

KFM  
9035  
1973  
.A245a

STATE LAW LIBRARY

AUG 28 1986

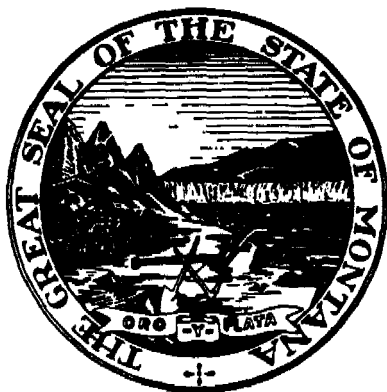
**RESERVE**

**OF MONTANA**

**MONTANA  
ADMINISTRATIVE  
REGISTER**

**DOES NOT  
CIRCULATE**

1986 ISSUE NO. 16  
AUGUST 28, 1986  
PAGES 1423-1487



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-2-157 Notice of Public Hearing on Proposed  
Adoption - Leaves of Absence Due to Disability. 1423-1427

COMMERCE, Department of, Title 8

8-50-15 (Board of Private Security Patrolmen and  
Investigators) Notice of Public Hearing on Proposed  
Amendment - Definitions - Fee Schedule. 1428-1429

8-97-20 (Montana Economic Development Board)  
Notice of Proposed Amendment - Rates, Charges and  
Fee Schedule. No Public Hearing Contemplated. 1430-1431

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-313 Notice of Proposed Amendment - Recording of  
Delayed Birth Records. No Public Hearing Contemplated. 1432-1433

JUSTICE, Department of, Title 23

23-3-24 (Board of Crime Control) Notice of Proposed  
Amendment - Basic Course - Intermediate Course and  
Advance Course. No Public Hearing Contemplated. 1434-1436

LIEUTENANT GOVERNOR, Title 30

30-1 (Statehood Centennial Commission) Notice  
of Public Hearing on Proposed Adoption - Sanctioning  
Official Centennial Commemorative Products and  
Projects. 1437-1442

REVENUE, Department of, Title 42

42-2-320 Notice of Public Hearing on Proposed  
Amendment and Adoption - Individual Liability  
for State Withholding Taxes. 1443-1444

SECRETARY OF STATE, Title 44

44-2-49 Notice of Public Hearing on Proposed  
Amendment and Adoption - Procedures Governing the  
Processing and Counting of Computer Election Services  
Votomatic Punchcard Ballots. 1445-1453

RULE SECTION

ADMINISTRATION, Department of, Title 2

REP (Public Employees Retirement Board)  
AMD Administration of Public Retirement Systems  
NEW and the State Social Security Program. 1454-1459

STATE AUDITOR, Title 6

NEW Montana Insurance Assistance Plan - Commercial  
Liability. 1460

FISH, WILDLIFE AND PARKS, Department of, Title 12

Notice of Decision Not to Adopt - Abandoning  
the Teton Spring Creek Preserve. 1461

NEW Transplant of Nuisance Animals - Introduction  
of Peregrine Falcons. 1462-1463

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

NEW Water Quality - Regulation of Phosphorus  
Compounds Used for Cleaning Purposes. 1464-1465

LABOR AND INDUSTRY, Department of, Title 24

AMD Annual Adoption of Standard Prevailing Rate  
Wages. 1466-1467

INTERPRETATION SECTION

Opinions of the Attorney General.

78. Cities and Towns - Lease with Option to Purchase  
Subject to Requirement of Competitive Bidding -  
Contracts - Municipal Government must Competitively  
Bid Contract Which is a Lease with Option to  
Purchase - Municipal Governments. 1468-1471

Page Number

Opinions of the Attorney General, continued

79	Legislature - Dual Officeholding by Member of Legislature and Municipal Officer - Municipal Government - Public Office.	1472-1474
80	Consolidation - Recommendation of Local Government Study Commissions to Consolidate Law Enforcement Services - County Government - Local Government Study Commissions - Recommendation to Consolidate Services - Municipal Government.	1475-1476

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	1477
How to Use ARM and MAR.	1478
Accumulative Table.	1479-1487

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PUBLIC HEARING ON  
of rules relating to leaves of ) THE ADOPTION OF RULES RELATING  
absence due to disability. ) TO LEAVES OF ABSENCE DUE TO  
 ) DISABILITY

TO: All Interested Persons.

1. On September 18, 1986, at 12:15 P.M., in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the adoption of rules relating to leaves of absence due to disability.

2. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This policy may be cited as the disability (maternity) policy.  
(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that leaves of absence due to disability shall be requested by the employee and approved by the agency consistent with requirements of applicable rules and agency policy relating to the type of leave requested.

(2) Nothing in this policy guarantees the approval or granting of leave requested. The agency shall approve a reasonable leave of absence, as provided in this policy when maternity leave is requested.

(3) It is the objective of this policy to establish minimum standards for leave requests and approval, medical certification and reinstatement when an employee is disabled.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Disability" means any illness, injury, or other condition which prevents the employee from performing some or all of the duties of the position. A disability may be the result of a short-term illness or injury, pregnancy or childbirth, industrial accident or a handicap.

(2) "Handicap" means a physical or mental handicap as these terms are defined in 49-2-101, MCA, and with the following clarification found at ARM 24.9.801(3):

(a) "a 'handicapped person' is a person who:

(i) has a physical or mental handicap which substantially limits one or more of such person's major life activities;

(ii) has a record of having such an impairment; or

(iii) is regarded as having such an impairment.

(b) a factor in determining whether an impairment substantially limits a major life activity is the duration of the impairment. A short-term illness or injury such as a cold or sprained ankle, is not by itself a 'handicap' within the meaning of section 49-2-101, MCA."

(3) "Industrial accident" means an injury or disease to an employee which arises out of and occurs in the course of employment.

(4) "Maternity leave" means, as defined in ARM 24.9.1201(2), "any leave of absence granted to or required of an employee because of such employee's disability due to pregnancy." It may be a paid or unpaid leave of absence.

(5) "Reasonable accommodation" means, as provided in section 504 of the Rehabilitation Act of 1973, an adjustment made to a job, work environment, or both that enables an otherwise qualified handicapped person to perform the duties of the position, unless the accommodation would impose an undue hardship on the operation of the agency programs.

(6) "Short-term illness or injury" means, in accordance with ARM 24.9.801(3), a condition of limited duration, such as a cold, the flu, or a sprained ankle, which in and of itself does not limit employability.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE IV APPROVAL OF LEAVE (1) An employee shall request leave of absence due to disability and shall comply with applicable rules and agency policy relating to the type of leave requested. Leaves of absence due to disability may include the approved use of sick leave, annual vacation leave, compensatory time, leave of absence without pay, other accrued paid leave or a combination of these leaves.

(2) An agency shall approve or disapprove requests for leave of absence due to disability consistent with criteria used by the agency to approve leave of absence for any other purpose. The agency may require the employee to produce evidence of the need for leave of absence before leave is approved or at any time during the leave. (For requirements specific to maternity leave, see Rule VI)

(3) Leave of absence for a disability which is the result of an industrial accident shall be requested by the employee and approved by the agency consistent with this policy, whether or not the employee is or may become eligible for workers' compensation benefits. Eligibility for workers' compensation benefits is determined by the workers' compensation division, department of labor and industry, under rules adopted by that agency found at ARM 24.29.101 et seq.

(4) When approving leaves of absence due to disability, an agency may approve a combination of paid leave and leave of absence without pay in a workweek, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay.

(5) An employee who is on an approved leave of absence without pay may be eligible to self pay insurance premiums in accordance with the state employees health benefits plan document issued by the employee benefits section, state personnel division, department of administration.

(6) Reinstatement from leave shall be determined on a case-by-case basis, consistent with the applicable rules and agency policy relating to the type of leave taken. If the leave is a result of a disability due to pregnancy or child birth, the

reinstatement requirements of 49-2-310 and 49-2-311, MCA, the Montana Maternity Leave Act, and ARM 24.9.1207 shall be followed.  
(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

**RULE V MEDICAL CERTIFICATION** (1) An employee who requests leave due to disability may be required to provide medical certification specifying that the disabling condition requires a leave of absence. Medical certification shall be obtained by the employee in accordance with agency policy and procedure, the sick leave rules, ARM 2.21.137, and this rule.

(2) An employee who requests more than 6 calendar weeks of leave due to disability shall provide medical certification. The agency may require medical certification at any time before or during the leave and may require recertification, except as described in Rule VI, Maternity Leave.

(3) The medical certification shall identify the illness or condition and estimate the length of time off needed before the employee will be fit to return to work.

(4) The employing agency may require an employee who has been injured on the job to provide medical certification consistent with this rule for purposes of approving leave or continued employment. The agency need not rely on medical certification provided by the workers' compensation division when considering leave approval or continued employment.

(5) At the end of a leave of absence due to disability, an agency may require an employee to provide medical certification that the employee is fit to perform the duties of the position.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

**RULE VI MATERNITY LEAVE** (1) Six calendar weeks after the birth of a child shall be considered a reasonable period of recovery from a temporary disability resulting from childbirth.

(2) An employee shall not be required to obtain medical certification of a temporary disability for the initial six weeks of leave following the birth of a child. If the employee requests leave due to disability which exceeds six calendar weeks, the employee shall obtain medical certification that the additional leave is necessary, consistent with Rule V.

(3) To aid in the efficient operation of the agency, the agency may require notification from the employee that the employee plans to take a leave of absence after the birth of the child. The notification may include the anticipated length and types of leave the employee plans to take.

(4) Nothing in this rule prohibits an employee from voluntarily returning to work sooner than 6 calendar weeks after the birth of a child, except where the employee is medically unfit.

(5) An employee may also request leave due to a pregnancy related disability that occurs before the birth of a child. Medical certification for such leave may be required by the employer consistent with Rule V.

(6) Other requirements for the administration of maternity leave are found at 49-2-310 and 49-2-311, MCA, the Montana Maternity Leave Act, and in rules adopted by the human rights commission, department of labor and industry, found at ARM 24.9.1201 et seq.

(7) An employee may request the use of annual leave, leave without pay, compensatory time or other appropriate paid leave for purposes such as adoption or childcare. Leave shall be requested by the employee and approved or disapproved by the agency consistent with rules and agency policy applicable to the type of leave requested.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VII REASONABLE ACCOMMODATION OF AN EMPLOYEE'S HANDICAP

(1) If a disabling condition becomes a handicap, an agency may be required to provide a reasonable accommodation in accordance with sections 503 and 504 of the Rehabilitation Act of 1973 and federal regulations interpreting the act. A short-term illness or injury, as defined in this policy, shall not be considered a handicap.

(2) If an employee's condition becomes a known handicap to the agency, the agency may consult the "guide to reasonable accommodation" for assistance. This guide is issued by and available from the state personnel division, department of administration.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VIII DISCHARGING A DISABLED EMPLOYEE

(1) An agency may discharge a disabled employee for, as provided in 39-2-504, MCA, "continued incapacity to perform" the job duties. Such discharge shall be in compliance with the state discipline handling policy, ARM 2.21.6505 et seq.

(2) If the "incapacity to perform" is due to a known handicap, the agency may discharge the employee if:

(a) the employee is unable to satisfactorily perform the job duties;

(b) no reasonable accommodation is possible, and the agency is prepared to document that an accommodation would create an undue hardship, and

(c) the agency has complied with the applicable requirements of the discipline handling policy.

(3) Nothing in this policy prohibits the discharge of a disabled employee for reasons not relating to the disability.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE IX DISABILITY RETIREMENT

(1) An employee who is disabled, as defined in 19-3-1001, MCA, may be eligible for a disability retirement through the public employees' retirement division (PERD). Rules to administer disability retirement are adopted by PERD and are found at ARM 2.43.101 et seq.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE X CLOSING

(1) This policy shall be followed unless it conflicts with negotiated labor contracts, or specific statutes, which shall take precedence to the extent applicable.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. These rules are proposed in response to concerns expressed by agency directors, personnel officers and employees about



inconsistency in the administration of disability and maternity cases. In 1980 the department of administration repealed maternity rules then in effect because portions of the rules were in conflict with state and federal law. Since that time, state agencies have administered disability and maternity cases by relying on other existing types of leave. A survey of state agencies in 1985 identified specific areas of inconsistency which are addressed in these rules.

4. These rules proposed to be adopted under the authority of 2-18-102(3), MCA, which allows the department of administration to "develop and issue personnel policies for the state." These rules are intended to establish consistent minimum standards in the areas of: leave requests and approval, medical certification, maternity leave, reasonable accommodation of an employee's handicap, and discharging a disabled employee. Both disability and maternity cases are addressed in the same rules because the federal Pregnancy Discrimination Act of 1978 (PDA) requires that pregnancy and pregnancy-related illnesses be treated on an equal basis with other medical conditions.

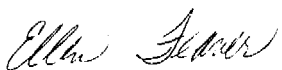
5. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules in writing to:

Laurie Ekanger, Administrator  
State Personnel Division  
Department of Administration  
Room 130, Mitchell Building  
Helena, Montana 59620

no later than September 25, 1986.

6. Barb Charlton, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed adoption is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

  
Ellen Feaver, Director  
Department of Administration

Certified to the Secretary of State August 18, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PRIVATE SECURITY PATROLMEN  
AND INVESTIGATORS

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of 8.50.423 con-	)	PROPOSED AMENDMENT OF
cerning definitions and 8.	)	8.50.423 DEFINITIONS AND
50.437 concerning fees	)	8.50.437 FEE SCHEDULE

TO: All Interested Persons.

1. On September 17, 1986, at 1:00 p.m., a public hearing will be held in the upstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The proposed amendment of 8.50.423 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1376 and 8-1377, Administrative Rules of Montana)

"8.50.423 DEFINITIONS (1) through (7) will remain the same.

(8) Alarm installer employees, other than alarm response runners must be licensed as alarm installer employees."

Auth: 37-60-202, MCA, AUTH Extension, Sec. 10, Ch. 647, L. 1985 Imp: 37-1-131, 37-60-301, 409, MCA

3. The reason for this amendment is to clarify that alarm installer employees under 37-60-409, MCA, must be qualified.

4. The proposed amendment of 8.50.437 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1383, Administrative Rules of Montana)

8.50.437 FEE SCHEDULE

(1) License application fees	
(a) Contract security company	\$ 75-00100.00
(b) Proprietary security organization	75-00100.00
(c) Private investigator employer	75-00100.00
(d) Qualifying agents and resident managers	75-00100.00
(e) Security alarm installer	75-00100.00
(f) License renewals	50-00150.00
(g) Duplicate licenses	10-00 15.00
(2) Employee registration application fees	
(a) Armed contract security employee	75-00100.00
(b) Armed proprietary security employee	75-00100.00
(c) Armed private investigator employee	75-00100.00
(d) Renewals	50-00150.00
(3) Employee Identification Application Fees	
(a) Unarmed contract security employee	25-00 30.00
(b) Unarmed proprietary security employee	25-00 30.00
(c) Unarmed private investigator employee	50-00 60.00

(d) Unarmed alarm installer employee	30.00
<del>(d)</del> (e) Renewals for unarmed contract and proprietary security employee	<del>10.00</del> 30.00
<del>(e)</del> (f) Renewals for unarmed private investigator employee	<del>25.00</del> 30.00
(g) Renewals for unarmed alarm installer employee	30.00
(4) Miscellaneous fees	
(a) Re-exams	15.00 20.00
(b) Late renewals	5.00 25.00
(c) Branch office application	25.00 30.00
(5) Exam fee	25.00

Fee schedule will remain in effect until December 1, 1987, after which date will revert back to the same fee schedule that is in effect on August 11, 1986, with the addition of permanent fees of \$25.00 for unarmed alarm installer employees and their renewal of \$10.00, and taking qualifying examinations - \$25.00.

Auth: 37-1-134, 37-60-202, MCA, AUTH Extension, Sec. 10, Ch. 674, L. 1985 Imp: 37-1-134, 37-60-304, 305, 306, 312, MCA

5. The reason for the amendment of 8.50.437 is to cover current program area costs including repayment of loan of \$20,000 due June 30, 1987.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments, either orally or in writing, at the hearing or submit them to the Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than September 25, 1986.

5. Geoffrey L. Brazier, Staff Attorney, will preside over and conduct the hearing.

BOARD OF PRIVATE SECURITY  
PATROLMEN AND INVESTIGATORS  
CLAYTON BAIN, CHAIRMAN

BY: Geoffrey L. Brazier  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 18, 1986.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.97.308 con- ) OF 8.97.308 RATES, CHARGES  
cerning rates, charges and ) AND FEE SCHEDULE  
fee schedule )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 29, 1986, the Montana Economic Development Board proposes to amend the above-stated rule.

2. The proposed amendment of 8.97.308 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3475 through 8-3477, Administrative Rules of Montana)

"8.97.308 RATES, SERVICE CHARGES AND FEE SCHEDULE (1)  
through (3) will remain the same.

(4) Secondary Market Fees. For purchases of all Small Business Administration (SBA) guaranteed loans authorized by ARM 8.97.407, a refundable fee of \$75.00 will be assessed by the board. The fee will be passed on to the transfer agent for all SBA guaranteed loans that are purchased. If a fee is collected and the purchase of the SBA guaranteed loan does not occur, the fee will be refunded to the remitter.

Current (4) through (8) will be renumbered (5) through (9)."

Auth: 17-6-324, MCA Imp: 17-6-315 (1), MCA

3. The Montana Economic Development Board (MEDB) buys federally guaranteed portions of loans from its approved lenders. All purchases of SBA guaranteed portions of loans must be handled through a transfer agent - (Colson Investor Services). Beginning April 10, 1986, the transfer agent began assessing a \$75.00 "set-up" fee to cover the costs of handling the purchase. The fee will be refunded if the loan purchase does not occur.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Economic Development Board, 1520 East 6th Avenue, Helena, Montana, 59620-0505, no later than September 26, 1986.

5. If a person who is directly affected by the proposed amendment 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 comments he has to the Montana Economic Development Board, 1520 East 6th Avenue, Helena, Montana, 59620-0505, no later than September 26, 1986.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of

the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

MONTANA ECONOMIC DEVELOPMENT  
BOARD

D. PATRICK MCKITTRICK

BY:

Geoffrey L. Brazier  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 18, 1986.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM.16.6.303,	)	AMENDMENT OF A RULE
relating to the recording	)	No Public Hearing Contemplated
of delayed birth records	)	(Birth Records)

TO: All Interested Persons

1. On September 30, 1986, the department proposes to amend its vital statistics rule 16.6.303 relating to the documentation and filing of delayed birth records. The current rule is found at page 16-96 of the Administrative Rules of Montana.

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

16.6.303 DELAYED BIRTH RECORDS (1) Any person born in the state of Montana whose birth was not properly recorded at the time of birth may file a certificate of delayed birth registration.

(2) A delayed birth record is one registered 6-months 471 days (15 months) or more after the birth occurred.

(3) A child 6-months-to-12-years 182 days (6 months) to 471 days (15 months) old may have his birth registered on sworn statement of the mother or other person who was in attendance at the birth, or as a delayed birth registration outlined in paragraph (4) below. If no one who was present at the birth is available, the local registrar may complete the certificate if he is able to ascertain with reasonable certainty the relevant information with reasonable certainty.

(4) To register a delayed certificate 182 days (6 months) to 12 years after birth, the name of the registrant and the date and place of birth entered on a delayed certificate of birth shall be supported by at least two pieces of documentary evidence, only one of which may be an affidavit of personal knowledge.

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

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

(c) Photostatic copies of documents will be accepted may be submitted, subject to verification. Affidavits from notary public notaries public that they have examined documents will not be accepted in lieu of the documents or photostatic copies thereof. Altered documents will not be accepted.

~~45) (d) The certificate of delayed birth registration, with abstracted proofs, will not be valid and cannot be filed until final approval is made by the department or its designated agents. Prior to October 1, 1981, a fee of \$2 will be charged for registering a delayed birth record, except that when a certified copy is requested at time of registering a delayed record, then no charge for the registration will be made. Effective October 1, 1981, the fee for registering a delayed birth record will be \$3. Effective October 1, 1986, the fee for registering a delayed birth record is \$5; however, if a certified copy is requested at the time of registering a delayed record, no charge for the registration will be made.~~

AUTHORITY: 50-15-102, MCA

IMPLEMENTING: 50-15-103, 50-15-204, MCA

3. The department is proposing the amendment so that sufficient documentation is provided upon which to issue a birth certificate for all births not properly recorded at the time of birth. Previously, only a sworn statement of the mother or other person in attendance at the birth was required for certificates delayed 6 months to 12 years. The proposed amendment will augment the documentation for this class of certificates.

4. 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 Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 29, 1986.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views, or arguments orally or in writing at a public hearing, such person must make written request for a hearing and submit this request along with any comments to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 29, 1986.

6. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the administrative code committee of the legislature, from a governmental agency or subdivision, or from an association having no fewer than 25 members who will be directly affected, a public hearing will be held at a later date. The department has determined that 5 persons represent 10% of the class of potentially affected persons. Notice of the hearing will be published in the Montana Administrative Register.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 18, 1986.

BEFORE THE BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF AMENDMENTS OF
amendment of Rule 23.14.416,	)	RULE 23.14.416 THE BASIC
23.14.417, and Rule	)	COURSE, RULE 23.14.417 THE
23.14.418	)	INTERMEDIATE COURSE, AND
	)	RULE 23.14.418 THE ADVANCE
	)	COURSE

TO: All Interested Persons      NO PUBLIC HEARING CONTEMPLATED

1. On October 3, 1986, the Board of Crime Control proposes to amend the above stated rules.
2. The proposed amended rules should read as follows:

23.14.416 THE BASIC COURSE (1) The amount of training for which certification will be granted in the basic course shall be a ~~total of 280~~ not less than 330 hours of instruction.

(2) Requirement - Successful completion of ~~280~~ not less than 330 hours of instruction in the following minimum prescribed subject areas at a training school certified to present the basic course:

- (a) introduction to law enforcement and police ethics - 3 - 4 hours
  - (b) criminal law, procedures and liability - 37 37.5 hours
  - (c) criminal evidence crime scene protection, processing, evidence preparation and handling 20 52 hours
  - (d) criminal investigation care preparation, courtroom procedure and moot court - 60 16 hours
  - (e) patrol procedures - 70 62 hours
  - (f) traffic - 8 16 hours
  - (g) juvenile procedures - 2 4 hours
  - (h) defensive tactics - 12 hours
  - (i) firearms human behavior and abnormal behavior - 45 10 hours
  - (j) first aid - interpersonal communications and interviewing techniques - 6 9.5 hours
  - (k) written examinations threat response - 7 12 hours
  - (l) firearms safety, fundamentals, maintenance and practical - 46 hours
  - (m) written examinations and graduation - 6 hours
  - (3) shall remain the same
- Auth: 44-4-301, MCA      Imp: 7-32-303, MCA

23.14.417 THE INTERMEDIATE COURSE (1) The amount of training for which certification will be granted in the intermediate course shall be a ~~total of 90~~ not less than 80 hours of instruction in the following minimum prescribed subject areas at a training school certified to present the intermediate course:



- (a) orientation - 1/2 hour
  - (b) bank robbery investigation legal update and the exclusionary rule - 2 6 hours
  - (c) rape investigation civil liabilities - 2 hours
  - (d) crime scene photography - 8 6 hours
  - (e) interrogations and interviews - 8 6 hours
  - (f) responding to silent alarms advanced abnormal psychology - 4 6 hours
  - (g) new Montana criminal code principles of investigation - 8 hours
  - (h) safe burglary demonstration death investigation - 4 6 hours
  - (i) safe burglary investigation - arson investigation - 4 7.5 hours
  - (j) forensic pathology deviant sexual behavior - 4 6 hours
  - (k) firearms safety child abuse and domestic abuse - 1 4 hours
  - (l) firearms training rape, incest and child molestation - 2 6 hours
  - (m) practical cases surveillance techniques - 16 4 hours
  - (n) press relations proactive investigations - 2 4 hours
  - (o) test counterfeiting, forgery and false documents - 1 1/4 4 hours
  - (p) juvenile procedures - 2 hours
  - (q) written test - 2 hours
  - (3) remains the same
- Auth: 44-4-301, MCA Imp: 2-4-201, MCA

23.14.418 THE ADVANCED COURSE (1) The amount of training for which certification will be granted in the advanced course shall be a total of 80 not less than 72 hours.

(2) Requirement - Successful completion of 80 hours not less than 72 hours of instruction in the following minimum prescribed subject areas at a training school certified to present the advanced course:

- (a) orientation and introduction - 1 1/2 hour
- (b) the criminal justice system legal update, legal concepts and liabilities - 2 8 hours
- (c) law and legal matters management and supervision concepts - 16 4 hours
- (d) human and community relations media response - 16 2 hours
- (e) advanced patrol procedures and techniques current issues in policy - 16 4 hours
- (f) advanced investigative techniques and aids dealing with the mentally ill and handicapped - 16 4 hours
- (g) special weapons and tactics case management - 8 hours
- (h) police-juvenile relations crisis management update - 2 8 hours
- (i) examination and review advanced interrogation technique - 3 16 hours

- (j) officer stress and burn-out - 4 hours
- (k) physical fitness program - 3 hours
- (l) research project - 8 hours
- (m) examination - 2 hours
- (3) remains the same

Auth: 44-4-301, MCA Imp: 2-4-201, MCA

3. The board is proposing to amend the rules regarding the course content of the Basic, Intermediate and Advanced Courses recommended by the Peace Officers Standards and Training Advisory Council. The curriculum changes were based on a job task analysis, a training needs assessment and on surveys of past students and their supervisors and administrators. Some training changes resulted from legislation requiring procedural changes in domestic abuse cases and victim assistance.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than October 2, 1986.

5. If a person who is directly affected by the proposed amendment 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 Mr. Bain no later than October 2, 1986.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental sub-division 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 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

  
\_\_\_\_\_  
Administrator

Certified to the Secretary of State August 14, 1986

BEFORE THE MONTANA STATEHOOD CENTENNIAL OFFICE  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF PUBLIC  
Rules I through IX relating to ) HEARINGS  
sanctioning official centennial )  
commemorative products and )  
projects )

TO: All Interested Persons:

1. On September 18, 1986 at 7 p.m. in the Third Floor Conference Room, Parmly Billings Library in Billings; on September 24, 1986 at 7 p.m. at the Valley County Courthouse in Glasgow; and on September 25, 1986 at 7 p.m. in the Commission Chambers, Civic Center in Great Falls, public hearings will be held to consider the proposed adoption of rules pertaining to the sanctioning of official commemorative products and projects.

2. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I PURPOSE (1) The general purposes of the Montana statehood centennial office and commission (hereinafter "office" and "commission") as set out in 2-89-107, MCA include fostering community, statewide and regional activities; assuring active citizen involvement and diversity of the presentation of topics; and focusing national and international attention on Montana "while reminding Montanans what Montana has been, is and hopes to become."

(2) The specific purposes of the sanctioning program are to promote quality in all activities associated with the centennial, to assure variety in the types of activities available, to foster awareness and appreciation of Montana's human and natural assets, and to raise revenue to support administrative and other functions.

(3) To consistently identify officially recognized centennial activities, a logo has been adopted. The logo shall be used in conjunction with as many sanctioned products and projects as possible.

(4) The sanctioning program is designed with some incentives for participation by both the producing and consuming public. The sanctioning program will allow a central source of information to provide a descriptive registry of items, events and services affiliated with the official commemoration and to cooperatively market or publicize those items, events and services.

(5) No restriction on the location of potential licensees is made, but Montana applicants are encouraged to participate and may incorporate additional terminology or, if approved by the department of commerce, affix the "Made in Montana" logo to indicate their place of origin.

AUTH: 2-89-106, MCA; IMP: 2-89-101, 2-89-105, 2-89-107,  
MCA.

RULE II USES OF THE LOGO (1) The logo is the sole property of the Montana statehood centennial office and shall not be used without the express permission of the office. No member of office staff or the commission may use the logo for his or her personal use. No member of office staff or the commission may authorize others to use the logo unless specifically delegated such responsibility. Except as provided in (2), no individual, firm, partnership, corporation, association, union or other organization, private or governmental, may use the logo without obtaining a license from office.

(2) Newspapers of general circulation and public broadcasting stations are authorized to use the logo for public information and public service in print and visual form. Such media uses include: news dissemination; public service messages intended to further public awareness; historical features such as "centennial minutes"; and in any manner protected by the first amendment of the United States constitution, such as editorial comment. However, nothing herein is intended to permit use of the logo by the various media in any manner to generate commercial revenue or to suggest sanctioning of any media-sponsored centennial-related activity or of subjects covered. Office shall, on request of media, provide quality copies of the logo but media shall not transfer to other parties access to such copies without express permission.

(3) All other uses shall be by license applied for and approved, contingent upon payment of a fee or royalty, or both, established by office.

(4)(a) For non-commercial uses, the following entities may be granted a license to use the logo for purposes other than for generating revenue or implying sanction of a particular project, program, event or service:

- (i) state and local government agencies;
- (ii) non-profit organizations with proof of IRS Code 501(c)3 or 501(c)4 status;
- (iii) local centennial committees registered with the office;

(iv) commercial enterprises wishing to generally promote the centennial (e.g., grocery stores willing to have specially printed sacks).

(b) Each application must specify precisely how the logo is to be used, including its placement on any printed material. Each license shall require payment of a minimal fee, determined by office, to recover costs for materials and processing.

(5) For commercial and other uses, entities wishing to use the logo in conjunction with any officially sanctioned product, program, event or service--either for profit or not for profit--must pay an initial fee and royalties based on a percentage of revenues generated. The initial fee will be

\$250 and the royalty payment, not to exceed 7.5 percent of gross sales, must be calculated and paid quarterly. The office shall examine each application independently and may negotiate or waive required fees as circumstances dictate; for example, for a licensee representing more than one product, program, event or service, a combined fee agreement may be available.

(6) Strict graphics standards must be adhered to in all uses of the logo. On payment of the required fees, office shall provide licensees with a graphics standards manual containing high-quality reproduction proofs of the logo in various sizes and, if appropriate, a color key. The manual must specify guidelines on the graphics standards necessary to insure integrity of the original logo design and its reproduction.

(7) The logo may appear in one or multiple colors as specified in the manual. Any variations from those specifications must be applied for and approved in advance.

(8) Adaptations or stylized versions of the logo may be developed to accommodate localized or thematically affiliated activities. The manual will specify the format and conditions for such adaptations, and use of any such adaptations may involve a special fee for processing and preparation.

(9) Any application for license to use the logo must be in or on a form prescribed by office. Only those applications containing complete information and assurances will be processed. Prior to using the logo, licensees must have a licensing agreement in writing from office.

(10) The logo is protected by trademark and other means, and the trademark symbol must be included in any reproductions of the logo.

(11) In granting use of the logo, office does not convey general endorsement or sponsorship to licensees. Only in exceptional circumstances where particular benefit to the commemoration is demonstrated and additional compensation is rendered will exclusive licenses be issued for rights to one-of-a-kind projects, programs, events or services.

AUTH: 2-89-106, MCA; IMP: 2-89-101, 2-89-105, MCA

RULE III OFFICIAL COMMEMORATIVE PRODUCTS (1) No product may be held out or advertised as a sanctioned product until office has issued a license applied for in a form provided by office and licensee has paid appropriate fees.

(2) Through unsolicited proposals by application, the office and commission encourage and expect a wide array of products to be associated with the official commemoration. However, the office may issue requests for proposals for some products over which it wishes to maintain ownership and distribution control or which would otherwise be absent from the marketplace.

(3) Sanctioned products must be identified as such. Office may require that the official logo be used on sanctioned products or packaging, or both. In certain instances, the logo may be referred to as the "centennial

seal." Wording that a sanctioned product is "registered with the official Montana statehood centennial commemoration," or is "an official commemorative [or souvenir] of the Montana centennial" is acceptable. Only in exceptional circumstances when an exclusive license is issued should the word "the" precede the identifying clause. Licensees may not use language that indicates the product is "endorsed" by the office or commission.

(4) Sanctioned products must meet high standards of quality and safety, including all applicable industry standards, laws and regulations. The state, the commission, the office and the members and employees thereof shall not be liable for sanctioned products. Licensees are responsible for their products and for carrying appropriate liability insurance. Licensing agreements must contain provisions to assure that appropriate standards are met and that the state of Montana is indemnified and held harmless for product performance or use. Office may refuse to license products on the basis of factors listed in (4) and (5) or if they are deemed objectionable or inappropriate (e.g., personal hygiene items and objects that glamorize drug use, crime or violence) for public presentation in conjunction with the official commemoration.

(5) Technical, marketing, financial and other factors will be considered in review of applications. Among criteria to be addressed in the application process will be production capacity, commitments and quality control; compliance with applicable state or federal design and environmental standards; warranty or guarantee provisions; terms and conditions of sale proposed, including pricing; distribution arrangements; availability of promotional materials; market penetration projections; financial references and accounting abilities; and originality and appropriateness of product to centennial commemoration. Staff reviews will be conducted by the office with occasional advice from selected state agencies prior to presentation of applications to the commission.

(6) One copy of each product for which a license is issued must be deposited with office and will become the permanent property of the state of Montana. If a sample is not provided at the time of application, design specifications or a prototype must be submitted. Under no circumstances should a sanctioned product be released for sale until the copy is in office's possession.

(7) Distribution, wholesaling and retailing functions for sanctioned products are the responsibility of individual licensees. Office intends to produce a catalog of official commemoratives at some time prior to 1989 and may assist in the identification of outlets; however, licensees may not rely on office for marketing or distribution functions.

AUTH: 2-89-106, MCA; IMP: 2-89-101, 2-89-105, 2-89-107, MCA

RULE IV OFFICIAL COMMEMORATIVE PROJECTS (1) Office and commission encourage the development of a wide range of

activities--including, but not limited to those educational, cultural, recreational and promotional in nature--with which the logo may or may not be used as covered in Rule II and which may or may not involve a tangible "product" as covered in Rule III. To register a program, event or service as an official commemorative project, sponsors must be licensed in a manner similar to the product sanctioning procedures referred to in Rule III. Such registration will assure recognition and serve clearinghouse, coordination and scheduling purposes.

(2) Sanctioned projects must be identified as such. If feasible, the logo must be used in conjunction with registered projects as part of programming materials, publicity, signs, or other elements. Wording that the program, event or service is "registered as an official Montana statehood centennial activity [or project]" is acceptable. Sponsors may not use language that indicates licensed activities are "endorsed" by the office or commission or portray cosponsorship unless arrangement for same has been specifically incorporated in the licensing agreement.

(3) Applicants for projects intending to use the logo in any way shall follow procedures specified in Rule II. Applicants for projects not using the logo shall apply on registration forms provided by office. Depending on the project proposed, review of applications may be conducted consistent with any appropriate state agency's existing criteria (e.g., Montana arts council, historical society, state library, promotion division, parks division, office of public instruction) and may, on occasion, involve staff from those agencies in formulating office's presentation for commission action.

(4) Except for a minimal registration fee to recover costs for processing, no standard charge will be assessed for official commemorative projects. For events where an admission fee is collected, office may negotiate for contribution of a percentage of the proceeds. For other programs, events or services, sponsors at the time of application shall propose funding plans, including any dedication of proceeds for local or state centennial activities.

AUTH: 2-89-106, MCA; IMP: 2-89-101, 2-89-105, 2-89-107, MCA

RULE V SCHEDULE (1) Office intends to make application forms for the sanctioning program available no later than January 1, 1987. Office does not intend to act on any applications before February 27, 1987. At the time of application, prospective licensees shall indicate the intended schedule of their product or project; generally, products should be available no later than November 8, 1988.

AUTH: 2-89-105, MCA; IMP: 2-89-101, 2-89-102, 2-89-107, MCA.

RULE VI PERSONAL ENDORSEMENTS No member of the commission, office staff or the governor may be quoted or

photographed by other than the media in conjunction with any official commemorative product or project for purposes of advertising or publicity without express written permission specifying the conditions for using such quotation or photograph.

AUTH: 2-89-101, 2-89-105, MCA; IMP: 2-89-105, MCA

RULE VII INFORMATION ACCESS Office is authorized to use any and all material filed with applications--including photographs, artwork or other attachments--in production of its publications, such as catalogs and calendars.

AUTH: 2-89-105, MCA; IMP: 2-89-105, MCA

RULE VIII DURATION AND ENFORCEMENT (1) Information provided in application will be used to determine duration of license. Licenses may be subject to periodic renewals.

(2) Licenses can be revoked at any time if, in office's discretion, use has exceeded the scope of authorization or is otherwise detrimental to the programs or image of the centennial. Any violation of these rules shall subject the violator to any and all criminal punishment and civil penalties provided by law.

AUTH: 2-89-101, 2-89-105, MCA; IMP: 2-89-101, 2-89-105, 2-89-107, MCA.

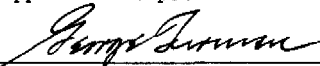
RULE IX WAIVERS Office, in consultation with commission, may waive certain provisions in Rules I through VIII as special circumstances warrant.

AUTH: 2-89-106, MCA; IMP: 2-78-101, 2-89-105, 2-89-107, MCA.

4. The office is proposing new rules I through IX because the 49th Legislative Session enacted House Bill 873 which provides for the administration of statehood centennial activities. Office is authorized to adopt rules to administer the provisions of the statutes. The rules are necessary because of the numerous inquiries that have been made relating to use of the logo or other official designations.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption at the public hearings or in writing to: Centennial Office, P. O. Box 1989, Capitol Station, Helena, MT 59620 no later than October 3, 1986.

6. Lieutenant Governor George Turman, or a designated representative, has been appointed to preside over and conduct the hearings.

  
\_\_\_\_\_  
LIEUTENANT GOVERNOR GEORGE TURMAN,  
Statehood Centennial Commission Chairman

Certified to Secretary of State August 18, 1986.

16-8/28/86

MAR Notice 30-1



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF A PUBLIC HEARING on
of Rule 42.17.120 and the )	the AMENDMENT of Rule
PROPOSED ADOPTION of Rule I )	42.17.120 and the PROPOSED
relating to individual lia- )	ADOPTION of Rule I relating
bility for state withholding )	to individual liability for
taxes. )	state withholding taxes.

TO: All Interested Persons:

1. On September 23, 1986, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the amendment of rule 42.17.120 and the adoption of rule I relating to individual liability for state withholding taxes.

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

42.17.120 EMPLOYER'S FAILURE TO WITHHOLD (1) If an employer fails to deduct and withhold as required under 15-30-202, MCA, and thereafter, the income tax against which the withholdings may be credited is paid, the amount required to be deducted and withheld shall not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties, interest, or additions to the tax applicable because of such failure to deduct and withhold. The employer will not be relieved under this provision from his liability for payment of the amounts required to be withheld unless he can show that the income tax against which the required withholdings may be credited has been paid.

(2)--in the case of corporations, individual liability for amounts required to be deducted may be asserted against the officers or employees responsible for the failure to withhold and pay over required deductions from wages.

AUTH: 15-30-305 MCA; IMP: 15-30-203 MCA.

RULE I INDIVIDUAL LIABILITY (1) If a corporate employer willfully fails to withhold or fails to remit withheld monies to the department as required under 15-30-203, MCA, the individual responsible for withholding will be held individually liable for the withholding.

(2) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty or interest against the corporation. The individual is liable for any amount of withholding plus penalty and interest unpaid by the corporation.

AUTH: 15-30-305 MCA; IMP: 15-30-203 MCA.

3. Rule 42.17.120 is proposed to be amended because the rule does not clearly address the individual responsibility for withholding taxes.

Rule I is proposed to be adopted to address the individual responsibility for withholding taxes if the taxes are withheld but not paid to the state and the individual liability for withholding taxes, including penalty and interest, if the corporation files bankruptcy and the penalty and interest are discharged by the bankruptcy court.

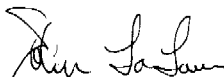
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Irene LaBare  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than September 25, 1986.

5. Scott Currey, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendment and adoption is based on § 15-30-305, MCA, and implement § 15-30-203, MCA.



JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 08/18/86

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the AMEND-	)	NOTICE OF PUBLIC HEARING ON
MENTS OF RULES 44.3.1737	)	PROPOSED AMENDMENTS OF RULES
thru 44.3.1741; 44.3.1743	)	44.3.1737 THRU 44.3.1741;
thru 44.3.1746 and 44.3.1749	)	44.3.1743 THRU 44.3.1746 AND
relating to procedures gov-	)	44.3.1749; AND ADOPTION OF A
erning the processing and	)	NEW RULE ON PROCESSING AND
counting of Computer Election	)	COUNTING OF COMPUTER ELECTION
Services Votomatic punchcard	)	SERVICES VOTOMATIC PUNCHCARD
ballots.	)	BALLOTS.

TO: All Interested Persons.

1. On September 18, at 10:00 a.m. a public hearing will be held in Room 402, Capitol Building, Helena, Montana to consider the adoption of amendments to the above stated rules.

2. The proposed amendments provide as follows:

44.3.1737 DEFINITIONS - COMPUTER ELECTION SYSTEMS VOTOMATIC (CES) Subsections (i) through (d)(ii) remain the same.

(e) "Ballot Labels" means the white pages attached to the ballot assembly. In a primary election, these pages can be colorcoded to differentiate between the nonpartisan, Democrat, Republican and any other party ballots. 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.

Subsections (i)(f) through (i) remain the same.

(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 and throughout the day to insure that the device is in good working order.

Subsection (1)(k) remains the same.

(1)(1) "Voting Authority Slip" means a prenumbered slip issued to an elector giving him access to a voting device. Subsection (1)(m) remains the same except it shall be re-numbered.

AUTH: Sec. 13-17-107(2), MCA

IMP: Sec. 13-17-107, MCA

RULE I PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) PRIMARY ELECTION (1) The order of the ballot label for a primary election shall be as follows:

- (a) Nonpartisan, judicial;
- (b) local ballot issues.
- (c) party punch;
- (d) Democrat;
- (e) Republican;
- (f) Any other party with ballot access; and

(2) Counties using the Ballot Tab Vote tabulator shall program CES Option 52 and shall include a printout of the option card with the return of the official canvass to the secretary of state.

AUTH: Sec. 13-17-206, MCA

IMP: Sec. 13-17-206, MCA

44.3.1738 PROCEDURES FOR USE OF COMPUTER ELECTION-SYSTEMS VOTOMATIC - (CES) - BEFORE THE POLLS OPEN Sections (1) through (5) remain the same.

(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, and 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)(d) have a second certificate 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 the Ballot Security Log prior to the opening of the polls verifying the number of unused ballots sent to the polling place and sign the first certificate provided by the election administrator on the return sheets. After the polls close, the election judges shall sign a second certificate to signify that the number of ballots to be transported and counted has been reconciled with the poll book list of the number of people who voted.

(9) Election judges, one from each party having ballot access, shall compare ballot labels in the votomatics against an sample absentee ballot for that precinct to make sure the names and numbers are the same pages and voting positions assigned each candidate and each issue match exactly.

(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.~~

AUTH: Sec. 13-17-107(2), MCA

IMP: 13-12-201 through 13-12-208, 13-13-115 and 13-17-206, MCA

44.3.1739 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - WHILE THE POLLS ARE OPEN (1) Each elector upon entering the polling place shall may 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.

(2) Providing the elector with the option to vote a paper ballot is required if more than 5% of the electors voting in the last preceding general election voted using paper ballots.

44)(3) An elector may request a paper ballot under the conditions specified in subsection (2) above. He shall be issued a paper ballot and the stub shall be numbered consecutively, beginning with paper ballot number one through the total number of paper ballots printed for that precinct. A separate poll book shall be used for the paper ballots. sequential number under the conditions specified in subsection (2) above 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.

Subsections (5) through (10) remain the same except that they shall be re-numbered.

44)(10) 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 the 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 and check the stylus for broken tip.

44)(11) 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, exchange a new poll book and a ballot box for the poll book and ballot box in use at the time of exchange.

(b) the box containing ballots shall not be opened until all electors who are voting at the time of exchange have deposited their ballots in that box;

(c) the first number in the new poll book shall be in sequential order with the last number in the old poll book;

(d) those electors whose names are entered in the new poll book shall have their ballots deposited in the new ballot box which was checked and locked;

(b)(e) the judges shall open the original ballot box, quickly but accurately count all ballot envelopes containing ballot cards, reconcile the total with the number of names in the pollbook, and enter the total on the Early Pickup Transfer Case Control Log and on the Ballot Security Log; attached to final transfer case.

(f) when the number of ballot envelopes with ballot cards still inside is reconciled with the number of names on the poll book they shall be returned, with the poll book and the Transport Carrier Control Log, to the original ballot box;

~~(e)~~(g) the ballot box 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 pickup of ballots, and

~~(d)~~ the ballot box and be locked and put back into service;

~~(e)~~(h) the early pickup transfer case original ballot box containing ballots shall not be surrendered until a receipt signed by the persons authorized to pick up ballots has been received.

AUTH: Sec. 13-17-107(2), MCA

IMP: Secs. 13-12-209, 13-13-114, 13-13-115, 13-15-103 and 13-17-305, MCA

44.3.1740 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - AFTER THE POLLS CLOSE (1) The election administrator shall choose the most appropriate method of securing the ballot pages from each votomatic in each precinct.

~~(1)~~(2) If Election judges shall remove ballot assemblies from the votomatics, they shall dismantle the assemblies, wrap ballot pages or place the pages in a manila envelope 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 Nev. 2 shall be completed and signed by all-judges.

(3) If the votomatics are transported to the election office for dismantling at a later time, they shall first be sealed with a small, numbered plastic seal secured by pressing together interlocking parts as with an ordinary padlock. A log recording the seal numbers and signed by the election judges shall be transported to the election office with the votomatics.

~~(3)~~(4) All unused official ballot cards shall be placed in the envelope provided for that purpose, left in the container in which they were delivered. The container shall be sealed, placed in a ballot box and locked.

Subsections (4) and (5) remain the same except that they shall be renumbered.

~~(6)~~(7) The judges shall count all ballots and reconcile the total number of ballots cast with total number of voting authority slips issued, electors recorded in the poll book. The Ballot Security Form shall be completed and signed by all election judges.

~~(7)~~(8) Election judges shall place all voted ballot cards and write-in envelopes, with ballot cards enclosed, and the completed Ballot Security Form, including the number of the plastic seal, in the transfer case. The transfer case shall be sealed and two judges, possibly one from each party having ballot access, but a minimum of two representing different parties, shall immediately deliver the transfer case to the counting center.

~~(8)~~(9) 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.  
AUTH: Sec. 13-17-107(2), MCA  
IMP: Secs. 13-13-115, 13-17-117, 13-15-101, 13-15-201, 13-15-202, 13-15-204 and 13-15-205, MCA

44.3.1741 CENTRAL COUNTING CENTER FOR TABULATION OF COMPUTER ELECTION SYSTEMS - VOTOMATIC (CES) BALLOTS Subsections (1) through (4) remain the same.

(5) The procedures set forth in 44.3.1742 through 44.3.1750 are designed to ensure total ballot security throughout the processing and counting of votomatic ballot cards. Within such guidelines, the election administrator is allowed to deviate from the letter of the rules and determine the specific methods, supplies and arrangements that carry out the intent of the rules.

~~(5)~~ (6) Boards (b) through (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.

AUTH: Sec. 13-17-107(2), MCA  
IMP: Secs. 13-17-107, MCA

44.3.1743 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD Subsections (1)(a)(b) and (d) remain the same except (d) shall be renumbered.

(c) The Receiving Board shall open the container and ensure that the seal number matches the number recorded on the Ballot Security Form inside the container and shall then deliver the container, unopened, to the Inspection Board.



(d) If the Ballot Security Form is absent, incomplete, or the seal number does not agree with that shown on the seal, the election administrator shall be called for disposition.

AUTH: Sec. 13-17-107(2), MCA

IMP: Sec. 13-17-107, MCA

44.3.1744 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)(b) 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)(c) 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 the damaged ballots shall either be set on end in the transfer case to signify the need for duplication or they shall be 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.~~

Subsections (1)(f) through (m) shall remain the same except that they shall be re-numbered.

AUTH: Sec. 13-17-107(2)

IMP: Secs. 13-13-117, 13-15-203 and 13-17-107, MCA

44.3.1745 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - DUPLICATION BOARD Subsections (1) through (1)(e) remain the same.

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

(i) If ~~The~~ ballot identification positions ~~which~~ appear at the bottom of the ballot, ~~they~~ 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.

Subsections (1)(g) through (1) remain the same.

AUTH: Sec. 13-17-107(2), MCA

IMP: Sec. 13-17-107, MCA

44.3.1746 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - WRITE-IN TALLY BOARD (1) Each board shall consist of a minimum of three and a maximum 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:

Subsections (1)(a) through (e) remain the same.

AUTH: Sec. 13-17-107(2), MCA

IMP: Secs. 13-13-117, 13-15-202 and 13-17-107, MCA

44.3.1749 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:

Subsection (1)(a) shall remain the same.

~~(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.~~

Subsection (1)(c) shall remain the same, but shall be renumbered.

AUTH: Sec. 13-17-107(2), MCA

IMP: Secs. 13-15-101 and 13-17-107, MCA

44.3.1750 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.

AUTH: Sec. 13-17-107(2), MCA

IMP: Secs. 13-1-303 and 13-17-101, MCA

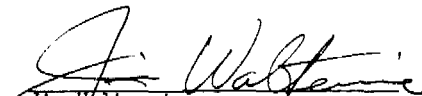
3. The rule amendments are proposed for the purpose of deleting unnecessary language, complying with current election laws and ensuring uniformity in the processing and counting of punchcard ballots.

4. 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 Elwood English, Room 225, Capitol Building, Helena, Montana, 59620, no later than 5:00 p.m. September 26, 1986.

5. Elwood English, Room 225, Capitol Building, Helena, Montana, has been designated to preside over and conduct the hearing.

6. The authority and implementing sections are listed at the end of each rule.

Dated this 18th day of August, 1986.

  
Jim Waltermire  
Secretary of State

BEFORE THE PUBLIC EMPLOYEES RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adop- ) NOTICE OF REPEAL OF RULES  
tion, amendment and repeal ) 2.43.401, 2.43.501, 2.43.601  
of the substantive rules of ) 2.43.602, AMENDMENT OF RULES  
the board ) 2.43.301, 2.43.402 - 404, 2.43.411 -  
                                  ) 414, 2.43.502, 2.43.603, 604 AND  
                                  ) ADOPTION OF 2.43.302 - 304, 2.43.405 -  
                                  ) 410, 2.43.416 - 428, 2.43.503 - 505,  
                                  ) 2.43.605 - 608, 2.43.711 - 716,  
                                  ) 2.43.801 - 804

TO: All Interested Persons:

1. On June 14, 1986 at 9:00 AM, a public hearing was held in the Public Employees Retirement Division Board Room, 1712 Ninth Avenue, Helena, Montana. Notice of hearing was published on page 702 of issue 9 of the Montana Administration Register.

2. The rules are repealed, amended and adopted as noticed with the following changes:

2.43.502 DISABILITY RETIREMENT (1)(a) Members eligible for disability retirement must file claims within four (4) months after the member's discontinuance from service, unless the member is continuously disabled from the last date of service to the date the application is filed.

(b) Application for disability retirement may be secured from the public employees' retirement division office, and a complete application will include:

(i) employee's claims;  
(ii) employer statement; and  
(iii) attending physician's statement. Any additional information pertinent to the claim may be submitted by the member and may be reviewed by a medical doctor and the board.

(c) Any claimant may request an informal meeting with the board before or after initial action on his claim by submitting written request to the division at least 1 full week before any scheduled meeting; provided, however, claimant will be given an opportunity to discuss his claim with the board no later than the second regularly scheduled meeting after submitting his request. Inability to attend any given meeting will not jeopardize a member's right to appear at future meetings.

(d) Any such request for, or attendance at, an information meeting as described in (c) shall in no way constitute a waiver of an individual's right to request a formal hearing under the Administrative Procedures Act. Any member requesting a formal hearing after an adverse determination by the board must file a request for hearing, in writing, no later than 30 days after notification of the board's original determination or no later than 30 days after notification of the board's adverse determination after an information hearing.

(e) Any retiree who has been previously retired under the disability provision of this act upon return to covered employment is subject to immediate reinstatement to active membership and a discontinuance of this disability allowance.

(f) All approved disability claims will be retroactive to the date on which the claimant ceased to be employed by a covered employer.

(2) Same as noticed.

2.43.603 REFUNDS (1) Any contributing member whose service has been discontinued for any reason other than death or retirement, may elect to withdraw his accumulated contributions provided:

(a) he makes written request on an application provided by the PERD, and

(b) all refund applications must be completed by both the employee and the employer, notarized, and forwarded to the PERD by the employer, and

(c) the contribution and service credit from the report on which the member last appears on is credited to his account, and

(d) the member is not returning to covered employment for at least 30 days.

(2) through (8) Same as noticed.

RULE I DEFINITIONS For the purposes of this Chapter, the following definitions apply:

(1) "Administrator" means the administrator of the public employees' retirement division of the department of administration;

(2) through (14) are renumbered and text same as noticed.

RULE XIV REQUALIFICATION OF SERVICE (1) and (2) Same as noticed

(3) In order to qualify the previously refunded service, an active member must initiate the action through the system to which he currently contributes, identifying, in writing, the system and the period of employment which is to be requalified.

(4) Same as noticed.

(5) The member must sign an agreement have a letter of intent on file with the board for the buy back of previously refunded service credits, stating the amount of service credit to be requalified, the cost of the "buy back," and the amount of time over which the member will pay for such service.

(6) Same as noticed.

RULE XV ABSENCE WHILE IN MILITARY SERVICES (1) If an actively employed member of the public employees', judges, highway patrol, sheriffs', game wardens', municipal police, or firefighters' unified retirement systems who enters the U. S. military during time of war involving the United States or during time of national emergency as specified by statute, that member may elect to qualify such time as service time within his retirement system, provided he ~~he~~ remains a member of the retirement system during the period of active military duty by leaving his accumulated contributions on deposit, and either:

(a) ~~(b)~~ during the period of absence from covered employment, he continues to contribute to the retirement system

amounts equal to the contributions he would have made if not absent; or

(b) ~~(e)~~ within two years from time of return to service, he has entered into a signed agreement with the board to qualify the active military service time, which will include member's contributions and interest.

RULE XVII QUALIFICATION OF OTHER TYPES OF SERVICE (1) through (4) Same as noticed.

(5) The active member must sign an agreement have a letter of intent on file with the board to qualify all, or a specific portion of this service, to be credited to his account. The agreement letter of intent will state whether payment for this qualification of service will be made in a lump sum or in installment payments. Such installment payments will be subject to additional interest as determined by the board and computed over the payment period.

RULE XIX INCOMPLETE PAYMENTS (1) through (3) Same as noticed.

(4) If a member, or anyone acting on his behalf, fails to pay the balance of the agreed upon payments due within 60 days of termination of covered service, the additional contributions (plus interest) will be refunded to the member, his beneficiary, or his estate, and the service being qualified will not accrue to his retirement account- and benefits will be paid based upon the previously credited service.

RULE XXVI DESIGNATION OF BENEFICIARY (1) The participant shall make the selection of beneficiary, in writing and on the form provided by the division for this purpose, dated and signed by the participant and either:

(a) witnessed by a disinterested third party who shall attest to the voluntary nature of the participant's action (for members of the public employees', police and firefighters' unified retirement systems); or

(b) notarized (for members of the judges', highway patrol, sheriffs' or game wardens' retirement systems).

(2) Same as noticed.

RULE XXIX REDUCTION IN WORK FORCE (1) Employees laid off due to a reduction in work force may be eligible to receive an expedited refund of their accumulated contributions, provided the application for withdrawal of contributions is on file and the employer has certified the employee was laid off due to reduction in force.

(2) and (3) Same as noticed.

RULE XXX DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) through (3) Same as noticed.

(4) "Coverage groups" means the groupings by which employees must be covered under a plan and agreement with the state agency of employees by class of position for social

security coverage purposes. These groupings are either 'absolute coverage groups' (e.g., composed of employees in positions not under a retirement system) or 'retirement system coverage groups' (e.g., composed of employees in positions under a retirement system).

(5) through (11) Same as noticed.

(12) "State agency" means the Montana social security program, located within the public employees' retirement division of the department of administration.

(12) (13) Text same as noticed.

RULE XXXVIII APPLICATION FOR SUPPLEMENTAL INSURANCE BENEFIT GROUP INSURANCE PREMIUM PAYMENTS (1) Each volunteer fire company is eligible for payments toward supplemental insurance benefits coverage for their active members provided the company submits:

(a) eligible volunteer fire departments submit an application form (as provided by the division), and

(b) a certified copy of the department's active membership list; and

(c) proof of insurance;

(b) in case of injury or accident the group insurance policy that the fire department holds is the primary insurer;

(2) The retirement division will pay those expenses of an accident after the primary group insurance policy dollar is met, up to \$25,000 per accident per fireman.

RULE XXXIX PAYMENTS TO SERVICE PROVIDERS FOR DUTY-RELATED DISABILITIES (1) Payments for disability compensation claims made pursuant to Title 19, Chapter 12, Part 5, MCA shall be ordered paid directly to medical service providers after:

(a) the claim is properly filed as described in 19-12-502, MCA; and

(b) all personal and/or group insurance payments for those services first have been deducted from the claim.

(2) Subsequent insurance settlements in payment of medical expenses which have been previously paid by the board shall be reimbursed to the pension fund within 60 days of receipt by member of service provider.

3. At the hearing, the board received the following comments:

COMMENT: (2.43.402) Would the new procedures for completing membership cards and designation of beneficiaries adversely effect those already on file?

RESPONSE: No. The new rules will not have retroactive effect on any properly filed membership card or designation of beneficiary.

COMMENT: (RULE XXII) Would this new rule providing acceptable documentation of service time be too restrictive?

RESPONSE: No. While it specifies particular instruments that verify service that can be qualified into an administered

retirement system it is a guide and the board may consider any official record that tends to support a member's claim for credit in a retirement system.

COMMENT: (RULE XX) Some part paid fire fighters may not approve of the ratio of service credit to a full paid fire fighters salary.

RESPONSE: The rule reflects standing board policy and is consistent with the same ratio of salary of a part paid fire fighter to that of a full paid fire fighter.

4. The rationale for the amendments is as follows:

2.43.502 DISABILITY RETIREMENT, a party should be permitted the opportunity of an informal hearing which might result in a more efficient disposition of a member's claim and still preserve his right to a contested case hearing.

2.43.603 REFUNDS, contains grammatical corrections to clarify its meaning.

RULE I, "Administrator" is not used in chapter 43 of the ARM and does not need to be defined.

RULES XIV, XVII, an agreement is not necessary to buy back or qualify other service but a writing memorializes the member's intent and protect the member, the beneficiary and the retirement division.

RULE XV, contains grammatical corrections to clarify its meaning.

RULE XIX, the board, felt time limits were oppressive, intended to delete them but inadvertently (4) remained unchanged. Additional language prevents delay of benefits by failure to complete a buy back and also allows the member to cancel it and receive a refund.

RULE XXVI, Four retirement systems statutorily require notarized beneficiary designations. A second section is added to properly effect those systems without impacting the others.

RULE XXIX, The addition of "expedited" clarified the rule.

RULE XXX, "State agency" is defined by statute and not needed in the rule while further definition of "coverage groups" clarifies those who are affected.

RULES XXXVIII, XXXIX, originally one rule was used to cover two distinct statutory provisions, eligibility for supplemental insurance and the actual disbursement of funds. A separate rule is used to deal with each subject. They prevent confusion as to information required to qualify for supplemental insurance and



avoiding the potential of duplicate medical service payments.



---

PATRICK MC KELVEY, President  
Public Employee's Retirement Board

Certified to the Secretary of State August 18, 1986

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE

In the matter of the adoption ) NOTICE OF THE ADOPTION  
of rules pertaining to the ) OF RULES  
Montana Insurance Assistance Plan )

TO: All Interested Persons.

1. On May 29, 1986, the commissioner of insurance published notice of the proposed adoption of rules pertaining to the Montana Insurance Assistance Plan at page 879 of the 1986 Montana Administrative Register, issue number 10.

2. The agency has adopted the rules with the following changes:

~~RULE I~~ 6.6.2301 DEFINITIONS As used in ~~Rules I through VIII~~ ARM 6.6.2302 through 6.6.2309, the following definitions apply:

(1) through (12) Same as proposed rules.

~~RULE II~~ 6.6.2302 AGENT COMMISSION Same as proposed rule.

~~RULE III~~ 6.6.2303 APPLICATIONS AND APPLICATION FEES (1) through (4) same as proposed rules.

~~RULE IV~~ 6.6.2304 FISCAL ARRANGEMENT (1) through (3) same as proposed rules.

~~RULE V~~ 6.6.2305 UNAVAILABILITY Same as proposed rules.

~~RULE VI~~ 6.6.2306 ELIGIBLE APPLICANTS Same as proposed rules.

~~RULE VII~~ 6.6.2307 LINES OF INSURANCE Same as proposed rules.


~~RULE VIII~~ 6.6.2308 EFFECTIVE DATE OF POLICY The policy is effective when the insured accepts the insurer's quotation and pays the premium. The policy is effective at 12:01 A.M. on the day following the date the insured mails the premium to the insurer.

~~RULE IX~~ 6.6.2309 SEVERABILITY Same as proposed rules.

3. Carl Swanson, Chairman of the Advisory Committee, Montana Insurance Assistance Plan, suggested that Rule VIII would be clearer if it read as follows: "The policy is effective at 12:01 a.m. on the day following the date the insured mails the premium to the insurer."

The commissioner agreed with this comment and amended the rules to reflect it.

4. The authority for the rules is 33-8-205 and 33-8-212, MCA, and the rules implement 33-8-201 through 33-8-231, MCA.

  
Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

Certified to the Secretary of State August 11<sup>th</sup>, 1986.

Montana Administrative Register

16-8/28/86

BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF DECISION
of a rule abandoning the Teton )	NOT TO ADOPT PROPOSED
Spring Creek Preserve )	RULE

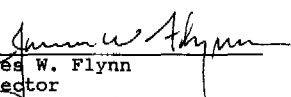
TO: All Interested Persons.

1. On March 27, 1986, the Department of Fish, Wildlife and Parks (Department) published notice of a proposed adoption of a rule concerning the abandonment, for all species of deer only, the Teton-Spring Creek Bird Preserve. The notice was published at page 424 of the 1986 Montana Administrative Register, issue number 6.

2. A public hearing was held on April 23, 1986, in Choteau, Montana. The Montana Fish and Game Commission (Commission) in a regularly scheduled meeting on May 15, 1986, recommended that the Department not adopt the proposed rule.

3. The Department has decided not to adopt the proposed rule. The decision is based on the recommendation of the Commission and upon the generally adverse public testimony, particularly from landowners within the Teton-Spring Creek Bird Preserve.

4. The rule-making authority of the Department is found in 87-5-402, MCA, and the rule would have implemented 87-5-402, MCA.

  
James W. Flynn  
~~Director~~  
Department of Fish,  
Wildlife, and Parks

Certified to Secretary of State August 18, 1986

BEFORE THE MONTANA FISH AND GAME COMMISSION

In the matter of new rules	)	NOTICE OF ADOPTION OF
relating to the transplant	)	RULES RELATING TO THE
of nuisance animals and the	)	TRANSPLANT OF NUISANCE
introduction of peregrine	)	ANIMALS AND THE
falcons.	)	INTRODUCTION OF PEREGRINE
		FALCONS

TO: All interested persons

1. On May 29, 1986, the Commission published a notice of a public hearing on the proposed adoption of a rule relating to the transplant of nuisance animals and the introduction of peregrine falcons at pages 885-887 of the 1986 Montana Administrative Register, issue number 10.

The Commission has adopted the rules with the following changes:

12.9.401 (RULE I) DEFINITIONS For purposes of this rule the following definitions apply:

~~(1) "Nuisance animals" means any game or nongame wildlife which has caused significant damage to real or personal property or represents a threat of injury to persons.~~

(2) (1) "Hacking" means the reintroduction of peregrine falcons into their former range by any process to allow natural physical conditioning of eyasses or young birds of prey taken from the nest before they can fly or hatched in captivity. It may, for example, involve the use of a box or other structure suspended on a cliff face and through the top of which food and water are lowered to keep the falcons from associating people with food, until the young birds learn to fly and hunt on their own. It is the process of taking the captive birds or nestlings and facilitating their transition to a wild state using such methods as hacking direct and cross-fostering.

12.9.402 (RULE II) INTERPRETIVE RULE Same as proposed.

(RULE III) AUTHORIZATION FOR THE TRAPPING AND TRANSPLANT OF NUISANCE ANIMALS Not adopted at this time.

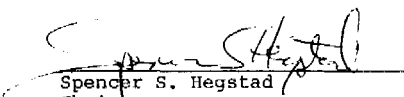
12.9.403 RULE IV REINTRODUCTION OF PEREGRINE FALCON Same as proposed rule.

3. No one attended the public hearing, but the Legislative Council did propose changes to the rules as follows:

COMMENT: The proposed rule on the trapping and transplant of nuisance animals is unnecessary if transplants are made into habitat already occupied by that species, because the definition of "natural habitat" contemplates unoccupied habitat. Further, if the Department proposes to transplant into "natural habitat", the scientific investigation must be more complete.

RESPONSE: The Legislative Council's assertion has merit. Therefore the Commission has deleted Rule I(1) and Rule III.

4. The authority for the proposed rules is 87-4-704, 87-5-711, and 87-5-714, and they implement sections 87-5-111 and 87-5-714.



Spencer S. Hegstad  
Chairman  
Department of Fish,  
Wildlife and Parks

Certified to Secretary of State August 18, 1986.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF ADOPTION
of new rules I, II, and III, )	OF A MODEL RULE
for the regulation of )	
phosphorus compounds used )	
for cleaning purposes )	(Water Quality)

TO: All Interested Persons

1. On July 17, 1986, the department published notice of proposed adoption of a model rule for the regulation of phosphorus compounds used for cleaning purposes, at page 1137 of the 1986 Montana Administrative Register, issue number 13.

2. The department has adopted the new rules (to be codified as ARM 16.20.1201, 16.20.1202, and 16.20.1203) with the following changes (matter stricken is interlined, new matter is underlined):

16.20.1201      POLICY [RULE I]      Same as proposed.

16.20.1202      DEFINITIONS [RULE II]      Same as proposed.

16.20.1203      PROHIBITIONS AND EXCEPTIONS [RULE III]

(1) No household cleaning product may be distributed, sold, offered, or exposed for sale if it contains a phosphorus compound in concentrations in excess of a trace quantity, except that no dishwashing detergent may be distributed, sold, offered, or exposed for sale if it contains a phosphorus compound in excess of 8.7% by weight expressed as elemental phosphorus.

(2) Same as proposed.

(3) ~~Cleaning agents used for industrial processes; cleaning food and beverage processing equipment; cleaning medical or surgical equipment; or cleaning dairy equipment are exempt from the provisions of this rule.~~ The following cleaning agents and other products containing phosphorus are exempt from the provisions of this rule:

(a) those used in food or beverage processing, or used by health care services and facilities;

(b) those used by commercial establishments, and those used for industrial processes or for cleaning food and beverage processing equipment, medical or surgical equipment, or dairy equipment; and

(c) those used for agricultural operations.

4. Comments received by the department, and the department's responses, follow:

Comment: It was suggested that since "phosphorus" is the element to be limited, that it not be utilized with the term "phosphorus compound" as the latter term incorporates other items included in the finished product.

Response: This suggestion was adopted inasmuch as the term "phosphorus" more precisely implements the legislative intent.

Comment: It was suggested that the exceptions contained in Rule III be rewritten to more closely follow the restrictions contained in the language of the legislative intent.

Response: This suggestion was accepted for the reasons given.

Comment: It was suggested that the exceptions of Rule III include products used in laboratories and research facilities.

Response: This suggestion was accepted to the extent that these products are incorporated in the restriction regarding health care facilities.

Comment: It was suggested that the model rule be made more comprehensive, that when the department or a county determines that eutrophication enhanced by human activity is occurring, the department or county should also specify the status of water quality, use of the water, and a technically sound program of specific goals and strategies designed to reach the desired water quality objectives.

Response: This suggestion was not adopted. Legislative intent requires department or county determination that eutrophication is occurring with phosphorus as a limiting factor. It does not require a threshold finding of other efforts or proposed use of the water, only that other efforts are being made.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 18, 1986.

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

IN THE MATTER OF Amendment of )	NOTICE OF ADOPTION OF
24.16.9007 to change the )	AMENDMENT TO 24.16.9007
annual effective date of the )	ANNUAL ADOPTION OF
standard prevailing rate of )	STANDARD PREVAILING RATE
wages applicable to public )	WAGES
works from October 1st to )	
December 1st. )	

TO: All Interested Persons

1. On July 17, 1986, the department of labor and industry published a proposed amendment to ARM 24.16.9007 concerning a change in the effective date for annual adoption of standard prevailing rates of wages from October first to December first, and clarifying language of the rule at page 1141, Montana Administrative Register, Issue No. 13.

2. The department of labor and industry has amended ARM 24.16.9007 as proposed, with the following change:

24.16.9007 ANNUAL ADOPTION OF STANDARD PREVAILING RATE OF WAGES (1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, shall be adopted in accordance with the Montana Administrative Procedures Act and rules implementing the act.

(a) A notice of proposed adoption of commissioner's determination shall be published in the Montana Administrative Register 30 to 45 days prior to adoption according to regular publication dates scheduled in 1.2.419.

(b) Such minimum wage rates shall become effective on the first day of December, and shall supersede and replace all previously adopted wage rates for corresponding classifications. Adopted wage rates shall remain in effect until superseded and replaced by a subsequent adoption.

(c) An adoption of wage rates shall have no effect on contracts for public works awarded during the effective period of a previous adoption of rates under these rules.

(d) The wage rates proposed and the wage rates adopted shall be incorporated by reference in respective notices published in the Montana Administrative Register.

(2) The commissioner will maintain a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information will be distributed to each addressee. All others may obtain a copy or be included on the mailing list



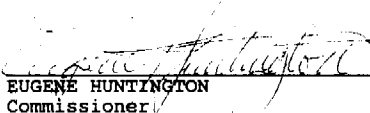
upon request delivered to the Administrator, Employment Relations Division, Department of Labor and Industry, Corner of Lockett and Roberts, P. O. Box 1728, Helena, MT 59624. Copies of adopted wage rates will be available at reproduction cost for a period of five years following their effective date.

(a) The standard prevailing rate of wages, by county or locality, adopted by reference in 1986 MAR p. 44, became effective on January 16, 1986. (AUTH: Sec. 18-2-409 and IMP, Sec. 18-2-402 MCA.

3. No comments or testimony were received and no formal hearing was held.

4. The authority to amend ARM 24.16.9007 is contained in 18-2-431 MCA.

5. The Legislative Council office requested a restatement of the rationale. The purposes of the amendment are to clarify language and to postpone the annual effective date for prevailing wage rates from October 1 to December 1, allowing more time for gathering data and making proper wage determinations.

  
EUGENE HUNTINGTON  
Commissioner

Certified to the Secretary of State August 18, 1986.

VOLUME NO. 41

OPINION NO. 78

CITIES AND TOWNS - Lease with option to purchase subject to requirement of competitive bidding;  
CONTRACTS - Municipal government must competitively bid contract which is a lease with option to purchase;  
MUNICIPAL GOVERNMENTS - Requirement to competitively bid contract which is a lease with option to purchase;  
MONTANA CODE ANNOTATED - Section 7-5-4302;  
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 101 (1980).

HELD: A lease with an option to purchase is subject to the requirement of section 7-5-4302, MCA, that it be competitively bid.

4 August 1986

Philip F. Walsh  
City Attorney  
P.O. Box 588  
White Sulphur Springs MT 59645

Dear Mr. Walsh:

You have requested my opinion concerning the validity of a lease-purchase contract entered into by the City of White Sulphur Springs and a private equipment dealer. The contract provides that the City will lease a front-end loader on an annual basis, and that after five successive years of such lease payments the equipment will become the property of the City. The contract was not competitively bid. You further advise me that under the terms of the contract, the City is free to terminate the contract by failing to make any of the annual payments.

If it were a simple purchase, the contract here clearly would be subject to a competitive bid requirement. Section 7-5-4302(1), MCA, provides, in pertinent part:

Except as provided in 7-5-4303, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of

any kind, or for construction, repair, or maintenance for which must be paid a sum exceeding \$10,000 must be let to the lowest responsible bidder after advertisement for bids.

See also 38 Op. Att'y Gen. No. 101 (1980) where I held that a similar provision for counties (§ 7-5-2306, MCA) requires that the entirety of the contract, not the annual amount, is looked at to determine whether the threshold for bidding has been reached. That question is not involved here since both the annual amount and the total exceed the bidding threshold.

The question here is whether a lease, with an option to purchase, should be treated as a purchase for purposes of the statute requiring competitive bids. In 38 Op. Att'y Gen. No. 101 (1980) I also held that a lease with an option to purchase should be treated the same as a purchase for the purpose of bidding requirements. While that opinion was, in part, based on a specific statute (§ 7-5-2307, MCA) in county contract law, I believe the principle it expresses should also apply here.

The Legislature has established competitive bidding as the primary method to make public purchases. The purpose of such a requirement is stated by the McQuillin text on municipal corporations:

The provision of statutes ... requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable ....

McQuillin, Municipal Corporations § 29.29 (3d ed.).

This important purpose should not be subverted by the use of a device which gets around the competitive bidding requirement. Under the facts presented here, the lease with an option to purchase is essentially similar to a purchase, and the purpose behind the Legislature's requirement of competitive bidding is equally valid when applied to a lease with an option to purchase. As the Montana Supreme Court noted in the

case of Dover Ranch v. County of Yellowstone, 609 P.2d 711, 715 (1980):

A statute will not be interpreted to defeat its object or purpose, and the objects sought to be achieved by the legislature are of prime consideration in interpreting it. Doull v. Wohlschlager (1963) 141 Mont. 354, 377 P.2d 758.

609 P.2d at 715.

The South Dakota case of Fonder v. South Sioux Falls, 71 N.W.2d 618, 53 A.L.R.2d 493 (1955), is instructive. The South Dakota statute exempted purchases of less than \$500 from the competitive bidding requirement, and the city council made a series of purchases from the same contractor, each of which was for less than the \$500 threshold. It appeared that the city council was making piecemeal purchases in order to evade the bidding requirements. The South Dakota court condemned this practice, first noting that "[F]amiliar principles require us to look beyond the words of a statute in an effort to understand the meaning of the legislature." The court went on to say:

The intention to regulate the purchase of all materials, supplies and equipment by public corporations is made manifest by the express terms of this statute. For obvious reasons small contracts were excepted from its provisions. However, by introducing this exception dealing with small contracts, it is inconceivable that the lawmakers intended to provide a lawful means by which its prime objective to require the major needs of the public for materials, supplies or equipment be met through competitive lettings could be circumvented by multiple small open-market purchases .... To arrive at a different conclusion, we would be compelled to ignore the object and spirit of this legislation.

53 A.L.R.2d at 496.

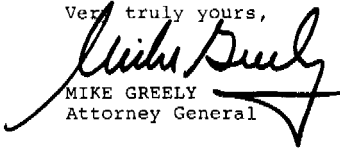
While the factual basis of the South Dakota case is different than the one here, the principle it expresses, that the competitive bidding requirement serves an

essential public purpose and should not be narrowly construed, is one with which I strongly concur.

THEREFORE, IT IS MY OPINION:

A lease with an option to purchase is subject to the requirement of section 7-5-4302, MCA, that it be competitively bid.

Very truly yours,

  
MIKE GREELY  
Attorney General

VOLUME NO. 41

OPINION NO. 79

LEGISLATURE - Dual officeholding by member of  
Legislature and municipal officer;  
MUNICIPAL GOVERNMENT - Dual officeholding by member of  
Legislature and municipal officer;  
PUBLIC OFFICE - Dual officeholding by member of  
Legislature and municipal officer;  
MONTANA CODE ANNOTATED - Section 5-2-104;  
MONTANA CONSTITUTION - Article V, section 9;  
OPINIONS OF THE ATTORNEY GENERAL - 8 Op. Att'y Gen. at  
393 (1920), 35 Op. Att'y Gen. No. 90 (1974), 40 Op.  
Att'y Gen. No. 46 (1984).

HELD: An elected mayor holds a "public office of a  
civil nature" as that phrase is defined in  
State ex rel. Barney v. Hawkins, 79 Mont. 506,  
257 P. 411 (1927), and is thereby prohibited  
by article V, section 9 of the Montana  
Constitution from serving as a member of the  
Legislature while serving as mayor.

15 August 1986

James R. Weaver  
City Attorney  
Drawer G  
Columbia Falls MT 59912

Dear Mr. Weaver:

You have asked my opinion on the following question:

Does article V, section 9 of the Montana  
Constitution permit an elected mayor to serve  
simultaneously as an elected representative in  
the State Legislature?

Your question requires an interpretation of article V,  
section 9 of the Montana Constitution, and section  
5-2-104, MCA. Article V, section 9 provides:

No member of the legislature shall, during the  
term for which he shall have been elected, be  
appointed to any civil office under the state;

Montana Administrative Register

16-8/28/86

and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office. [Emphasis added.]

Section 5-2-104, MCA, provides, in pertinent part:

(2) A member of the legislature who is elected to other public office shall resign from the legislature prior to assuming the office to which he was newly elected.

As you have mentioned in your opinion request, the question of dual officeholding by a member of the State Legislature and a municipal officer was addressed in 40 Op. Att'y Gen. No. 46 at 184 (1984). As cited in that opinion, the most significant Montana case on dual officeholding is State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927). Barney sets forth a five-pronged test for determining whether certain public offices are public offices "of a civil nature," and are thereby affected by the language of article V, section 9 of the Montana Constitution.

(1) It must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature; (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the Legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office, created or authorized by the Legislature, and by it placed under the general control of a superior body; (5) it must have some permanency and continuity, and not be only temporary or occasional. In addition, in this state, an officer must take and file an official oath, hold a commission or other written authority,

and give an official bond, if the latter be required by proper authority.

Barney, supra, at 528-29.

Positions found to be civil offices under article V, section 9 of the Montana Constitution (or its predecessor, article V, section 7) include a county high school trustee, 8 Op. Att'y Gen. at 393 (1920), and a member of a local government study commission, 35 Op. Att'y Gen. No. 90 at 252 (1974).

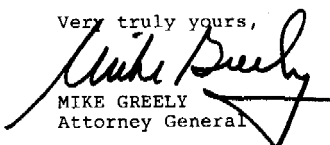
I concluded in 40 Op. Att'y Gen. No. 46 at 184 (1984) that, in general, an office which is created by the Legislature or by a municipality through authority conferred by the Legislature is a civil office under the state and therefore affected by article V, section 9, Montana Constitution, if that office involves the exercise of the sovereign power of government. 40 Op. Att'y Gen. No. 46 at 184 (1984) should be consulted for a history of the constitutional provision and its various local interpretations.

The office of mayor is an office created by a municipality through authority conferred by the Legislature. Tit. 7, ch. 3, MCA. The office of mayor is also vested with a portion of the sovereign power of government which is executive in character.

THEREFORE, IT IS MY OPINION:

An elected mayor holds a "public office of a civil nature" as that phrase is defined in State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927), and is thereby prohibited by article V, section 9 of the Montana Constitution from serving as a member of the Legislature while serving as mayor.

Very truly yours,

  
MIKE GREELY  
Attorney General



VOLUME NO. 41

OPINION NO. 80

CONSOLIDATION - Recommendation of local government study commissions to consolidate law enforcement services;  
COUNTY GOVERNMENT - Recommendation of local government study commissions to consolidate law enforcement services;  
LOCAL GOVERNMENT STUDY COMMISSIONS - Recommendation to consolidate services;  
MUNICIPAL GOVERNMENT - Recommendation of local government study commissions to consolidate services;  
MONTANA CODE ANNOTATED - Sections 7-3-171 to 7-3-193, 7-3-185, 7-3-187, 7-3-190.

HELD: A local government study commission's supplemental recommendation to consolidate services is submitted to the appropriate governing bodies rather than to the voters.

18 August 1986

Wm. Nels Swandal  
Park County Attorney  
Park County Courthouse  
Livingston MT 59047

Dear Mr. Swandal:

You have asked my opinion on several questions concerning the operation of local government study commissions. Sections 7-3-171 to 193, MCA, provide the mechanism by which a local government study commission can recommend a change in government to be voted upon by the electorate.

Your first question concerns whether the local government study commissions of Park County and Livingston may recommend to the electorate a service consolidation of the Park County Sheriff's Department and the Livingston Police Department. Section 7-3-185, MCA, describes the scope of study commission recommendations. Study commissions may recommend a change in the form or structure of local government. §§ 7-3-185(1)(a) and (2)(a), MCA. Recommended changes in structure are to be set forth in a study commission's

16-8/28/86

Montana Administrative Register

final report and placed on the ballot for voter approval or disapproval. § 7-3-187, MCA.

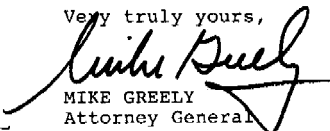
Local government study commissions may also recommend a service consolidation or transfer in cooperation with a study commission of another county or municipality. §§ 7-3-185(1)(b) and (2)(b), MCA. These recommendations, however, are not intended for submission to the voters. Rather, a recommendation to consolidate services is to be set forth in a study commission's supplemental report and "submitted to all appropriate governing bodies for reaction within 1 year." § 7-3-190, MCA.

Because the statutes do not contemplate voter approval for a study commission's "supplemental" recommendations, your remaining questions need not be addressed.

THEREFORE, IT IS MY OPINION:

A local government study commission's supplemental recommendation to consolidate services is submitted to the appropriate governing bodies rather than to the voters.

Very truly yours,



MIKE GREELY  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

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

### Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject<br>Matter          | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.  |

# ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1986. This table includes those rules adopted during the period June 30, 1986 through September 30, 1986 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1986, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1986 Montana Administrative Register.

## ADMINISTRATION, Department of, Title 2

- I-XII Administration of a Sick Leave Fund for State Employees, p. 864, 1297
- 2.4.101 and other rules - Regulating Travel Expenses of State Employees While on Official Business, p. 1124
- 2.5.301 and other rules - Procurement of Used Equipment - Procurement from Sheltered Workshops and Work Activity Centers - Delegation of Purchasing Authority - Bid and Performance Security - Competitive Sealed Bids - Small Purchases of Supplies and Services, p. 1900, 242
- (Public Employees' Retirement Board)
- 2.43.301 and other rules - Administration of Public Retirement Systems and the State Social Security Program, p. 702
- (State Tax Appeal Board)
- 2.51.307 and other rules - Operation of and Public Participation in the County and State Tax Appeals Process, p. 862, 1174
- (Workers' Compensation Judge)
- 2.52.343 and other rule - Attorney Fees - Petition for New Trial or Reconsideration of Attorney Fee Award, p. 302, 774

## AGRICULTURE, Department of, Title 4

- I-III Designation of Noxious Weeds Pursuant to the County Weed Control Act, p. 88, 337

- I-VI Emergency Rules - Cropland Insect Detection and Spraying Program, p. 1175
- I-VIII Establishing 1080 Livestock Protection Collar Regulations, p. 396, 775
- I-VIII Establishing Civil Penalties for Pesticide Act Violations, p. 618, 1013
- I-X and other rules - Commodity Dealers and Public Warehousemen - Grain Rules - Dry Beans, p. 872, 1178
- I-XII Noxious Weed Trust Fund, p. 1, 651
- I-XLIII Establishing Standards for Anhydrous Ammonia Facilities, p. 1231
- 4.10.101 and other rules - Pesticide Sale and Use, p. 589, 1007
- 4.10.1501 Definition of Terms in the Pesticide Act, p. 725, 1071
- 4.12.1205 and other rule - Importation of Alfalfa Leafcutting Bees, p. 6, 336
- 4.12.3503 and other rules - Permitting Purple Internal Discoloration in Nooksack Seed Potatoes for Blue or Red Tag Grades, p. 536
- 4.12.3503 and other rule - Grading of Certified Seed Potatoes, p. 8, 245

STATE AUDITOR, Title 6

- I-III Montana Title Insurance Act, p. 12, 783
- I-VIII Voluntary Payroll Deductions - Automatic Deductions from Payroll Warrants Other than those Mandated by Law, p. 1941, 246
- I-IX Emergency Rules Relating to Montana Insurance Assistance Plan, p. 655, 781
- I-IX Montana Insurance Assistance Plan, p. 879
- 6.6.2003 Unfair Trade Practices on Mid-term Cancellations of Casualty or Property Insurance, p. 10, 538

COMMERCE, Department of, Title 8

(Board of Architects)

- 8.6.406 and other rules - Qualifications Required of Architects Licensed Outside Montana - Examination - Individual Seal - Disciplinary Actions, and Partnerships, p. 404, 789

(Board of Chiropractors)

- 8.12.601 Applications, Educational Requirements - Renewals - Continuing Education Requirements, p. 730, 1182

(Board of Cosmetologists)

- 8.14.401 and other rules - Expanding Existing Cosmetology Rules to Incorporate Manicuring Specifications Granted by the 1985 Legislature, p. 1807, 659
- 8.14.603 and other rule - School Requirements - Application - Out-of-state Cosmetologists/Manicurists, p. 1132

- (Board of Dentistry)  
I-XVIII Licensing - Procedure - Unprofessional Conduct -  
Inspections - Disciplinary Issues - Complaint  
Procedures, p. 732
- (Board of Hearing Aid Dispensers)  
8.20.401 and other rules - Traineeship Requirement and  
Standards - Fees - Examination - Renewals - Address  
Change - Code of Ethics - Hearings - Disciplinary  
Actions - Fines - Purchaser Recision Rights -  
Continuing Education, p. 250, 410
- (Board of Horse Racing)  
8.22.502 Licenses Issued for Conducting Parimutual Wagering  
on Horse Racing Meetings, p. 90, 791
- (Board of Medical Examiners)  
8.28.904 and other rules - Implementation of an EMT  
Defibrillation Training and Certification Program  
for EMT - Basic Personnel, p. 626, 1073
- (Board of Morticians)  
I Disciplinary Actions, p. 740, 1304  
8.30.606 Pre-arranged, Pre-financed or Prepaid Funerals, p.  
1358
- (Board of Occupational Therapists)  
I-XVI Procedures - Licensing and Discipline, p. 412, 943
- (Board of Optometrists)  
8.36.403 and other rules - Application for Examination -  
General Practice Requirements - Unprofessional  
Conduct - Violations - Disciplinary Actions -  
Requirements, p. 1269
- (Board of Pharmacy)  
8.40.403 and other rule - Examination for Licensure -  
Approved Programs, p. 305, 945
- (Board of Physical Therapy Examiners)  
8.42.402 Examinations, p. 418, 792
- (Board of Private Security Patrolmen and Investigators)  
8.50.423 and other rules - Definitions - Temporary  
Employment - Experience Requirements - Insurance  
Requirements - Fees - Probationary Investigators -  
Assessments, p. 419, 946
- (Board of Public Accountants)  
8.54.612 and other rules - Confidential Client Information -  
Enforcement Against Permit Holders - Enforcement  
Procedures - Investigators - Credit for Service as  
Lecturer, Discussion Leader, or Speaker - Reviewers  
Under the Positive Enforcement Program - Profession  
Monitoring, p. 998
- (Board of Realty Regulation)  
8.58.401 Purpose of Board, p. 307, 661
- (Social Work Examiners and Professional Counselors)  
I-IV Continuing Education Requirements, p. 309, 662  
I-IV Licensure Requirements - Application Procedure -  
Fee Schedule - Ethical Standards, p. 312, 663
- (Board of Veterinary Medicine)  
8.64.501 and other rules - Applications - Examinations -  
Disciplinary Actions, p. 316, 948

(Milk Control Bureau)

- 8.79.101 Transactions Involving Purchase and Resale of Milk Within the State, p. 883, 1183
- 8.79.301 Licensee Assessments, p. 152, 452
- (Financial Division)
- I Examination Fees for Consumer Loan Licensees, p. 494
- 8.80.301 Advertising by Consumer Loan Licensees, p. 321, 793
- (Board of Milk Control)
- I Emergency Rule - Limited Service Wholesale Allowance - Temporary Wholesale Prices, p. 251, 539
- I Emergency Rule - Limited Service Minimum Jobber Price, p. 539
- 8.86.301 Class I Price Formula to Establish a Special Wholesale Price for Retail Grocery Stores, p. 495, 1016
- 8.86.301 Pricing Rules - Class I Price Formula to Change On-the-farm Retail Prices, p. 1134
- (Economic and Community Development Division)
- I Administration of the 1986 Federal Community Development Block Grant (CDBG) Program, p. 156, 664
- 8.94.3701 Incorporation by Reference of Rules for the Administration of the Federal Development Block Grant Program, p. 154, 542
- (Montana Economic Development Board)
- 8.97.404 Permissible Investments and Deposits, p. 636, 1074
- (Hard Rock Mining Impact Board)
- 8.104.203 and other rules - Format of Plan - Content of Objection to Plan - Implementation of an Approved Plan - Definitions - Waiver of Impact Plan Requirement - Modification of Plan - Financial Guarantee of Tax Prepayments - Evidence of the Provision of Service or Facility - Contents of Petition for Plan Amendment, p. 1052

EDUCATION, Title 10

(Superintendent of Public Instruction)

- I-III Special Education Transportation, p. 1003, 1383
- (Board of Public Education)
- I Minimum Scores on the National Teacher Examination Core Battery, p. 158, 1020
- 10.55.101 Accreditation Standards: Procedures, p. 649, 1305
- 10.55.202 Board of Trustees, p. 161, 1019, 1075
- 10.55.204 Principal - Defining the Requirements for the Administrative Assistant Program, p. 1360
- 10.55.302 Certificates, p. 162, 1019
- 10.55.303 Teaching Assignments, p. 1362
- 10.55.505 Safety, p. 163, 1020
- 10.57.101 Review of Policy, p. 647, 1305
- 10.57.301 Endorsement Information, p. 1363
- 10.57.403 Class 3 Administrative Certificate, p. 637, 1306
- 10.57.405 Class 5 Provisional Certificate, p. 639, 1306



- 10.57.501 School Psychologists, Social Workers, Nurses and Speech Therapists, p. 642, 1307
- 10.58.103 Visitations, p. 644, 1307
- 10.58.303 Professional Education, p. 645, 1308
- 10.58.511 Foreign Languages, p. 1364  
(Montana State Library Commission)
- I-III and other rule -State Coal Severance Tax Funding to Federations and Grant Programs, p. 324

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Prohibition of Shooting on a Portion of the Clark Fork and Bitterroot Rivers near Missoula, p. 888
- I Abandoning Teton - Spring Creek Bird Preserve, p. 424
- I Fish Plants by the Department or Commercial Hatcheries, p. 429, 497, 949
- I-IV Transplant of Nuisance Animals and the Introduction of Peregrine Falcons, p. 885
- I-VI Migratory Game Bird Avicultural Permits, p. 1471, 116
- 12.8.202 and other rules - Public Use Regulations on Department Lands and Waters, p. 425, 952
- 12.9.207 Seeley Lake Game Preserve, p. 1696, 668

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I Subdivisions - Authorizing Local Departments or Boards of Health to Review Minor Subdivisions, p. 1139
- I-III Notification Requirements for Owners and Operators of Underground Storage Tanks - Interim Prohibition for Installation, p. 326, 669
- I-III Water Quality - Regulation of Phosphorous Compounds Used for Cleaning Purposes, p. 1137
- I-XVII Standards and Criteria Relating to Health, Safety and Physical Well-being in Schools, p. 443, 882, 1479, 546
- 16.8.1404 and other rules - Air Quality - Limiting Visible Air Contaminants - Prohibiting Wood Stove Combustion of Certain Materials - Setting Standards for Stack Heights, p. 20, 91, 1021
- 16.10.207 and other rules - Regulation of Food Service Establishments, p. 501, 1076
- 16.18.201 and other rule - Water Treatment Operators Requirement to Earn Continuing Education Units, p. 498, 1078
- 16.28.201 and other rule - Communicable Diseases - AIDS, Who must Report a Communicable Disease - What Diseases are Reportable - Reporting Requirements, p. 1949, 254

- 16.32.328 Minimum Standards for a Hospital - Retention of Medical Records, p. 1061  
16.44.104 and other rules - Hazardous Waste Management - Updating State Regulations to Bring Them into Conformance with the Federal Hazardous Waste Program, p. 890, 1309

HIGHWAYS, Department of, Title 18

- 18.6.202 and other rules - Regulation of Outdoor Advertising, p. 1482, 339

INSTITUTIONS, Department of, Title 20

- I-VI Voluntary Admissions to Montana State Hospital, p. 1960, 258  
I-IX and other rules - Admission Policy for the Center for the Aged, p. 1965, 257  
I-XII Certification of Mental Health Professional Persons, p. 1953, 260

JUSTICE, Department of, Title 23

- 23.7.111 Uniform Fire Code, p. 164, 453  
(Board of Crime Control)  
23.14.407 and other rules - Requirements for the Advance Certificate - The Basic Course - The Intermediate Course - The Advance Course, p. 507, 1023

LABOR AND INDUSTRY, Department of, Title 24

- 24.16.9007 Changing the Annual Effective Date of the Standard Rate of Wages Applicable to Public Works from October 1st to December 1st, p. 1141  
(Workers' Compensation Division)  
I Relative Value Fee Schedule for Medical, Chiropractic and Paramedical Services, p. 1970, 454  
24.29.702 Self-Insurers, p. 1273  
24.29.3801 Attorney Fee Regulation and Submission of Attorney Fee Contracts, p. 27, 458

STATE LANDS, Department of, Title 26

- I Shut-in Oil Royalties for Oil and Gas Leases on State Land, p. 1144  
I-XI Consultation of the Department of State Lands with the State Historic Preservation Office Under the Antiquities Act, p. 1849, 953

LIVESTOCK, Department of, Title 32

- 32.3.212 Changing the Requirements for Import of Cattle from States Classified Brucellosis A, B, and C, p. 432, 794
- 32.3.213 Allowing Movement of Cats into State Under Health Certificate, p. 437, 795
- 32.3.407A Permanent Waiver in All Counties the Change of Ownership Brucellosis Test, p. 435, 796

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)

- 36.16.101 and other rules - Water Reservations - Applications in the Yellowstone River Basin - Applications in the Missouri River Basin - Reservation Changes and Transfers, p. 920

(Board of Water Well Contractors)

- I-VII Definitions - Disciplinary Action, p. 235, 671, 797
- 36.21.410 Examinations, p. 1146
- 36.21.601 and other rules - Current Construction Standards - Minimum Construction Standards for Water Wells in Montana, p. 1148

(Board of Oil & Gas Conservation)

- 36.22.1242 Increasing the Oil and Gas Privilege and License Tax, p. 742, 1063, 1384

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-XXXIX Telecommunications Act - Minimum Rate Case Filing Requirements for Telephone Utilities, p. 166, 799

REVENUE, Department of, Title 42

- I SRS Inspection of Income Tax Returns, p. 1318, 51, 261
- I-III Adjusting a Jointly Filed Tax Return, p. 509, 1026
- I-IV Seven Day Credit Limit of Cigarette and Tobacco Products, p. 940, 1320
- I-VI Reporting Requirements for New Production of Oil and Gas, p. 1974, 817
- I-IX Disclosure of Child Support Information, p. 1065
- 42.20.113 Valuation of Agricultural and Timberland - Christmas Trees, p. 92, 558
- 42.22.1102 and other rule - Net Proceeds Reclamation Costs, p. 1604, 30, 1080
- 42.22.1212 and other rules - Oil and Gas Net Proceeds Deductions, p. 1909, 460
- 42.27.102 and other rule - Gasoline Tax and Distributor's Bond, p. 240, 823

SECRETARY OF STATE, Title 44

- I Fees for Clerks and Recorders for Filing Certified Copies of Agricultural Liens and Continuations and Prescribing a Method of Payment, p. 744, 1082
- I-XIV Interpretative Rules for the Implementation of Public Law 98-435, Voting Accessibility for the Elderly and Handicapped Act, p. 180, 462

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I Interstate Compact on the Placement of Children, p. 1290
- I-IX Residential Alcohol and Drug Treatment for Indigent Juveniles, p. 585, 911, 1251
- 46.5.621 and other rules - Child and Youth Care Facilities, p. 511
- 46.8.102 and other rules - Utilization of Aversive Training Procedures in Development of Disabilities Services, p. 1712, 345
- 46.8.701 and other rules - Certification of Developmental Disabilities Professional Persons - Service Program Funding, p. 752, 1083
- 46.10.318 AFDC Emergency Assistance to Needy Families with Dependent Children, p. 191, 559
- 46.10.324 and other rule - AFDC Eligibility of Minor Custodial Parents and AFDC-related Medicaid Eligibility, p. 1379
- 46.12.102 and other rule - Billing, Reimbursement, Claims Processing and Payment for the Medicaid Program, p. 94, 359
- 46.12.204 and other rules - Co-payments for Licensed Clinical Social Workers' Services, p. 330, 677
- 46.12.401 and other rules - Provider Sanctions in the General Relief Medical Assistance Program, p. 1005, 1321
- 46.12.575 Family Planning Services, p. 449, 970
- 46.12.801 Prosthetic Devices, Durable Medical Equipment and Medical Supplies, p. 755
- 46.12.1201 and other rules - Reimbursement for Skilled Nursing and Intermediate Care Services, p. 439, 824
- 46.12.1202 and other rules - Adoption of Amendments to Federal Statutes, Agency Rules and Guidelines Incorporated by Reference in Rules Pertaining to Reimbursement for Skilled Nursing and Intermediate Care Services, p. 445
- 46.12.1205 Emergency Amendment - Payment Procedures for Skilled Nursing and Intermediate Care Services, p. 360
- 46.12.3002 and other rules - Eligibility Determinations for SSI - and AFDC - Medically Needy Assistance - Mandatory Social Security Number Requirements, p. 332, 678
- 46.13.302 and other rules - Low Income Energy Assistance, p. 1365
- 46.13.401 LIEAP Maximum Benefit Awards for Wood, p. 96, 362

- 46.13.401 Emergency Amendment of LIEAP Maximum Benefit Awards  
for Wood, p. 130
- 46.25.101 and other rules - Structured Job Search and  
Training Program - Workfare, p. 746, 1084
- 46.25.711 and other rules - General Relief Assistance and  
General Relief Medical Programs, p. 1292