who~~ fail the ARRT limited scope core examination on two attempts they shall retake:

(a) through (c) remain the same.

(8) Temporary permit applicants (graduates of a radiologic technology program accredited by a mechanism recognized by the ARRT) who have failed the ARRT radiologic technologist examination ~~three~~ four times shall take:

(a) through (10) remain the same.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-1-131, 37-14-306, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that the combined examination is a state administered examination and for consistency among all references to the examination in board rule. The implementation cites are being amended to accurately reflect all statutes implemented through the rule.

The board is also amending this rule to be consistent with the American Registry of Radiologic Technologists (ARRT) examination guidelines and to clarify that graduates of the 88-hour course must complete a module examination for selected anatomic regions in which the applicant desires to be permitted. This amendment clarifies that the 48-hour course requirements comprised within each limited x-ray procedure, as identified in ARM 24.204.507(3)(a) through (g) are not included with the 40-hour fundamental course approved by the board. The reference in this rule was inadvertently omitted from MAR Notice No. 24-204-32 when other references were amended.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrts@mt.gov, and must be received no later than 5:00 p.m., December 7, 2007.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.radiology.mt.gov. The department strives to make the electronic copy of this 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

8. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RADIOLOGIC TECHNOLOGISTS
ANNE DELANEY, R.T., CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 29, 2007

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

In the matter of the amendment of ARM 37.80.101, 37.80.201, 37.80.205, 37.80.206, and the repeal of ARM 37.80.601, 37.80.602, 37.80.603, and 37.80.604 pertaining to the child care assistance program	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Interested Persons

1. On December 4, 2007, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Board of Investments Conference Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 26, 2007. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) This chapter pertains to payment for child care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990", as amended in 1996, and the "Personal Responsibility and Work Opportunity Reconciliation Act"~~,~~ of 1996. These rules also pertain to subsequent refunding of this program. In addition, this chapter's requirements for certification of legally unregistered providers under ARM 37.80.306 apply to all child care programs administered by the department where the department allows participation of legally unregistered providers.

(2) through (13)(a) remain the same.

(b) the Montana Child Care Manual in effect on ~~May 1, 2006~~ September 1, 2007. The Montana Child Care Manual, dated ~~May 1, 2006~~ September 1, 2007, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human

Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at ~~www.dphhs.mt.gov~~ www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (3)(e) remain the same.

(4) If a birth or adoptive parent of a child does not live with the child and is not paying child support under a child support order recognized by a Montana district court, the custodial parent must apply for and cooperate with Child Support Enforcement Services from the department's Child Support Enforcement Division. The department determines cooperation with Child Support Enforcement Division by maintaining an open case when a case can be established or by the parent providing all appropriate requested documentation to Child Support Enforcement Division for them to open a child support case. A custodial parent who fails without good cause to apply for such services and to cooperate with the Child Support Enforcement Division will be decertified for benefits under this chapter as of the date of such failure. Good cause is defined as specified in ARM 37.78.215.

(5) through (10)(b) remain the same.

(11) Any licensed or registered child care provider is not eligible for child care assistance while a child attends a public or private school, including kindergarten in any circumstance. The department will not pay for care while a child who is of legal school age attends a private or public school or kindergarten. The department will not pay for a child to be home schooled.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

(1) through (5) remain the same.

(6) The rate charged by a child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private pay parents for the same service~~,~~. ~~with the following exceptions for quality child care providers:~~

~~(a) Providers who qualify for a one star quality child care rating will receive 110% of the respective rate and providers who qualify for a two star rating will receive 115% of the respective rate. The criteria to qualify for quality incentive adjustments are set forth in section 7-1 of the Child Care Manual.~~

(7) and (8) remain the same.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, MCA

37.80.206 CERTIFIED ENROLLMENT (1) through (3)(c) remain the same.

(4) Child care facilities must notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days. If the provider fails to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days, the department is not required to pay for any care from the date the child last attended the facility.

AUTH: 52-2-704, MCA
IMP: 52-2-704, MCA

4. The rules as proposed to be repealed provide as follows:

37.80.601 BEST BEGINNINGS QUALITY CHILD CARE MINI GRANTS found at ARM page 37-17935.

AUTH: 52-2-704, 53-2-201, 53-4-212, MCA
IMP: 52-2-704, MCA

37.80.602 BEST BEGINNINGS QUALITY CHILD CARE MERIT PAY found at ARM page 37-17936.

AUTH: 52-2-704, 53-2-111, MCA
IMP: 52-2-704, 52-2-111, 52-2-112, 52-2-711, MCA

37.80.603 INFANT/TODDLER CARE GIVER CERTIFICATION found at ARM page 37-17941.

AUTH: 52-2-111, 52-2-704, 53-2-201, MCA
IMP: 52-2-704, MCA

37.80.604 REQUIREMENTS FOR CHILD CARE FACILITY PARTICIPATION IN THE BEST BEGINNINGS STAR QUALITY TIERED REIMBURSEMENT PROGRAM found at ARM page 37-17942.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-721, 53-4-212, MCA

5. ARM 37.80.101(13) The department has found it necessary to revise sections 1-2, 1-3, 1-4, 1-5, 2-1, 2-2, 2-5, 3-1, 4-1, 6-2, 6-5, 6-6, 6-7, 6-10, 6-13, 7-5b, and 7-5c of the Montana Child Care Manual. The Montana Child Care Manual was incorporated into rule on July 1, 2005. The department has found it necessary to add sections 3-3 and 4-2 to the Montana Child Care Manual.

Section 1-2 is updated to include the most recent Human and Community Services organizational chart. No fiscal impact is associated with this change.

Section 1-3, relating to Definitions, is updated to include the following definitions for Improper Payment and for In-Compliance with Child Support:

- Improper Payment - An improper payment is a payment requested or made to a parent or provider in error.
- In-Compliance with Child Support - The parent has an open case and maintains an open case while receiving a Best Beginnings Child Care Scholarship with the Montana Child Support Enforcement Division or has complied with all requests by CSED to open a case, the parent is receiving child support through a district court order, or the parent must have appropriate reasons and documentation to apply for Good Cause not to pursue child support as outlined in the Child Care Policy Manual Section 2-2.

The addition of these definitions will clarify the department's use of these terms with parents and providers. No fiscal impact is associated with this change.

Section 1-4 is titled Provider Rates. The department completed a Market Rate Survey in June 2007 and has updated scholarship reimbursement rates to be at the 75th percentile of the current 2007 market. The department has determined that it is necessary to update the provider reimbursement rates to ensure families in poverty have the ability to access public funding used to subsidize child care assistance. The reimbursement rates have shown an increase in eleven of the twelve areas, and have shown a decrease in one area. The Market Rate is projected to increase by 6.8% or an estimated $1.3 million in SFY 2008 in expense to the federal Child Care and Development Fund (CCDF). A decrease in the hourly infant rate for centers in the Miles City area has occurred. The hourly infant rate for centers has decreased by $.10 per hour. This may impact payments for an estimated 21 infants in any of the five center facilities. The number of children estimated to be effected was determined by the Miles City unduplicated case load used in the funding formula extended with 1.67 children per family average. In Section 1-4, page 7 of 8, the title State in the last row of the table should be changed to Out-of-State. There is no calculated fiscal impact associated with this rule change.

Section 1-5, related to the Child Care Sliding Fee Scale is updated to reflect the 2007 Federal Poverty Guidelines to ensure families in poverty are able to access public funding used in order to subsidize child care assistance. The fiscal impact is $418,911 annually with 3.2% increase in the 150% level of poverty. These changes impact families in two ways. First, a family's co-pay is decreased, which increases by $137,851 the total care by CCDF. Second, actual case load cost will increase by $281,059.

Section 2-1, related to the Application Process families follow to receive child care subsidies, is amended to require parents to verify the hours billed for the preceding month are accurate, and requires parents to verify the accuracy of their provider's billing by reviewing and signing their Explanation of Benefit. The parent has a right to a timely recertification process. The department, however, has determined the current process is too cumbersome to fulfill that right, and is ineffective. The department believes the changes to section 2-1 remedy these issues. There is no calculated fiscal impact associated with this rule change.

Section 2-2, related to Household Requirements, is updated to clarify that parents are responsible for reporting any changes to their child support case to the Child Care Resource and Referral agency (CCR&R), including opening and closing of child support cases. This section is also changed so as not to require parents under the age of 18 to apply for child support through the Montana Child Support Enforcement Division until they reach the age of 18. No fiscal impact is associated with these changes.

Section 2-5, related to Prospective Budgeting, is changed by removing the reference currently found on page 10 of 11 to factoring "ongoing income received weekly or bi-weekly...unless it meets the exception on page eight" because no such exception is found on page 8 of that section of the manual. No fiscal impact is associated with this change.

Section 2-6, related to Income Table, is changed to add a section disregarding from income any child support paid out of a home as countable income towards the family's total gross income for eligibility for child care assistance. The parent cannot access funds the parent is paying for child support to another household, and must verify the payment of such child support for each month, and must also verify there are no arrearages. The department anticipates these changes will likely cost approximately $120,000 per year based on approximately three-hundredths of 1% of the current budget because more families will likely be eligible for child care assistance.

Section 3-1, related to Office of Public Assistance (OPA), WoRC and CCR&R Coordination, is changed to clarify the process the CCR&R Eligibility Worker is to use when TANF cash benefits cannot be verified in The Economic Assistance Management System (TEAMS). In such cases, the CCR&R Eligibility Worker must enter $1.00 for TANF cash benefits on the Child Care Under Big Sky (CCUBS) person screen, enter $1.00 for Food Stamps benefits, and enter $1.00 for housing or rent benefits. By entering a dollar amount in these lines on the CCUBS person screen, the CCR&R Eligibility Worker is able to process the TANF referral for child care assistance in a more timely manner. The section is also changed to allow child care to begin for 30 days before TANF Cash Assistance has been authorized. This can be referred to a 30-day presumptive eligibility period for TANF participants, since the WoRC Case Manager believes that the family will qualify for TANF Cash Assistance. If TANF Cash Assistance is not authorized, then the family's child care case will be closed after the initial 30-day period. No fiscal impact is associated with this change.

The department has determined that it is necessary to add a new section, 3-3, to the Child Care Policy Manual related to Working Caretaker Relative Child Care. The Working Caretaker Relative Child Care Program was authorized in House Bill 2 of the 2007 Montana State Legislature and is funded by TANF. This program allows a working caretaker relative who is receiving a child only TANF cash benefit to receive child care assistance while working and receiving their TANF cash benefit. The

working caretaker relative must be working 60 hours per month if a single adult household, and 120 hours per month if a two adult household. The child will receive authorization for child care for six months at a time, after which the caretaker relative's work requirement must be reverified before further child care is authorized. The fiscal impact is projected at $683,784 to the TANF Child Only Program.

Section 4-1, related to CFSD & CCR&R Coordination, is revised to clarify the process used for setting up child care authorizations between CFSD social workers and the CCR&R eligibility workers. The department has found it necessary to revise all of section 4-1. The Human and Community Services Division have developed a coordinated effort with the Child and Family Services Division for all of Child Protective Services (CPS) child care to be paid using the CCUBS system. Previously, the child care case would be transferred every twelve months between the two department's computer systems. Now, the CPS child care cases will remain in the Human and Community Services CCUBS computer system. This process will ensure child care providers only have to receive their payments off of one system and that each child will be afforded the same policies between CPS, TANF and non-TANF types of cases. The fiscal impact is zero to the public as all children will be served. The funding is now funneled through a single system.

The department has been requested to cooperate to provide serving Tribal IV-E children and the department has found it necessary to add a new section 4-2 to the Child Care Policy Manual titled Tribal IV-E CPS Child Care. The fiscal impact of serving Tribal IV-E children is $109,000 of total IV-E funds in cooperation with Division 03.

Section 6-2, which relates to Legally Unregistered Providers (LUP), is changed to strike an example that no longer exemplifies the intention of the program that a LUP should register with the DPHHS Quality Assurance Division if the LUP wishes to care for more than two children or all of the children from one family. In addition, the section is changed to update the Fingerprint Process to reject and return to the Early Childhood Services Bureau (ECSB) any fingerprints that are smudged and/or unreadable, and to notify the proper CCR&R that a second set of prints is required. The Department of Justice requires no additional charge for reprocessing a second set of prints. No fiscal impact is anticipated with these changes.

Section 6-5, related to Change Reporting, is changed to add a subsection related to Child Support to require families to report any change in their child support case to the local CCR&R within ten days of the change in order to remain eligible for child care assistance. This change will ensure that families are attempting to receive all income to which the family is entitled. No fiscal impact is anticipated with this change.

Section 6-6, related to Absent Day Policies - Maintaining the Continuity of Care, is revised to allow parents a 30-day grace period when eligibility may be otherwise jeopardized due to a parent's loss of employment in order to provide continuity of care to the children, and to strike all references to the HCS/CC - 012 Request for

Grace Period for Child Care Benefits form because now the department has required all changes to a case be reported on form HCS/CC - 016. The section is also changed to add an additional allowance when a parent takes one child to a medical appointment. In that case, the parent could receive child care for the siblings of the child attending the appointment if it is inappropriate for the siblings to attend the medical appointment. The department believes this relates to the continuity of care and offers the ability to meet the "best interest of the child" as to children who stay at the child care facility while a sibling attends a medical appointment. No fiscal impact is anticipated with these changes.

Section 6-7, related to Invoice and Payment Processes, is revised to add an exception to the subsection entitled Scholarship Will Not Pay Twice. Registered/licensed child care providers which are a child's primary care provider are allowed to bill for a "Certified Enrollment Day" (CE) when a child is temporarily absent from full-time care in the provider's facility as long as all of the criteria for a CE day are met. The department has determined that in such circumstances, it is also necessary to revise policy and pay for care provided by a Legally Unregistered Provider which provides actual care to the child while the child is sick. The department has determined that this absent day policy will support working parents in maintaining their work schedules. The fiscal impact of this revision will be less than $1000 because very few cases occur where a child may be authorized with a registered/licensed child care provider as well as a LUP. Section 6-7 is also revised with reference to the subsection related to Unexplained Absences. The department currently requires providers to notify the CCR&R of a child's unexplained absence or irregular attendance after five consecutive days. Many providers, however, do not report these unexplained absences until as much as ten days or longer. The department has determined it necessary that when a provider fails to report to the CCR&R of a child's unexplained absence after the fifth day, then the provider will forfeit their paid ten-day closure notice period. This change will likely save the department money because the department will no longer be responsible for paying a ten-day closure notice period for providers who are not meeting the responsibility of reporting a child's unexplained absence.

Section 6-10, related to Table of Eligibility Related Forms, is changed by striking the use of Forms HCS/CC – 012 Request for Grace Period for Child Care Benefits. The department no longer uses this form, but instead requires all changes to a family's child care case to be reported on another form, HCS/CC – 016 Change Report. With the addition of the Working Caretaker Relative TANF Child Care Program the department has determined it is necessary to add Form HCS/CC – 150 Working Caretaker Relative Child Care Application so working caretaker relatives can be properly referred to the CCR&R for authorization of child care services. There is no calculated fiscal impact to this rule change.

Section 6-13, related to Resources for CCR&R Eligibility Specialists, has been simplified by removing the names and e-mail addresses of staff and agency personnel, and listing only staff and agency positions and phone numbers. Changes in personnel make it difficult to update this section accurately with names of those

who fill the specific positions. On page 2 of 22, all staff names and e-mail addresses should be stricken because it is very difficult to keep this section up-to-date. Only staff positions and phone numbers will be shown. On page 3 of 22, all agency personnel names should be stricken because it is very difficult to keep this section up-to-date. No fiscal impact is associated with this change.

Section 7-5b, related to Higher Education Merit Pay, is changed to clarify which staff at a child care resource and referral agency are eligible to apply for Higher Education Merit Pay. The department has determined it necessary to clarify section 7-5b, page 1 of 7, 4th bullet. The bullet should read: A Montana Child Care Resource and Referral Provider Service staff member is eligible to apply for Higher Education Merit Pay. Current policy reads that a Montana Child Care Resource and Referral agency can apply for these funds. It is the department's intention that only Provider Service staff access this program to complete college coursework in the area of early childhood. There is no calculated fiscal impact associated with this rule change.

Section 7-5c, related to Infant Toddler Merit Pay, is changed to increase the amount of the Infant Toddler Merit Pay Stipend to $500 for each approved recipient. The Infant Toddler Merit Pay Program is a 60-hour training program. The reason for the change is to align the Infant Toddler Merit Pay with the Merit Pay I Program, which allows a recipient to receive $500 for 50 hours of training. Previously participants in the Infant Toddler Merit Pay Program were taking more hours of training and receiving less of a stipend than in the Merit Pay I Program. There is no calculated fiscal impact for this rule change; however, fewer participants will be approved for the Infant Toddler Merit Pay Program. The department has determined that fewer participants in this program may lead to fewer certified Infant Toddler caregivers. The department, however, does not have the means to increase this budget.

ARM 37.80.201(4) The department has determined it necessary to add to section (4) of this rule. The amended section (4) clarifies that the department determines cooperation with Child Support Enforcement Division (CSED) by maintaining an open case with CSED when a case can be established by CSED or providing all appropriate requested documentation to CSED for them to attempt to open a child support case. There is no calculated fiscal impact associated with this rule change.

ARM 37.80.201(11) The department has determined it necessary to add section (11) to this rule to clarify that a licensed or registered child care provider is not eligible to be reimbursed for child care services provided while a child attends a public or private school, including kindergarten in any circumstance. The department will not pay for care while a child who is of legal school age attends a private or public school or kindergarten, even if the school or kindergarten is licensed or registered with the DPHHS QAD. The department will not pay for a child to be home schooled. There is no calculated fiscal impact associated with this rule change.

ARM 37.80.205(6)(a) The department has determined it necessary to strike this subsection of the rule because they are duplicated in the state child care manual, which is incorporated into ARM by reference pursuant to statute. There is no calculated fiscal impact associated with this rule change.

ARM 37.80.206(4) This rule requires child care facilities to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days or lose their right to a paid ten-day closure notice period. The department requires this so the CCR&R can determine whether the family is still in need of child care or has switched to a new provider. The rule is changed to set forth consequences which result if providers fail to report such changes; therefore, not requiring the department to pay for any care from the date the child last attended the facility. There is no calculated fiscal impact associated with this change.

ARM 37.80.601 through 37.80.604 The department has determined it necessary to repeal these rules because they are duplicated in the state child care manual, which is incorporated into ARM by reference pursuant to statute. There is no calculated fiscal impact associated with this rule change.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Gwen Knight, 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 December 6, 2007. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this 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. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ Francis X. Clinch
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State October 29, 2007.

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

In the matter of the adoption of New Rules I through IV and the amendment of ARM 37.8.102, 37.8.103, 37.8.104, 37.8.109, 37.8.116, 37.8.126, 37.8.127, 37.8.128, 37.8.129, 37.8.301, 37.8.801, 37.8.804, and 37.8.816 and repeal of 37.8.106 pertaining to vital statistics	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Interested Persons

1. On December 3, 2007, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, 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 wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 26, 2007. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I CERTIFICATE OF BIRTH RESULTING IN A STILLBIRTH

(1) Upon request by either parent, a certificate of birth resulting in a stillbirth must be filed within ten calendar days after the date of the delivery or the date the certificate was requested to be filed. If the delivery meets the definition of a stillbirth as defined in 50-15-101, MCA, the person in charge of the final disposition of the fetus must file a properly completed Montana Certificate of Fetal Death.

(2) If a stillbirth delivery occurs in Montana and a certificate of fetal death has not been filed, additional evidence must be provided to support the facts of the pregnancy, that the delivery resulted in a stillbirth, and that the delivery occurred within this state.

(3) Acceptable examples of evidence of pregnancy include the following:

(a) prenatal record;

(b) a statement from a physician or other health care provider qualified to determine pregnancy;

(c) a report of a home visit by a public health nurse or other health care provider that indicates that the mother was pregnant at the time of the visit; or

(d) other evidence acceptable by the department.

(4) Evidence that the birth was stillborn includes the following:

(a) a completed and filed Montana Certificate of Fetal Death;

(b) a statement from the physician or other health care provider who saw and examined the stillborn child; or

(c) other evidence acceptable to the department.

(5) Evidence of the mother's presence in Montana on the date of delivery includes the following:

(a) if the delivery occurred in the mother's residence:

(i) a driver's license or a state-issued identification card that lists the mother's current residence;

(ii) a rent or mortgage receipt that includes the mother's name and address;

(iii) any type of utility, telephone, or other bill that includes the mother's name and address; or

(iv) other evidence acceptable to the department.

(b) if the delivery occurred outside of the mother's place of residence and the mother is a resident of Montana, such evidence must consist of:

(i) an affidavit from the tenant of the premises where the delivery occurred stating that the mother was present on those premises at the time of delivery; and

(ii) evidence of the affiant's residence similar to that required in (5)(a); and

(iii) evidence of the mother's residence in the state similar to that required in (5)(a); or

(iv) other evidence acceptable to the department.

(6) If the mother is not a resident of Montana, proof that a stillbirth occurred in Montana outside of a health care facility must consist of clear and convincing evidence acceptable to the department.

(7) The department shall determine the acceptability of all documentary evidence submitted in support of a stillbirth that occurred outside of a health care facility.

(8) Documents presented must be in the form of the original record or a duly certified copy thereof or a notarized signed statement from the custodian of the record or document attesting to the accuracy of the record.

AUTH: 50-15-102, 50-15-103, 50-15-208, MCA
IMP: 50-15-102, 50-15-103, 50-15-208, MCA

RULE II AMENDMENT OF VITAL RECORDS (1) Any requested or court ordered amendment to a filed birth or death record must be submitted in writing to the department. On receipt of a request or court order, the department may immediately notify the appropriate county clerk and recorder to suspend the issuance of the affected record until the department issues a letter of correction.

(2) Application for the amendment of marriage applications, licenses, certificates or marital termination reports (which are not part of the decree) may be made by either party directly to the clerk of district court that issued the marriage license or has on file the marital termination orders. The court shall make the changes and forward a copy of the corrected document to the department.

(3) Except in those cases specified in (4) and (5), a vital record may only be

amended by an order from a Montana district court with appropriate jurisdiction, the original data provider, or those persons authorized by 50-15-121(1), MCA.

(4) The demographic information of a death record may be amended by the next of kin, the informant listed on the death certificate, the funeral director, or the person in charge of the final disposition of the body. If any information provided by the informant is disputed after the record has been filed, changes to the demographic data must be made pursuant to an order from a Montana district court with appropriate jurisdiction.

(5) Applications to amend the medical certification of cause of death shall only be made by the physician who provided the medical certification, or a coroner or state medical examiner if the coroner or medical examiner assumed responsibility for the case. If the cause of death certification is disputed, changes to the cause of death certification must be made pursuant to an order from a Montana district court with appropriate jurisdiction.

(6) The department's supervisory staff may amend a vital record when the nature of the amendment is needed to protect the integrity, accuracy, and validity of the record.

(7) A court order that changes a vital record shall indicate if an amended or substitute record is to be created. If the court order does not indicate a preference, the record will be amended.

(8) Any subsequent change to information previously altered through this process requires an order from a Montana district court with appropriate jurisdiction.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, 50-15-403, MCA

RULE III AMENDMENT PROCESS AND DOCUMENT REQUIREMENTS

(1) Except as noted in [NEW RULE IV], a filed original vital record must be amended by placing a line through the information to be deleted 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. If the change to the record is to add missing or blank information, the added information must be entered in the appropriate location.

(2) Any certified copy of a vital record issued in the state that was amended or corrected within the first year after filing will not be marked "ALTERED"; however, the summary evidence number and the date of the correction will be indicated. Any vital record amended one year or more after the event will be marked "ALTERED" and will contain the summary evidence number and the date the alterations occurred.

(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 cases other than those cited in [NEW RULE IV], the department may amend any portion of a vital record if a requestor submits a correction affidavit.

(a) The correction affidavit must include the following information:

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

(ii) the date and place of birth, birth resulting in a stillbirth, death, or fetal death;

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

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

(v) certification by the affiant that all affected parties concur with the changes; and

(vi) supporting documentation provided by the affiant as irrefutable proof that the amendment(s) are correct.

(b) If not all parties agree to the changes, an order from a Montana district court with appropriate jurisdiction is required.

(5) The department will determine the number and suitability of the supporting documentation required as irrefutable proof to sustain the accuracy of the amendment(s).

(6) Supporting documents must not be altered and must meet the following criteria:

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

(b) For any person five years of age or older, the documents must be dated at least five years before the date of application or within three years after the date of birth.

(c) No two documents submitted as evidence may be from the same source.

(7) Upon request, the department will provide a list of suggested supporting documents.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

RULE IV ADOPTIONS, NAME CHANGES, AND SEX CHANGES

(1) The department will replace the original birth certificate with a new one without indicating that the information was altered in cases of adoption, a determination of paternity, an acknowledgment of paternity, or legitimation.

(2) In order to establish the replacement certificate, the department must be provided with the following:

(a) For an adoption:

(i) a certified copy of the certificate of adoption; and

(ii) a certified copy of the final order of adoption.

(b) For a legitimation:

(i) a notarized Acknowledgement of Paternity for Legitimation; and

(ii) a certified copy of the marriage certificate.

(c) For a court order establishing paternity:

(i) a certified copy of the court order establishing paternity under 40-6-123, MCA, which must contain:

(A) the child's name as it appears on the original certificate;

(B) the child's date and county of birth; and

(C) the full name, date of birth, and place of birth of the father being placed on the certificate.

(d) For an acknowledgement of paternity when the last name of the child is being changed:

(i) a notarized Acknowledgement of Paternity signed by both parents; and

(ii) a notarized request for a new certificate signed by both parents.

(3) Once paternity has been established, the registrant's last name may only be changed through an adoption, legitimation, or court order.

(4) Except in the cases specified in [NEW RULE III], the amendment of a registrant's given name or surname on a birth certificate may be made only if the department receives a certified copy of an order from a Montana district court with appropriate jurisdiction. The court order that directs the name change must include the registrant's name as it appears on the certificate, the registrant's date of birth, the county of birth, if available, and information sufficient to locate and identify the record to be altered. If the court order directs the issuance of a new certificate, the record will not show amendments, and the new certificate will not indicate on its face that it was altered. The procedure to add a first and/or middle name to a birth record that is more than one year old, as in the case when a child is not named at birth, is regulated under [NEW RULE III].

(5) The sex of a registrant as cited on a certificate may be amended only if the department receives a certified copy of an order from a Montana district court with appropriate 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 original birth certificate and the full name to which it is 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. If the sex of an individual was listed incorrectly on the original certificate, refer to [NEW RULE III].

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

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

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

(1) "Amendment" means alteration or addition 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, or with a clerk of district court.

(2) "Ashes" which are the result of a cremation of a human body are considered the same as a dead body as defined in 50-15-101(3), MCA.

(2) and (3) remain the same but are renumbered (3) and (4).

~~(4)~~ (5) "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.

(6) "Department" means the Department of Public Health and Human Services, Office of Vital Statistics.

(7) "Filing date" means the date a vital record is accepted for registration by

the department.

(5) through (7) remain the same but are renumbered (8) through (10).

(11) "Summary of evidence" means a number assigned to an affidavit, administrative order, or court order which is used to track the evidence provided to amend, correct, or reissue a vital record.

(12) "Supporting documentation" means any document required as evidence for the filing of a delayed vital record or for verification of changes to original data or adding missing data on a filed vital record.

AUTH: 50-15-102, 50-15-103, MCA
IMP: 50-15-101, 50-15-103, MCA

37.8.103 LOCAL REGISTRAR DUTIES ~~PRESERVATION OF COPIES OF RECORDS~~ (1) ~~After a local registrar has received, numbered, and signed a death, birth, or fetal death certificate, the registrar shall file the original with the department and one copy with the county as required by 50-15-109, MCA. The local registrar must retain a triplicate copy of each paper certificate, which must be filed to be easily accessible for reference.~~ A local registrar accepting a paper vital record for filing shall add the filing date and sign a death, birth, fetal death, or stillborn certificate. The registrar shall forward the original document to the department and one duplicate to the county clerk and recorder as required by 50-15-109, MCA.

(2) The local registrar shall retain one duplicate, which must be easily accessible for reference. The local registrar may not further copy or provide any copies of the retained duplicate.

~~(2)~~ (3) A registrar must retain for two years each copy of a paper certificate recorded in accordance with 50-15-109, MCA. After two years, the local registrar ~~may request written permission from the department to~~ shall destroy the triplicate copy of the certificates. The destruction of any certificate must be reported in writing to the department.

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

(4) remains the same.

(5) A paper filing occurs when the local registrar accepts the certificate. An electronic filing occurs when the record passes all validation checks and is assigned a state file number. If both a paper certificate and an electronic filing exist, the electronic filing is considered the original certificate and it must be filed first.

~~(5)~~ (6) When leaving the position of local registrar, the outgoing registrar must deliver all records, manuals, and materials to the succeeding registrar or to another person designated by the department.

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

37.8.104 AUTHORIZED FORMAT FOR SUBMISSION OF A VITAL RECORD (1) remains the same.

(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 and may not contain any alterations or obliteration of the original data.

(3) remains the same.

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

37.8.109 REGISTRAR'S ~~MONTHLY~~ STATEMENT OF CERTIFICATES FILED (1) To facilitate and to ~~i~~ensure proper accounting, local registrars shall submit to the department, on a monthly, weekly, or biweekly basis, statements of the certificates that have been filed in the registrar's county. ~~certificates filed on or before the fifth day of each month on blank forms supplied by the department~~ If submitted on a monthly basis, the local registrars shall submit the statements on or before the fifth day of each month. The statements must be recorded on forms supplied by the department, ~~and shall retain copies for their own files. The statement~~ and must indicate the number of birth, death, and fetal death certificates filed in the registrar's county ~~during the prior month and forwarded to the department~~. If ~~none~~ no certificates were filed, the statement must so indicate.

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

37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) Fees in this rule apply to the department, the county clerk and recorders, or any vital record issuance agency. County clerk and recorders will retain for use in their respective counties any amount specified in 7-4-2631, MCA or this rule. The difference between the fees collected by the county clerk and recorder, and the amount specified by the department, must be forwarded to the department and be deposited as specified in 50-15-111, MCA.

~~(1)~~ (2) The fee for a search and issuance of a certified copy (photocopy or computer-produced) of a birth certificate, a death certificate, a fetal death certificate, a certificate of birth resulting in a stillbirth, ~~an acknowledgment of paternity,~~ or a delayed birth registration is ~~$12~~ $10 ~~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~~.

(3) The fee for a search and issuance of a noncertified informational copy of a birth certificate, death certificate, fetal death certificate, certificate of birth resulting in a still birth, acknowledgment of paternity, delayed birth registration, or documentary evidence used to amend a vital record is $8. Counties shall forward $1 of each $8 fee to the department.

(4) The fee for a certified copy of documentary evidence used to amend a vital record, an acknowledgement of paternity, or any other vital record document is $8.

~~(2)~~ (5) The ~~department shall charge a~~ fee for nonincidental documents or a paper search of files or records that have been filed within a period of five years or

less without copying, is ~~of $10~~ $5 ~~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 documents filed more than five years previous, an additional fee of $1 per year over the first five years will be charged. Counties must forward $1 of each records search fee to the department.

(3) through (5) remain the same but are renumbered (6) through (8).

~~(6)~~ (9) 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)~~ (10) The fee for amending or correcting a vital record after one year from the date of filing is $15. If a court orders the creation of a replacement record, the fee is $25. A certified copy of the amended record will be provided ~~to the person requesting the amendment or correction~~.

(11) The fee for creating a replacement birth certificate after a legitimation, paternity determination, acknowledgement of paternity, or court order establishing paternity is $25. A certified copy of the record will be provided.

~~(8)~~ (12) The fee for a search of the putative father registry is ~~$10~~ $15 per name.

(9) remains the same but is renumbered (13).

~~(10)~~ (14) The fee for producing aggregate statistics is ~~$25~~ $35 per hour for programming and processing if that processing takes more than half an hour's work ~~on existing programs~~.

~~(11)~~ (15) The fee for a disinterment permit is ~~$5~~ $10. The local registrar shall collect the fee~~, $2 of which must be remitted~~ and forward $5 of the fee to the department.

(16) Unless negotiated by contract, the fee for the verification of a vital event by a non-Montana government agency, subdivision of a non-Montana government agency, or contractor for a government agency will be $8 per request.

~~(12)~~ (17) Overpayment of a required fee received ~~in the Office of Vital Statistics~~ by the department will be refunded if in excess of $5.~~, and any~~ Any overpayment of less than $5 will be refunded~~,~~ if the applicant requests ~~it~~ the refund in writing within one year after the payment to the department.

(18) If a record has been located but the criteria of ARM 37.8.126 and 37.8.127 are not met, the request is cancelled and no refund will be issued. Fees will be retained for the cost of the record search.

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

37.8.126 ACCESS TO RECORDS (1) Anyone who submits a completed state-approved ~~or county~~ application shall provide proof of identification before ~~may obtain~~ obtaining a certified or noncertified copy of a vital record ~~death certificate~~.

(2) If a death certificate lists the cause of death as "pending autopsy" or "pending investigation", a certified or noncertified copy will be issued which has the cause of death information removed ~~may not be issued~~.

~~(2)~~ (3) The following people may obtain a certified copy of a birth record:

(a) a registrant, upon establishing ~~their~~ the registrant's 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~~ identification 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~~ proof of the guardianship;

(d) an individual who needs a certified copy to protect ~~their~~ his or her 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) remains the same.

~~(3)~~ (4) The following people 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;~~ unless the former spouse can demonstrate a need to protect individual or property rights; or

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

~~(4)~~ (5) Birth certificates may be released to the public no earlier than ~~Anyone who requests a birth certificate of an individual who was born~~ 30 years after the date of birth. ~~or more earlier will be issued a noncertified copy of the certificate.~~ Only noncertified copies will be released.

(6) A certified copy of certificate of birth that resulted in a stillbirth may only be issued to the following:

(a) either parent if listed on the certificate; or

(b) those persons listed in 50-15-121(1), MCA, upon receipt of an order from a Montana district court with appropriate jurisdiction.

(7) Informational noncertified copies of a certificate of a birth that resulted in a stillbirth may be released to the public no earlier than 30 years after the date of delivery.

~~(5)~~ (8) A clerk of the district court may issue a certified copy of a marriage or marital termination record to anyone listed in ~~(2)~~ (3) after receiving a completed application for the record and establishing the identity of the requestor and the requestor's relationship to the registrants.

(6) and (7) remain the same but are renumbered (9) and (10).

AUTH: 50-15-103, 50-15-121, 50-15-122, MCA
IMP: 50-15-103, 50-15-121, 50-15-122, MCA

37.8.127 APPLICATION FOR COPY OF VITAL RECORD (1) Each application for a certified copy of a vital record should be on a ~~state~~ department-approved application form. Written applications not using the department-approved application form must ~~be in writing and~~ contain the applicant's name, signature, address, and the purpose for which the certified copy is needed. All applications must include either a copy of the requestor's valid identification, or the requestor's signature on the application must be notarized.

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

(4) Upon request, the department will provide a list of acceptable forms of identification needed from the requestor.

AUTH: 50-15-102, 50-15-103, 50-15-121, 50-15-122, MCA
IMP: 50-15-103, 50-15-121, 50-15-122, MCA

37.8.128 CONTENTS OF CERTIFIED AND NONCERTIFIED COPIES

(1) through (2)(e) remain the same.

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

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

(h) if the registrant of a birth record is deceased, each copy must clearly indicate "DECEASED" on the face of the copy.

(3) remains the same.

(4) Each certified copy of a birth that resulted in a stillbirth record must include, in addition to the items in (1):

(a) the full given name of the registrant if provided on the record;

(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 delivery in literal format;

(d) the county of delivery;

(e) the sex; and

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

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

AUTH: 50-15-102, 50-15-103, 50-15-121, 50-15-124, MCA
IMP: 50-15-103, 50-15-121, 50-15-122, 50-15-124, MCA

37.8.129 FORMAT AND PAPER REQUIREMENTS FOR CERTIFIED COPIES (1) With the exception noted in (2), ~~effective February 15, 2003,~~ all certified copies of birth, death, fetal death, and stillbirth 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~~.~~ ;

(h) intaglio border; and

(i) embossed hologram.

(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 ARM 37.8.128.~~ Any alternate method of issuing a certified copy must be approved by the department, in writing, before its official use.

(3) remains the same.

(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

AUTH: 50-15-102, 50-15-103, 50-15-122, 50-15-124, MCA
IMP: 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-15-123, 50-15-124, MCA

37.8.301 CERTIFICATE OF BIRTH (1) through (5) remain the same.

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

(7) and (8) remain the same.

(9) If a birth occurs somewhere other than in a health care facility and is not attended by a physician or a licensed midwife, and the birth certificate is filed before the first birthday, additional evidence in support of the facts of the birth is required. A certificate for the birth must be completed and filed by the individual responsible for filing the certificate as stated in 50-15-221(4), MCA, and include evidence of the pregnancy, evidence that the infant was born alive, and evidence the birth occurred within this state, as stated in (10) through (12).

(10) Evidence of a pregnancy is:

(a) a prenatal record;

(b) a statement from a physician or other health care provider qualified to determine pregnancy;

(c) a report of a home visit by a public health nurse or other health care provider that indicates the mother was pregnant at the time of the visit; or

(d) other evidence acceptable by the department.

(11) Evidence that the infant was born alive includes:

(a) a statement from the physician or other health care provider who saw or examined the infant;

(b) an observation of the infant during a home visit by a public health nurse; or

(c) other evidence acceptable to the department.

(12) Evidence of the mother's presence in Montana on the date of birth includes:

(a) if the birth occurred in the mother's residence:

(i) a driver's license or a state-issued identification card that lists the mother's current residence;

(ii) a rent or mortgage receipt dated near the date of birth that includes the mother's name and address;

(iii) any type of utility, telephone, or other bill dated near the time of birth that

includes the mother's name and address; or

(iv) other evidence acceptable to the department.

(b) if the birth occurred outside of the mother's place of residence and the mother is a resident of Montana, such evidence must consist of:

(i) an affidavit from the tenant of the premises where the birth occurred, that the mother was present on those premises at the time of birth;

(ii) evidence of the affiant's residence similar to that required in (12)(a)(i);

(iii) evidence of the mother's residence in the state similar to that required in (12)(a)(i); or

(iv) other evidence acceptable to the department.

(13) If the mother is not a resident of Montana, such evidence must consist of clear and convincing evidence acceptable to the department.

(14) The department will determine the acceptability of all documentary evidence submitted in support of a birth outside a health care facility. Documents presented must be in the form of the original record or a duly certified copy thereof or a notarized signed statement from the custodian of the record attesting to the accuracy of the record.

AUTH: 50-15-102, 50-15-103, MCA
IMP: 50-15-102, 50-15-103, 50-15-109, ~~50-15-112~~, ~~50-15-113~~, ~~50-15-201~~, 50-15-124, 50-15-202, 50-15-221, MCA

37.8.801 DEATH CERTIFICATE (1) A certificate of death for each death that occurs in Montana must be completed and filed using either a current Montana certificate of death form or Montana's Electronic Death Registration System.

(2) remains the same.

(3) The person in charge of the 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 the 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) remains the same.

(6) For the purpose of the death certificate, any professional registered nurse licensed by the state of Montana may provide pronouncement of death information.

(6) and (7) remain the same but are renumbered (7) and (8).

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

37.8.804 COURT ORDERED FILING OF BIRTH OR DEATH CERTIFICATE

(1) Only a Montana ~~or federal~~ district court ~~of competent~~ with appropriate

jurisdiction may order a birth or a death certificate be filed ~~issued~~ for a birth or a 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~~ district court ~~of competent~~ with appropriate 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~~ with appropriate 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: 50-15-102, 50-15-103, MCA
IMP: 50-15-204, 50-15-404, MCA

37.8.816 DISINTERMENT PERMITS (1) and (2) remain the same.

(3) The request for disinterment must be made by the decedent's next of kin, by ~~court~~ an order from a Montana district court with appropriate jurisdiction, 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. If there is a dispute about a disinterment, and all affected parties do not concur, an order from a Montana district court with appropriate jurisdiction directing the disinterment is required.

(4) The permit consists of five copies that must be distributed as follows:

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

(b) ~~a~~ 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~~ A copy must be sent to the department.

(5) remains the same.

AUTH: 50-15-102, 50-15-407, MCA
IMP: 50-15-407, MCA

4. ARM 37.8.106, AMENDMENT OF VITAL RECORDS, as proposed to be repealed is on page 37-1364 of the Administrative Rules of Montana.

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

5. The rationale for these rules is as follows:

RULE I

The department developed Rule I to comply with Senate Bill 518, enacted by the 2007 Montana Legislative Session. The new law, contained in 50-15-208, MCA, requires the department to issue certificates of birth that have resulted in stillbirth starting on January 1, 2008. The law also requires the department to adopt rules for:

(a) the time by which a certificate must be filed after the stillbirth;
(b) the evidence required to establish the facts of the stillbirth; and
(c) the information required on the certificate.

The certificate of birth resulting in stillbirth is optional and may be issued upon the request of a parent. A certificate of fetal death is required if the fetus has reached 20 days of gestation, which is the same definition of a stillbirth specified in Senate Bill 518, 50-15-101, MCA, 2007 Laws of Montana, Chapter 474. Fulfilling the requirements for a certificate of fetal death provides enough information and proof for the stillbirth certificate. In situations where fetal death certificates are not filed for any reason, evidence is needed to prove that the stillbirths happened in Montana. Such evidence may be similar to that required for medically unattended live births. The department listed the evidence in Rule I.

Rule I is necessary to carry out the requirements of Senate Bill 518, 50-15-208, MCA. The department needs adequate proof that a delivery resulting in a stillbirth happened in Montana when the delivery occurs outside of a health care facility or was not medically attended. This rule prevents the issuance of certificates when the stillbirth events never happened.

RULES II, III, and IV

The department proposes to have these new rules replace ARM 37.8.106, slated for repeal. The new rules address altering and amending vital records. Due to the numerous situations where amending vital record information may be needed, the department divided its requirements into three shorter rules for clarity.

Section 50-15-204(3), MCA, requires the department to develop rules "establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records."

Rule II provides the general requirements for all types of vital record amendment and corrections. Sections (2) through (6) clarify who may request changes to a vital record, and the appropriate process. Section (7) addresses court-ordered changes. Section (8) provides the recourse that is available when the information is disputed after the record has been filed.

Rule III standardizes how the department and local registrars amend or replace information on birth or death certificates. The uniform process helps increase the likelihood that certificates altered by the department or a registrar will be acceptable

to other government agencies that use certificates to validate births or deaths. Section (5) establishes the types of supporting documents needed to prove a birth or death.

Rule IV provides procedures for adoptions, name changes, and sex changes. These unique matters result in the issuances of new birth certificates without amending the originals.

Overall, the new rules and the repeal of ARM 37.8.106 are needed to clarify the procedures to correct or amend a vital record. Splitting the requirements into three rules eliminates any ambiguity existing currently in ARM 37.8.106. Also, the rules standardize the correction/amendment process, and assure that the amended or replaced vital records are legitimate if their authenticity is challenged.

Alternatives considered included making extensive amendments to ARM 37.8.106. The alternative was rejected because of the vast changes of the requirements. Amending ARM 37.8.106 would have resulted in one large rule that would have been hard to comprehend.

ARM 37.8.102. The changes to this rule clarify the definition of an "amendment" for purposes of Rules II, III, and IV, and add several definitions to aid in the administration of the vital records system. The term "ashes" was added to accommodate cremations for purposes of the death certificate. The definition of "department" was added to clarify that the phrases "Office of Vital Statistics" and "Vital Statistics Office" found throughout the rules mean the same entity.

ARM 37.8.103. The department made changes to this rule to standardize both paper and electronic filing requirements. Section 50-15-109(2), MCA, amended by the 2005 Legislature, allows electronic filing. The statute no longer requires the retention of paper copies of vital records if they are filed electronically.

Changes to the rule also require the local registrar to destroy any paper record older than two years and report the destruction to the department. The current rule provides for the destruction of records only upon receiving permission to do so. This requirement has led many local registrars to unnecessarily retain copies of birth and death records that have not been amended or altered.

The revisions to ARM 37.8.103 are necessary to clarify the duties of the local registrars regarding record retention and destruction in this age of electronic filing.

ARM 37.8.104. Section (2) requires that the original information on vital records not be altered or erased. All alterations must be tracked in order to identify how and when the amendments were made. This rule is needed to prevent forgeries.

ARM 37.8.109. The change to this rule allows local registrars to submit to the department their statements on the number and type of certificates filed with the registrars on a weekly or biweekly basis. The change allows more time flexibility for

local registrars.

ARM 37.8.116. This rule contains fee changes that are applicable to the department and local registrars. Section 50-15-111(1), MCA, directs the department to set fees by rule for:

(a) certified copy of certificates or records;

(b) searches of files or records when a copy is not made;

(c) copies of information provided for statistical or administrative purposes as allowed by law;

(d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgement, or court order.

(e) filing a delayed registration of a vital event;

(f) amending a vital record, after one year from the date of filing; and

(g) other services specified in statute or by rule.

In ARM 37.8.116(1), the department clarifies that the ensuing fees in the rule apply to all vital record issuing agencies in the state. The section also specifies how the fees must be distributed between the counties and the state.

By amending section (1), the department intends to have uniform fees between the counties and the department. Currently, the state has two disparate fee structures that are vastly different.

For instance, 7-4-2631, MCA, specifies the portion of the fees that counties may retain for their own use. The law specifies that counties will charge $5 for a certified copy of a birth certificate, and $3 for a certified copy of a death certificate. Counties are to send the difference between its fee and the state's fee to the department for deposit in a special revenue account for the maintenance, preservation, and administration of the statewide vital statistics system.

Over the years, however, the department has had to increase its fees in ARM 37.8.116 to cover all of the costs for the maintenance and administration of the vital statistics system. Besides maintaining its own system, the department provides to the counties application forms and security paper for certificates, maintenance for the state-wide electronic data system, and training. As a result, disparities between the department and county fees currently exist. For instance, the current fees are $12 for a state-issued birth certificate compared to $5 for a county-issued one, and $12 for a state-issued death certificate versus $3 for a county-issued one. The department believes the proposed fee structure specified in section (1) will establish fee parity and provide funding for the vital record system that is used by the department and counties.

Section (2) of ARM 37.8.116 contains a reduction in fees, from $12 to $10, for certified copies of certificates.

Section (3) specifies the fee for an informational copy of a record regardless of the search circumstance. This fee is being reduced from $10 to $8 per copy.

Section (4) is added to set the fee for obtaining certified copies of documentary evidence.

Section (5) sets the fee for record searches when a copy of the record is not made. The search fee is being reduced from $10 to $5.

In section (9), the fee for filing a delayed registration remains the same at $25.

Sections (10) and (11) have been altered to reflect the requirements in 50-15-111, MCA. That statute requires the department to prescribe fees by rule for the issuance of a replacement birth certificate subsequent to adoption, legitimation, and paternity determination, acknowledgement, or court order.

The fees of $15 and $25 are based on the difference in the amount of work needed for amending records as opposed to creating replacements. Amending existing records entails less work in that the original record remains intact, the old information is struck, and new or corrected information is added. To substitute a record, any retained information is entered on a new record, and all original documents are recalled, placed in a sealed file, and stored indefinitely. The fees specified in sections (10) and (11) are commensurate with the amount of work required.

Sections (12) and (14) include raising the fee to conduct a search of the putative father registry and for the programming needed to produce aggregate statistics. The fee increases of $5 for putative father searches and $10 for compiling statistics are needed to cover the growing costs for processing and programming.

Section (15) contains a $5 addition to the fee for disinterment permits. The fee has not been changed since 1981 even though administrative and accounting expenses incurred in providing the service have increased through the years. The increased fee enables the office to recover the costs of providing the permits.

Section (16) applies to non-Montana governmental and out-of-state agencies that require verification of the information on a certificate. Federal agencies, as well as private entities such as insurance companies and hospitals that want to purge their old files, submit lists of birth and death certificates to the department and ask for verification of the information. Because no specific fee currently exists for this service, the entities and agencies have been charged $10 per verification, the same cost for a noncertified copy of a certificate. Section (6) designates a specific fee for vital record verification, listed as $8. The fee is less than $10 because copies of certificates are not requested.

The department does not charge intrastate agencies for verification information because to do so would be like billing itself. Transferring funds between the agencies entails journal entries, increased time, and increased costs to the agencies.

Section (18) allows the department to retain, not refund, fees for providing services to noncomplying requests for information and copies. On average, there are between 75 and 100 issuance requests per year that do not meet the minimum application requirements. Currently, requestors that do not meet these requirements can request a refund after the department staff have searched for the requested record and spent time and resources contacting the requestors for additional information or documentation. After the department's work, the requestor may cancel the request or not follow through and provide what is necessary.

Retention of the fees for noncomplying requests is needed to cover the department and counties' expenses. If retention of the fees is allowed, requestors will receive prior notice on the initial applications about the fees being nonrefundable and retained for administrative costs.

Additional changes to ARM 37.8.116 clarify the applicability of the various existing fees and rules. The fees remain the same and should have no additional fiscal impact.

The changes to ARM 37.8.116 are necessary because the department provides and covers all costs for the administration of Montana's vital records system, including:

- purchasing security paper and distributing it to the counties;
- developing, printing, and distributing vital record forms;
- developing, implementing, and maintaining electronic data acquisition and issuance systems; and
- training for the use of the system.

Because of the current fee structure, only those persons requesting copies or services from the department pay for the operating and administrative costs associated with the statewide system. The intent of the proposed fee structure is to have a uniform statewide system where the costs are shared between the state and counties.

The changes to this rule will have the following fiscal impact:

Assumptions used:

(1) The fee for the issuance of certified copies is $12 for the first copy and $5 for each additional copy. It is estimated that about 39% of the requests involve additional copies; thus, the table below estimates that there were 11,717 single requests (9374 birth and 2343 death) and 4570 requests for additional copies (3656 birth and 914 death). Records search requests are also impacted by the proposed fees; therefore, it is estimated that there were 564 single-copy records search requests and 226 additional copy requests. It is unknown exactly how many certificates are issued by the counties. To calculate the fiscal impact of a uniform fee, the number of birth and death certificates that were issued from the electronic issuance system in 2006 (61,420 birth and 52,778 death) was used. The numbers

do not account for copies of original birth certificates issued and maintained by the county clerk and recorders' offices.

(2) Since a record search usually results in an informational copy being issued, the figures used in the chart below demonstrate the fiscal impact of the proposed fees for searches and copies. It is unknown how many informational copies are issued by counties, but it is estimated that in 2006 the ratios of county and state-issued certified copies was 75% county and 25% state, thus it is estimated that 2370 county and 790 state informational copies were issued.

(3) To compute the impact of a search when no record is copied, it is estimated that an average of four no-find letters are sent by the department each week, which is 624 letters a year. By using the 25/75 ratio to estimate the number for the county, the county would be conducting 1872 searches per year.

(4) The disinterment fee is $5, with $3 retained by the county and $2 sent to the state. The new fee will be $10, with $5 retained by the county and $5 sent to the state.

(5) It is unknown how many court orders will require the creation of replacement records. For fiscal impact, it is estimated that 50% of all court orders to amend vital records will require replacements.

(6) The figure in parenthesis is the full fee. The number outside of the parenthesis is the amount of each transaction that will be either retained by the county or sent to the state. This figure is used to calculate the fiscal impact on the state or counties.

State Fiscal Impact

Service	Number Estimated per Fiscal Year (FY)	Current Fee	Current Annual Impact per FY	Proposed Fee (Total Fee) and Fee Retained by State	Impact of proposed Fees FY 2008
Issuance (Birth)	9,374	$12.00	$112,488.00	$10.00	$93,740.00
Additional Copies (Birth)	3,656	$5.00	$18,280.00	$10.00	$36,560.00
Issuance (Death)	2,343	$12.00	$28,116.00	$10.00	$23,430.00
Additional Copies (Death)	914	$5.00	$4,570.00	$10.00	$9,140.00
Informational copies	564	$10.00	$5,640.00	$8.00	$4,512.00
Additional Copies	226	$5.00	$1,130.00	$8.00	$1,808.00
Search (No Copy)	208	$10.00	$2,080.00	$5.00	$1,040.00
County Issuance Birth (State impact only)	61,420	0	0	($10.00) $5.00	$307,100.00
County Issuance Death (state impact only)	52,778	0	0	($10.00) $7.00	$369,446.00
County Issuance Informational copy	2370	0	0	($8.00) $1.00	$2,370.00
Search (Not Copy) County	624	0	0	($5.00) $1.00	$6,240.00
Adoption	859	$25.00	$21,475.00	$25.00	$21,475.00
Establish paternity	64	$25.00	$1,600.00	$25.00	$1,600.00
Court ordered	59	$15.00	$885.00	$15.00	$885.00

(Amendment)					
Court ordered (New record)	59	$25.00	$1,475.00	$25.00	$1,475.00
Correction to a Record	458	$15.00	$6,870.00	$15.00	$6,870.00
Open a sealed File	87	$25.00	$2,175.00	$25.00	$2,175.00
Putative Father Search	30	$10.00	$300.00	$15.00	$450.00
File a delay certificate	13	$25.00	$325.00	$25.00	$325.00
Verification of a vital event	57	$0.00	$0.00	$8.00	$456.00
Legitimation	26	$25.00	$650.00	$25.00	$650.00
Disinterment Permit (State only)	30	($5.00) $2.00	$60.00	($10.00) $5.00	$150.00
Total Impact			**$206,741.00**		**$888,153.00**

ARM 37.8.126. The department retained this rule's general requirements regarding people who are authorized to obtain copies of vital records.

Under (4)(a) of ARM 37.8.126, the department added that former spouses may be allowed access to birth records only if they demonstrate a need for the information to protect individual or property rights. Such disclosure is allowed in 50-15-121(1), MCA.

The department added sections (6) and (7) pertaining to the disclosure of certificates of birth resulting in stillbirth. The department provides the same restrictions as those for birth records as stated in 50-15-121 and 50-15-122, MCA.

ARM 37.8.127. The changes to this rule clarify the application procedures needed to request copies of vital records. Requiring the county clerk and recorder offices to use a state-approved application as required in 50-15-121(2), MCA, provides for uniformity in the request process, and attempts to assure that all legal requirements were met for the access of specific records.

ARM 37.8.128. The department's additions to this rule include clarification regarding what is to be done when the mother's name is missing from the birth record. This may occur in a single parent adoption. The additions also provide that if the registrant is deceased, "DECEASED" must be indicated on the face of the birth certificate prior to its issuance.

Also added are the requirements for the contents of a certificate of birth that resulted in a stillbirth. The department believes the changes meet the requirements of Senate Bill 518, 50-15-208, MCA, which states that the department must adopt rules specifying the contents of certificates of birth resulting in a stillbirth.

ARM 37.8.129. The department removed the effective date of February 15, 2003, which has since passed. The department also removed the option of issuing certified copies of records on plain paper. In doing so, the department seeks to prevent forgeries.

ARM 37.8.301. The rule changes include rewording a part of the rule to allow for the electronic filing of birth certificates. The changes also specify what additional

documentation is needed to establish the facts of a birth that takes place outside of a birthing facility or was unattended. This documentation is required by 50-15-221(4), MCA, which states:

The department shall, by rule, determine what evidence may be required to establish the facts of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the department, the certificate must be prepared and filed by one of the following persons in the indicated order of priority in subsections (4)(a) through (4)(e):

(a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, Chapter 27, in attendance at or immediately after the birth;

(b) a person in attendance at or immediately after the birth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(e) the local registrar, if 50-15-202 applies.

ARM 37.8.801. The rule change clarifies that a professional licensed nurse may provide pronouncing information for death certificates. Frequently, the certifier of the cause of death is not present at the death, therefore the certifier must rely on information provided by an attending professional nurse. The rule change also reflects that death certificates may be electronically filed through the statewide registration system.

ARM 37.8.804. The department replaced the verb "issue" with "file". This change reflects the fact that a court orders a birth or death certificate to be filed, not issued.

ARM 37.8.816. The change to this rule addresses problems that have occurred when families do not agree about the disinterment of a body. The disputes must be resolved in a state district court.

Fiscal impact. With the exception of the changes made to ARM 37.8.116, there is no fiscal impact associated with the new rules, the repeal of ARM 37.8.106, or the amendments.

6. The department intends the rule changes to be applied effective January 1, 2008.

7. 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 Gwen Knight, 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 December 6, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. 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.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this 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. The web site may be unavailable at times, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by letter dated July 10, 2007, sent postage prepaid via USPS.

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

/s/ Michelle Maltese
Rule Reviewer

/s/ Russell E. Cater for
Director, Public Health and Human Services

Certified to the Secretary of State October 29, 2007.

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

In the matter of the amendment of ARM 37.57.301, 37.57.304, 37.57.305, 37.57.306, 37.57.307, 37.57.308, 37.57.315, 37.57.316, 37.57.320, and 37.57.321, pertaining to newborn screening tests and eye treatment	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On December 3, 2007, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 26, 2007. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

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

37.57.301 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Health care facility" means a hospital or other facility licensed by or located in the state of Montana for the purpose of providing health care services, and which provides primary health care services for newborns at birth.

~~(1)~~ (2) ~~A~~ "~~n~~Newborn" ~~is~~ means an infant ~~under~~ in the first 28 days of life.

~~(2)~~ (3) ~~"Tests for inborn errors of metabolism"~~ "Newborn screening tests" are ~~include~~ laboratory screening tests for ~~phenylketonuria, galactosemia, congenital hypothyroidism and hemoglobinopathies.~~ the following conditions:

(a) Acylcarnitine Disorders:

(i) Fatty Acid Oxidation Disorders

(A) Carnitice uptake defect

(B) Long-chain L-3-OH acyl-CoA dehydrogenase deficiency

(C) Medium-chain acyl-CoA dehydrogenase deficiency

(D) Trifunctional protein deficiency

(E) Very long-chain acyl-CoA dehydrogenase deficiency

(ii) Organic Acidemia Disorders

(A) 3-OH 3-CH3 glutaric aciduria
(B) 3-methylcrotonyl-CoA carboxylase deficiency
(C) β-ketothiolase deficiency
(D) Glutaric acidemia type I
(E) Isovaleric acidemia
(F) Methylmalonic acidemia (Cbl A,B)
(G) Methylmalonic acidemia (mutase deficiency)
(H) Multiple carboxylase deficiency
(I) Propionic acidemia
(b) Amino Acid Disorders:
(i) Argininosuccinic acidemia
(ii) Citrullinemia
(iii) Homocystinuria (due to CBS deficiency)
(iv) Maple syrup urine disease
(v) Phenylketonuria
(vi) Tyrosinemia type I
(c) Biotinidase deficiency
(d) Classical galactosemia
(e) Congenital adrenal hyperplasia (21 hydrosylase deficiency)
(f) Congenital hypothyroidism
(g) Cystic fibrosis
(h) Hemoglobinopathies, including:
(i) Hb S/B-thalassemia
(ii) Hb SC disease
(iii) Hb SS disease (Sickle cell anemia Hb)

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.304 VERY LOW BIRTH WEIGHT (UNDER 1,500 GRAMS) ~~INFANTS~~ NEWBORNS~~: IN HOSPITAL~~ (1) If a newborn is of very low birth weight, i.e., under 1,500 grams, a ~~sample~~ specimen of its blood must be taken for testing after 24 hours of age and no later than seven days of age, unless medically contraindicated, in which case the ~~sample~~ specimen must be taken as soon as the infant's medical condition permits.

(2) If the ~~infant~~ newborn is not yet feeding when the initial screening ~~sample~~ specimen is collected, a repeat specimen for phenylalanine testing must be taken at least 48 hours following the first ingestion of milk.

(3) In the event that the ~~infant~~ newborn stays in ~~the hospital~~ a health care facility longer than 14 days following birth, a repeat congenital hypothyroid screening must be made either at the time of ~~the hospital~~ discharge~~,~~ if the ~~hospital~~ stay is ~~a month or~~ less than one month, or at one month of age if the ~~hospital~~ stay is one month or longer ~~than one month~~.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.305 ~~INFANTS~~ NEWBORNS OTHER THAN THOSE WITH VERY LOW BIRTH WEIGHT~~: IN HOSPITAL~~ (1) ~~The hospital or institution wherein newborn care was rendered to a newborn weighing 1,500 grams or more must take the required specimen~~ For newborns at birth weights of 1,500 grams or more, the required blood specimen must be taken:

(a) between 24 and 72 hours of age ~~of each newborn~~; or

(b) 48 hours following its first ingestion of milk, but not later than the seventh day of life.

(2) In the event the newborn is discharged from ~~the~~ a health care facility prior to the third day of life, the blood specimen must be taken immediately before discharge and, in addition, if the newborn is discharged before it is 24 hours old:

(a) another specimen must be taken and submitted to the department's laboratory between the fourth and 14th day of the newborn's life; and

(b) the ~~administrative officer or other person in charge of the hospital or institution caring for newborn infants~~ health care facility must:

(i) explain the reasons why it is of utmost importance to return for these tests; and

(ii) ensure that the parent or legal guardian of the newborn signs a statement assuming responsibility to cause a specimen to again be taken between the fourth and 14th day of life of the newborn and to submit it to the department for testing.

(3) If taking a specimen on any of the dates cited in (1) and (2) ~~of this rule~~ is medically contraindicated, the specimen must be taken as soon as possible thereafter as the medical condition of the ~~infant~~ newborn permits.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.306 TRANSFER OF NEWBORN INFANT (1) In the event of transfer of a newborn ~~infant to another hospital or other institution~~ from one health care facility to another, or from a place of birth that is not a health care facility to a health care facility, the specimen required must be taken and submitted by~~:~~ the receiving health care facility unless a sample was taken and submitted by the transferring health care facility or other responsible person.

~~(a) the transferring hospital or other institution if transfer occurs on or after the third day of life; or~~

~~(b) the receiving hospital or other institution if the transfer occurs before the third day of life.~~

(2) ~~A hospital or other institution which receives a newborn who has not been previously tested must take a specimen for testing and submit it to the department's laboratory between the fourth and seventh day of the newborn's life, unless taking a specimen is medically contraindicated, in which case the specimen must be taken as soon as the medical condition of the infant permits.~~ A receiving health care facility must take specimens as necessary for follow-up tests as required by this subchapter.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.307 INFANT BORN OUTSIDE ~~HOSPITAL OR INSTITUTION~~ HEALTH CARE FACILITY (1) When an infant ~~has been~~ is born outside of a ~~hospital or other institution~~ health care facility and ~~has~~ is not subsequently ~~been admitted~~ transferred to ~~such~~ a health care facility for initial newborn care, it is the ~~duty of the~~ responsibility of one of the persons designated in 50-15-221(4)(a), (b), and (c), MCA, in the order of priority indicated therein, to ~~person required in 50-15-201, MCA, to register the birth of that child to~~ cause the blood specimen to be taken and submitted, as required by this subchapter ~~not later than the seventh day of the child's life, unless medically contraindicated, in which case it shall be taken as soon as the medical condition of the infant permits~~.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.308 NEWBORN EYE TREATMENT (1) A physician, nurse-midwife, or any other person who assists at the birth of any ~~infant~~ newborn must, within the time limit stated in (3) below, instill or have instilled into each conjunctival sac of the newborn one of the following:

(a) through (3) remain the same.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.315 TRANSFUSION: WHEN BLOOD SPECIMEN TAKEN (1) If a newborn needs a transfusion, blood specimens for the tests required by this subchapter must be taken before the transfusion takes place.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.316 ABNORMAL TEST RESULT (1) and (1)(a) remain the same.

(b) the ~~individual~~ person to whom the above report is made must ensure that a second blood specimen is taken within 24 hours of notification and submitted to the department for a second test.

(2) through (3) remain the same.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.320 RESPONSIBILITIES OF REGISTRAR OF BIRTH: ADMINISTRATOR OF ~~HOSPITAL~~ HEALTH CARE FACILITY (1) Each person in charge of any health care facility and each person responsible under ARM 37.57.307 ~~in which a newborn is cared for~~ must:

(a) ~~E~~ensure that a blood specimen is taken from each ~~infant~~ newborn ~~cared for by the facility~~ for which the health care facility or person is responsible, ~~on the schedule noted in the rules in this subchapter~~ in conformity with this subchapter, for the purpose of performing newborn screening tests ~~for inborn errors of metabolism.~~;

(b) ~~B~~be certain, prior to the discharge of the ~~infant~~ newborn, that the specimen to be forwarded to the laboratory is adequate for testing purposes~~.~~;

(c) ~~W~~within 24 hours after the taking of the specimen, cause such specimen to be forwarded to the department's laboratory by first class mail or its equivalent~~.~~; and

(d) ~~R~~record on the ~~infant's~~ newborn's chart or file the date of taking of the test specimen and the results of the tests performed when reported by the department.

~~(2) Each person who is responsible, pursuant to 50-15-201, MCA, for registering the birth of a newborn must ensure that:~~

~~(a) A blood specimen is taken from the infant for which that person is responsible, on the schedule noted in the rules in this subchapter.~~

~~(b) Ensure that the specimen is adequate for testing for inborn errors of metabolism.~~

~~(c) Ensure that the specimen is forwarded to the department's laboratory, by first class mail or its equivalent, within 24 hours after the specimen is taken.~~

~~(d) Record on the newborn's chart, if any, the date the test specimen was taken and the results of the tests performed when reported by the department.~~

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.321 STATE LABORATORY: RESPONSIBILITY FOR TESTS

(1) Only those ~~laboratory~~ newborn screening tests ~~for inborn errors of metabolism which are~~ performed by the department laboratory or, in the case described in ARM 37.57.316, a laboratory approved by the department, meet the requirements of 50-19-201, 50-19-202, 50-19-203, and 50-19-204, MCA.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

4. These rules expand the current list of screening tests required to be provided to infants born in Montana. Montana currently requires that four screening tests be performed on blood samples taken from newborns to test for a total of six congenital conditions. Senate Bill 162, passed as 2007, Laws of Montana, Chapter 401, by the 2007 Montana legislative session, authorized expansion of the panel of required newborn screening tests through rulemaking. The objective of the Montana legislature in passing Senate Bill 162 was to make sure all infants born in Montana are afforded the best opportunity for diagnosis and treatment of congenital conditions that can result in catastrophic health, financial, and quality of life consequences to newborns and their families, and that the requirements for testing should keep pace with the medical and scientific capacity to diagnose and treat congenital conditions. These amended rules, as proposed, represent the minimum requirements reasonably necessary to give effect to the Legislature's intent, and to provide the greatest opportunity for healthy lives for Montana's children.

ARM 37.57.301 The amendments to this rule include a definition of "health care facility". This term is used, within the rules, as an aggregate identifier of all health

care facilities in Montana that provide primary health care services for newborns at birth, and replaces the terms "hospital" and "institution" as previously used in the rules. The use of this defined term recognizes changes in the health care system, where birthing centers and other nonhospital facilities, now provide primary health care services to significant numbers of newborns.

The definition of the term "tests for inborn errors of metabolism" has been stricken and replaced with a definition of "newborn screening tests". The modification of the defined term recognizes that not all of the tests proposed to be required to be performed on newborns are tests for tests for inborn errors of metabolism.

Most importantly, the amendments to this provision include the addition of 24 screening tests to the panel of tests required to be performed on newborns. Newborns born with these serious congenital conditions may appear to be perfectly healthy at birth and may not display any symptoms of their congenital conditions until serious physical damage or death has occurred. Undiagnosed and untreated, these conditions, variously, may result in organ and nervous system damage, failure to achieve normal physical growth, failure to achieve normal cognitive functioning, chronic ill health, mental retardation, and death. While the expanded panel of screenings is not without financial cost, the financial, emotional, and quality of life costs to afflicted families far outweigh the cost of testing.

The revised list of required newborn screenings brings Montana into line with national standards for newborn screenings. With screening, these congenital conditions can be identified before symptoms develop, and immediate medical intervention with specialized diets, hormone supplements, prophylactic antibiotic treatment, or other measures, can significantly prevent the morbidity and early mortality associated with these conditions.

The department considered adding fewer additional tests to the newborn screening panel, but strongly believes that all of these identified tests are necessary to provide the greatest protection of the health, lives, and futures of Montana's newborns. To exclude any one of these tests would eventually result in delayed diagnosis of that condition for one or more children, likely resulting in pain and suffering, long-term adverse health and developmental consequences, or death where those results may have been avoided. As well, though absolute costs cannot be determined, the financial costs to an afflicted family, the health care system, and society in general for maintenance of a developmentally disabled or mentally retarded individual are very high. The Centers for Disease Control and Prevention estimates that the lifetime cost to society for a person with mental retardation in the United States is $1.1 million (adjusted to 2006 values). The department believes the proposed panel of newborn screening tests provides the minimum testing protocol reasonably necessary to adequately protect the children and families of Montana.

ARM 37.57.307 This rule was amended to clarify what persons are required to ensure newborn screenings for infants born outside of health care facilities. The current rule places responsibility on a "person required in 50-15-201, MCA, to

register the birth of that child" to cause a blood specimen to be taken and submitted for newborn screening testing. Due to modifications in state statutes in prior years, the citation to the MCA in the current rule no longer accurately identifies the state statute related to registration of birth, so the proposed rule updates the citation. Further, the specific designations of individuals responsible to ensure newborn screenings have been amended to no longer include the following persons who may be responsible for registering a birth: the person in charge of the premises where the birth occurred (though a person in charge of a health care facility is still responsible under other provisions of these rules); and the local registrar. The department believes that neither of these classifications of persons who may be required to register a birth will ever be needed, or able, to ensure newborn screenings are performed.

Other minor changes have been made to make the use of defined terms consistent throughout these rules, and to simplify and clarify the requirements.

FINANCIAL IMPACT: The modifications, as proposed, could potentially impact the department financially. Because a significant number of children born in Montana each year are provided health care services through the Medicaid Program, some increased cost for an expanded newborn screening panel could be passed on to the department through higher health care costs. However, because many children afflicted with the long-term health conditions that result from undiagnosed and untreated congenital conditions receive benefits through department programs for health care services and/or developmental disability services, the overall financial impact to the department is expected to be minimal.

5. The department intends the rule changes to be applied effective January 1, 2008.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Gwen Knight, 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 December 6, 2007. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this 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. The web site may be unavailable at times, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated June 21, 2007, sent postage prepaid via USPS.

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

/s/ Denise Pizzini
Rule Reviewer

/s/ Russell E. Cater for
Director, Public Health and Human Services

Certified to the Secretary of State October 29, 2007.

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

In the matter of the adoption of New Rule I and the amendment of ARM 38.5.8301 pertaining to renewable energy standards for public utilities and electricity suppliers	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 29, 2007, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room of the Public Service Commission offices, 1701 Prospect Avenue, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 4:00 p.m. on November 23, 2007, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, commission secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail conniej@mt.gov.

3. The new rule as proposed to be adopted provides as follows:

NEW RULE I RENEWABLE ENERGY STANDARD -- ELECTRICITY SUPPLIERS (1) This rule applies to any electricity supplier that supplied electricity to one or more retail customers at any time during the twelve month period immediately preceding a compliance year.

(2) The following definitions apply to this rule:

(a) "billing demand" means actual metered demand or, if service is not metered, an engineering calculation of demand;

(b) "electricity supplier" means any person, corporation, business entity, or government entity that sells electricity to retail customers in the state of Montana and that is not a public utility or cooperative utility;

(c) "individual load" means the sum of the billing demands of each metered and/or unmetered account of a retail customer;

(d) "retail customer" means any customer that purchases electricity supply for residential, commercial, or industrial end-use purposes, does not resell electricity to others, and is separately identified in a public utility's billing system as a person or entity to which bills are sent for service to:

(i) metered and/or unmetered facilities located on contiguous property;

(ii) public street and/or highway lights; and

(iii) any combination of (2)(d)(i) and (d)(ii).

(3) On an annual basis on or before March 31, an electricity supplier must submit to the commission a report disclosing:

(a) total number of retail customers served by month for the twelve month period ending December 31 of the prior year;

(b) total billed retail sales of electrical energy, measured in kilowatt-hours, by month for the twelve month period ending December 31 of the prior year;

(c) for each retail customer, billed sales of electrical energy, measured in kilowatt-hours, by month for the twelve month period ending December 31 of the prior year; and

(d) for each demand-metered retail customer, individual load by month for the twelve month period ending December 31 of the prior year.

(4) An electricity supplier may assign a unique number to each retail customer subject to the reporting requirement in (3)(c) and (3)(d) to protect the customer's identity. Based on the information in an electricity supplier's annual report, an officer must attest to whether or not the electricity supplier was a competitive electricity supplier during the period covered by the annual report. An electricity supplier must consent by signature of an officer to release by a public utility of the electricity supplier's retail customer load information to the commission for purposes of verifying information in an electricity supplier's annual report.

(5) If an electricity supplier is a competitive electricity supplier in any compliance year, the electricity supplier's annual report must demonstrate compliance with the renewable energy standards. Pursuant to 69-3-2004, MCA, a competitive electricity supplier must satisfy the renewable energy standard for all retail sales of electricity in Montana, which may exceed sales to small retail customers. Report blanks for demonstrating compliance are available from the commission.

(6) Renewable energy credits used to comply with the renewable energy standards must be generated by eligible renewable resources, as defined in 69-3-2003(7), MCA. A competitive electricity supplier must petition the commission to certify any source of renewable energy credits used to comply with the renewable energy standards.

(7) Renewable energy credits used to comply with the renewable resource standards must be tracked and verified through WREGIS unless otherwise specifically authorized by the commission. A competitive electricity supplier may request authorization to use a renewable energy credit tracking and verification mechanism other than WREGIS by submitting a written request to the commission. The commission will consider the request after noticing the request and providing interested persons an opportunity to comment and/or request a hearing.

(8) A competitive electricity supplier may petition the commission for a waiver from full compliance with the renewable resource standards. The petition must include documentation and evidence showing that the competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits sufficient to comply with the applicable standards and could not achieve full compliance due to one or more of the following:

(a) the unavailability of sufficient renewable energy credits;

(b) a determination by a public utility that integrating additional eligible renewable resources into the electrical grid would jeopardize the reliability of the electrical system despite reasonable efforts to mitigate reliability concerns;

(c) full compliance would cause the competitive electricity supplier to exceed the cost caps in 69-3-2007, MCA; and

(d) other documented reasons beyond the competitive supplier's control.

(9) An electricity supplier that is a competitive electricity supplier in any compliance year must submit a renewable energy procurement plan as part of its annual report. The renewable energy procurement plan must explain whether the electricity supplier expects to be a competitive electricity supplier in the upcoming compliance year and, if so, provide:

(a) an estimate of the competitive electricity supplier's total retail sales for the next compliance year;

(b) an estimate of the quantity of renewable energy credits needed to comply with the renewable energy standards; and

(c) the anticipated source(s) of the renewable energy credits.

AUTH: 69-3-103, 69-3-2006, MCA
IMP: 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, MCA

REASON: Chapter 246, 2007 Montana Session Laws 1111-1116, defined competitive electricity supplier and small customer, and imposed on competitive electricity suppliers an obligation to procure a percentage of electrical energy sold in Montana from eligible renewable resources. New Rule I is necessary for the PSC to implement and enforce the amended statute.

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

38.5.8301 RENEWABLE ENERGY RESOURCE STANDARD – PUBLIC UTILITIES (1) A public utility's ~~default supply~~ resource procurement plan pursuant to ARM 38.5.8201 through 38.5.8227 or integrated least cost resource plan pursuant to ARM 38.5.2001 through 38.5.2012 must thoroughly document compliance with the Montana Renewable Power Production and Rural Economic Development Act, ~~68-8-1001~~ 69-3-2001, et seq, MCA, hereafter renewable resource standards. Public utilities must consider the requirements of this rule an integral part of the planning and procurement processes described in ARM 38.5.8201 through 38.5.8227 and 38.5.2001 through 38.5.2012.

(2) For public utilities operating in Montana within the geographic boundaries of the Western Electricity Coordinating Council, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Western Renewable Energy Generation Information System (WREGIS) ~~or, if WREGIS is not operational, such other tracking system as the commission may approve on application of the utility~~. For public utilities operating in Montana within the geographic boundaries of Midwest Reliability Organization, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Midwest Renewable Energy Tracking System (MRETS) ~~or, if~~

~~MRETS is not operational, such other tracking system as the commission may approve on application of the utility~~.

(3) Before entering into a long-term contract to purchase renewable energy credits, with or without associated electricity, for purposes of complying with the renewable resource standards, a public utility must petition the commission to certify that the renewable energy credits were produced by an eligible renewable resource. The petition may stand on its own or may be part of a request for advanced approval of the price(s), term, and quantity in a proposed contract to purchase renewable energy credits, either with or without associated electricity. If the applicable renewable energy tracking system in (2) provides a mechanism for ensuring that renewable energy credits are produced by eligible renewable resources, as defined in ~~69-8-1003~~ 69-3-2003, MCA, a public utility may rely on that mechanism. Otherwise a public utility's petition must contain sufficient information on the source of the renewable energy credits to allow the commission to determine whether the source is an eligible renewable resource.

(4) through (4)(b) remain the same.

(c) full compliance would cause the public utility to exceed the cost caps in ~~69-8-1007~~ 69-3-2007, MCA; and

(d) through (6)(g) remain the same.

(h) testimony and supporting work papers demonstrating the calculation of the utility's avoided costs and associated cost caps provided for in ~~69-8-1007~~ 69-3-2007, MCA;

(i) a thorough explanation and justification for any other terms in the power purchase agreement for which the public utility is requesting ~~advanced~~ approval; and

(j) remains the same.

(7) The commission will process a petition for ~~advanced~~ approval under the contested case procedures of the Montana Administrative Procedure Act. The commission will consider requests for expedited processing of petitions for advanced approval, but petitions submitted pursuant to this rule are not subject to the 180 day limit in 69-8-421, MCA.

(8) If a public utility determines in its ongoing long-term planning process pursuant to ARM 38.5.8201 through 38.5.8227 or 38.5.2001 through 38.5.2012 that the cost of complying with the renewable resource standards will likely exceed the cost caps in ~~69-8-1007~~ 69-3-2007, MCA, the public utility must submit an application to the commission no later than 180 days prior to the beginning of the compliance year. The application must thoroughly document the public utility's efforts to procure the required renewable energy credits, the calculated cost of compliance, work papers showing the most current calculation of the cost caps, an explanation of the methodology that underlies the calculation of the cost caps, and the amount by which the cost cap would be exceeded if the public utility were to comply with the renewable resource standards. Following notice of the application and an opportunity for a public hearing, the commission will issue an order authorizing or denying full or partial forbearance from the renewable resource standard for that compliance year.

(9) On an annual basis on or before March 31, public utilities subject to the retail choice provisions in 69-8-201, MCA, must submit to the commission a report disclosing:

(a) Each electricity supplier that uses the public utility's transmission and/or distribution facilities to deliver electricity to retail customers in the state;

(b) For each electricity supplier, the information required in [NEW RULE I(3)]. A public utility must assign a unique number to each retail customer of an electricity supplier with respect to the information in [NEW RULE I(3)(c) and (3)(d)] to protect the customer's identity.

AUTH: 69-3-103, 69-3-2006, MCA
IMP: 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, MCA

REASON: Chapter 220, 2007 Montana Session Laws 1017, directed the Code Commissioner to renumber Title 69, chapter 8, part 10, as an integral part of Title 69, chapter 3. Chapter 491, 2007 Montana Session Laws 2197 – 2219 eliminated references to default supply. Chapter 246 imposed on competitive electricity suppliers an obligation to procure a percentage of electrical energy sold in Montana from eligible renewable resources. The amendments are necessary to conform the rule to statutory changes and for the PSC to enforce the amended statute.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and ten copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than December 6, 2007, 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at http://psc.mt.gov (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form no later than December 6, 2007. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-07.10.4-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list should make a written request which includes that name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-

mailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. On October 12, 2007, the Department of Public Service Regulation notified the primary sponsor, by first class mail and e-mail, that it had begun work on the substantive content of the rule to implement HB 681. On October 25, 2007, the Department of Public Service Regulation notified the primary sponsors of SB 367, HB 25, and HB 681, by first class mail and e-mail, that it had begun work on the wording of this proposal notice. The Department of Public Service Regulation will provide the primary sponsors a copy of the published proposal notice within three days after publication.

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State October 29, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I relating to property tax refund hardship request	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 28, 2007, at 11:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, 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 no later than 5:00 p.m., November 19, 2007, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I GOOD CAUSE FOR EXTENDING FILING PERIOD FOR PROPERTY TAX REFUND; PROCEDURE FOR REQUESTING AN EXTENSION; DEMONSTRATING "GOOD CAUSE" (1) If a taxpayer qualifies for a 2006 property tax refund, but fails to file for the refund by December 31, 2007, the taxpayer may request an extension of the filing period by demonstrating good cause for the extension to the department.

(2) To request an extension, in addition to filing the claim for refund, the taxpayer must file a statement with the department, executed by the taxpayer under penalty of false swearing, describing the grounds constituting good cause for the extension.

(3) For purposes of this rule, "good cause" includes, but is not limited to, inability to file for the refund because the taxpayer's ability to file was materially impaired by reason of:

(a) an act of God, natural disaster, or emergency as declared by the Governor or President;

(b) military service;

(c) physical, mental, or medical incapacity;

(d) disputed or undetermined property ownership; or

(e) other reason that, in the department's sole discretion, materially impaired

the taxpayer's ability to file for the refund.

(4) The request for an extension must be filed with the department no later than June 30, 2008.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA
IMP: Ch. 6 Sp. Laws May 2007, 15-1-201, 15-30-140, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the 60th Legislature during Special Session enacted HB9, Chapter 6, which provided for a $400 property tax refund for residents of Montana who resided in their principal residential property for more than seven months during 2006 and paid property taxes which exceeded $400 (possibly including 2005 and 2004 taxes). This rule is necessary to clarify that under certain circumstances, as outlined in the rule, the department will consider issuing this refund to taxpayers beyond December 31, 2007.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 6, 2007.

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 www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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. The primary bill sponsor, Representative Jon Sonju, was notified on October 26, 2007, by electronic mail.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 29, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and II relating to tax year 2007 property tax credit	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 28, 2007, at 2:00 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, 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 no later than 5:00 p.m., November 19, 2007, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I QUALIFYING FOR THE 2007 PROPERTY TAX REFUND

(1) If a taxpayer or taxpayers changed principal Montana residences during 2007, the department may consider the ownership and occupancy of the successive residence as a principal residence when determining whether the taxpayer or taxpayers qualify for the minimum term of residence for the property tax refund as provided in 15-30-140, MCA.

(2) For the successive residence to be considered as a principal residence for purposes of a minimum term of residence for the property tax refund as stated in 15-30-140, MCA, the taxpayer or taxpayers must, during the tax year:

(a) move out of the primary principal residence in Montana and into the successive principal residence in Montana; and

(b) have paid Montana property taxes on either or both residences for at least seven months.

(3) The taxpayer or taxpayers may only make a claim for a refund under 15-30-140, MCA, for one of the residences.

(4) Ad-valorem taxes and fees paid for trailers and other recreational vehicles do not qualify for this credit.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA
IMP: 15-1-201, 15-30-140, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the 60th Legislature during Special Session enacted HB 9, Chapter 6, which provides for an individual income tax credit for property taxes for residents of Montana who resided in their principal residential property for more than seven months during the tax year. This rule is necessary to clarify the criteria the department will use when determining eligibility for this tax refund when a Montana taxpayer moved from one principal residence to another principal residence within the state during the tax year.

NEW RULE II CALCULATION OF THE 2007 REFUNDABLE INDIVIDUAL INCOME TAX CREDIT (1) Section 15-30-140, MCA, provides that the amount of the 2007 refundable income tax credit is to be determined by applying a factor known as "the relief multiple" to the amount of property taxes that would otherwise be owed by class four residential property owners on $20,000 of market value, for the mills levied under 20-9-331, 20-9-333, and 20-9-360, MCA, for tax year 2007. This calculation requires determination of, first, the value of the relief multiple; and, second, the amount of property taxes that would be owing on $20,000 of market value of class four residential property for the mills levied under 20-9-331, 20-9-333, and 20-9-360, MCA, for tax year 2007. The product of these two amounts determines the individual income tax credit amount for tax year 2007.

(2) The base value of 0 is established in 15-30-140, MCA, as the relief multiple, and further provides that, for tax year 2007 only, this value shall be increased by 0.1 for each $1,000,000 of unaudited general fund revenue received in fiscal year 2007 in excess of a threshold amount of $1,802,000,000. As required by 15-30-140, MCA, the Department of Administration certified the unaudited general fund revenue to be $1,838,053,331 in a July 27, 2007, memorandum addressed to the Budget Director from the Director of the Department of Administration. Based on this certified amount, and the formula provided for in statute, the relief multiple for tax year 2007 is determined to be 3.6, calculated as follows:

Certified fiscal 2007 unaudited general fund revenue:	$1,838,053,331
Revenue threshold contained in HB9:	$1,802,000,000
Revenue in excess of threshold:	$ 36,053,331
Excess revenue rounded down to nearest million:	$ 36,000,000
Rounded excess revenue expressed in millions:	36
Relief multiple for each $1,000,000 of excess revenue:	0.1
Relief multiple for tax year 2007:	3.6

(3) The amount of tax year 2007 property taxes owing on $20,000 of market value for a class four residential property owner depends on the applicable tax year 2007 homestead exemption percentage and taxable valuation rate; and the number of mills levied under 20-9-331, 20-9-333, and 20-9-360, MCA, for tax year 2007.

(4) As provided in 15-6-222, MCA, the homestead exemption for tax year 2007 is 33.2%. Alternatively, this means that only 66.8% of the market value of class four property is subject to property tax for tax year 2007. Also as provided in 15-6-134, MCA, the taxable valuation rate for tax year 2007 is 3.07%. Finally, a total of 95 mills are levied under 20-9-331, 20-9-333, and 20-9-360, MCA, for tax year 2007. These statutory parameters result in a net property tax of $38.96 being levied on $20,000 of class four residential property for tax year 2007, calculated as follows:

Market value:	$20,000
Taxable market value factor:	66.8%
Taxable market value:	$13,360
Taxable valuation percentage:	3.07%
Taxable valuation:	$410.15
Multiply by 95 mills:	0.095
Tax credit per unit of relief multiple:	$ 38.96

As shown above, the total value of the individual income tax credit provided to Montana homeowners for tax year 2007 is the product of:

(a) the amount of tax year 2007 tax liability on $20,000 of class four residential property associated with the 95 mills levied under 20-9-331, 20-9-333, and 20-9-360, MCA; and

(b) the relief multiple as calculated above.

(5) The tax credit for tax year 2007 is $140 when rounded to the nearest whole dollar:

Property tax on $20,000 of market value (95 mills):	$38.96
Tax year 2007 relief multiple:	3.6
Tax year 2007 individual income tax credit amount (rounded to nearest whole dollar):	$ 140

AUTH: 15-30-140, MCA
IMP: 15-6-134, 15-6-222, 15-30-140, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II because, while the 60th Montana Legislature in House Bill 9 provided for the general formula for determining the tax year 2007 individual income tax credit amount, no specific calculation of the credit amount is officially available from other sources. The department is mandated to administer the credit and accordingly is obligated to make this calculation of the credit amount.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 6, 2007.

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 www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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. The primary bill sponsor, Representative Jon Sonju, was notified on October 26, 2007, by electronic mail.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 29, 2007

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.1410 through 4.12.1420 relating to the virus-indexing program	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 6, 2007, the Montana Department of Agriculture published MAR Notice No. 4-14-164 relating to the above-stated rules at page 1247 of the 2007 Montana Administrative Register, Issue Number 17.

2. The agency has amended ARM 4.12.1410, 4.12.1411, 4.12.1412, 4.12.1413, 4.12.1414, 4.12.1415, 4.12.1416, 4.12.1417, 4.12.1418, 4.12.1419, and 4.12.1420 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, October 29, 2007.

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

In the matter of the amendment of ARM 24.138.403 mandatory certification, 24.138.502 initial licensure of dentists by examination, 24.138.503 initial licensure of hygienists by examination, 24.138.505 dentist licensure by credentials, 24.138.506 dental hygienist licensure by credentials, 24.138.507 dentist licensure by credentials for specialists, 24.138.508 dental hygiene local anesthetic agent certification, 24.138.511 denturist application requirements, 24.138.514 application to convert an inactive status license to an active status license, 24.138.518 renewals, 24.138.525 reactivation of an expired license, 24.138.530 licensure of retired or nonpracticing dentist or dental hygienist for volunteer service, and repeal of 24.138.524 reactivation of a lapsed license	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 26, 2007, the Board of Dentistry (board) published MAR Notice No. 24-138-63 regarding the public hearing on proposed amendment and repeal of the above-stated rules, at page 1004 of the 2007 Montana Administrative Register, issue no. 14.

2. On August 17, 2007, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.138.403, 24.138.502, 24.138.503, 24.138.505, 24.138.506, 24.138.507, 24.138.508, 24.138.511, 24.138.514, 24.138.518, 24.138.525, and 24.138.530 exactly as proposed.

4. The board has repealed ARM 24.138.524 exactly as proposed.

BOARD OF DENTISTRY
PAUL SIMS, D.D.S., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 29, 2007

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.2701 definitions, 24.156.2705 unprofessional conduct, 24.156.2713 EMT license application, 24.156.2715 equivalent education, 24.156.2717 EMT license renewal, 24.156.2731 fees, 24.156.2741 EMT training program/course application and approval, 24.156.2745 examinations, 24.156.2751 EMT levels of licensure, 24.156.2754 EMT course requirements, 24.156.2757 EMT clinical requirements, 24.156.2761 revision of curriculum and statewide protocols, and 24.156.2771 scope of practice	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 9, 2007, the Board of Medical Examiners (board) published MAR Notice No. 24-156-68 regarding the public hearing on proposed amendment of the above-stated rules, at page 1081 of the 2007 Montana Administrative Register, issue no. 15.

2. On August 30, 2007, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.156.2705, 24.156.2713, 24.156.2715, 24.156.2717, 24.156.2731, 24.156.2741, 24.156.2745, 24.156.2751, 24.156.2754, 24.156.2757, 24.156.2761, and 24.156.2771 exactly as proposed.

4. During the board discussion it was noted that there was a mistake on the acronym for National Standard Curriculum. This transposition has been corrected.

5. The board has amended ARM 24.156.2701 with the following changes, stricken matter interlined, new matter underlined:

24.156.2701 DEFINITIONS (1) through (7) remain as proposed.

(8) "Curriculum" means the combination of instructor lesson plans, course guides, and student study guides prepared by the United States Department of Transportation (USDOT) and commonly known as "National Standard Curriculum" ~~(NCS)~~ (NSC).

(9) through (20) remain as proposed.

BOARD OF MEDICAL EXAMINERS
ARTHUR FINK, D.O., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 29, 2007

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.210.401 fees, 24.210.641 unprofessional conduct, 24.210.667 continuing education, 24.210.1016 timeshare course, 24.210.1018 timeshare exam, 24.210.1020 timeshare renewal, and adoption of NEW RULE I fee schedule	)))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On July 5, 2007, the Board of Realty Regulation (board) published MAR Notice No. 24-210-30 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 947 of the 2007 Montana Administrative Register, issue no. 13.

On April 12, 2007, the board published MAR Notice No. 24-210-29 regarding the proposed amendment of ARM 24.210.401, 24.210.641, 24.210.667 and other rules at page 407 of the 2007 Montana Administrative Register, issue no. 7 and has amended these rules on September 6, 2007, at page 1329 of the 2007 Montana Administrative Register, issue no. 17.

2. On July 26, 2007, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.210.1016, 24.210.1018, and 24.210.1020 exactly as proposed.

4. The board has adopted NEW RULE I (24.210.1001) exactly as proposed.

5. Due to the concurrent amendments to ARM 24.210.401, 24.210.641, and 24.210.667 in MAR Notice Nos. 24-210-29 and 24-210-30, the board has amended these rules as shown:

ARM 24.210.401 is amended as proposed in MAR Notice Nos. 24-210-29 and 24-210-30, but in order to correctly identify the earmarking as a result of the concurrent amendments, earmarking is clarified as follows:

24.210.401 FEE SCHEDULE (1) remains as proposed in MAR Notice No. 24-210-30.

(2) through (17) remain as amended in MAR Notice No. 24-210-29.

(18) remains as proposed in MAR Notice No. 24-210-30.

(18) remains as amended in MAR Notice No. 24-210-29 but is renumbered (19).

ARM 24.210.641 is amended as shown in the final notice of MAR Notice No. 24-210-29 and as proposed in MAR Notice No. 24-210-30, but is amended to show necessary punctuation, correct catchphrase, and earmarking changes as follows:

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(ab) remain as amended in MAR Notice No. 24-210-29 and proposed MAR Notice No. 24-210-30.

(ac) failing to comply with all completion and reporting requirements for continuing education as established by the board; ~~or~~

(ad) failing to respond to a request from the board~~.~~ ; or

(af) remains as proposed in MAR Notice No. 24-210-30 but is renumbered (ae).

(4) remains as proposed but was renumbered (6) in MAR Notice No. 24-210-29.

ARM 24.210.667 is amended as proposed in MAR Notice No. 24-210-29 and 24-210-30 but in order to correctly identify the earmarking as a result of the concurrent amendments, earmarking is clarified as follows:

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (14) remain as amended in MAR Notice No. 24-210-29.

(16) remains as proposed in MAR Notice No. 24-210-30 but is renumbered (15).

BOARD OF REALTY REGULATION
MARILYN FLOBERG, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 29, 2007

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

In the matter of the amendment of ARM 24.216.402 fee schedule, 24.216.502 minimum standards for licensure, and 24.216.503 examination	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 5, 2007, the Board of Sanitarians (board) published MAR Notice No. 24-216-18 regarding the public hearing on the proposed amendment of the above-stated rules, at page 953 of the 2007 Montana Administrative Register, issue no. 13.

2. On July 26, 2007, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.216.402, 24.216.502, and 24.216.503 exactly as proposed.

BOARD OF SANITARIANS
TED KYLANDER, R.S., CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 29, 2007

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

In the matter of the amendment of 37.78.102, 37.78.206, 37.78.208, 37.78.420, 37.78.425, 37.78.506, and 37.78.508, pertaining to Temporary Assistance for Needy Families (TANF)	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On September 6, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-411 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1296 of the 2007 Montana Administrative Register, issue number 17.

2. The department has amended ARM 37.78.102, 37.78.208, 37.78.420, 37.78.425, and 37.78.508 as proposed.

3. The department has amended the following rules as proposed with the following changes from the original proposal. New matter is underlined. Matter to be deleted is interlined.

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS (1) through (3)(k) remain as proposed.

(l) all required members of the filing unit, or individuals who would have been a required member of the filing unit at the time of sanction, which includes an individual who is sanctioned for noncompliance in allowable work activities as defined in ARM 37.78.103 and 37.78.807 negotiated in the Family Investment Agreement/WoRC Employability Plan (FIA/EP) or sanctioned for failure to accept and maintain employment without good cause, if the sanction results in an ineligibility period as defined in ARM 37.78.506~~;~~, with the following exceptions:

(i) minor children who are removed from the household by Child and Family Services and who are determined eligible for child only TANF in another household; or

(ii) minor children who are determined eligible for child only TANF in another household.

(m) through (6)(a)(i) remain as proposed.

AUTH: 53-2-201, 53-4-212, MCA
IMP: 53-2-201, 53-4-211, MCA

37.78.506 TANF: TANF CASH ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with an allowable work activity as defined in (8), or to provide verification and/or documentation of participation in the activities, a sanction will be

imposed on the individual. The first sanction will result in the reduction of the monthly TANF Cash Assistance payment by an amount equal to one person's share of the payment for one month. The second sanction will result in case closure and the imposition of a one month ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The third sanction will result in case closure and the imposition of a three month ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The fourth and subsequent sanctions will result in a six months ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The ineligibility period will follow the required filing unit members or individual(s) even if they move to another household and apply for benefits as part of that household~~.~~, with the following exceptions:

(a) minor children who are removed from the household by Child and Family Services and who are determined eligible for child only TANF in another household; or

(b) minor children who are determined eligible for child only TANF in another household. This rule does not apply to households who are receiving TANF extended benefits as defined in ARM 37.78.202. The imposition of a sanction ends the currently negotiated FIA/WoRC Employability Plan the last day of the penalty month. A sanction is considered imposed even if a fair hearing is requested and continued benefits are issued.

(2) through (10) remain as proposed.

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

ARM 37.78.206 and 37.78.506 - Amendments Relating to Sanctions

COMMENT #1: Commentor supports the department's intensive case management treatment initiative to work with families having trouble meeting the requirements.

Commentor thinks the proposed changes are not consistent and punitive towards children who go to live with caretaker relatives when parents have a violation if the caretaker relatives cannot get a child only grant, especially with reference to Native American people who rely heavily on extended family assistance to care for their children. Why punish the children and deny them assistance because of a parent's violation? Many grandparents take in their grandchildren in troubled situations. How, in such situations, can the department impose sanctions on the children whose well-being depends on the grandparent taking them in?

Commentor stated that the sanctions are not helping families, which are struggling, sanctioned and end up in even worse situations, destroying any stability the family may have achieved before being sanctioned. Some families won't apply for TANF

because of such punitive sanctions, the commentor states, and chose to live in squalor instead. Commentor supports using intensive case management to help avoid families going into a sanction situation.

Commentor understands that no matter what the department does, some will not comply with program requirements; however, the department should not affect and apply the sanctions to those who are trying to meet the program requirements but are still failing for some reason, but not on purpose.

Commentor supports decreasing required work hours, particularly since by the commentator's calculations, participants only earn $2.64 per hour under the program. If the person can get a minimum wage job they could earn $10,000 for the same amount of time.

RESPONSE: The department has no further comment regarding the requirement for an intensive case management meeting, but continues to support this requirement.

The department has considered the numerous comments regarding the imposition of sanctions against children, and has amended the ARM to indicate two exceptions will exist to the imposition of an ineligibility period due to sanction against children who were required filing unit members at the time of sanction. The department believes these amendments will assist in addressing the concerns and comments received. These exceptions are as follows:

> If children who are under a sanction ineligibility period are removed from the home by Child and Family Services and placed in another household, they may be eligible for child only TANF cash assistance during the ineligibility period, provided all other eligibility criteria are met, i.e., living with a specified caretaker relative within the 5th degree of kinship.
>
> If a specified caretaker relative, who is within the 5th degree of kinship, makes application for child only TANF for children who are under a sanction ineligibility period, the children who are under a sanction ineligibility period may be eligible, provided all other eligibility criteria are met, i.e., child support enforcement referrals on both absent parents.

The department is amending ARM 37.78.206 and 37.78.506 accordingly.

As reflected in the rationale language in the proposal submission of the ARM to the Secretary of State, the department maintains the change to the sanction policy is necessary to assist the department in meeting the mandated work participation rate and in negating possible monetary penalties to the state for failure to meet the participation rate. The TANF Reauthorization regulations contain strict definitions of allowable work activities, as well as criteria for verification and documentation of such work activities. Individuals who are not complying with allowable work activities are subject to sanction and have a negative impact on the work participation rate.

By strengthening the consequences for noncompliance, the department believes it may limit the negative impact to the work participation rate.

In preparing the proposed changes to the sanction policy, the department has taken into consideration changes it intends to make regarding the decrease of hours of required participation in allowable work activities. This will allow households to better meet family obligations while maintaining compliance with the allowable work activities. The department agrees with the comment that individuals who obtain employment, even at minimum wage, would be financially more stable than solely relying on TANF.

When preparing the proposed changes to the sanction policy, the department also took into consideration existing policy which allows granting exceptions to participating for individuals who are fully incapacitated and the offering of accommodations in order to allow the individual to participate to the best of their ability. These processes are intended not only to give the participants the opportunity to avail themselves of the training opportunities available but to also assist the department in identifying those who choose not to comply versus those who are unable to participate fully.

The department is required by federal regulation to maintain a sanction policy and process for individuals who are not complying with allowable work activities. While some families may choose not to apply for TANF based on the potential to be sanctioned for noncompliance, the department has no option but to have a sanction policy and process in place. The proposed changes to the sanction policy put the state more in line with sanction policies in surrounding states. The policy of the department has always excused a participant's failure to comply with program requirements, including participation in allowable work activities, upon the showing of "good cause". If an individual can show good cause for noncompliance, a sanction would not be imposed.

ARM 37.78.420 - Increase to TANF Benefit Amounts

COMMENT #2: Commentor supports the increase to TANF funding.

RESPONSE: The department would clarify that the increase was not to TANF funding but to the TANF payment standards or the monthly benefit amount. The department has no further comment regarding the increase to the TANF payment standards but does continue to support this increase.

The following comments did not appear to pertain to a specific ARM amendment. The department will consider them general comments and reply to them as such.

COMMENT #3: Commentor noted the serious lack of child care availability for the extreme low income. There is currently no child care available at all for the 0 to 2 year old age group that will accept state payment. Unregistered day care also presents a problem.

RESPONSE: The department accepts the comment and is in agreement with this concern. The department will work closely with the Early Childhood Services Bureau to resolve the situation.

COMMENT #4: Commentor noted that there is a three month wait for any mental health services at all.

RESPONSE: The department accepts the comment and understands the burden that a lack of mental health services availability may place on a family. The department will ensure these concerns are shared with the appropriate divisions within the state and work toward a resolution.

COMMENT #5: Commentor noted that the stringent TANF requirements often put a stop to this family's ability to get ahead.

Commentor noted that the allowable work activities keep getting trimmed down by the department as to what constitutes allowable work activities. The department needs to recognize and allow certain types of activities to be allowable work activities if they are necessary for the parent to become stable in order to be suitable for work forces. Commentor would like to see more latitude in what the department will allow for work activities. If the individual needs mental health treatment or behavioral training in order for them to become employable, the department should consider those activities to be allowable work activities.

RESPONSE: The TANF Reauthorization regulations included in the Deficit Reduction Act of 2005 (DRA) contain strict definitions of allowable work activities. The same regulations contain strict criteria for verification and documentation of such work activities. TANF Reauthorization regulations limit the activities states may claim as allowable work activities for meeting the work participation rate as mandated by the Administration for Children and Families (ACF). Failure to meet the rate will result in monetary penalties to the state. The department has no option but to follow the regulations in order to avoid a monetary penalty.

The department also received the following written comments regarding the proposed ARM amendments:

ARM 37.78.206 and ARM 37.78.506 - Amendments relating to sanctions.

COMMENT #6: "I am writing to oppose the proposed rules to TANF that would include children in the sanctions. Please do not approve this rule change. This is punitive to children and we certainly are a much better state than this."

COMMENT #7: "On behalf of the Fort Peck Assiniboine and Sioux Tribes I have been the designated person to draft this written letter to OPPOSE the TANF rule change that will greatly impact the basic need of children who are members of our reservation. It will also impact relatives and kinship placements that need support in taking on the requested responsibilities. Many of our families are already on fixed

incomes barely meeting their needs. This rule if passed may jeopardize kinship placement as there would be a strong opportunity for them to be sanctioned. On one hand the State of Montana is promoting "Safe and Stable Families" and then present rule changes that would interfere with a child's basic stability of having their financial needs met.

Another point, if parents are sanctioned, children become at risk for removal, families will become homeless, children will become more susceptible to being placed in foster care and raising additional costs for the State and taxpayers.

The Fort Peck Tribes strongly oppose this TANF rule change by resolution on this date."

RESPONSE TO #6 AND #7: In response to the above written comments, the department would refer to the previous response given in regards to ARM 37.78.206 and ARM 37.78.506. The department is amending the proposed ARM to make two exceptions to the sanction ineligibility period following the children.

/s/ Francis X. Clinch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 29, 2007.

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

In the matter of the amendment of ARM 37.86.702, 37.86.805, 37.86.1001, 37.86.1004, 37.86.1005, 37.86.1006, 37.86.1105, 37.86.1506, 37.86.1807, 37.86.2105, 37.86.2205, 37.86.2207, 37.86.2402, 37.86.2405, 37.86.2505, and 37.86.2605 pertaining to audiology services, dental, outpatient drug services, home infusion therapy, durable medical equipment and medical supplies, optometric services, EPSDT, transportation, and ambulance services	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On September 20, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-412 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1400 of the 2007 Montana Administrative Register, issue number 18.

2. The department has amended ARM 37.86.702, 37.86.805, 37.86.1001, 37.86.1004, 37.86.1005, 37.86.1006, 37.86.1105, 37.86.1506, 37.86.1807, 37.86.2105, 37.86.2205, 37.86.2207, 37.86.2402, 37.86.2405, 37.86.2505, and 37.86.2605 as proposed.

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

COMMENT #1: The sixteen cent increase in dispensing fees for pharmacies is welcome but is insufficient to adequately reimburse pharmacies, especially in light of the impending changes to drug reimbursement mandated by the Deficit Reduction Act.

RESPONSE: The department appreciates the support for the current dispensing fee increase. This increase was legislatively approved in House Bill 2. Further modifications of the pharmacy dispensing fee specifically related to the Deficit Reduction Act and cost to dispense findings are being addressed in MAR Notice Number 37-417 pertaining to Medicaid reimbursement for dispensing fees and outpatient compound prescriptions published at page 1611 on October 25, 2007 in the Montana Administrative Register, issue number 20.

COMMENT #2: Legislative Counsel commented that one of the two statutes cited

as implementing authority, 53-6-141, MCA, is a repealed statute.

RESPONSE: Legislative Counsel is correct. The cite to 53-6-141, MCA, was an error. The correct implementation cites, which were also included in the notice, are 53-2-201, 53-6-101, 53-6-111, or 53-6-113. All citations in the published history of a rule must appear in the notice, including the repealed cite. Underlining a citation indicates it is being relied upon as the authority to implement the proposed rule changes. It should not have been underlined.

4. The department intends to apply the amendments to ARM 37.86.805, 37.86.1004, 37.86.1005, 37.86.1506, 37.86.1807, 37.86.2207(9), and 37.86.2605 retroactively to October 1, 2007.

The department intends to apply the amendments to ARM 37.86.1006, 37.86.2105, 37.86.2205, and 37.86.2207(2) retroactively to July 1, 2007.

The department intends to apply the amendments to ARM 37.86.2405 and 37.86.2505 retroactively to November 1, 2006.

No detrimental effects are anticipated as a result.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State October 29, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.22.1311, and repeal of ARM 42.21.112 relating to personal, industrial, and centrally assessed property taxes	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 20, 2007, the department published MAR Notice No. 42-2-776 regarding the proposed amendment and repeal of the above-stated rules at page 1412 of the 2007 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 11, 2007, to consider the proposed amendment and repeal. No one appeared at the hearing to testify. No comments were received. Therefore, the department amends and repeals the rules as proposed.

3. The department amends ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.42.151, 42.21.153, 42.21.155, and 42.22.1311 and repeals ARM 42.21.112 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 29, 2007

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;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

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.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

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 P.O. 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 or Register) 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

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2007. This table includes those rules adopted during the period July 1 through September 30, 2007, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2007, 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 2006 and 2007 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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