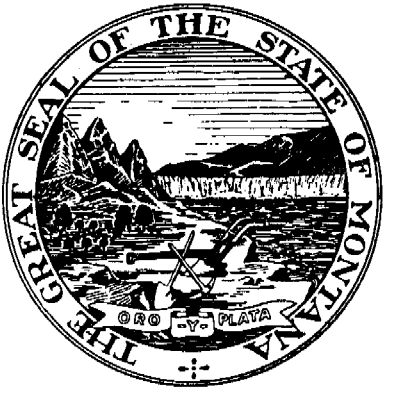
MONTANA ADMINISTRATIVE REGISTER



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NOTICE: The July 1977 through June 1979 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed repeal of ARM 32-2.6A (14)-S640, 32-2.6A(14)-S680, and 32-2.6A(14)-S690 relating to artificial insemination.	))))))	NOTICE OF PROPOSED REPEAL OF ARM 32-2.6A(14)-S640, 32-2.6A (14)-S680, AND 32-2.6A(14)-S690 (Artificial Insemination) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after January 13, 1980 the Board of Livestock proposes to repeal rules 32-2.6A(14)-S640 DEFINITIONS OF TERMS USED, 32-2.6A(14)-S680 INFECTIOUS CONTAGIOUS DISEASE SHALL BE REPORTED, and 32-2.6A(14)-S690 SEMEN FROM APPROVED SIRES ONLY, concerning artificial insemination.

2. The rules which are proposed to repeal are located at pages 32-52 and 32-55 of the Administrative Rules of Montana. The Board is proposing the repeal of these rules because the first two rules unnecessarily repeat statutory language and are therefore contrary to the provisions of section 2-4-305 MCA. The third rule is not necessary because the state of Montana does not have a permit system for the intrastate use of semen in the practice of artificial insemination. Section 32-2.6A(78)-S6330 already provides for a permit system for semen imported into Montana.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to James W. Glosser, D.V.M.,Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Capitol Station, Helena, Montana, 59601 no later than January 13, 1980.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views, or arguments orally or in writing at a public hearing he must make written request for hearing and submit this request along with any written comments he has to Dr. Glosser, at the address given in paragraph 4, no later than January 13, 1980.

6. The Board having determined that more than 250 people are involved in the artificial insemination of livestock within the state of Montana, if the Board receives requests for public hearing on the proposed repeal from 25 or more persons directly affected by the proposed repeal, from the Administrative Code Committee of the legislature, from another agency of state government, or from an association having more than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the Board to make the proposed repeal is based on section 81-2-102 MCA.

ROBERT C. BARTHELMESS
Chairman, Board of Livestock

By: BRADFORD F. NEWCOMB, D.V.M.
Chief, Disease Control Bureau

Certified to the Secretary of State December 4, 1979.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed amendment of rule 32-2.6A(10)-S630 concerning quarantined feedlots.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 32-2.6A(10)-S630 (Quarantined Feedlots) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after January 13, 1980 the Board of Livestock proposes to amend rule 32-2.6A(10)-S630 APPROVED QUARANTINED FEEDLOTS, to permit such feedlots to handle brucellosis reactor animals under certain circumstances.

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

32-2.6A(10)-S630 APPROVED QUARANTINED FEEDLOTS

(1) An approved quarantined feedlot is a tightly fenced dry feed yard which is held under quarantine and has been approved by the state veterinarian for feeding cattle for slaughter only, which cattle may be from herds in which certain diseases exist, particularly brucellosis. ~~Such cattle may include any animals from a brucellosis quarantined herd except brucellosis reactors.~~

(2) Brucellosis involved cattle eligible for entry into a quarantined feedlot include exposed and suspect animals. Reactor animals may not be placed in a quarantined feedlot except under specific written permission of the state veterinarian and according to such conditions as he may impose in the interest of effective disease control.

~~(2)~~ (3) Application for approval.

(a) Application for approval as a quarantined feedlot must be made to the state veterinarian, and such application must furnish the following information:

(i) Name and address of applicant;

(ii) Location of feedlot;

(iii) Relation to other premises where cattle may be held

(iv) Drainage;

(v) Watering facilities; and

(vi) Reasons for applying for approved feedlot.

(b) An application for approval of a feedlot must be accompanied by an inspection report signed by the district deputy state veterinarian with his recommendation.

~~(3)~~ (4) Location and drainage:

(a) Such feedlot must be located so that there is no contact with other livestock, and so that the drainage cannot contaminate any area on which other livestock are held.

(b) The water facilities must be such that other live-

stock do not use the same water.

~~(4)~~ (5) All cattle fed in a quarantined feedlot shall not be removed from the feedlot except for immediate slaughter pursuant to and in accordance with the provisions of Rule 32-2.6A(26)-S6050, section (1), subsections (a),(b), and (c).

~~(5)~~ (6) All cattle in quarantined feedlots must be branded on the left shoulder with an "F".

~~(6)~~ (7) Limit and revocation of approval:

(a) The approval of the feedlot as a quarantined feedlot will be valid only until June 30 each year, and must be renewed before that date.

(b) The approval may be revoked at any time if in the opinion of the state veterinarian there is failure to comply with the requirements of this rule.

3. The department is proposing this amendment in order to allow brucellosis reactor cattle to be fed to a slaughter weight under certain conditions in quarantined feedlots to allow the owner of such infected animals to minimize the economic loss by feeding these animals to a slaughter weight. It is contemplated that this practice would be utilized only when there are calves at side of the infected animals and under very limited circumstances.

4. Interested persons may submit their data, views, and arguments concerning the proposed amendment in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Capitol Station, Helena, Montana, 59601 no later than January 13, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, or argument orally or in writing at a public hearing he must make written request for hearing and submit the request along with any written comments he has to Dr. Glosser, at the above address given in paragraph 4 of this notice, no later than January 13, 1980. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every livestock producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from any given governmental subdivision, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

6. The authority of the department to make the proposed amendment is based on section 81-2-102 MCA. This amendment implements that same section.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By
BRADFORD F. NEWCOMB, D.V.M.
Chief, Disease Control Bureau

Certified to the Secretary of State December 4, 1979.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed repeal of ARM 32-2.6A (118)-S6760, 32-2.6A(118)--S6830, and 32-2.6A(118)-S6840 relating to tuberculosis area and herd plans.	NOTICE OF PROPOSED REPEAL OF ARM 32-2.6A(118)-S6760, 32-2.6A (118)-S6830 AND 32-2.6A(118)-S6840 (Tuberculosis Area Herd Plans) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after January 13, 1980 the Board of Livestock proposes to repeal ARM 32-2.6A(118)-S6760 PAYMENT OF INDEMNITY, 32-2.6A(118)-S6830 INDIVIDUAL ACCREDITED HERD PLAN, and 32-2.6A(118)-S6840 MODIFIED-ACCREDITED AREA PLAN relating to herd and area plans for tuberculosis control and indemnity.

2. The rules proposed to be repealed are on pages 32-107, 32-108, and 32-109 through 32-112 of the Administrative Rules of Montana. These rules are proposed for repeal because Montana has now achieved accredited free status so as far as tuberculosis control is concerned. Therefore, there is no need for individual herds or areas within Montana to attempt to qualify for the special status provided by these rules, since the statewide status accomplishes the same result. The indemnity rule unnecessarily restates statutory language.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Capitol Station, Helena, Montana, 59601 no later than January 13, 1980.

5. If a person who is directly affected by the proposed repeal of these rules wishes to express his data, views, or arguments orally or in writing at a public hearing must make written request for a hearing and submit that request along with any written comments to Dr. Glosser, at the address given in paragraph 4 of this notice, no later than January 13, 1980. The department has determined that the affected persons number more than 250. In the event that the department receives request for a public hearing on the proposed repeals from 25 or more persons who are directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or from a association having not less than 25 directly affected members, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

6. The authority of the department to make the proposed repeal is based on section 81-2-102 MCA.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By:
BRADFORD F. NEWCOMB, D.V.M.
Chief, Disease Control Bureau

Certified to the Secretary of State December 4, 1979.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the adoption of rules relating to the dating of milk and liquid dairy products containers for freshness.	)))))	NOTICE OF PUBLIC HEARING (Milk Freshness Dating)

TO: All Intersted Persons

1. On January 8, 1980, beginning at 9:00 a.m. a hearing will be held in the auditorium of the Scott Hart Building, Sixth Avenue and Roberts Street, Helena, Montana, to consider the adoption of rules relating to the dating of fluid milk and fluid milk products for freshness.

2. The proposed rules do not replace or modify any rules presently contained in the Administrative Rules of Montana.

3. The proposed rules read as follows:

Rule I. SCOPE OF RULES

These rules apply to whole milk, low fat milk, nonfat milk, buttermilk, chocolate milk, whipping cream, half and half and or any other liquid milk product designed to be consumed in the form in which it is packaged.

Rule II. TIME FROM PROCESSING THAT FLUID MILK MAY BE SOLD FOR HUMAN CONSUMPTION

(1) No grade A pasteurized milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than [8 through 14] days after pasteurization.

(2) No grade A raw milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than [8 through 14] days after the milk is bottled.

(3) For purposes of this rule [8 through 14] days after pasteurization or bottling means the midnight closest to [192 through 336] hours following the hour that pasteurization or bottling of the milk is completed.

Rule III. LABELING OF MILK CONTAINERS TO SHOW LAST DAY OF LEGAL SALE

(1) Each container into which grade A pasteurized or grade A raw milk is placed for sale for human consumption must be marked with a pull date. The pull date will state in arabic numerals or standard abbreviations for months, the month and day which is the last day the milk may be sold as set forth in rule II.

(2) Language in substance the same as "sell by" or

"not to be sold after" must be placed by the date in a manner which clearly shows that the milk must be sold by the date on the container.

Alternative A. Rule III. LABELING OF MILK CONTAINERS AS TO DATE OF FILL.

(1) Each container into which grade A pasteurized or grade A raw milk is placed for sale for human consumption must be marked with the date the container was filled. The fill date will, in arabic numerals or using standard abbreviations for months, state the month and day the milk was processed and placed in the container.

(2) Language in substance the same as "filled on" must be placed by the date in a manner which clearly shows that the date on the container is the date when the container was filled.

Alternative B. Rule III. LABELING OF MILK CONTAINERS TO SHOW DATE OF FILL AND LAST DATE OF LEGAL SALE

(1) Each container into which grade A pasteurized or grade A raw milk is placed for sale for human consumption must be marked both with a processing date and a pull date. Each date must be stated in arabic numerals or standard abbreviations for months, and show, respectively, the date on which the container was filled and the date which is the last day of legal sale.

(2) Language in substance the same as "filled on" must be placed by the fill date in a manner which clearly shows that date to be the date when the container was filled.

(3) Language in substance the same as "sell by" or "not to be sold after" must be placed by the pull date in a manner which clearly shows that the pull date is the last date by which the milk may be sold.

Rule IV. MANNER, POSITIONING, AND SIZE OF LABELING

(1) Labels required by [Rule III or its alternatives] must be of a color clearly contrasting with the area immediately surrounding the label. The labels may be put on by printing, stamping, or burning, a combination of any of those methods, or by some other method specifically approved in writing by the department.

(2) Labels placed on "pure paks" or similar containers shall be located on the top sealing fin. Labels on molded plastic jugs may be placed anywhere on the upper half of the container except the lid, or on the printed product label. Labels for other containers shall be located as specifically approved in writing by the department.

(3) All characters in the labels required by [Rule III or its alternatives] must be at least 1/8 inch in height.

Rule V. WHEN MILK OFFERED FOR SALE SUBJECT TO SEIZURE

Milk offered for sale contrary to the provisions to

rule II or III may be seized and destroyed by agents of the department of livestock.

4. These rules are proposed for adoption to assure that the consumer may determine the freshness of milk or liquid milk products offered for sale by having each container of those products dated as to freshness. The current practice of most dairy plants is to indicate the date after processing by which their products should be removed from the shelves by putting numbers or standard abbreviations for the month and day on the containers. A representative sampling of such containers made by the Milk Control Board of the Department of Business Regulation in June 1979 showed that such dates varied by more than a week, and that in many instances the dates were unreadable because they were illegible or because they were part of a code.

The Department anticipates that if these rules are adopted many dairy plants will need to retool to provide the information required. Persons opposed to the rules for that reason are requested to provide reliable facts and figures showing the costs of such retooling, and facts and figures showing the volume of their products processed and sold.

Among other issues to be considered are the number of days following processing that the products covered by this notice may be exposed to sale; whether the dating should be based on fill date, pull date, or both; whether language to the effect of "filled on" or "sell by" should accompany the date; the nature of penalities to enforce the rules; the positioning of the labels; the manner and size of labeling; and in the alternative, whether these rules are required at all. The scope of this hearing is intended to be broad so that the rules may be modified or totally redrawn to reflect the input received. The department hopes that input will be received from consumers and consumer groups as well as parts of the dairy industry.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Mike McCarter, Agency Legal Services Bureau, Department of Justice, State Capitol, Helena, Montana, by January 11, 1980.

6. Mike McCarter, Agency Legal Services Bureau, Department of Justice, State Capitol, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Department of Livestock to adopt these rules is based on Section 81-2-102 MCA, and the rule implements that section.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: Bradford F. Newcomb
BRADFORD F. NEWCOMB, D.V.M.
Chief, Disease Control Bureau

Certified to the Secretary of State December 4, 1979.

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

IN THE MATTER of Proposed Adoption of Rules for Compensation for Consumer Intervenors in the Public Utility Regulatory Policies Act (PURPA)-Related Proceedings.	)))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES FOR COMPENSATION FOR CONSUMER INTERVENORS IN PURPA-RELATED PROCEEDINGS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 12, 1980, the Department of Public Service Regulation proposes to adopt new rules for compensation for consumer intervenors in Public Utility Regulatory Policies Act (PURPA)-related proceedings.

2. The proposed rules provide as follows:

Rule I. PRELIMINARY DETERMINATION OF ELIGIBILITY

(1) An intervenor who wishes to be eligible for an award of costs of participation in a PURPA-related proceeding must, within 14 days of the first notice of hearing in a given proceeding, make application to the Commission for such purpose. Such application shall be brief in nature and shall:

(a) State the consumer interest represented by the intervenor as distinguished from those represented by the Montana Consumer Counsel, the relevance of the hearings to that interest and why participation is needed for a full **and fair** determination of the issues;

(b) Outline the general nature of the consumer's expected participation, other funding sources available and the anticipated budget;

(c) Include an affidavit stating that, but for an award of fees and costs, participation will be a significant financial hardship to the consumer; and

(d) Be served upon all affected utilities and other known parties and intervenors to the proceeding.

Hardship, as used in this section, may be established by demonstrating that the intervenor does not have sufficient resources available to participate effectively in the proceeding without such an award or, in the case of a group or organization by showing that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(2) Affected utilities, parties and other intervenors shall have the right to file an objection to any application for eligibility within 14 days of its filing.

(3) The Commission shall make a determination of the eligibility of an intervenor to receive an award under these rules within 28 days of receipt of an application. A negative determination of eligibility precludes an award of fees and costs at the conclusion of the proceeding. An affirmative determination of eligibility does not assure the intervenor of

an award; the intervenor must, in addition, meet the other requirements of these rules.

The Commission may condition its determination of eligibility upon a requirement that intervenors with the same or similar interest share a common legal representative and common expert witnesses. The Commission may, in its determination of eligibility, set a ceiling on the costs which may be awarded to eligible intervenors.

Rule II. AWARD OF COSTS (1) At the time of issuance of a final Order in any PURPA-related proceeding, the Commission shall award costs of participation to any intervenor who has fulfilled the requirements of this Rule. These costs shall be assessed against each electric utility affected by the proceeding. In the event that more than one utility is affected, each utility's share of the assessment shall be determined by multiplying the total award by a ratio of that utility's total 1978 retail Kwh sales in Montana by the total 1978 retail Kwh sales in Montana of all the affected utilities in the proceeding.

(2) The determination as to which consumer intervenors are entitled to costs shall be made by the Commission after considering whether the consumer intervention substantially contributed to the formal decision of the Commission.

(3) In reviewing claimed costs for their reasonableness, the Commission will compare claims with expenses incurred by other parties for similar services. In no case shall the award exceed the actual costs incurred by the intervenor for each service.

Rule III. PROCEDURES (1) Within 10 days of the Commission Order awarding costs to a consumer intervenor, said party shall file a memorandum of costs with the Commission Secretary detailing attorney fees, expert witness fees and other reasonable costs for which compensation is claimed.

Any party may file an objection to the reasonableness of any fee or cost within 10 days of the filing of the memorandum of costs. Within 30 days of its original Order awarding costs, the Commission shall, after considering the memorandum of costs, and any objections thereto, issue an order setting out the amount of the award and, if necessary, allocating that amount among the various affected utilities.

(2) Any consumer who has not been awarded costs in the Commission's Order may petition the Commission for an order awarding such costs. The Commission shall dispose of such petition within 20 days by entering an Order either granting or denying the petition. If the petition is granted, the consumer shall then follow the procedures set forth in Rule 3(1).

(3) Payment of costs under this Rule shall be made by the affected utility or utilities within 30 days of the date on which a Commission Order issues under Rule 3(1). If costs are not paid within 30 days of said Order, the consumer intervenor may initiate procedures to enforce the Order pursuant to Section 122(a)(2) of PURPA.

Rule IV. ACCOUNTING TREATMENT (1) All monies paid to consumer intervenors by an affected utility under this Rule will be considered regulatory expenses in the rate case in which the testimony is presented.

3. The purpose of these proposed rules is to establish a procedure for awarding costs of intervention to eligible parties who participate in hearing relating to the standards or purposes set forth in the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub.L. 95-617, 16 U.S.C. § 2601 et seq. Th Montana Public Service Commission may award compensation for reasonable attorney's fees, expert witness fees, and other reasonable costs of participation by intervenors in any PURPA-related proceeding, when their participation has substantially contributed to a full and fair consideration of the issues involved in such proceeding and when they have met the other requirements set forth in these rules.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Eileen E. Shore, 1227 11th Avenue, no later than January 10, 1980.

5. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

7. The authority of the Commission to adopt these rules is 2-4-303 and 69-3-103, MCA, IMP. 69-3-102, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE December 3, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF DENTISTRY

IN THE MATTER of the Proposed Adoption of new rules setting fee schedules for dentists and) dental hygienists.)	NOTICE OF PROPOSED ADOPTION OF ARM 40-3.34(6)-S3455 FEE SCHEDULE AND ARM 40-3.34(10)-S34010 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 15, 1979, the Board of Dentistry published a notice of proposed adoption in the above entitled matter. Because of questions raised by the Administrative Code Committee, no action will be taken on that notice and the proposed adoptions are being re-noticed.

2. On January 12, 1980, the Board of Dentistry proposes to adopt two new rules setting fee schedules for dentists and dental hygienists.

3. The proposed rules ARM 40-3.34(6)-S3455 sets a fee schedule for dentists and will read as follows:

"40-3.34(6)-S3455 FEE SCHEDULE

(1) Examination fee	$60.00
(2) Re-examination fee	60.00
(3) *Reciprocity	50.00
(4) Licensure	20.00
(5) Renewal, in-state	25.00
(6) Renewal, out-of-state	25.00
(7) *Duplicate Licensure fee	10.00
(8) *Penalty fee	10.00

* Indicates those fees which are set by statute."

4. The Board is proposing the adoption of this rule as the Board has authority to set fees commensurate with costs and has determined this schedule, which includes fees that are set by statute, to be necessary to sustain the administrative costs of the Board. House Bill 233 which gave the Board discretion in setting some of the fees, also required a statement of intent in which the Board of Dentistry is required to publish data on the actual costs of examination in the notice of proposed rules. Listed below are the actual figures involved in the procedure for examination for both dentists and dental hygienists:

Actual Cost: Department cost per applicant or examinee

four hours secretarial time	$23.00
law and rules - one copy	1.10
meeting room	2.00
three reference letters, return postage included	1.56
two verification letters, return postage included	1.04
five page exam(copying)	.25
application - postage	.47
Misc. costs	.88
Subtotal	30.30

Board time and cost per applicant	27.00
TOTAL PER APPLICANT	57.30

The proposed rule implements sections 37-4-301 (4)(e),(f), (7), 303(2), 306, 307(1), (2) and (3) MCA. These sections are also the authority sections for the Board to make the proposed adoptions, as the Board does not have an overall authority section in their statutes.

5. The proposed rule ARM 40-3.34(10)-S34010 sets a fee schedule for dental hygienists and will read as follows:

"40-3.34(10)-S34010 FEE SCHEDULE

(1) Examination fee	$60.00
(2) Re-examination fee	60.00
(3) *Reciprocity	20.00
(4) Renewal, in-state	10.00
(5) Renewal, out-of-state	10.00
(6) *Licensure fee	15.00
(7) *Duplicate license fee	10.00
(8) Penalty fee	10.00

* Indicates those fees which are set by statute."

6. The Board is proposing the above rule for the reasons set out in paragraph 4. above. The proposed rule implements sections 37-4-303(2), 402(5)(e),(f),(7), 403 (3), and 406 (1) MCA. These sections are also the authority sections for the Board to make the proposed adoptions.

7. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Dentistry, Lalonde Building, Helena, Montana 59601, no later than January 10, 1980.

8. If a person who is directly affected by the proposed adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Dentistry, Lalonde Building, Helena, Montana 59601 no later than January 10, 1980.

9. If the Board receives requests for a public hearing on the proposed adoptions from 10% or 25 or more of those persons directly affected by the proposed adoptions or the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

10. The authority of the Board to make the proposed adoptions is based on the sections listed after each proposed rule.

BOARD OF DENTISTRY
DOUGLAS E. WOOD, D.D.S, PRESIDENT

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, December 4, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

IN THE MATTER of the Proposed Repeal of ARM 40-3.96(6)-S9630) Grandfather clause and the Proposed amendments of ARM 40-3.96(6)-S9640 Subsection (3) concerning applications; ARM 40-3.96(6)-S9670 subsection (3) concerning examinations; and ARM 40-3.96(6)-S9675 concerning permits.	NOTICE OF PROPOSED REPEAL OF ARM 40-3.96(6)-S9630 GRANDFATHER CLAUSE and THE PROPOSED AMENDMENTS OF ARM 40-3.96(6)-S9640 APPLICATIONS; ARM 40-3.96(6)-S9670 EXAMINATIONS; and ARM 40-3.96(6)-S9675 GRANDFATHER CLAUSE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 12, 1980, the Board of Radiologic Technologists proposes to repeal ARM 40-3.96(6)-S9630 which allows for a grandfather clause and to amend ARM 40-3.96(6)-S9640 subsection (3) concerning applications, 40-3.96(6)-S9670 subsection (3) concerning examinations and ARM 40-3.96(6)-S9675 concerning permits.

2. The proposed repeal of 40-3.96(6)-S9630 deletes the rule in its entirety. The rule is located at page 40-386.3 of the Administrative Rules of Montana and reads as follows: (deleted matter interlined)

~~"40-3.96(6)-S9630 GRANDFATHER CLAUSE (1) Applications to qualify for licensure without examination (Sec. 66-3708 R.C.M. 1947) must be submitted to the Board no later than March 1, 1977."~~

3. The board is proposing the deletion as the 1979 Legislature deleted the section of the statutes providing for a grandfather clause.

4. The proposed amendment of 40-3.96(6)-S9640 amends subsection (3) as follows: (New matter underlined)

"40-3.96(6)-S9640 APPLICATIONS .....

..(3) Reconsideration: At any time within one year after date of notice of action by the board, a written request may be made for reconsideration of an application which has been rejected. After one (1) year has expired from the date the application is received by the board, new application must be made."

5. The board is proposing to add the word "written" for better clarification of the process for reconsideration of rejected applications. The rule implements section 37-14-302 MCA.

6. The proposed amendment of 40-3.96(6)-S9670 amends subsection (3) as follows: (new matter underlined, deleted matter interlined)

"40-3.96(6)-S9670 EXAMINATIONS ....

..(3) ~~The minimum passing grade shall be seventy-five percent (75%).~~ Passing scores for the examination are listed as follows:

(a) General knowledge portion 56 correct answers

(b) Chest, extremeties, spine & skull	20 correct answers
(c) Other, including fluoroscopy	24 correct answers

....."

7. The board is proposing the amendment to this rule to raise the passing scores on the examination for permits from 75% to the numbers stated above. The rule implements section 37-14-303 MCA.

8. The amendment to 40-3.96(6)-S9675 places present subsection (c) as (b) and changes the wording of (b) and makes it (2) and will read as follows: (New matter underlined, deleted matter interlined)

"40-3.96(6)-S9675 PERMITS (1) Applicants for permit to perform x-ray procedures must meet the following requirements for approval to take the examination for permit:

(a) must show proof of employment from physician or administrator;

~~(b) must have completed a minimum of 24 hours of formal classroom x-ray training under the direction of a radiologic technologist or radiologists; and~~

~~(c)~~ (b) must have proof of formal experience or minimum of 6 months practical experience.

(2) After failing the examination 3 times, an applicant must complete a minimum of 24 hours of formal classroom x-ray training under the direction of a radiologic technologist or radiologists; before being allowed to again sit for the examination."

9. The board is proposing the amendment to place a ruling on persons who continue to fail the examination so that they must receive instruction prior to taking the examination after 3 failures. The rule implements section 37-14-306 MCA.

10. Interested parties may submit their data, views or arguments concerning the proposed amendments and repeal in writing to the Board of Radiologic Technologists, Lalonde Building, Helena, Montana 59601 no later than January 10, 1980.

11. If a person who is directly affected by the proposed amendments and repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Radiologic Technologists, Lalonde Building, Helena, Montana 59601 no later than January 10, 1980.

12. If the board receives requests for a public hearing on the proposed amendments or repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments or repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 60 persons based on the 600 licensed radiologic technologists in Montana.

13. The authority of the Board to make the proposed amendments and repeal is based on section 37-14-202 MCA.

BOARD OF RADIOLOGIC TECHNOLOGISTS
REYNOLD J. BENEDETTI, R.T.
CHAIRMAN

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, December 4, 1979.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF A RULE relating to wine distributor's monthly reports)	NOTICE OF PROPOSED ADOPTION OF A RULE relating to wine distributor's monthly reports. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Parties:

1. On January 21, 1980, the Department of Revenue proposes to adopt a rule relating to wine distributor's monthly reports.

2. The proposed rule provides as follows:

RULE I WINE DISTRIBUTOR'S MONTHLY REPORTS (1) Each table wine distributor shall file with the department a wine distributor's monthly tax report (Form AA-50), as required by 16-3-404, MCA, showing the number of liters received during the immediately preceding calendar month. The form must be filed whether or not the distributor has received any wine during the preceding calendar month. The form is available from the Audit and Accounting Division; Department of Revenue; Mitchell Building; Helena, Montana 59601.

(2) The form is to be accompanied by payment of the tax due under 16-1-411, MCA.

(3) Failure to file the form is sufficient cause for a suspension or revocation of the distributor's license. Unless the distributor is able to show good cause, failure to file subjects the distributor to a fine of $10 for the first failure, $50 for the second, and $100 for each failure thereafter.

3. The rule is proposed to implement the provisions relating to sales of table wines resulting from Initiative 81 and SB 99 from the 1979 Legislature. Section 16-1-411, MCA, bases the tax on the amount of wine delivered to the distributor. Consequently the form for distributor's reports provides for a showing of the amount of wine delivered. For ease of administration the tax payment and the form are to be submitted together. The last subsection applies 16-4-406, MCA, to the specific instance of failing to make the required reports. The specific fine amounts are provided so that the distributor knows in advance the fine he may be subject to.

4. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing no later than January 14, 1980, to:

Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59601

5. If a person who is directly affected by the proposed rule wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than January 14, 1980.

6. If the department receives request for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are 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 estimated to be 3 based upon the number of licensed table wine distributors.

7. The authority of the department to make the proposed rule is based on 16-1-303, MCA. The proposed rule implements 16-1-411, 16-3-404, and 16-4-406, MCA.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 12-4-79

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of procedural rules for the use of voting machines and devices where the procedures differ from use of paper ballots	)))))	NOTICE OF PROPOSED ADOPTION OF PROCEDURAL RULES FOR USE OF VOTING MACHINES AND DEVICES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 12, 1980, the Secretary of State proposes to adopt rules relating to the procedures for use of voting machines and devices.

2. The proposed rules provide as follows:

RULE I USE OF VOTING MACHINES AND DEVICES (1) No voting machine or device may be used in this state without first having been approved in compliance with Section 13-17-101, MCA.

(2) The following voting machines and devices have been approved under authority of the law in effect prior to July 1, 1979:

(a) IES (Shoup) Voting Machine
(b) AVM (Automatic Voting Machine)
(c) Computer Election Systems - Votomatic (CES)

(The implementing section for Rule I is 13-17-101, MCA)

RULE II PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - BEFORE THE POLLS OPEN (1) Each IES (Shoup) voting machine internal program shall be set prior to each election by the election administrator in accordance with the ballot as certified by the secretary of state.

(2) Ballot labels for the IES (Shoup) voting machine are to be printed in accordance with the ballot as certified by the secretary of state. The election administrator shall insert the ballot labels, place in voting position and vote all offices to test accuracy of each machine.

(3) Election administrator shall furnish return sheets and certificates to the precinct judges. The return sheets shall:

(a) have each candidate's name designated by the same reference that the name bears on the ballot labels and counters and allow for writing in a vote for a candidate,

(b) provide for the return of the vote on ballot issues,

(c) have a blank for indicating the precinct, the number of machines used, and other necessary information,

(d) have a certificate to be executed before the polls open by the election judges,

(e) have a second certificate stating the manner of closing the polls and verifying the returns, and

(f) have the certificate and attestation of the election judges on each return sheet.

(4) Election administrator shall close and lock each machine and deliver them to polling places. Keys shall be placed in an envelope having the corresponding machine number and the protective counter number recorded on it by the election administrator. Key envelopes shall be delivered to chief election judge for each precinct. Chief election judge shall distribute keys to judges, as needed, for preparation of machines for use and upon close of polls for locking the machines.

(5) Election judges, one from each party having ballot access, shall compare the names on the front labels of each machine with the names on the return sheets. The names must be the same and in the same order. Those judges not comparing names shall take return sheets to the machines and write, in the spaces provided, the machine number and the seal number for each machine. They shall also enter the protective counter number on the return sheets.

(6) All election judges shall examine the public counter on each machine to see that they are all set at 000. If numbers are found on any counters where a candidate's name appears or an issue is placed, record the number in the proper column on the return sheets and subtract it from the total at the time the votes are totaled. The judges shall view the protective counter on each machine and determine that the counter shows the same figure as shown on the envelope containing the keys for each machine.

(7) All election judges shall certify to the facts in (6) above by signing Certificate No. 1 in the form provided by the election administrator.

(8) Election judges, one from each party having ballot access, shall check the red number on write-in paper roll and the seal number on each machine to make sure they are the same as on key envelope.

(9) Election judges shall turn keys, as instructed, remove them from each machine, put them in the key envelope, and place the envelope in the custody of the chief election judge.

(The implementing sections for Rule II are 13-17-206, 13-12-201 through 13-12-208 and 13-13-115, MCA)

RULE III PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - WHILE THE POLLS ARE OPEN (1) An election judge, designated by the chief election judge, shall use a demonstrator to show electors how to use the machine, upon request.

(2) Upon the elector's signing the register he shall be issued a numbered voting authority slip. His name need not be written in the poll and tally book but the number on the voting authority slip shall be written to the right of the elector's name and signature in the register.

(3) An elector may request a paper ballot. Upon such request he shall be given a paper ballot and be allowed to vote as required by law.

(4) Upon presentation of a numbered voting authority slip, the election judge in charge of a machine shall take the slip, place it in the wedge shaped box on the side of the machine, pull voting latch out and allow the elector to enter the machine. No one may be allowed to enter a machine without a numbered voting authority slip and no slip shall leave the polling place.

(5) Elector shall turn the red switch all the way to the right. This closes the secrecy curtain.

(6) When voting in a primary election the elector shall select the party for which he intends to vote by pushing down the party lever of his choice.

(7) Elector may write in a vote for a candidate of his choice by writing in the name of the candidate after opening the write-in space for the office. Opening of the slide prevents elector from voting for a candidate whose name appears on the ballot label for the same office.

(8) After voting, by pushing down the levers, the elector shall leave marks showing and move the red switch all the way to the left. This registers his votes, clears the machine and opens the curtains.

(The implementing sections for Rule III are 13-13-114, 13-13-115, 13-17-305, 13-10-209 and 13-12-209, MCA)

RULE IV PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - AFTER THE POLLS CLOSE (1) Election judges shall procure from the chief election judge the appropriate keys for locking of the machines. Judges shall turn the keys as instructed, break the numbered seals and turn knob clockwise, as instructed. Judges shall turn vise handle which will lock keys in the machine.

(2) Election judges, one from each party having ballot access, shall read or observe the reading of the votes registered on the candidate and ballot issue counters on the face of the machines. Two election judges, each of a different party, shall write the totals on the return sheets in the column and on the line for each machine being read.

(3) Write-in votes:

(a) Election judges, one from each party having ballot access, shall ascertain if write-in votes appear on the paper roll. If so, they shall pull the paper from the paper roll

and take to a table to canvass. Two of the judges shall tally the write-in votes in the poll and tally book.

(4) Absentee ballots:

(a) Election judges, one from each party having ballot access, shall compare the name on the outside of the sealed envelope containing absentee ballots and the same names in the register. They shall write "Absent Elector" in the space provided for signature in the register.

(b) A numbered voting authority slip shall be initialed for each absentee elector and the number of the slip shall be written to the left of the signature line in the register and then the slip shall be put in the wedge shaped box, at any machine.

(c) Judges shall proceed to count and tally absentee ballots as for any other paper ballot in the poll and tally book and record the totals on the return sheets.

(5) Upon completion of counting all paper ballots and totalling all machine votes, the information required by Certificate No. 2 in the form provided by the election administrator shall be completed and signed by all election judges.

(6) Total of votes cast for each candidate or ballot issue by machine, paper ballot or absentee ballot shall be recorded on the return sheets. One sheet shall be posted at the polling place and one returned to the election administrator.

(7) Contents required for each official envelope shall be enclosed in the proper envelope, a seal affixed to each and signed by all election judges.

(8) Machines shall be closed and all doors securely shut and locked.

(9) Chief election judge shall return all supplies and required materials to the election administrator as instructed. The keys for the machines must be checked in and verified by the election administrator.

(The implementing sections for Rule IV are 13-15-101, 13-17-206, 13-15-201, 13-15-202, 13-13-115, 13-12-117, 13-13-241, 13-13-242 and 13-15-205, MCA)

RULE V PROCEDURES FOR RECOUNT OF VOTES IN IES (SHOUP) PRECINCTS (1) The recount board shall remove the seals from the voting machines in precincts where a recount is required and proceed to record the votes cast for all candidates or all ballot issues for which the recount is ordered. Any paper ballot voted in the precincts shall be recounted as prescribed by law.

(2) After recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

(3) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report stating the number of votes determined by the recount and shall enter the result of the election as determined by the recount in the board records.

(4) When the recount has been finished all ballots shall again be sealed in the proper envelope in the presence of the election administrator and the recount board. The machines from which seals were removed shall be resealed in the presence of the election administrator and the recount board. All other materials used in the recount that are required to be sealed shall be resealed. The envelopes, the machines and all other materials used shall be delivered to the election administrator for custody.

(5) Immediately after the recount, the county recount board shall certify the results as provided by law.

(The implementing sections for Rule V are 13-15-204, 13-16-413 and 13-16-414 through 13-16-418, MCA)

RULE VI PROCEDURES FOR USE OF AVM (AUTOMATIC VOTING MACHINES) - BEFORE THE POLLS OPEN (1) Each AVM voting machine shall be programmed by the election administrator in accordance with the ballot as certified by the secretary of state.

(2) Ballot labels for the AVM voting machine are to be printed in accordance with the ballot as certified by the secretary of state. The election administrator shall insert the ballot labels, place in voting position and vote all offices to test accuracy of each machine.

(3) Election administrator shall furnish return sheets and certificates to the precinct judges. The return sheets shall:

(a) have each candidate's name designated by the same reference that the name bears on the ballot labels and counters and allow for writing in a vote for a candidate,

(b) provide for the return of the vote on ballot issues,

(c) have a blank for indicating the precinct, the number and make of machine used, and other necessary information,

(d) have a certificate to be executed before the polls open by the election judges,

(e) have a second certificate stating the manner of closing the polls and verifying the returns, and

(f) have the certificate and attestation of the election judges on each return sheet.

(4) Election administrator shall close, lock and place a new machine seal on each machine by passing the seal through the slot in the lower right-hand corner of the front of the machine and deliver them to polling places. Keys shall be

placed in an envelope having the corresponding machine number and the protective counter number recorded on it by the election administrator. Key envelopes shall be delivered to chief election judge for each precinct. Chief election judge shall distribute keys to judges, as needed, for preparation of machines for use and upon close of polls for locking the machines.

(5) Election judges, one from each party having ballot access, shall compare the names on the front labels of each machine with the names on the return sheets. The names must be the same and in the same order. Those judges not comparing names shall take return sheets to the machine and write, in the spaces provided, the machine numbers and the seal number for each machine. They shall also enter the protective counter number on the return sheets.

(6) All election judges shall examine the public counter on each machine to see that they are all set at 000. If numbers are found on any counters where a candidate's name appears or an issue is placed, record the number in the proper column on the return sheets and subtract it from the total at the time the votes are totaled. The judges shall view the protective counter on each machine and determine that the counter shows the same figure as shown on the envelope containing the keys for each machine.

(7) All election judges shall certify to the facts in (6) above by signing Certificate No. 1 in the form provided by the election administrator.

(8) Election judges, one from each party having ballot access, shall check the write-in paper roll on each machine to make sure it has a seal and is dated. If not, the judges shall sign and date the paper roll and draw a line all the way across the paper.

(9) Election judges shall turn keys, as instructed, remove them from each machine and place in the key envelope in the custody of the chief election judge.

(The implementing sections for Rule VI are 13-12-201 through 13-12-208 and 13-13-115, MCA)

RULE VII PROCEDURES FOR USE OF AVM VOTING MACHINES - WHILE POLLS ARE OPEN (1) An election judge, designated by the chief election judge, shall use a model AVM to demonstrate to electors how to use the machine upon request.

(2) Upon the elector's signing the register he shall be issued a numbered voting authority slip. His name need not be written in the poll and tally book but the number on the voting authority slip shall be written to the right of the elector's name and signature in the register.

(3) An elector may request a paper ballot. Upon such request he shall be given a paper ballot and be allowed to vote as required by law.

(4) Upon presentation of a numbered voting authority slip, the election judge in charge of a machine shall take the slip, place it on the spindle, push the entrance button and allow the elector to enter the machine. No one may be allowed to enter a machine without a numbered voting authority slip and no slip shall leave the polling place.

(5) Elector shall move the red handle all the way to the right. This closes the secrecy curtain and activates the machine.

(6) When voting in a primary election the elector shall select the party for which he intends to vote per instructions posted in each style of AVM machine.

(7) Elector may write in a vote for a candidate of his choice by writing in the name of the candidate after opening the write-in slide for the office. Opening of the slide prevents elector from voting for a candidate whose name appears on the ballot label for the same office.

(8) After voting, by flicking down the selectors, the elector shall move the red handle all the way to the left. This registers his votes and opens the curtains.

(The implementing sections for VII are 13-13-114, 13-13-115, 13-17-305, 13-10-209 and 13-12-209, MCA)

RULE VIII PROCEDURES FOR USE OF AVM VOTING MACHINES - AFTER THE POLLS CLOSE (1) Election judges shall seal each machine with a new metal machine seal by passing the seal through the slot in the lower right-hand corner of the front of the machine. They will turn keys in the locks, as instructed, remove them and place them in custody of the chief election judge.

(2) Election judges, one from each party having ballot access, shall read or observe the reading of the vote totals from the back of each machine from right to left, an entire row at a time. Two election judges, each of a different party, shall write the totals on the return sheets in the column and on the line for each machine being read.

(3) Write-in votes:

(a) Election judges, one from each party having ballot access, shall ascertain if write-in votes appear on the paper roll. If so, they shall cut and pull the paper from the bottom roll and take to a table to canvass. Two of the judges shall tally the write-in votes in the poll and tally book.

(4) Absentee ballots:

(a) Election judges, one from each party having ballot access, shall compare the name on the outside of the sealed envelope containing absentee ballots and the same names in the register. They shall write "Absent Elector" in the space provided for signature in the register.

(b) A numbered voting authority slip shall be initialed for each absentee elector and the number of the slip shall be written to the left of the signature line in the register and then the slip shall be put on a spindle, at any machine.

(c) Judges shall proceed to count and tally absentee ballots using the same procedures as for paper ballots in the poll and tally book and record the totals on the return sheets.

(5) Upon completion of counting all paper ballots and totalling all machine votes, the information required by Certificate No. 2 in the form provided by the election administrator shall be completed and signed by all election judges.

(6) Total of votes cast for each candidate or issue by machine, paper ballot or absentee ballot shall be recorded on the return sheets. One sheet shall be posted at the polling place and one returned to the election administrator.

(7) Contents required for each official envelope shall be enclosed in the proper envelope, a seal affixed to each and signed by all election judges.

(8) Machines shall be closed and all doors securely shut and locked.

(9) Chief election judge shall return all supplies and required materials to the election administrator as instructed. The keys for the machines must be checked in and verified by the election administrator.

(The implementing sections for Rule VIII are 13-15-101, 13-15-201, 13-15-202, 13-13-115, 13-12-117, 13-13-241, 13-13-242, 13-15-204 and 13-15-205, MCA)

RULE IX PROCEDURES FOR RECOUNT OF VOTES IN AVM MACHINE PRECINCTS (1) The recount board shall remove the seals from the voting machines in precincts where a recount is required and proceed to record the votes cast for all candidates or all ballot issues for which the recount is ordered. Any paper ballots voted in the precincts shall be recounted as prescribed by law.

(2) After recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

(3) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report stating the number of votes determined by the recount and shall enter the result of the election as determined by the recount in the board records.

(4) When the recount has been finished all ballots shall again be sealed in the proper envelope in the presence of the election administrator and the recount board. The machines from which seals were removed shall be resealed in

the presence of the election administrator and the recount board. All other materials used in the recount that are required to be sealed shall be resealed. The envelopes, the machines and all other materials used shall be delivered to the election administrator for custody.

(5) Immediately after the recount, the county recount board shall certify the results as provided by law.

(The implementing sections for Rule IX are 13-16-413 and 13-16-414 through 13-16-418, MCA)

RULE X DEFINITIONS - COMPUTER ELECTION SYSTEMS VOTOMATIC (CES) (1) Unless the context clearly indicates otherwise, the following terms shall have the following meanings.

(a) "Automatic Tabulating Equipment" means and includes apparatus necessary to automatically examine and count votes as designated on ballot cards, and data processing machines which can be used for counting ballots and tabulating results.

(b) "Ballot Assembly" means the device delivered to the polling place consisting of a plastic frame, a yellow mask and the ballot labels which are affixed to the ballot assembly much like the pages in a book. These ballot labels are the official ballot for any given election.

(c) "Ballot Card" means a prescored data processing card with a stub attached to the top. The ballot cards are white and when punched, record the elector's choice of candidates and his vote for or against ballot issues.

(d) "Ballot Envelope" means an envelope which serves two purposes:

(i) for secrecy of the voted ballot card; and

(ii) is the "write-in" ballot.

(e) "Ballot Labels" means the white pages attached to the ballot assembly. In the primary they are marked on the right-hand edge to indicate to the elector the party ballot he wishes to vote or the nonpartisan ballot. Ballot labels for the general election are also white. They have the party affiliation, or independent, or statement "nominated without party affiliation" printed immediately behind the name of the candidate. Ballot labels for absentee voting shall be printed identical to the pages printed for the ballot assembly but shall be in booklet form.

(f) "Chad" means rectangular bits of paper punched out of a ballot card by the voting stylus.

(g) "Demonstration Ballot Card" means a yellow prescored data processing card which is distinctly marked DEMONSTRATION on its face. It is used for demonstration purposes and is not to be voted by the electors or put in the ballot box.

(h) "Demonstration Ballot Label" means the demonstration ballot pages attached to the demonstration device and used for

demonstration purposes only. The demonstration ballot label shall have no relationship to any Montana election.

(i) "Duplicate Ballot Card" means a pink prescored data processing card which is distinctly marked DUPLICATE on its face and has no stub. It is used for duplicating damaged or overvoted ballots at the computer center.

(j) "Test Ballot Card" means a yellow prescored data processing card which is distinctly marked DEMONSTRATION on its face and is assigned a number corresponding to a number assigned to a device. This card is used by the election judges to test a Votomatic prior to the opening of the polls to insure that that device is in good working order.

(k) "Transfer Case" means a metal box furnished by the election administrator which has the capacity for containing the voted ballot cards and ballot envelopes and which can be sealed.

(l) "Voting Authority Slip" means a prenumbered slip issued to an elector giving him access to a voting device.

(m) "Voting Stylus" means an object used to register a vote by punching a hole in a ballot card.

(No implementing section for Rule X)

RULE XI PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - BEFORE THE POLLS OPEN (1) Ballot layout shall be prepared for an election by election administrator using forms and instructions prepared by Computer Election Systems and in accordance with the ballot as certified by the secretary of state.

(2) Ballot labels for an election shall be printed in compliance with the ballot layout prepared by the election administrator and in accordance with the ballot as certified by the secretary of state.

(3) Election administrator shall prepare the parts of the ballot assembly (frame, yellow mask and ballot labels), combine the parts to form the individual votomatics and deliver the votomatics to the precincts prior to the day of election.

(4) Election administrator shall arrange for the computer and program to be tested to ascertain that equipment will correctly count the votes cast for all offices and on all ballot issues. The test shall be observed by the Observation Board (see Rule XVI(1)(a)) and shall be open to representatives of the political parties, candidates, the press and the general public. The test shall be as prescribed in Rule XVI(1)(a) and (b).

(5) Election administrator shall hire and train all board members required for the Central Counting Center.

(6) Election administrator shall furnish return sheets and certificates to the precinct judges for posting of paper and absentee ballot totals, as applicable. The return sheets shall:

(a) have each candidate's name designated by the same reference that the name bears on the ballot labels and allow for writing in votes for a candidate,

(b) provide for the return of the vote on ballot issues,

(c) have a blank for indicating the precinct, the number of devices used, and other necessary information,

(d) have a certificate to be executed before the polls open by the election judges,

(e) have a second certificate stating the manner of closing the polls and verifying the returns, and

(f) have the certificate and attestation of the election judges on each return sheet.

(7) Election judges shall set up votomatics at polling place as per instructions of the election administrator.

(8) Election judges shall complete appropriate sections of Ballot Security Log prior to the opening of the polls and sign the first certificate provided by the election administrator on the return sheets.

(9) Election judges, one from each party having ballot access, shall compare ballot labels in the votomatics against a sample ballot to make sure the names and numbers are the same.

(10) Election judges, as assigned by the chief election judge, shall vote a test ballot card in each votomatic by punching all possible positions to insure the device is in proper working order. Election judges shall indicate time and number of device on test ballot card and place in an envelope marked "Test Ballot Cards".

(11) Election judges, as assigned by the chief election judge, shall check to make sure precinct number is on every ballot label page if it is not pre-printed on the pages.

(The implementing sections for Rule XI are 13-17-206, 13-2-201 through 13-2-208 and 13-13-115, MCA)

RULE XII PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - WHILE THE POLLS ARE OPEN (1) Each elector upon entering the polling place shall be given a demonstration, by an election judge designated by the chief judge, on how to use the votomatic device and be allowed to practice. The demonstration ballot labels, provided by the election administrator for demonstration purposes, shall have no relationship to any Montana election.

(2) After signing the precinct register an elector shall be issued a numbered voting authority slip. His name need not be entered in the poll and tally book but the number of the voting authority slip shall be written to the right of the elector's name in the register.

(3) Elector shall give his voting authority slip to the election judge in charge of ballots and the election judge shall issue him a ballot and a gray secrecy envelope.

(4) An elector may request a paper ballot. He shall be issued a paper ballot and the sequential number on the next ballot card shall be placed on the paper ballot stub. The ballot card having that number shall be marked "spoiled" and be placed in the ballot box. The paper ballot shall be cast and counted as provided by law.

(5) Election judge in charge of ballots shall direct the elector to the proper voting booth for his type of ballot.

(6) When voting in a primary election the elector shall use the ballot label pages printed for the party of his choice.

(7) The elector shall vote by using both hands to slide the ballot into the device making sure the two holes at the top of the ballot card fit over the two red pins. Elector shall cast his votes by using the stylus provided in the booth and punching the ballot card for the candidates of his choice and on the ballot issues.

(8) An elector may write in for a candidate of his choice by writing the candidate's name and office on the lines provided for write-in on the inside of the gray secrecy ballot envelope. He must place an "x" in the square before the name as required by law for his vote to be valid.

(9) After voting his ballot card the elector shall place the ballot card inside the gray secrecy ballot envelope, with the stub still attached, and take the set to the judge in charge of the ballot box.

(10) Ballot box judge shall remove stub and place it in the stub box. Election judge shall deposit the ballot in the ballot box, checking to be sure ballot is properly inserted in the envelope without opening the envelope or looking at the ballot.

(11) Election judges, assigned by chief election judge, shall test vote each votomatic every two hours, one booth at a time. A test exactly like the one before the polls opened shall be conducted, all test cards shall have the time and device number indicated on them and shall be inserted in envelope provided. The judges shall check ballot pages to see if any are damaged, or if any alterations or markings have been made on the ballot label pages. They shall remove any pencils or campaign literature from the booth.

(12) Election administrator may provide for early pickup of ballots for transfer to the computer center. Upon arrival of persons authorized to pick up the ballots, the following procedures shall be used:

(a) election judges, one from each party having ballot access, shall open the ballot box and all ballot envelopes containing ballot cards shall be removed,

(b) the judges shall quickly but accurately count all ballot envelopes containing ballot cards and enter the total on the Early Pickup Transfer Case Control Log and on Ballot Security Log attached to final transfer case,

(c) the ballot envelopes with ballot cards still inside shall be placed in the early pick-up transfer case which shall be sealed with a ballot box seal. The seal shall be signed by the chief judge and at least two judges assigned to prepare the early pick-up of ballots,

(d) the ballot box shall be locked and put back into service,

(e) the early pick-up transfer case containing ballots shall not be surrendered until a receipt signed by the persons authorized to pick up ballots has been received.

(The implementing sections for Rule XII are 13-13-114, 13-13-115, 13-17-305, 13-10-209, 13-12-209 and 13-13-117, MCA)

RULE XIII PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - AFTER THE POLLS CLOSE (1) Election judges shall remove ballot assemblies from the votomatics; dismantle the assemblies; wrap ballot pages and seal with an official seal signed by all judges. The votomatics shall have an official seal placed on each of them and signed by the election judges.

(2) Certificate No. 2 shall be completed and signed by all judges.

(3) All unused official ballot cards shall be placed in the envelope provided for that purpose.

(4) Election judges, one from each party having ballot access, shall open the ballot box and remove all envelopes, with ballot cards, paper ballots and absentee ballots.

(5) Election judge shall examine each cast ballot card envelope to determine if there is a write-in inside the envelope. If there is a write-in vote, the gray envelope shall be left around the ballot card. If there is not a write-in vote, the envelope shall be removed from the card. The ballot shall be added to stacks of other voted ballot cards and the envelope returned to the precinct supplies. If a write-in vote is present, the envelope, with ballot card enclosed, is stacked separately from the other voted ballot cards.

(6) The judges shall count all ballots and reconcile the total number of ballots cast with total number of voting authority slips issued. The Ballot Security Form shall be completed and signed by all election judges.

(7) Election judges shall place all voted ballot cards and write-in envelopes, with ballot cards enclosed, in the transfer case. The transfer case shall be sealed and two judges, one from each party having ballot access, shall immediately deliver the transfer case to the counting center.

(8) The two election judges delivering the transfer case shall return to the precinct and join the other judges in counting of paper ballots and closing of the polls.

(The implementing sections for Rule XIII are 13-13-115, 13-15-101, 13-15-204, 13-15-205, 13-15-201, 13-15-202, 13-13-117 and 13-15-201, MCA)

RULE XIV PROCEDURES FOR RECOUNT OF VOTES IN (CES) - VOTOMATIC PRECINCTS (1) The recount board shall test the automatic tabulating equipment used for votes cast by voting devices in the same manner provided for preelection testing. However, the board shall prepare a new group of preaudited ballots for this test. If the test does not show any errors, the votes cast for the candidates or on the ballot issues for which a recount is ordered shall be recounted by the tabulating equipment.

(2) If any errors are found in the test or if any questions remain as to the accuracy of the count, the board may have the program and equipment checked by a qualified individual who did not participate in the original preparation of the program and equipment.

(3) The board may also order manual counting of the votes cast if they believe it is necessary to resolve all questions relating to the election.

(4) The board may remove the seals from any voting device and check the ballot labels for each device with the official certification of the ballot arrangement for each precinct.

(5) Any paper ballots voted in a precinct shall be recounted as prescribed by law.

(6) Write-in votes shall be recounted in the same manner as the count is made, in the computer center, after the closing of the polls.

(7) After recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each ballot issue shall be compiled and checked for accuracy.

(8) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report stating the number of votes determined by the recount and shall enter the result of the election as determined by the recount in the board records.

(9) When the recount has been finished, all ballots and ballot labels shall again be sealed in the proper envelope in the presence of the election administrator and the recount board. The devices from which seals were removed shall be resealed in the presence of the election administrator and the recount board. All other materials used in the recount that

are required to be sealed shall be resealed. The envelopes, the devices and all other materials used shall be delivered to the election administrator for custody.

(10) Immediately after the recount, the county recount board shall certify the results as provided by law.

(The implementing sections for Rule XIV are 13-16-414 through 13-16-418, MCA)

RULE XV CENTRAL COUNTING CENTER FOR TABULATION OF COMPUTER ELECTION SYSTEM - VOTOMATIC (CES) BALLOTS (1) The election administrator shall develop a central counting center with all procedures to be directed by the election administrator.

(2) There shall be appointed at least one board in each of the following categories:

(a) Observation Board
(b) Receiving Board
(c) Inspection Board
(d) Duplication Board
(e) Ballot Tabulation Board
(f) Ballot Sealing Board
(g) Election Results Board

(3) Members of the above boards shall be appointed by the election administrator and each board shall consist of a minimum of one person from each political party having ballot access.

(4) At the discretion of the election administrator the above boards, except for board (a), may be combined and the board members given double duties.

(5) Boards (b) thru (g) shall have for their use a log for recording of their activities. Board (g) shall also be provided with Election Return Forms designed for use with the Computer Election System.

(No implementing section for Rule XV)

RULE XVI CENTRAL COUNTING CENTER PROCEDURES AND BOARD DUTIES - OBSERVATION BOARD (1) The election administrator shall consult with the chairman of each political party having ballot access for appointment of members to this board. The board shall verify the accuracy of the computer program and attest to the procedures during computer processing of the ballots. The duties are as follows:

(a) Prior to the election, the computer and program shall be tested to ascertain that the equipment will correctly count the votes cast for all offices and on all ballot issues. The test shall be observed by the Observation Board and shall be open to representatives of the political parties, candidates, the press and the general public. The test shall be conducted by processing a pre-audited group of ballots so punched as to

record a pre-determined number of valid votes for each candidate and on each issue. It shall include, for each office, one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the computer to reject such votes.

(b) If an error is detected in the test, it shall be corrected. An error-free test must be conducted before the program and computer are approved by the Observation Board.

(c) The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above.

(d) The test shall also be repeated immediately after the official ballot count is completed.

(e) The Observation Board should be familiar with the correct procedures for processing ballots at the computer, as well as general computer operating procedures.

(f) All proceedings at the computer center shall be conducted under the observations of each political party and the public, but no persons except those specifically authorized for the purpose, shall touch any ballot card or return.

(No implementing section for Rule XVI)

RULE XVII CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD (1) It shall be the responsibility of the Receiving Board to receive the sealed ballot transfer cases from each precinct. The duties are as follows:

(a) When a metal container is received by a Receiving Board, the following entries shall be made in the Receiving Board Log:

(i) precinct name,

(ii) serial number of the red plastic padlock seal on the front of the transfer case,

(iii) initials of the receptionist,

(iv) time of delivery, and

(v) condition of the container (note any discrepancies, i.e., seal broken, etc. . .).

(b) If it appears that the container has been tampered with or the seal broken, it shall be immediately referred to the election administrator for disposition.

(c) The Receiving Board shall deliver the container, unopened, to the Inspection Board.

(d) The procedure for the early pick-up is the same as XVII(1)(a) thru (c) above, except that authorized county personnel rather than election judges will deliver the transfer cases.

(No implementing section for Rule XVII)

RULE XVIII CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - INSPECTION BOARD (1) It shall be the responsibility of the Inspection Board to examine all ballot cards and prepare them for processing by the computer. There shall be as many inspection boards as deemed necessary by the election administrator. The duties are as follows:

(a) When the transfer case containing ballots arrives at the Inspection Board, the following information shall be written on the Inspection Board Log:

(i) precinct name,

(ii) time of receipt,

(iii) seal number.

(b) Seal shall be broken and the ballot container opened.

(c) The Ballot Security Form attached to the container shall be inspected and checked to see that the seal number is the same as shown on the log. If the Ballot Security Form is absent, incomplete, or the seal number does not agree with that shown on the Inspection Board Log, the election administrator shall be called for disposition.

(d) The two types of ballots to be processed shall be separated into:

(i) voted ballot cards, and

(ii) write-in envelopes with ballots still inserted in the inner fold or pockets.

(e) Voted ballot cards shall be checked for:

(i) incomplete stub removal - remove stub pieces,

(ii) hanging chad - remove chad,

(iii) damaged ballots - The precinct number shall be written on the ballot card and placed in the manila envelope marked "From: Inspection Board To: Duplication Board", and the precinct number shall be written on the face of the manila envelope in the upper right-hand corner. The envelope shall not be sealed.

(f) Marks on Ballot - Checks shall be made to see if a mark is identifiable. Once it is determined the ballot is identifiable, the ballot shall be rejected and the reason for rejection shall be written on the back of the ballot, signed by a board member, then inserted in the Inspection Board Rejected Ballot envelope.

(g) The write-in ballots (gray ballot envelopes with the ballot cards still inserted) shall be processed as follows:

(i) Write on every envelope and card (set) the precinct number and the ballot's consecutive number. Each ballot shall be numbered starting with the number one. The same precinct number will appear on each write-in ballot set. Each set must be individually checked.

(ii) Directions in e(i), (ii) and (iii) above shall be used when checking cards in the write-in envelopes to insure that they will be able to be processed.

(h) Check validity of the write-in as follows:

(i) Each write-in must include the title of office, and the candidate's name. Abbreviations for an office are acceptable. An "x" shall be marked in the square before the name.

(ii) Write-in votes may be counted and tallied only if the intent of the elector is clearly expressed in the voting square. The intent of the elector may not be discounted solely for reason that the intent is expressed by:

(A) a mark which is not an "x",

(B) a mark which is not wholly within the voting square, or

(C) a mark which is indistinct.

(iii) If any of the requirements as stated in XVII(h)(ii)(A), (B) and (C) are not met, the write-in shall be declared invalid, and

(iv) a line shall be drawn through the name involved on the gray ballot envelope and all board members shall initial envelope. Place the write-in ballot envelope into the manila envelope marked "From: Inspection Board To: Write-In Tally Board." Write the precinct number in the upper right-hand corner.

(v) If the write-in is otherwise valid, it is then checked for possible overvote. This is done by checking the write-in against the same numbered response position(s) on the ballot card using a sample ballot as a guide.

(i) A write-in vote for an office is only valid if there is no punch in numbered ballot card position for that office.

(ii) If no overvote occurs, the card shall be placed in the container for ballot cards ready for computer processing. The write-in envelope shall be placed in the large manila envelope marked: "From: Inspection Board To: Write-in Tally Board" for tallying by the Write-In Board.

(j) Handling an overvote is as follows:

(i) if the office being checked has more candidates listed than are to be elected, i.e., four candidates in a vote for one office or,

(A) if there are more candidates ((i) above) than are to be elected, all the ballot card numbers representing all candidates listed for that office shall be circled. This will indicate to the Duplication Board to punch out the positions circled, thereby creating an overvote for that office. The computer reads the overvote and voids any vote for that office.

(B) then a line shall be drawn through the name involved on the gray ballot envelope and all board members shall initial the envelope.

(C) the gray write-in ballot envelope shall be placed into the manila envelope marked "From: Inspection Board To: Write-In Tally Board" and write the precinct number on the face of the envelope in the upper right-hand corner.

(D) the ballot card shall be placed in the manila envelope marked: "From: Inspection Board To: Duplication Board" and write the precinct number on the face of the envelope if this has not already been done.

(ii) if the office being checked has the same number of candidates listed as to be elected, i.e., a single candidate office,

(A) If there are the same number of candidates as the allowable number of votes for that office an "x" shall be placed over the invalid punch(s). This will indicate to the Duplication Board to reproduce the ballot card excluding that particular office.

(B) Then a line shall be drawn through the name involved on the gray ballot envelope and all board members shall initial the envelope.

(C) Place the gray write-in ballot envelope into the manila envelope marked "From: Inspection Board To: Write-In Tally Board".

(D) Write the precinct number on the face of the manila envelope if this has not already been done.

(E) Place ballot card in the envelope marked, "From: Inspection Board To: Duplication Board".

(k) If the elector writes in the name of a candidate who is listed on the ballot and also votes for him on his ballot card, the following shall be performed:

(i) If the name written-in is spelled exactly as shown on the official ballot, a line should be drawn through the write-in and initialed. Place the gray envelope in the "Write-In Tally Board" envelope. The ballot card shall not be affected.

(l) The good ballot cards are placed back in the metal container with the cut corner of the card in the upper left-hand position. There may be two types of ballot cards in the Duplication envelope, as follows:

(i) damaged ballots, and

(ii) overvote ballots requiring additional punching or duplication.

(m) The number of damaged ballots (rubber-banded) and the number of overvote ballots (rubber-banded) shall be entered in the Inspection Board Log and replaced in the "From: Inspection Board To: Duplication Board" envelope. The number of write-in ballot envelopes shall be entered in the Inspection Board Log and replaced in the "From: Inspection Board To: Write-In Tally Board" envelope. The number of rejected ballots shall be entered in the Inspection Board Log and placed in the rejected ballot envelope. The metal ballot transfer case and envelopes shall be delivered to the duplication and write-in tally boards.

(The implementing sections for Rule XVIII are 13-15-203 and 13-13-117, MCA)

RULE XIX CENTRAL COUNTING CENTER PROCEDURES AND BOARDS DUTIES - DUPLICATION BOARD (1) It shall be the responsibility of the Duplication Board to duplicate damaged ballots and punch or reproduce overvoted ballots. The duties are as follows:

(a) When a manila envelope marked "From: Inspection Board To: Duplication Board" is received, the following information shall be entered on the Duplication Board Log:

(i) precinct name,

(ii) time of receipt,

(iii) number of ballots rubber-banded as damaged, and

(iv) number of ballots rubber-banded as overvotes.

(b) Each ballot shall be checked to see that the precinct number has been recorded.

(c) There will be two types of ballots to be punched or duplicated - damaged and overvotes.

(d) Inspect the group of ballots rubber-banded as damaged.

(i) If ballots do not require duplicating, burnish, or straighten as required.

(ii) The number which did not require duplication and the number which required duplication shall be entered in the Duplication Board Log.

(e) Damaged ballots to be duplicated shall be placed in the port-a-punch device. Under the ballot to be duplicated shall be placed a pre-scored ballot card which will become the duplicate ballot. The duplicate ballot is preprinted "Duplicate" and is pink in color. An identical serial number shall be recorded on the original and duplicate. This ties the two ballots together and provides an auditing trail.

(f) The unpunched duplicate ballot can be seen through the holes of the original ballot.

(i) The ballot identification positions which appear at the bottom of the ballot shall be punched out.

(ii) Using the stylus provided, each chad seen through the original ballot shall be punched out. This shall be done by beginning on the left side of the ballot and going down the entire row.

(iii) This shall be done for each row in which holes appear.

(g) When the ballot has been accurately reproduced, the board members shall "sight" check the ballot against the light. This check determines whether all holes have been punched or if holes were punched which should not have been punched.

(h) Place the original ballot cards, which have been duplicated, back into the "From: Inspection Board To: Duplication Board" envelope. Seal after each precinct is completed.

(i) Overvoted ballots are classified into two groups; those needing additional punching and those to be duplicated.

Ballots that need additional punching shall be marked with a circle around specific numbers. When a ballot card number has been circled, it is an indication from the Inspection Board to the Duplication Board to punch out the positions so marked.

(ii) Overvoted ballots requiring duplication shall be duplicated the same as provided in XIX(i)(e) thru (h).

(iii) The number of ballots which required only additional punching and the number of ballots which were reproduced shall be entered in the Duplication Board Log. Board members shall initial the precinct completed.

(j) Replace original ballots which have been reproduced in the envelope in which they arrived, i.e., "From: Inspection Board To: Duplication Board." Place duplicate ballots in the container going to the computer room, by precinct.

(k) The ballot shall be rejected if inadequate information prevents reproduction.

(i) The reason for rejection shall be written on the back of the ballot and ballot shall be signed by a board member.

(ii) A board member shall return the ballot to the Inspection Board Rejected Ballot Envelope for that precinct.

(iii) Enter in the Duplication Board Log the number of ballots rejected in that precinct.

(l) It shall also be the duty of the Duplication Board to duplicate jammed/damaged ballots from the sorter or ballot phase of the procedure.

(No implementing section for Rule XIX, MCA)

RULE XX CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - WRITE-IN TALLY BOARD (1) Each Board shall consist of five members and those members shall be appointed from each party as evenly as possible. It shall be the responsibility of the Write-In Tally Board to tally write-in votes received from the Inspection Board. The duties are as follows:

(a) When the manila envelope marked, "From: Inspection Board To: Write-In Tally Board" is received by the Write-In Tally Board, the following information shall be entered on the Write-In Tally Board Log:

(i) precinct name,

(ii) time of receipt, and

(iii) number of gray envelopes to process.

(b) Write-in votes shall be tallied one precinct at a time as follows:

(i) open all envelopes and stack similar names together,

(ii) process one stack at a time with two board members reading, two board members tallying, with the fifth member determining validity of write-in's.

(iii) do not count any write-in which has a line drawn through the name and initialed,

(iv) write-in votes may be counted and tallied only if the intent of the elector is clearly expressed in the voting square. The intent of the elector may not be discounted solely for reason that the intent is expressed by:

(A) a mark which is not an "x",

(B) a mark which is not wholly within the voting square, or

(C) a mark which is indistinct.

(v) the office voted must be clearly indicated, i.e., "U.S. Senator" or "State Senator" not just "Senator". Abbreviations of offices are acceptable, and

(vi) when validated, two board members shall write the candidates names as voted and the office on the Write-In Tally Board Sheet.

(c) Tally sheets for write-in votes shall be kept by precinct, in duplicate.

(i) the total numbers of votes received shall be entered in the space in the far right section of the sheet,

(ii) all members of the board shall sign the tally sheets pertaining to each precinct,

(iii) all write-in envelopes shall be returned to the envelope in which they were received, with one copy of the tally sheet,

(iv) this envelope shall then be sealed and delivered to the election administrator, and

(v) the second copy of the Write-In Tally shall be forwarded to the Election Results Board for inclusion in the unofficial canvass.

(d) If among the write-in envelopes an official ballot card is included, this should be referred to the election administrator immediately. The election administrator will have the responsibility of seeing that the ballot card is sent to the Ballot Tabulation Board to be reunited with the other cards from the precinct for tabulation.

(e) Once one precinct is completed, another precinct shall be requested and the steps outlined above should be followed.

(The implementing sections for Rule XX are 13-15-202 and 13-13-117, MCA)

RULE XXI CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - BALLOT TABULATION BOARD (1) The Ballot Tabulation Board shall consist of as many trained personnel as required to handle and process all ballots delivered to the computer room. Tabulation of ballots shall be done by using instructions contained in the current operating manual for the tabulation equipment. The duties are as follows:

(a) Upon delivery of the transfer case from the Inspection Board to the computer room, a member of the board shall

initial and record the time of receipt in a log provided for this purpose. Place the Ballot Security Log in the envelope provided by the election administrator for this purpose.

(b) When header cards for precinct identification are used, the ballot cards are removed from the container, run through the sorter and the appropriate header card is placed in front of the ballots. The ballots and header card are then placed in the card tray with other precinct cards awaiting processing.

(c) A ballot tabulation board member shall remove cards from the card tray and place them in the computer's card reader hopper as needed.

(d) As the ballot cards are stacked in the computer's card reader stacker, they shall be removed by a board member and placed in a tabulated card box for subsequent sealing and storage. The header card remains with the ballots. Identify which precincts are in each tabulated ballot card box.

(e) If a ballot is spoiled during processing, a board member shall remove the ballot, record the precinct name on it, and place it in the envelope marked "Spoiled Ballots to be Duplicated". Periodically this envelope shall be delivered to the Duplication Board.

(f) Summary cards are punched for each precinct's results as the ballot cards are processed. These summary cards should be removed from the punch hopper and stacked in a card tray. Later the duplicated ballots and write-in ballots will be added to this tray and the cards will be re-run for the final canvass.

(g) All ballots, precinct header cards, accuracy decks, copy of the accuracy test, copy of the results, duplicated ballots, etc., shall be locked up after processing, pending the official canvass and, thereafter, sealed for a period of 12 months.

(h) Exact operating instructions are provided with the computer program. All members of the Ballot Tabulation Board should be familiar with these procedures.

(The implementing sections for Rule XXI are 13-15-202 and 13-1-303, MCA)

RULE XXII CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - BALLOT SEALING BOARD (1) It shall be the responsibility of the Ballot Sealing Board to prepare the tabulated ballots for storage at the close of the counting center. The duties are as follows:

(a) Upon receipt of a precinct's tabulated ballot card box, the Ballot Sealing Board members shall affix an official seal to the box and the seal shall be signed by all members of the board.

(b) Each official seal shall be numbered and that number shall be entered, for each precinct, on the Ballot Sealing Log.

(c) The tabulated ballot card box shall be delivered to the election administrator for transfer to storage.

(The implementing section for Rule XXII is 13-1-303, MCA)

RULE XXIII CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - ELECTION RESULTS BOARD (1) It shall be the responsibility of the Election Results Board to prepare the final unofficial election results, for votes cast by ballot card, report for posting at each precinct and at the computer center. The duties are as follows:

(a) When a computer tape having precinct totals for each candidate and each ballot issue comes from the Ballot Tabulating Board it shall be taped to the appropriate precinct Election Results Sheet. Two members of the Ballot Tabulating Board shall join the Election Results Board in Certification of the Election Results.

(b) The Election Results Board shall make a copy of the Election Results Sheet and give to a runner to post beside the election judges' results sheet in the precinct, upon completion of the tabulation and certification.

(c) When a computer tape having cumulative totals for each candidate and each ballot issue comes from the Ballot Tabulating Board it shall be taped to the appropriate Election Results form and be posted on the Computer Center Results Board.

(The implementing section for Rule XXIII is 13-15-101, MCA)

RULE XXIV CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - CLOSING OF COUNTING CENTER (1) It shall be the duty of the election administrator to collect all tabulated ballot card boxes, logs and materials used for the counting center and place them in storage upon completion of the tabulation of ballots and certification of the results of the election.

(The implementing section for Rule XXIV is 13-1-303, MCA)

3. These rules are proposed to provide procedures for use of voting machines and devices where procedures differ than where voting is done by paper ballot.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Leonard C. Larson, Room 202, Capitol Building, Helena, Montana 59601, no later than January 10, 1979.

5. If a person who is directly affected by the proposed rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request along with any written comments he has to Leonard C. Larson, Room 202, Capitol Building, Helena, Montana 59601, no later than January 10, 1980.

6. If the secretary of state receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the total of registered electors in the state of Montana.

7. The authority section for these rules is based on Section 13-17-107(2), MCA.

Dated this 4th day of December, 1979

Frank Murray

FRANK MURRAY
Secretary of State

By: Leonard C Larson

Leonard C. Larson
Chief Deputy

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46-2.18(34)-S18170 (46.7.1302) pertaining to state economic need policies.	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.18(34)-S18170 (46.7.1302). NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 14, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.18(34)-S18170 (46.7.1302) pertaining to state economic need policies.

2. The Department proposes to amend the rule as follows:

46-2.18(34)-S18170 (46.7.1302) STATE ECONOMIC NEED POLICIES ~~(1) The Visual Services Division will provide all services without conditioning them on an economic need test. All services will be provided on the basis of a "Statement of Understanding" which is agreed upon by the client and the Agency.~~

(1) The Visual Services Division will establish economic need criteria to determine the portion of service cost if any, to be paid by the client. Economic need will not be applied when determining eligibility; however, the purchase of certain services by the Division will be based upon economic need.

(a) Economic need criteria will be designed to insure that all available assistance and contributions from the client, his family or interested organizations will be utilized before spending State/Federal funds for services.

(b) Economic need criteria will apply to the following services:

(i) Transportation (other than for diagnostic reasons).

(ii) Training books and materials.

(iii) Maintenance (other than for diagnostic reasons.)

(iv) Except for Randolph Sheppard vending facilities; tools, equipment, initial stocks and supplies (including livestock) and capital advances.

(v) Physical restoration services.

(vi) Occupational and business licenses.

(vii) Telecommunication, sensory and other technological aids and devices.

3. The rule needs to be amended as a state law, Section 53-7-306 MCA, requires an economic need for certain services as outlined in the above rule.

4. Interested parties may submit their data, views, and arguments concerning the proposed amendment to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601 no later than January 11, 1979.

5. The authority of this agency to amend the proposed rule is based on Section 53-7-302 MCA implementing Section 53-7-306 MCA.

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 26, , 1979.

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

In the matter of the repeal of Rule 36-2.8(18)-S8130, the amendment of rules 36-2.8(18)-S8060 through 36-2.8(18)-S1820) and rules 36-2.8(18)-S8140 through 36-2.8(18)-S8160, and the adoption of a new rule, pertaining to alternative renewable energy source grants and providing for the solicitation of proposals	NOTICE OF REPEAL OF RULE 36-2.8(18)-S8130, AMENDMENT OF RULES 36-2.8(18)-S8060 THROUGH 36-2.8(18)-S8120 AND RULES 36-2.8(18)-S8140 THROUGH 36-2.8(18)-S8160, AND ADOPTION OF A RULE, RENEWABLE ALTERNATIVE ENERGY SOURCE GRANTS

TO: All Interested Persons

1. On October 25, 1979, the Department of Natural Resources and Conservation published notice in 1979 MAR p. 1262 of a proposed repeal of Rule 36-2.8(18)-S8130, amendment of Rules 36-2.8(18)-S8060 through 36-2.8(18)-S8120 and Rules 36-2.8(18)-S8140 through 36-2.8(18)-S8160 pertaining to alternative renewable energy source grants, and adoption of a new rule providing for the solicitation of proposals.

2. The department has repealed, amended, and adopted the rules as proposed.

3. No comments or testimony were received.

4. Authority to make the changes is given by 90-4-104, MCA. As described in the published notice of proposed repeal, amendment, and adoption, the changes implement Sections 90-4-101, 90-4-102, and 90-4-104 through 90-4-106, MCA.

Ted J. Doney

Ted J. Doney, Director
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59601

Certified to the Secretary of State Nov 30, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the Amendments of ARM 40-3.48(6)-S4840 concerning applications; ARM 40-3.48(6)-S4850 subsections (1)(b) and (2) concerning seals and issuing licenses; ARM 40-3.48(6)-S4860 subsections (1),(5) and (7) concerning examinations; ARM 40-3.48(6)-S4880 concerning reciprocity; and repeal of ARM 40-3.48(6)-S48040 concerning standards for registration.	NOTICE OF AMENDMENTS OF ARM 40-3.48(6)-S4840 APPLICATIONS; ARM 40-3.48(6)-S4850 (1)(b) and (2) GRANT AND ISSUE LICENSES; ARM 40-3.48(6)-S4860 (1), (5), and (7) EXAMINATIONS; ARM 40-3.48(6)-S4880 RECIPROCITY; and REPEAL ARM 40-3.48(6)-S48040 STANDARDS FOR REGISTRATION - QUALIFICATIONS

To: All Interested Persons:

1. On October 25, 1979, the Board of Landscape Architects published a notice of proposed amendment of 40-3.48(6)-S4840 concerning applications; 40-3.48(6)-S4850 subsections (1)(b) and (2) concerning seals and issuing licenses; 40-3.48(6)-S4860 subsections (1),(5) and (7) concerning examinations; 40-3.48(6)-S4880 concerning reciprocity and proposed repeal of 40-3.48(6)-S48040 concerning standards for registration at pages 1273 through 1277, Montana Administrative Register, issue no. 20.

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

3. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the amendments of ARM 40-3.98(6)-S98040 subsection (1) concerning inactive salesmen and ARM 40-3.98(6)-S98085 subsection (2)(c) concerning basis for suspension or revocation of licenses.	NOTICE OF AMENDMENTS OF ARM 40-3.98(6)-S98040 (1) RENEWAL - INACTIVE LIST - REGISTER AND ARM 40-3.98(6)-S98085 (2)(c) SUSPENSION OR REVOCATION - VIOLATION OF RULES - UNWORTHINESS OR INCOMPETENCY

TO: All Interested Persons:

1. On October 25, 1979, the Board of Realty Regulation published a notice of proposed amendments of 40-3.98(6)-S98040 subsection (1) concerning inactive salesmen and ARM 40-3.98(6)-S98085 subsection (2)(c) concerning basis for suspension or revocation of licenses at pages 1278 and 1279, Montana Administrative Register, issue number 20.

2. The board has amended the rules as proposed with 2 minor changes made in accordance with a telephone call from the

Administrative Code Committee. They are as follows: 40-3.98(6)-S98040 subsection (4)(a) had incorrectly cited the MCA subsection letters as numbers and should read as follows: (new matter underlined, deleted matter interlined)

"40-3.98(6)-S98040 RENEWAL - INACTIVE LIST - REGISTER

....

(4)...

(a) if he has not paid the current year real estate license fee he must pay the required fee in accordance with section 37-51-311 ~~(5),(7),(9)~~ (1) (c),(g), (i) MCA according to class of license;....."

The amendment to 40-3.98(6)-S98085 changes one word and adds a subsection number and reads as follows: (new matter underlined, deleted matter interlined)

"40-3.98(6)-S98085 SUSPENSION OR REVOCATION - VIOLATION OF RULES - UNWORTHINESS OR INCOMPETENCY (1).....

(2).....(c) The licensee or agency in advertising shall be especially careful to present a true picture and shall not advertise without disclosing his name and identity as a real estate licensee. Such disclosure shall be required whenever the licensee or agency negotiates or attempts to negotiate the listing, sale, purchase or exchange of real ~~property~~ estate as described in section 37-51-102 (2) and (8) MCA, which belongs to the licensee, the agency or belonging to a third party. ....."

3. Other than the telephone call from the Administrative Code Committee, no comments or testimony were received. The board proposed the first amendment to comply with the current statutes, as amended in the last legislative session. The amendment to 40-3.98(6)-S98085 is to eliminate confusion regarding the licensee's obligation to identify himself in real estate advertisements. The rules implement sections 37-41-302, 311, and 321 MCA.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, December 4, 1979.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE general revision of rules relating to inheritance and estate tax.	))))	NOTICE OF AMENDMENT OF CERTAIN RULES relating to inheritance and estate tax.

TO: All Interested Persons:

1. On October 25, 1979, the Department of Revenue published notice of the proposed amendment of rules 42-2.10(1)-S1040, 42-2.10(2)-S10000, 42-2.10(2)-S10030, 42-2.10(2)-S10050, 42-2.10(4)-S10060, and 42-2.10(6)-S10100, relating to inheritance and estate taxes, at pages 1283 through 1289 of 1979 Montana Administrative Register, issue no. 20.

2. The Department has amended the rules with the following changes (deletions interlined and additions capitalized and underlined):

42-2.10(1)-S1040 TRANSFERS OF JOINT INTEREST PROPERTY (1) No changes from proposal.

(2) No changes from proposal.

(3) No changes from proposal.

(4) No changes from proposal.

(5) Except as provided in subsection (2), when the decedent dies on or after July 1, 1979, the transfer of joint interest property is taxable as provided in this subsection. WHEN A SURVIVING JOINT INTEREST HOLDER IS A SPOUSE OF THE DECEDENT, THE TRANSFER OF THE INTEREST IS EXEMPT FROM THE INHERITANCE TAX AS PROVIDED IN ARM 42-2.10(2)-S10030(3)(f). When a surviving joint interest holder is ~~either the spouse or~~ an issue of the decedent, the inheritance tax is based upon the value of the fraction of the decedent's interest passing to the surviving ~~spouse or~~ issue. When the surviving joint interest holder is not the spouse or an issue of the decedent, the inheritance tax is based upon the full value of the decedent's interest and is not reduced in proportion to the fraction received by the survivor.

42-2.10(2)-S10050 TRANSFERS ~~OF SECURITIES~~ OF ASSETS -- WAIVERS (1)(a) ~~No corporation organized or existing under the laws of this state shall transfer or deliver stock, bonds, mortgages or other securities held by a non-resident decedent to the executor, administrator, or legal representative of said decedent unless the inheritance tax on such transfer has been paid or secured or unless the State Department of Revenue has determined that no tax is due on said transfer and has issued a certificate of transfer. Transfers of securities held by a non-~~

~~resident decedent are exempt from the inheritance tax of the requirements of Section 91-4413, R.C.M. 1947, have been satisfied.~~ Waivers or consents to transfer are ~~required~~ GENERALLY NECESSARY for transfers of stocks or bonds in a domestic or foreign corporation from the name of a resident decedent or from the name of the trustee of a revocable or an irrevocable trust created by the decedent. Waivers or consents are not required for the transfer of securities in a Montana corporation by a non-resident decedent if such securities are exempt from the Montana inheritance tax on the basis of reciprocity.

(b) If a decedent was resident of a foreign country or was not domiciled in a district or state of the United States, a waiver is ~~required~~ GENERALLY NECESSARY on stock owned by the decedent in any Montana corporation.

(2)(a) Upon the death of an insured, resident decedent, waivers or consents to transfer for life insurance proceeds are not required if the proceeds of the policies do not exceed $50,000 or if the proceeds are payable entirely to a surviving spouse regardless of the amount. In all other cases involving an insured, resident decedent, a waiver or consent is ~~required~~ GENERALLY NECESSARY. When the proceeds of a policy or policies exceed $10,000, a notice of payment is required to be mailed by the company to the department. Policies which have been left with the insurer and matured endowments require a consent to transfer regardless of the amount unless payable to a surviving spouse.

~~(3)~~(B) For non-resident decedents there are no waiver requirements, and the proceeds may be transferred without securing the consent of the department.

(3) FAILURE TO OBTAIN A WAIVER OR CONSENT TO TRANSFER MAY SUBJECT ONE OR MORE OF THE PARTIES TO THE TRANSFER TO TAX LIABILITY IF THE INHERITANCE OR ESTATE TAX HAS NOT BEEN PAID.

3. The changes in the two rules given above are the result of comments received by the Department. The revision of subsection (5) of rule 42-2.10(1)-S1040 is made to reflect the amendment of 72-16-313, MCA, made by Chapter 696, Laws of 1979. That Session Law increased the spousal exemption from one-half of property transferred to all of property transferred. While the statute and Rule 42-2.10(2)-S10030, as proposed for amendment, would achieve the same result, the Department agrees that for clarity it is best to revise rule 42-2.10(1)-S1040 to incorporate the full spousal exemption. The changes made in Rule 42-2.1092)-S10050 are also made for clarity. The use of the words "is required" conveys the idea of a statutory or legal requirement. This was not the intention and is in fact not the case. The waivers are "required" as a practical matter to transfer certain assets; however, waivers are not required as a matter of law. Failure to obtain a waiver can result in tax liability, and as a result a new subsection (3) is added. No other comments or testimony were received.

IN THE MATTER OF THE GENERAL REVISION of rules relating to abandoned property.	))))	NOTICE OF AMENDMENT OF CERTAIN RULES AND REPEAL OF CERTAIN RULES relating to abandoned property.

TO: All Interested Persons:

1. On October 25, 1979, the Department of Revenue published notice of the proposed amendment of rules 42-2.10(10)-S10120 and 42-2.10(10)-S10170 and the proposed repeal of rules 42-2.10(10)-S10140, 42-2.10(10)-S10150, 42-2.10(10)-S10160, 42-2.10(10)-S10190, 42-2.10(10)-S10200, and 42-2.10(10)-S10220, relating to the treatment of abandoned property, at pages 1290 through 1292 of the 1979 Montana Administrative Register, issue no. 20.

2. The Department has amended the rules as indicated above and repealed the rules as indicated above.

3. No comments or testimony were received.

IN THE MATTER OF THE REPEAL OF RULE 42-2.12(6)-S12095 concerning appeal of department decisions in certain liquor license matters.	)))))	NOTICE OF REPEAL OF RULE 42-2.12(6)-S12095 APPEAL FROM DEPARTMENTAL DECISION

TO: All Interested Persons:

1. On October 25, 1979, the Department of Revenue published notice of the proposed repeal of rule 42-2.12(6)-S12095, concerning appeal of department decisions in certin liquor license matters, at page 1280 of the 1979 Montana Administrative Register, issue no. 20.

2. The Department has repealed the rule as proposed.

3. No comments or testimony were received.

IN THE MATTER OF THE REPEAL OF RULES 42-2.14(6)-S14080 and 42-2.14(6)-S14100, concerning strip coal mines license tax; 42-2.14(10)-S14180, concerning certain penalties, 42-2.14(10)-	))))))	NOTICE OF REPEAL OF RULES 42-2.14(6)-S14080, 42-2.14(6)-S14100, 42-2.14(10)-S14180, 42-2.14(10)-S14210 and 42-2.14(10)-S14240, concerning the miscellaneous tax division.

S14210, concerning certain initial inventories of tobacco products, 42-2.14(10)-S14240, concerning certain filing procedures.

TO: All Interested Persons:

1. On October 25, 1979, the Department of Revenue published notice of the proposed repeal of the above-listed rules, concerning the miscellaneous tax division, at pages 1281 and 1282 of the 1979 Montana Administrative Register, issue no. 20.

2. The Department has repealed the rules as proposed.

3. No comments or testimony were received.

IN THE MATTER OF THE REPEAL OF RULES 42-2.18(1)-S1800, 42-2.18(1)-S1810, 42-2.18(1)-S1820, 42-2.18(2)-S18070, and 42-2.18(6)-S18180 relating to taxation of motor fuels.

NOTICE OF REPEAL OF RULES 42-2.18(1)-S1800, 42-2.18(1)-S1810, 42-2.18(1)-S1820, 42-2.18(2)-S18070, and 42-2.18(6)-S18180 relating to taxation of motor fuels.

TO: All Interested Persons:

1. On October 11, 1979, the Department of Revenue published notice of the proposed repeal of the above-listed rules, relating to taxation of motor fuels, at pages 1178 and 1178 of the 1979 Montana Administrative Register, issue no. 19.

2. The Department has repealed the rules as proposed.

3. No comments or testimony were received.

IN THE MATTER OF THE ADOPTION OF RULES AND THE AMENDMENT OF RULE 42-2.6(1)-S6520 TO IMPLEMENT HOUSE BILL 150, relating to the method of taxation of banks and savings and loan associations

NOTICE OF ADOPTION OF RULES AND AMENDMENT OF RULE 42-2.6(1)-S6520 relating to the taxation of banks and savings and loan associations.

TO: All Interested Persons:

1. On October 25, 1979, the Department of Revenue published

notice of the proposed adoption of rules and the amendments of rule 42-2.6(1)-S6520, relating to the taxation of banks and savings and loan associations, at pages 1296 through 1299 of the 1979 Montana Adminsitrative Register, issue no. 20.

2. The Department has adopted Rule I (42-2.6(1)-S6961), Rule II (42-2.6(1)-S6962), Rule III (42-2.6(1)-S6963), and Rule IV (42-2.6(1)-S6964) and amended rule 42-2.6(1)-S6520 as proposed.

3. No comments or testimony were received.

IN THE MATTER OF THE AMENDMENT OF RULES 42-2.22(2)-S22060 and 42-2.22(2)-S22120, relating to the assessment of motor vehicles.	NOTICE OF AMENDMENT OF RULES 42-2.22(2)-S22060 and 42-2.22(2)-S22120, relating to the assessment of motor vehicles.

TO: All Interested Persons:

1. On October 25, 1979, the Department of Revenue published notices of the proposed amendment of rules 42-2.22(2)-S22060 and 42-2.22(2)-S22120, relating to the assessment of motor vehicle, at pages 1293 through 1295 of the 1979 Montana Administrative Register, issue no. 20.

2. The Department has amended the rules as proposed.

3. Comments were received from two individuals. Mrs. H. Hammond of Missoula raised several objections. In a letter, Mrs. Hammond indicated that: (1) it was unfair to ignore optional equipment; (2) movement of taxpayers from district to district would result in incorrect taxation, and (3) the wait for motor vehicle assessment at present is not so bad to require a remedy. The Department agrees that ignoring optional equipment for automobiles and light trucks will result in some disparity. However, assessment manuals (presently in use at this time) use average values to begin with and as a result may overvalue or undervalue a vehicle. In most cases the tax difference between excluding and including optional equipment will be less than $10. The Department considers such a differential to be acceptable when compared to the efficiencies and cost savings resulting from the use of manuals and computer generated assessments. In addition, in several counties optional equipment is presently not being assessed. The proposal will permit taxpayers to be treated equally, independent of the county wherein the vehicle is located. If a taxpayer moves to a new taxing jurisdiction, the old computer generated assessment would be invalid and a new one would be prepared by the appropriate county assessor. Use of the computer will not prevent the actions of an individual who abuses

the system and falsely registers a vehicle with the wrong county in order to avoid tax liability. However, a computer system may make it easier to catch such individuals in the future. While waiting times in some counties present no problems, in other counties the wait can be significant, especially during the lunch hour for individuals who must have their cars assessed during that period. Moreover, the assessor's office will be relieved from a certain amount of work and the resulting available time can be devoted to other duties. A letter was also received from Mr. R. Neussendorfer of Anaconda. Mr. Neussendorfer expressed a fear that the rule would impose a 2-week limitation on the time for obtaining plates or plate decal. The rule does not address the question of time at all. Hence the proposed rule will not produce the result feared by Mr. Neussendorfer. No other comments or testimony were received.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 11-30-79

VOLUME NO. 38 OPINION NO. 56

COUNTY COMMISSIONERS - Authority to contract for lease without election;
CONTRACTS - Application of debt limit to installment lease contract.
MONTANA CODE ANNOTATED - Section 7-7-2101.

HELD: A contract whose total liability exceeds $40,000 must be approved by the voters under section 7-7-2101, MCA, even though it provides for annual payments of less than $40,000, an option to purchase at the end of the contract term for an additional payment less than $40,000, and an option to cancel at any time.

23 November 1979

J. Fred Bourdeau, Esq.
Cascade County Attorney
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

> May the county enter into a lease whose total obligation exceeds $40,000 without a vote of the electorate under section 7-7-2101, MCA, if the contract provides:
> (a) that the annual lease payments individually will not exceed $40,000;
> (b) that the county has an option to purchase the equipment at the end of the lease period for an additional payment of less than $40,000; and
> (c) that the county has the option of cancelling the contract at the end of each annual payment period without further payment?

In 37 OP. ATT'Y GEN. NO. 152 (1978), I held that the condition set forth in subpart (a) above does not take a contract out of the debt limit provisions of section 7-7-2101, MCA. I continue to adhere to that holding.

The condition set forth in subpart (b) is likewise of no avail. The debt limit set forth in section 7-7-2101, MCA, applies to prevent the county from incurring a present

indebtedness which will be a burden on future taxpayers. Thus, in State ex rel. Deiderichs v. Board of Trustees, 91 Mont. 300, 7 P.2d 543 (1932), the Montana Supreme Court held that the debt limitation did not apply to bar an expenditure in excess of $40,000 financed by cash specifically appropriated from then available funds. Likewise, in Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974), the court held that an expenditure of currently available revenue sharing funds was not an "indebtedness or liability" subject to the statutory debt limit. However, the situation described in subpart (b) of your question is quite different. Even if the county exercises its option to purchase at the end of the lease period for an amount less than $40,000, the entire course of lease payments will have already been made, and your letter makes clear that the total amount of such payments will far exceed $40,000. Diederichs and Yovetich teach that such an expenditure may be made without a vote of the electorate only if the total expenditure does not exceed $40,000, or the funds to be expended are presently available for appropriation, and are not to be taxed from future taxpayers.

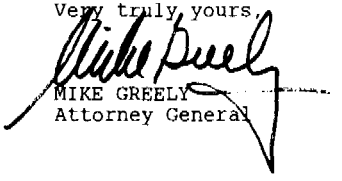
You also inquire whether an option to cancel the contract at any time will take it out of the debt limit. The essence of your question is whether the debt limit applies to liabilities whose actual amount is uncertain but which may exceed the $40,000 single purpose limit. I conclude that the limit does apply. The statute is an absolute prohibition on liabilities which exceed $40,000, unless such liabilities are approved by the voters before they are incurred. In the case of a contract with an option to cancel, it is impossible to determine whether the contract will exceed the debt limit until such time as the contract is cancelled or the total expenditure exceeds $40,000. If the latter occurs, the purpose of the statute will be circumvented, since the voters will not have had the opportunity to approve the project prior to its inception. This possibility requires the conclusion that any liability incurred for a single purpose must be given prior approval by the electorate if it is possible, under the terms of the contract, that the total liability may exceed $40,000.

THEREFORE, IT IS MY OPINION:

A contract whose total liability exceeds $40,000 must be approved by the voters under section 7-7-2101, MCA, even though it provides for annual payments of less

than $40,000, an option to purchase at the end of the contract term for an additional payment less than $40,000, and an option to cancel at any time.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 57

HIGHWAYS - Relinquishment of right-of-way easement;
HIGHWAYS - Abandonment vs. sale;
EASEMENTS - Right-of-way for highway purposes;
DEPARTMENT OF HIGHWAYS - Authority to hold funds in trust;
MONTANA CODES ANNOTATED - Sections 60-4-201 through 60-4-208.

HELD: 1. The code provisions regarding abandonment are to be followed when the Highway Commission relinquishes a right-of-way easement.

2. The Highway Department has authority to hold funds in trust for a local government.

27 November 1979

Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Ron Richards, Director
Department of Highways
Highways Building
Helena, Montana 59601

Gentlemen:

You have requested an opinion regarding the negotiations that have occurred with the Highway Department, the Anaconda Company, and Local Government of Butte-Silver Bow surrounding the closure of a portion of U.S. Highway 91, commonly known as the Woodville Hill. I have rephrased those questions as follows:

1. When a right-of-way easement is relinquished by the Highway Commission, are the code provisions regarding sale or abandonment to be followed?

2. Does the department have authority to hold funds in trust for a local government?

On December 11, 1972, the Anaconda Company filed a petition with the State Highway Commission for the abandonment of a portion of U.S. Highway No. 91. After some period of time, on August 9, 1977, the director of the Department of High-

ways recommended to the highway commission that this section be abandoned with Anaconda being required to bear the cost of a future replacement facility and the studies necessary to determine appropriate location. The State Highway Commission agreed to abandon the highway and adopted a formal motion at its meeting of November 1, 1977, subject to a formal agreement with Anaconda and payment of 1.8 million dollars to be used for alternative traffic facilities which would be agreeable to the government of Butte-Silver Bow and the Highway Department. On February 1, 1978, an agreement was signed between the Montana State Highway Commission and the Anaconda Company in which the commission agreed to abandon the Woodville Hill Highway and the Anaconda Company agreed to deliver 1.8 million dollars to the commission.

It is the position of the Department of Highways that the procedure described above was in fact an abandonment of that portion of U.S. Highway 91 and that the 1.8 million dollars received by the department is to be held in trust for the government of Butte-Silver Bow for the purpose of developing alternative traffic facilities to replace the Woodville Highway. It is the position of the Legislative Auditor that the transaction described above may constitute a sale of the Woodville Highway. The Auditor further asserts that even if the transaction was an abandonment, the department has no authority to hold the 1.8 million dollars in trust for Butte-Silver Bow and that the money belongs to the State of Montana. It is my opinion that the relinquishment of a right-of-way easement is an abandonment and that the department does have authority to hold funds in trust for the construction and maintenance of alternative traffic facilities in the future.

Initially, it is important to note that the Highway Department's interest in the Woodville Hill road was an easement, and not a fee simple. This distinction is critical, in light of the decision of the Montana Supreme Court in Park County Rod and Gun Club v. State, 163 Mont. 372, 517 P.2d 352 (1973). In that case the State Highway Department had acquired a small roadside park along a state highway by an instrument the grantors labeled "easement." The department later abandoned the adjoining highway and the park and gave a quit claim deed for the park area to the heirs of the original grantors. Park County Rod and Gun Club wished to acquire the tract for members' use and filed suit, alleging that the reconveyance to the heirs was a sale and that the sale was illegal because the statutes required appraisal,

bidding, and other procedures. The district court ruled in the club's favor and the judgment was appealed. The Supreme Court, reversing the district court, ruled that the interest held by the state and reconveyed to the heirs was an easement. The court went on to state that the interest created by the easement was so limited in nature as to not be a saleable interest:

> The only problem then is whether the state, acting through the highway department, can by administrative procedure, give the Whites a quit claim deed to clear their title. There was, according to the record, a long-established administrative procedure for handling easements which was followed by the highway department. The highway department acquires various "interests in real property" which might be termed transitory, or temporary licenses, permits, leases and easements for construction, maintenance and general highway uses. To say that the language used in section 32-3910, R.C.M. 1947 (60-4-202, MCA), "any interest in real property" must be sold at public auction extends to interests of a limited nature for specific highway purposes would make even neighborly permission impossible. Such interests of a limited or restricted nature are not saleable interests. This is particularly so where the "interest" is merely a right to use, as distinguished from an estate of inheritance or title to real estate.
>
> In the instant case, plaintiff would have us hold the instrument created a fee simple title with covenants running with the title. Under this theory, of course the state would have held such an "interest in real property" as to have required bids. But, as we have pointed heretofore, such was not the case.

163 Mont. at 378.

The court went on to discuss the long standing administrative practice of the department.

> Another reason appears in a long-standing administrative interpretation of the language "any interest in real property" as not governing easements, leases, and construction permits, in that

> the interest is such a limited one, usually acquired for a specific highway purpose, that it is not a saleable interest and is therefore not subject to section 32-3910, R.C.M. 1947. State v. King Colony Ranch, 137 Mont. 145, 350 P.2d 841; State ex rel Ebel v. Schye, 130 Mont. 537, 305 P.2d 350.
>
> Accordingly, we find the district court was in error in holding an easement of this nature to be such "an interest in real property" as to require public sale.

Logic compels the conclusion that if the interest in question is not a saleable interest, then the only proper method of disposing of a right-of-way easement is through abandonment. Sections 60-4-201 through 60-4-208, MCA, set forth the methods through which the department may divest itself of property. If an interest is not saleable, the only one of these provisions which may apply is that relating to abandonment. Consequently, it is my opinion that the disposition of a right-of-way easement by the Highway Department must be subject to the abandonment provisions of the Montana codes. This conclusion is buttressed by the very nature of an easement for right-of-way. A right-of-way easement interest held by the Highway Department cannot be conveyed to, or held by, any other person or public agency under the Court's holding in Park County Rod & Gun. Whenever the department relinquishes the right to maintain a highway or ceases to exercise it actively, the right disappears. Under the provisions of section 60-4-201, MCA, the department is vested with the power to "lay out, alter, construct, reconstruct, improve, repair, and maintain highways." No other agency or individual is vested with that authority by Montana law. See for example, section 7-14-4108, MCA. Thus, when the department divests itself of a right-of-way easement, the purpose for the easement ceases to exist, as does the easement itself. It follows that the right embodied by an easement in favor of the Highway Department may not be conveyed.

This is not to say, however, that the department may not enter into an agreement where it agrees to abandon a right-of-way easement in exchange for consideration. In such a case, the consideration furnished by the department is not an interest in real property, but rather an agreement to do a particular act, viz., follow the statutory procedures for abandoning a right-of-way. This procedure is consistent with the statute cited above, and is apparently a common practice.

To summarize, it is my opinion that the negotiations produced an abandonment of the department's right-of-way, and not a sale, since the department's interest in the right-of-way was not a saleable interest in real property.

The next contention raised by the Auditor's office is that the Highway Department lacks authority to accept funds to be held in trust for local governments. The highway code, section 60-1-102, MCA, provides:

> Legislative Policy and Intent. Consistent with the foregoing determinations and declarations, the legislature intends:
>
> (1) to place a high degree of trust in the hands of those officials whose duties it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as future use;...
>
> (2) to make the department of highways custodian of the federal-aid and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;
>
> (3) the state shall have an integrated system of highways, roads, and streets, and that the department of highways, the counties, and municipalities assist and cooperate with each other to that end;
>
> (4) to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter to be posed.

Section 60-2-201, MCA, provides:

> The General Powers of Department. (1) The department may plan, layout, alter, construct, reconstruct, improve, repair, and maintain highways under the federal-aid systems of state highways.
>
> (2) the department may cooperate and contract with counties and municipalities to provide assistance in performing these functions for other highways and streets.

(3) the department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

It is clear from a reading of the above statutes that the department of highways has a very broad legislative mandate when it comes to the highway system. A high degree of authority is placed in the hands of the department, coupled with an admonishment to cooperate with local governments.

Trusts may be established in many ways; no particular formalities are required under Montana law. They are a matter of intent, particularly that of the person creating the trust, the trustor, and the person selected to carry it out, the trustee. Trusts may be created orally, Stagg v. Stagg, 90 Mont. 180, 300 P. 538 (1931). All that the law demands is sufficient proof that the trust has in fact been created. Sections 72-20-107 and 72-20-108, MCA provide:

72-20-107. Voluntary Trust--How Created as To Trustor. Subject to the provisions of 72-24-102, a voluntary trust is created, as to the trustor and beneficiary by words or acts of the trustor indicating with reasonable certainty;

(1) an intention on the part of the trustor to create a trust; and

(2) the subject, purpose, and beneficiary of the trust.

72-20-108. Voluntary Trust--How Created As To Trustee. Subject to the provisions of 72-24-102, a voluntary trust is created as to the trustee by any words or acts of his indicating with reasonable certainty;

(1) his acceptance of the trust or his acknowledgement made upon sufficient consideration, of its existance; and

(2) the subject, purpose, and beneficiary of the trust.

There is nothing in Montana law to preclude the Department of Highways from serving as trustee with a local goverment as beneficiary for funds to be used for construction and maintenance of replacement facilities of a highway abandoned by the commission. Such function is in fact consistent with

the broad authority and powers given to the department and the mandate for cooperation with local governments.

The question arises as to the disposition of interest earned by a trust fund. That question has long been settled in Montana law. It is elementary that any interest earned by a trust belongs to the beneficiary and the trustee is compelled to apply it to that use. In re Davis' Estate, 47 Mont. 155, 134 P. 670 (1913); In re Allard Guardianship, 49 Mont. 219, 141 P. 661 (1914).

THEREFORE, IT IS MY OPINION:

1. The code provisions regarding abandonment are to be followed when the Highway Commission relinquishes a right-of-way easement.

2. The Highway Department has authority to hold funds in trust for a local government.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 58

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING - Private patrol operator licenses and reserve officers;
LICENSES, OCCUPATIONAL AND PROFESSIONAL - Private patrol operator licenses and reserve officers;
PEACE OFFICERS - Reserve officers, private patrol operator license requirements.
MONTANA CODE ANNOTATED - Sections 7-32-201, 7-32-214, 7-32-216, 7-32-218, 37-60-105.

HELD: The provision of section 37-60-105(2), MCA, which exempts officers engaged in the performance of their official duties from the licensing requirements of the Private Investigators and Private Patrol Operators Licensing Act, applies to reserve officers as defined in section 7-32-201(5), MCA, regardless of the source of any income they may receive when they are serving on the orders and at the direction of the chief law enforcement administrator of the local government.

28 November 1979

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion concerning the applicability of the licensing requirements of the Department of Professional and Occupational Licensing to reserve officers. Specifically, you have asked whether reserve officers must be licensed as private patrol operators pursuant to the Private Investigators and Private Patrol Operators Licensing Act, Title 37, chapter 60, MCA, when they are performing law enforcement functions under the direction of the chief law enforcement administrator of the local government but are being paid a salary by a private concern. Lewis and Clark County Sheriff Charles M. O'Reilly joins you in requesting my opinion concerning this question.

Section 7-32-201, MCA, defines "reserve officer":

> "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency.

It is my understanding that sheriffs are routinely contacted by public and private concerns to provide reserve officers to patrol various functions. When these functions are sponsored by a branch of the local government, reserve officers are often paid for their time by the local government. However, when the functions at which they serve are sponsored by private concerns, reserve officers are usually paid for their time by the private concern. In addition to these public and private functions, reserve officers are often called upon to volunteer their time without remuneration from any source.

Given this variety of functions, the question then becomes when, if ever, a reserve officer must be licensed as a private patrol operator in addition to fulfilling the statutory requirements with which he must comply to attain and maintain his reserve officer status.

The Private Investigators and Private Patrol Operators Licensing Act provides in section 37-60-105(2):

> This chapter does not apply to:
> ***
> (2) an officer or employee of the United States of America or this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(Emphasis added.) The answer to the question posed, then, depends on whether a reserve officer's "official duties" are determined with reference to the source of any income he may receive for performing them or with reference to the source of his authority to perform "official duties," i.e., the chief law enforcement officer of the political subdivison.

It is my opinion that the statutory provisions authorizing reserve officers and outlining their functions and limitations, clearly demonstrate the legislature's intent to

exempt them from the Private Investigators and Private Patrol Operators Licensing Act.

Section 7-32-214, MCA, sets out a detailed and comprehensive training program which reserve officers are required to complete within two years of their original appointment. The program includes a minimum of 88 hours of course work in more than 15 specialized subject areas.

Section 7-32-216, MCA, strictly delimits the circumstances under which a reserve officer may serve. Specifically it provides:

> (1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.
> (2) A reserve officer may act only in a supplementary capacity to the law enforcement agency.
> (3) Reserve officers:
> (a) are subordinate to full-time law enforcement officers; and
> (b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

(Emphasis added.) This provision clearly ties a reserve officer's ability to act as a reserve officer to the authorization of the chief law enforcement administrator of the local government. This dependency on the source of one's authorization is again emphasized in section 7-32-218, MCA:

> A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

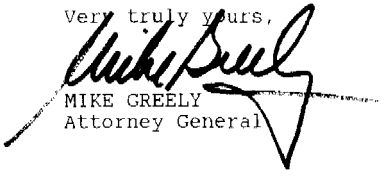
(Emphasis added.) Each of these provisions reveals an intention to tie the duties, functions, powers, and obligations of reserve officers to the authority given them by the chief law enforcement officer. The source of their authority, then, and not the source of any income they might receive for performing these duties, is the factor which determines their status as reserve officers. This conclusion becomes even more evident when one considers the fact

that often times reserve officers are called upon to volunteer their time without any compensation from any source.

THEREFORE, IT IS MY OPINION:

> The provision of section 37-60-105(2), MCA, which exempts officers engaged in the performance of their official duties from the licensing requirements of the Private Investigators and Private Patrol Operators Licensing Act, applies to reserve officers as defined in section 7-32-201(5), regardless of the source of any income they may receive, when they are serving on the orders and at the direction of the chief law enforcement administrator of the local government.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 59

MAILING LISTS - Distribution by state agency;
PRIVATE PARTIES - Use of state agency lists as mailing lists;
RIGHT TO KNOW - Use of mailing lists;
SECRETARY OF STATE - Prohibition on distribution of mailing lists;
SECRETARY OF STATE - Duty to ascertain intended use of agency lists;
LAWS OF MONTANA (1979) - Chapter 606;
MONTANA CODE ANNOTATED - Section 2-15-401(8);
MONTANA CONSTITUTION - Article II, section 9.

HELD: 1. Under the provisions of chapter 606, Laws of Montana 1979, agencies are prohibited from distributing a list of persons only if the intended use of such list is for unsolicited mass mailings, house calls or distributions, or telephone calls.

2. The prohibition pertains only to lists of natural persons, not businesses, corporations, governmental agencies or other associations.

3. Agencies are not required to affirmatively ascertain the intended use for which the list is sought; a clear written disclaimer from the agency as to the proscriptions and penalty of chapter 606 is sufficient.

28 November 1979

The Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

You have requested an opinion regarding the application of Laws of Montana (1979), chapter 606, to certain duties and responsibilities of the office of Secretary of State. Chapter 606 establishes a general policy prohibiting state and local government agencies from distributing or selling "lists of persons" for use as "mailing lists."

Section 2-15-401(8), MCA, provides that it is one of the duties of the Secretary of State to:

> furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office.

Montana law has numerous provisions that require various documents and other information to be filed with the Secretary of State as a matter of public record. Some examples of that information include: campaign expense statements with names and addresses of contributors to political campaigns; lobbyist registrations with names and addresses of lobbyists and principals of lobbyists; nominating certificates with names and addresses of candidates for public office; electors' petitions with the names and addresses of electors; executive appointments with names and addresses of persons appointed to offices, departments and boards; articles of incorporation, annual corporation reports and other corporate documents with the names and addresses of incorporators, corporate directors and corporate officers; certificates of information with names and addresses of incorporators of corporations, corporate directors and officers and names and addresses of partners; certificates of information under the uniform commercial code with names and addresses of debtors and secured parties in commercial transactions.

In addition it has been the practice of the Secretary of State, in his capacity as the state election administrator and custodian of public records, to prepare and furnish information abstracted from source documents of fundamental and general interest to the public. Some examples of that information are: rosters of legislators with the names and addresses; rosters of state and county elected officials with the names and addresses of the officials; rosters of election administrators with names, addresses and telephone numbers of the administrators; rosters of candidates for public office with the names and addresses of the candidates; rosters of lobbyists with the names and addresses of registered lobbyists.

It is my opinion that the provisions of chapter 606 do not necessarily conflict with the existing duties or practices of the Secretary of State.

Subsection (1) of chapter 606 provides:

> (a) [N]o agency may distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list.

That proscription extends to both state and local agencies. Subsection (2). It is accompanied by a concommitant prohibition extending to third persons who may gain access to such lists. Subsection (1)(b) provides that:

> (b) no list of persons prepared by the agency may be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

Use of a list of persons in violation of subsection (1)(b) is a misdemeanor. Subsection (7).

The general proscription against distribution and use of agency lists as mailing lists is qualified by the specific exemptions set forth in chapter 606. Initially, there is a specific provision for use of lists of persons as mailing lists where the persons have consented to such use.

Subsections (4) and (6) provide additional, self explanatory exceptions:

> (4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, or to lists of the names of employees governed by Title 39, chapter 31, MCA.
>
> ***
>
> (6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

Obviously lists of registered electors compiled by your office are not subject to the proscription. Persons providing prelicensing or continuing educational courses are also exempt by the provisions of subsection (5).

Subsection (3) permits third persons to compile and use mailing lists from original documents or applications which are otherwise open to public inspection. It provides:

(3) This section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

In determining the scope and limits of the general prohibition established in ch. 606, careful attention must be given to the words and language used in the chapter, particularly to the phrases "lists of persons" and "mailing lists." Both phrases have specific meanings which are critical to interpreting and applying the chapter.

A "mailing list" is commonly understood to mean a list of persons or businesses, often accompanied by their addresses and/or telephone numbers, used for unsolicited mass mailings, house calls or distributions, and/or telephone calls, see generally Annotation, 56 ALR3d 457 (1974). Terms of a statute, unless the context indicates otherwise, must be given their "natural and popular meaning in which they are usually understood." Jones v. Judge, ___ Mont. ___, 577 P.2d 846 (1978). There is no indication in the context of ch. 606 that the legislature intended to use the term "mailing list" in any other sense than its ordinarily understood meaning. Therefore, agencies are prohibited from distributing a list of persons only if the intended use of such list is for unsolicited mass mailings, house calls or distributions, or telephone calls. Agencies are not precluded from distributing or selling such lists for other uses.

"Lists of persons" similarly delimits the scope of chapter 606. Although reference to "persons" in some instances may include corporations, associations, organizations or other artificial entities, the reference to "persons" in chapter 606 is to natural persons. As noted in the bill, the interest promoted by chapter 606 is the right of privacy. The right of privacy is by its nature a personal one of individual human beings. See Article II, section 10, Montana Constitution. It is my opinion that chapter 606 does not forbid the dissemination of lists of names of corporations, associations, governmental bodies and businesses for use as mailing lists.

The implementation of chapter 606 must be consistent with Article II, section 9 of the Montana Constitution. Section 9 provides:

> Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The right of privacy, in turn, has a specific constitutional basis in Article II, section 10, which provides:

> Right of Privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 9 has not been interpreted by the Montana Supreme Court as of this date, but has been the subject of three recent Attorney General opinions, specifically, 37 OP. ATT'Y GEN. NOS. 107 and 170 and 38 OP. ATT'Y GEN. NO. 33. Number 107 is the seminal opinion. Initially, section 9 does not require state agencies to afford the public the most convenient mode of access or examination. The constitutionality of prohibiting copying of public documents may depend on the nature and reasons for doing so. See 38 OP. ATT'Y GEN. NO. 8. The Attorney General's opinions recognize what is apparent in the words of section 9 -- that the public right to know must be balanced against an individual's interest in personal privacy. Specific considerations involved in balancing the two interests are addressed in Opinion No. 107.

> A proper application of this balancing test involves the following steps: (1) determining whether a matter of individual privacy is involved, and (2) determining the demands of that privacy and the merits of publicly disclosing the information at issue, and (3) deciding whether the demand of individual privacy clearly outweighs the demand of public disclosure.

As to the first prong of the balancing test, the legislature by enacting ch. 606 has declared that a matter of individual privacy is involved in the dissemination of agency lists for use as mailing lists. That determination is fully consistent with "controlling access to information about oneself," State v. Brackman, ___ Mont. ____, 582 P.2d 1216, 1221

(1978). But as stated in Opinion No. 107, "The degree of infringement will vary according to the type of information sought, e.g., the name of an individual as compared to his medical history." It will also vary with the nature of the resulting invasion, see State ex rel. Zander v. District Court, ___ Mont. ____, 591 P.2d 656 (1979). If the list is unique, in that it establishes the personal habits or characteristics of the individuals whose names appear thereon, then the privacy interest increases. But generally, the additional, unique information yielded about an individual by the mere appearance of his or her name and/or address in an agency list will be minimal. The information disclosed typically will be information which has already been publicly disclosed, albeit in a less accessible or convenient form. Moreover, individuals who receive unsolicited communications because their name appears on a list are free to ignore them.

Arrayed against the privacy interest is the interest of the public in disclosure and reproduction of such lists. As with the privacy interest, the public interest will vary with the nature of the list. It will also vary with the purpose to which the list is put. As to lists that are used for commercial profit making purposes, the public interest is minimally implicated. The right of privacy in such instances may easily outweigh the public right to know. However, if the list is to be used in conjunction with educating the public or soliciting public participation in governmental or public matters, the public interest may well outweigh the privacy interest. For example, the public interest may outweigh privacy where an agency list is sought for purposes of informing the persons thereon of proposed legislation or agency regulations or actions.

Section 2-15-401(8) imposes an affirmative duty on the Secretary of State to furnish copies of virtually all documents on file in his office. The "right to know" provision of the Montana Constitution imposes additional responsibilities on governmental agencies. Those provisions could conceivably conflict with chapter 606.

In light of the foregoing discussion, it is my opinion that chapter 606 should be given a liberal interpretation. Agencies are not required, under the provisions of the bill, to affirmatively ascertain whether lists will be used as "mailing lists." Only when an agency has been made aware that the information sought is to be used as a "mailing list" would they be prohibited from providing it.

In reaching this conclusion I am aware of the possibility that a list of persons which is disseminated for legitimate purposes could be used by the requesting party as a mailing list. Such possibility, however, does not affect my opinion. Subsection 1(b) specifically prohibits third persons from using agency lists of persons as mailing lists. The subsection is accompanied by attendant penalties. Subsection (7).

For agency purposes it is sufficient to attach a letter or other appropriate written disclaimer to the disseminated lists advising the recipient of the prohibitions and sanctions contained in chapter 606 making it unlawful for third persons to use agency lists as mailing lists.

THEREFORE, IT IS MY OPINION:

1. Under the provisions of chapter 606, Laws of Montana 1979, agencies are prohibited from distributing a list of persons only if the intended use of such list is for unsolicited mass mailings, house calls or distributions, or telephone calls.

2. The prohibition pertains only to lists of natural persons, not businesses, corporations, governmental agencies or other associations.

3. Agencies are not required to affirmatively ascertain the intended use for which the list is sought; a clear written disclaimer from the agency as to the proscriptions and penalty of chapter 606 is sufficient.

Very truly yours,

MIKE GREELY
Attorney General