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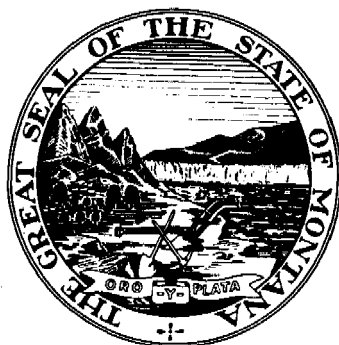
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**JUN 03 1997**

**OF MONTANA**

1997 ISSUE NO. 11  
JUNE 2, 1997  
PAGES 946-1004



## MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 2.21.5006	)	PROPOSED AMENDMENT OF ARM
and 2.21.5007 related to	)	2.21.5006 AND 2.21.5007
reduction in work force	)	RELATED TO REDUCTION IN
	)	WORK FORCE

TO: All Interested Persons.

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.5006 and 2.21.5007 related to reduction in work force.

2. The proposed amendments provide as follows:

2.21.5006 DEFINITIONS In addition to the definitions found in 2-18-1202, MCA, as used in this sub-chapter, the following definitions apply:

(1) "Reduction in work force" means a management action taken for non-disciplinary reasons in which an employee is laid off from ~~his or her present position employment~~. The RIF may take place for reasons including, but not limited to: elimination of programs; reduction in ~~FTE's~~ FTEs by the legislature; lack of work; lack of funds; expiration of grants; reorganization of a state agency; or privatization of a service normally or traditionally provided by an employee of a department.

(2) - (3) Remain the same.

(4) "Notice of anticipated lay-off" means a written notice informing an employee that the agency anticipates ~~he or she the employee~~ will be laid off. The notice ~~must~~ shall provide a tentative effective date of lay-off.

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

2.21.5007 POLICY (1) - (6) Remain the same.

(7) An employee shall be reinstated to the same position or a position in the same class, as the terms "position" and "class" are defined in ~~2-18-102~~ 2-18-101, MCA, when such a position becomes vacant in the agency from which the employee was laid off, if the vacancy occurs within ~~one~~ 1 year of the employee's effective date of lay-off. Employees who have been laid off from the agency shall be offered reinstatement on a "last-out/first-in" basis by skill match within a job classification. Specific reinstatement offers must be made to the employee in writing. The employee shall accept or reject the reinstatement offer in writing within 5 working days following receipt of the offer. If an employee rejects a reinstatement offer, the employee loses all rights to the employment offered, to participate in future internal recruitment, and to benefits provided by the State Employee

Protection Act, 2-18-1201 et seq., MCA. An agency is not required to make subsequent reinstatement offers to the employee.

(8) Acceptance of a permanent, seasonal or temporary ~~position employment~~ with a state agency does not end the reinstatement right for ~~one~~ 1 year from the effective date of lay-off.

(9) An employee is eligible to be considered as an internal applicant for job vacancies in the agency from which the employee was laid off for ~~one~~ 1 year from the effective date of lay-off.

(10) Remains the same.

(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of ~~one~~ 1 year from the date of separation. Each state agency shall provide a copy of all vacancy announcements for which the agency will conduct simultaneous internal and job registry recruitment and shall provide a copy of all external vacancy announcements, except for positions exempt under 2-18-103 and 2-18-104, MCA, to the Helena job service office which shall compile and distribute the notice to laid-off employees on a weekly basis;

(b) access to any job retraining and career development programs provided by the state, such as those provided through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within ~~one~~ 1 year after the elimination of the employee's position;

(c) - (d) Remain the same.

(e) retain, cash out or use accrued vacation leave credits to extend the employee's effective date of lay-off. Employees who have been laid off may choose to "bank" their credits with the agency that laid them off until they accept a permanent ~~position employment~~ in a state agency. The credits are not transferred if an employee accepts a ~~seasonal, temporary or short-term position employment~~ in a state agency;

(f) - (12) Remain the same.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 2-18-1201, et seq., MCA)

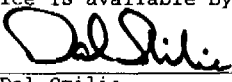
3. Amendment of ARM 2.21.5006 and 2.21.5007 is necessary because some of the definitions used in this subchapter have been changed by House Bill No. 172 of the 55th Legislature. The definition of permanent position has been removed and replaced with a definition of permanent employee. A new category of short-term worker has been added and is now defined in this part. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State.


4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 19, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.21.8011	)	ON PROPOSED AMENDMENT OF
through 2.21.8013,	)	ARM 2.21.8011 THROUGH
2.21.8017 and 2.21.8018	)	2.21.8013, 2.21.8017 AND
related to grievances	)	2.21.8018 RELATED TO
	)	GRIEVANCES

TO: All Interested Persons

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of 2.21.8011 through 2.21.8013, 2.21.8017 and 2.21.8018 related to grievances.

2. The proposed amendments provide as follows:

2.21.8011 POLICY AND OBJECTIVES (1) - (2) Remain the same.

(3) The department of administration delegates the authority to each executive branch department to adopt an internal grievance procedure ~~in accordance with ARM 2.21.1203, and with the general authority of a department head to adopt internal management policy found at 2-15-112 and 2-4-102 (10), MCA.~~ An internal grievance procedure must be consistent with the provisions of this policy and at a minimum include all steps contained in ARM 2.21.8017. Additional steps may be added, forms may be included, and time frames may be modified at the department's discretion.

(4) - (8) Remain the same.

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

2.21.8012 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) - (1)(c) Remain the same.

(d) when an employee is hired ~~into as~~ a temporary ~~position employee or short-term worker~~ or an employee is temporarily hired into a permanent position for less than 9 12 months and is not eligible to attain permanent status; and

(e) - (4) Remain the same.

(5) "Permanent ~~position employee~~" means, a permanent employee as provided defined in 2-18-101 (10), MCA, ~~"a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, MCA, and approved as such in the biennium budget."~~ For purposes of this policy, the term permanent ~~position employee~~ includes a seasonal ~~positions employee~~.

(6) "Permanent status" means, permanent status as provided defined in 2-18-101 (11), MCA, ~~"the state an employee attains~~

~~after satisfactorily completing an appropriate probationary period in a permanent position."~~

~~(7) "Short-term worker" means a short-term worker as defined in 2-18-101, MCA.~~

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

2.21.8013 EMPLOYEE GRIEVANCE (1) Remains the same.

(2) A grievant shall not use paid working time to prepare and pursue a grievance. A grievant may request to use other appropriate paid leave, accrued compensatory time or leave of absence without pay to prepare a grievance. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. Time spent by the grievant attending a hearing is paid working time only during the grievant's regular work shift and shall not exceed ~~eight (8)~~ hours per day.

(3) Remains the same.

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

2.21.8017 GRIEVANCE PROCEDURE (1) Step ~~±~~ I is the informal resolution. Both the employee and supervisor are encouraged to resolve the grievance informally whenever possible.

(2) Step ~~±~~ II is the formal grievance.

(a) - (c) Remain the same.

(d) The grievance is resolved at step ~~±~~ II if the grievant accepts management's response, or if the grievant fails to advance the grievance to step ~~±~~ III within 10 working days of the receipt of management's response.

(3) Step ~~±~~ III is the review by department head.

(a) If a grievant wishes to advance the grievance to step ~~±~~ III, ~~he~~ the grievant shall notify a management representative designated by the department head. The grievant shall notify the management representative in writing within 10 working days of receipt of management's response at step ~~±~~ II.

(b) - (e) Remain the same.

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

2.21.8018 HEARING (1) A hearing shall be conducted at step ~~±~~ III, if the grievance is filed as the result of a suspension without pay for more than 10 working days, a disciplinary demotion, or a discharge.

(2) Within 10 working days of advancement of the grievance to step ~~±~~ III, the designated management representative shall request either:

(a) - (b)(ii) Remain the same.

(3) The hearings examiner shall set the time and place for the hearing. The parties shall receive notice of the hearing either personally or by certified mail not less than 5 working days before the hearing.

(4) - (9) Remain the same.

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



3. Amendment of ARM 2.21.8012 is necessary because some of the definitions used in this subchapter have been changed by House Bill No. 172 of the 55th Legislature. The definition of permanent position has been removed and replaced with a definition of permanent employee. The definition of permanent status has also been changed. A new category of "short-term" worker has been added and is now defined in this part. The maximum length for temporary employment has been extended from 9 to 12 months. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State.

Minor editing changes are proposed in ARM 2.21.8011, 2.21.8013, 2.21.8017, and 2.21.8018 to conform to the administrative rule style recommended by the Office of the Secretary of State.

4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:



Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 19, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.21.3802,	)	ON PROPOSED AMENDMENT OF
2.21.3803, 2.21.3807,	)	ARM 2.21.3802, 2.21.3803,
2.21.3808 and 2.21.3811	)	2.21.3807, 2.21.3808 AND
related to probation	)	2.21.3811 RELATED TO
	)	PROBATION

TO: All Interested Persons.

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.3802, 2.21.3803, 2.21.3807, 2.21.3808 and 2.21.3811 related to probation.

2. The proposed amendments provide as follows:

2.21.3802 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that an employee newly hired into a permanent ~~or seasonal position employment~~ shall complete a probationary period.

(2) Remains the same.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

2.21.3803 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Agency" means all executive branch departments, those agencies allocated to the state board of education under 2-15-1511, MCA, and those institutions in the department of corrections listed in 53-1-202, MCA and in the department of public health and human services listed in 53-1-602, MCA. All ~~attached to~~ boards, commissions and ~~their related staffs attached to an executive department for administrative purposes~~ are considered part of the department for purposes of these rules.

(2) "Discharge" means ~~for purposes of this policy,~~ the termination of an employee's employment.

(3) Remains the same.

(4) "Permanent ~~position employee~~" means a permanent employee as provided defined in 2-18-101, MCA, ~~"a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, MCA," or otherwise authorized by the legislature.~~

(5) "Permanent status" means permanent status as provided defined in 2-18-101, MCA, ~~"the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position."~~

(6) "Probationary period" means a trial period established by an agency when an employee is newly hired to state government ~~in a~~ into permanent or seasonal ~~position employment~~ to assess

the employee's abilities to perform job duties; to assess the employee's conduct on the job; and to determine if the employee should be retained beyond the probationary period and attain permanent status.

(7) "Promotion" means the assignment of an employee ~~or a position~~ to a higher grade.

(8) "Reassignment" means the assignment of an employee from one position to another position in the same agency.

(9) "Seasonal ~~position~~ employee" means a seasonal employee as provided defined in 2-18-101, MCA, "a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, MCA, and which is a permanent position but which is interrupted by the seasonal nature of the position.

(10) "Short-term worker" means a short-term worker as defined in 2-18-101, MCA.

~~(10) (11) "Temporary position employee" means a temporary employee as provided defined in 2-18-101, MCA, "a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, MCA, created for a definite period of time not to exceed 9 months.~~

(11) remains the same, but is renumbered (12).

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

2.21.3807 PERMANENT STATUS (1) An permanent or seasonal employee attains permanent status after satisfactorily completing an appropriate probationary period in a permanent or seasonal position.

(2) An employee in a A temporary position or an employee temporarily hired into a permanent position for less than 9 months or a short-term worker is not eligible to attain permanent status.

(3) An employee who has attained permanent status in an agency and who transfers to another agency retains permanent status. The employee has no rights to the position held in the former agency.

(4) Where a position or work unit is transferred between agencies as a result of reorganization, an employee retains permanent status in the agency to which the position or work unit transfers. The employee shall have no rights to a position in the agency from which the position or work unit is transferred, unless otherwise provided by law.

(5) Provisions of the discipline handling policy, ARM 2.21.6505, et seq., the grievance policy, ARM 2.21.8001, et seq., and the reduction-in-work force policy, ARM 2.21.5005, et seq., apply to an employee who has attained permanent status as provided in this rule. (These policies are also found at 3-0130, the discipline handling policy; 3-0125, the grievance policy; and 3-0155, the reduction-in-work force policy in the Montana operations manual, volume III.)

(6) Remains the same.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

2.21.3808 PROBATIONARY PERIOD (1) An agency shall establish a probationary period for ~~employees~~ a newly-hired ~~into~~ permanent or seasonal ~~positions~~ employee and set the length of the probationary period.

(2) - (3) Remain the same.

(4) The agency is permitted ~~to~~, but not required ~~to~~, credit time in an approved leave of absence without pay toward completion of a probationary period. This includes leaves of absence between seasons for a seasonal ~~position~~ employee. Employees returning from an approved leave of absence without pay are not required to begin a new probationary period.

(5) The agency shall complete a performance appraisal for an employee ~~in a permanent position prior to the end of a probationary period, in accordance with~~ pursuant to the performance appraisal policy, ARM 2.21.6401 et seq., ~~and specifically with ARM 2.21.6411 (2) (also found at policy 3-0115, Montana operations manual, volume III).~~ Performance appraisal may, at the agency's discretion, be completed for an employee in seasonal position consistent with ARM 2.21.6411 (3).

(6) Remains the same.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

2.21.3811 PROMOTED OR REASSIGNED EMPLOYEES (1) An employee who has attained permanent status and who is internally promoted, reassigned or whose position is reclassified shall retain permanent status in the new position, as provided in ARM 2.21.3807, unless the employing agency has adopted a policy ~~in compliance with ARM 2.21.1205, providing for a trial period as described in (2) below.~~

(2) - (3) Remain the same.

(Auth. 2-18-102, MCA; Imp. 2-18-101 and 2-18-102, MCA)

3. Amendment of ARM 2.21.3802, 2.21.3803, 2.21.3807 and 2.21.3808 is necessary because some of the definitions used in this subchapter have been changed by House Bill No. 172 of the 55th Legislature. The definitions of permanent, seasonal and temporary position have been removed and replaced with definitions of permanent and temporary employee. The definition of permanent status has also been changed. A new category of "short-term" worker has been added and is now defined in this part. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State.


Amendment of ARM 2.21.3811 is proposed to strike the reference to a repealed rule and to conform to the administrative rule style recommended by the Office of the Secretary of State.

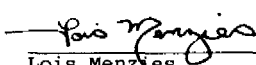
4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 19, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM	)	ON PROPOSED AMENDMENT OF
2.21.3603, 2.21.3607	)	ARM 2.21.3603, 2.21.3607
through 2.21.3610,	)	THROUGH 2.21.3610,
2.21.3615 through	)	2.21.3615 THROUGH
2.21.3618 and 2.21.3623	)	2.21.3618 AND 2.21.3623
related to veterans'	)	RELATED TO VETERANS'
employment preference	)	EMPLOYMENT PREFERENCE

TO: All Interested Persons.

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.3603, 2.21.3607 through 2.21.3610, 2.21.3615 through 2.21.3618 and 2.21.3623 related to veterans' employment preference.

2. The proposed amendments provide as follows:

2.21.3603 DEFINITIONS For purposes of the subchapter, the following definitions apply:

(1) "Active duty" means, as provided in 39-29-101 ~~(1)~~, MCA, "full-time duty with military pay and allowances in the armed forces, [and does not include] training, determining physical fitness, or service in the reserve or national guard."

(2) "Armed forces" means, as provided in 39-29-101 ~~(2)~~, MCA, "the United States:

(a) Remains the same.

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the ~~veterans administration~~ department of veterans affairs."

(3)(a) - (i) Remain the same.

(ii) ~~a legislative agency, such as the consumer council, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst,~~ for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme ~~court~~ administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) - (v) Remain the same.

(b) ~~As provided in 39-30-103, MCA, "A personnel action limited to current employees of a specific public entity identified in subsection (3) (a) [of the rule] 39-30-103, MCA, current employees in a reduction-in-force pool who have been identified in subsection (3) (a) [of this rule] 39-30-103, MCA,~~

or current participants in a federally-authorized employment program is not an initial hiring."

(4) "Reduction-in-work force" (RIF) means, "A management action taken for non-disciplinary reasons in which an employee is laid off from ~~his/her present position~~ employment. The RIF may take place for reasons including, but not limited to: elimination of programs; reduction in ~~FTE's~~ FTEs; lack of work; lack of funds; expiration of grants; reorganization of a state agency; or privatization of a service normally or traditionally provided by an employee of a department."

(5) "Scored procedure" means, as provided in 39-29-101 ~~(+)~~, MCA, "a written test, structured oral interview, performance test, or other selection procedures or a combination of these procedures that result in a numerical score to which percentage points may be added," and does not mean non-numerical scoring of procedures. Non-numerical scoring means assessing the applicant's degree of success or failure on a selection device or combination of devices without employing a numerical score, for example, a plus (+) for superior, a check (✓) for satisfactory and a minus (-) for unsatisfactory.

(6) "Under honorable conditions" means, as provided in 39-29-101 ~~(+)~~, MCA, "a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable."

(Auth. 39-29-112, MCA; Imp. 39-29-101, et seq., MCA)

2.21.3607 ELIGIBLE VETERAN (1) To be eligible to receive employment preference, a veteran, as defined in 39-29-101 ~~(+)~~, MCA, must:

(a) - (e) Remain the same.

(Auth. 39-29-112, MCA; Imp. 39-29-101 and 39-29-102, MCA)

2.21.3608 ELIGIBLE DISABLED VETERAN (1) To be eligible to receive employment preference, a disabled veteran, as defined in 39-29-101 ~~(+)~~, MCA, must:

(a) - (2) Remain the same.

(a) have, as provided in 39-29-101, MCA, "established the present existence of a service-connected disability or [be] receiving compensation, disability retirement benefits, or pension because of a law administered by the department of veterans administration affairs or a military department;" or

(b) Remains the same.

(Auth. 39-29-112, MCA; Imp. 39-29-101 and 39-29-102, MCA)

2.21.3609 ELIGIBLE RELATIVE (1) To be eligible to receive employment preference, an eligible relative, as defined in 39-29-101 ~~(+)~~, MCA, must:

(a) - (b) Remain the same.

- (2) An eligible spouse must:
- (a) be the unremarried surviving spouse of a veteran or disabled veteran ~~who has not remarried~~; or
  - (b) be the spouse of a disabled veteran who is unable to qualify for appointment to a position due to the disability and who is incapable of using ~~his~~ the employment preference because ~~his~~ the disability prevents ~~him~~ the veteran from working.
- (3) - (3)(a)(i) Remain the same.
- (ii) the mother is the unremarried widow of the veteran's father ~~of the veteran and has not remarried~~.
- (Auth. 39-29-112, MCA; Imp. 39-29-101 and 39-29-102, MCA)

2.21.3610 EMPLOYERS COVERED AND POSITIONS COVERED (1) As provided in 39-29-101 ~~(6)~~, MCA, public employer means:

- (a) Remains the same.
  - (b) a unit of the Montana university system ~~or a vocational technical center~~;
  - (c) - (d) Remain the same.
  - (2) As provided in 39-29-101 ~~(5)~~, MCA, positions covered by the employment preference are those occupied by a "permanent, temporary, or seasonal ~~positions~~ employee as defined in 2-18-101 [MCA], for ~~a~~ the state ~~position~~ or a similar permanent, temporary, or seasonal ~~position~~ employee with a public employer other than the state. The term does not include:
  - (a) - (e) Remain the same.
- (Auth. 39-29-112, MCA; Imp. 39-29-101, MCA)

- 2.21.3615 APPLYING PREFERENCE (1) Remains the same.
- (a) 5 percentage points if the applicant is a veteran," as defined in 39-29-101 ~~(9)~~, MCA; and
  - (b) "10 percentage points if the applicant is a disabled veteran or an eligible relative," as defined in 39-29-101 ~~(3)~~ ~~and (4)~~, MCA.
- (2) As provided in 39-29-102, MCA, "a disabled veteran who receives 10 percentage points under [39-29-102 ~~(1)~~ ~~(b)~~, MCA], may not receive an additional 5 percentage points under [39-29-102 ~~(1)~~ ~~(a)~~, MCA]."
- (3) A current employee of an agency, who meets the eligibility requirements ~~of this policy~~, may claim and receive veterans' employment preference when ~~he is~~ an applicant for an initial hiring as defined in ARM 2.21.3603.
- (4) - (6) Remain the same.
- (7) An applicant has 90 calendar days from receipt of notice of a hiring decision to file a petition in district court. To comply with this policy, the public employer shall retain a record of the hiring decision for at least 90 calendar days after the notice of the hiring decision and records may be kept longer at the agency's discretion. Other federal and state laws and regulations may require the retention of selection records for longer time periods. Depending on the selection procedures used, the record may include, but is not limited to



the following:

(a) - (e) Remain the same.

(Auth. 39-29-112, MCA; Imp. 39-29-102, MCA)

2.21.3616 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION (1) - (3) Remain the same.

(4) The person claiming eligibility for employment preference is responsible for providing all information necessary to document ~~his~~ the claim.

(5) - (7) Remain the same.

(a) from a veteran, disabled veteran, or eligible relative, a document issued by the department of defense or equivalent certification from the U.S. ~~veteran's administration~~ department of veterans affairs listing military status, and discharge type, commonly form DD-214 or military discharge papers;

(b) from a disabled veteran, a document from the U.S. ~~veteran's administration~~ department of veterans affairs certifying that the applicant has a service-connected disability or a document from the department of defense or the ~~veteran's administration~~ department of veterans affairs indicating the person has received the purple heart medal;

(c) from the unmarried surviving spouse of a deceased veteran, as veteran is defined in 39-29-101, MCA, the documentation required in ~~(7)(a)~~ (7)(b) of this rule and a copy of the death certificate or from the unmarried surviving spouse of a deceased disabled veteran, as disabled veteran is defined in 39-29-101, MCA, the documentation required in ~~(7)(b)~~ (7)(c) of this rule and a copy of the death certificate;

(d) from the eligible spouse of a disabled veteran, a document from the U.S. ~~veteran's administration~~ department of veterans affairs certifying the veteran is disabled, is unable to use the preference because of the disability, and is married to the disabled veteran in accordance with Montana law. When the ~~veteran's administration~~ department of veterans affairs does not certify that the disabled veteran is unable to use the preference because of the disability, the hiring authority shall obtain a signed statement from the disabled veteran that ~~he the veteran~~ he the veteran is incapable of using ~~his~~ his the employment preference because ~~his the veteran is unable to qualify for appointment to a position because of the disability and the disability prevents him the veteran~~ he the veteran from working;

(e) from an eligible mother of a deceased veteran or disabled veteran, a document from the U.S. ~~veteran's administration~~ department of veterans affairs certifying that the veteran, as provided in 39-29-101, MCA, "~~lost his life under honorable conditions while serving in the armed forces, died under honorable conditions while serving in the armed forces~~" or a document certifying, as required in 39-29-101, MCA, that the veteran has a service-connected permanent and total disability. The veteran's mother must also certify in writing that the mother's spouse is permanently and totally disabled or that ~~her~~ she

~~spouse is deceased and she has not remarried the mother is the unremarried widow of the veteran's father;~~

(f) - (10) Remain the same.

(Auth. 39-29-112, MCA; Imp. 39-29-103, MCA)

2.21.3617 HIRING DECISION (1) - (1)(b) Remain the same.

(2) Written notice must be given to each applicant claiming preference who is actually considered by the public employer as an applicant for a specific ~~position~~ vacancy.

(3) As provided in 39-29-103 ~~(3)~~, MCA, "If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference."

(4) Public employers who maintain active application files or conduct continuous recruitment must give written notice to each person claiming preference and whose application is active in accordance with the employer's selection procedures and who is actually considered for a specific vacancy. Notice must be given at the time a ~~position~~ vacancy is filled or by the end of each month in which a ~~position~~ vacancy is filled.

(5) Remains the same.

(Auth. 39-29-112, MCA; Imp. 39-29-103, MCA)

2.21.3618 INTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

(1) - (2)(c) Remain the same.

(3) As provided in 39-29-104, MCA, "Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation." The written explanation shall contain specific, job-related reasons why the person claiming preference was not hired. The explanation should be dated and identify the specific ~~position~~ vacancy in question. The employer should safeguard the confidentiality of information ~~he~~ has considered in accordance with state and federal law and as provided in ARM 2.21.3616.

(4) Remains the same.

(Auth. 39-29-112, MCA; Imp. 39-29-104, MCA)

2.21.3623 RETENTION DURING REDUCTION IN FORCE (1) - (3) Remain the same.

(4) As provided in 39-29-111 ~~(3)~~, MCA, "The preference in retention . . . does not apply to a position covered by a collective bargaining agreement."

(Auth. 39-29-112, MCA; Imp. 39-29-111, MCA)

3. Amendment of ARM 2.21.3603, 2.21.3607 through 2.21.3610, 2.21.3615 through 2.21.3618 and 2.21.3623 is necessary because some of the definitions in this subchapter have been changed by House Bill No. 172 of the 55th Legislature. The definitions of permanent, seasonal and temporary positions have been removed and replaced with definitions of permanent,


seasonal and temporary employee. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State. Other terminology has been updated, i.e. to reflect the current names of federal agencies.


4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 19, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM	)	ON PROPOSED AMENDMENT OF
2.21.619, 2.21.626,	)	ARM 2.21.619, 2.21.626,
2.21.627, and 2.21.636	)	2.21.627, AND 2.21.636
related to holidays	)	RELATED TO HOLIDAYS
	)	

TO: All Interested Persons.

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.619, 2.21.626, 2.21.627, and 2.21.636 related to holidays.

2. The proposed amendments provide as follows:

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

(1) "Full-time employee" means, as provided in 2-18-601 (5), MCA "an employee who normally works 40 hours a week."

(2) - (4) Remain the same.

(5) "Part-time employee" means, as provided in 2-18-601 (4), MCA "an employee who normally works less than 40 hours a week."

(6) Remains the same.

(Auth. 2-18-102 and 2-18-603, MCA; Imp. 1-1-216 and 2-18-603, MCA)

2.21.626 HOLIDAY BENEFITS AND ELIGIBILITY REQUIREMENTS

(1) - (4)(a) Remain the same.

(b) the employee is reinstated or re-employed following a reduction in force, returns to work following a leave of absence without pay of more than one pay period or a disciplinary suspension, or is called back to a seasonal or temporary position employment on the day after a holiday is observed.

(5) A short-term worker, as defined in 2-18-101, MCA is not eligible to receive holiday benefits.

(Auth. 2-18-102 and 2-18-603, MCA; Imp. 1-1-216 and 2-18-603, MCA)

2.21.627 HOLIDAY BENEFITS FOR FULL TIME EMPLOYEES (1) A full-time employee whose regular schedule calls for the employee to work on the day a holiday is observed shall receive 8 hours of holiday benefits. The employee usually receives the holiday off; however, management reserves the right to require an employee to work on the day a holiday is observed. The employee shall be compensated for work performed on a holiday, in addition to holiday benefits, as provided in ARM 2.21.636.

(2) Remains the same.

(Auth. 2-18-102 and 2-18-603, MCA; Imp. 1-1-216 and 2-18-603, MCA)

2.21.636 PAY FOR WORK PERFORMED ON A HOLIDAY (1) An employee who is ~~covered by~~ designated as non-exempt under the Fair Labor Standards Act (FLSA) and who ~~receives approval to work~~ works on the day a holiday is observed shall be paid for all hours actually worked. In addition to the holiday benefit provided for in ARM 2.21.626, the employee shall receive either ~~(a) or (b) a paid day off at the regular rate or premium pay as described below,~~ at management's discretion.

(a) - (5) remain the same.

(Auth. 2-18-102 and 2-18-603, MCA; Imp. 1-1-216 and 2-18-603, MCA)


3. Amendment of ARM 2.21.619, 2.21.626, 2.21.627, and 2.21.636 is necessary because some of the definitions used in these rules have been changed by House Bill No. 172 of the 55th Legislature. The definition of seasonal position has been removed and replaced with a definition of seasonal employee. A new category of short-term worker has been added. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State. Amendment of ARM 2.21.627 and 2.21.636 is proposed to clarify the calculation of pay for work performed on a holiday.

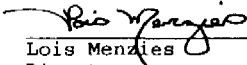
4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to [amasseybauer@mt.gov](mailto:amasseybauer@mt.gov). All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 19, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.21.8107	)	ON PROPOSED AMENDMENT OF
and 2.21.8109 related to	)	ARM 2.21.8107 AND
equal employment	)	2.21.8109 RELATED TO EQUAL
opportunity	)	EMPLOYMENT OPPORTUNITY

TO: All Interested Persons.

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.8107 and 2.21.8109 related to equal employment opportunity.

2. The proposed amendments provide as follows:

2.21.8107 POLICY AND OBJECTIVES (1) - (1) (a) Remain the same.

(b) discriminatory barriers to employment in state government based on race, color, religion, creed, sex, national origin, age, ~~handicap physical or mental disability~~, marital status, or political belief must be eliminated, in accordance with relevant state and federal law; and

(c) - (2) Remain the same.

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

2.21.8109 AGENCY PROGRAM (1) - (2) Remain the same.

(3) The program at a minimum shall include a policy statement, ~~described in (4)~~ and a plan of corrective measures described in ~~(5) this rule~~.

(4) - (7) Remain the same.

(8) An agency with 10 or fewer employees must develop a policy statement ~~as required in (4)~~, but may be exempted by the department of administration from adopting a specific plan of corrective measures ~~as required in (5)~~.

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

3. Amendment of ARM 2.21.8107 and 2.21.8109 is necessary because House Bill No. 53 of the 55th Legislature changed all references to "handicap" to the widely accepted term, "disability". Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State.


4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-

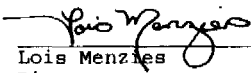
Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 14, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the  
amendment of ARM 2.21.216,  
2.21.217, 2.21.221 through  
2.21.224, 2.21.228,  
2.21.230, and 2.21.232  
related to annual vacation  
leave

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT OF  
ARM 2.21.216, 2.21.217,  
2.21.221 THROUGH 2.21.224,  
2.21.228, 2.21.230, AND  
2.21.232 RELATED TO ANNUAL  
VACATION LEAVE

TO: All Interested Persons.

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.216, 2.21.217, 2.21.221 through 2.21.224, 2.21.228, 2.21.230, and 2.21.232 related to annual vacation leave.

2. The proposed amendments provide as follows:

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

(1) "Break in service" means, as provided in 2-18-601 ~~(1)~~, MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment." A break in service could result from a termination or resignation or could be an absence of more than 5 working days in a row without an approved leave of absence.

(2) "Continuous employment" means, (for purposes of the qualifying period), as provided in 2-18-601 ~~(1)~~, MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days." An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.

(3) - (4) Remain the same.

(5) "Transfer" means, as provided in 2-18-601 ~~(1)~~, MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service."

(6) "Vacation leave" means, as provided in 2-18-601 ~~(8)~~, MCA, "a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

(7) remains the same.

(Auth. 2-18-604, MCA; Imp. 2-18-601, 2-18-611, 2-18-612, 2-18-614 through 2-18-617, and 2-18-621, MCA)

2.21.217 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to grant executive branch eligible state employees annual vacation leave benefits in accordance with 2-18-601, 2-18-611, 2-18-612, 2-18-614 through 2-18-617, and 2-18-621 Title 2, Chapter 18, part 6, MCA.

(2) and (3) Remain the same.

(Auth. 2-18-604 MCA; Imp. 2-18-601, 2-18-611, 2-18-612, 2-18-614 through 2-18-617, and 2-18-621, MCA)

2.21.221 ACCRUAL AND ELIGIBILITY TO USE VACATION LEAVE CREDITS (1) In accordance with 2-18-611, MCA, all permanent, seasonal, and temporary employees serving in positions which are permanent, intermittent, job share, or seasonal are eligible to earn vacation leave credits. In accordance with 2-18-611 (5),



~~MCA, temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months shall receive retroactive vacation leave credits for the preceding continuous period of temporary employment. A short-term worker, as defined in 2-18-101, MCA, does not earn leave or time toward the rate earned.~~

(2) ~~An employee must be continuously employed for the qualifying period of 6 calendar months to be eligible to use take or receive cash compensation upon termination for vacation leave. Unless there is a break in service, an employee is only required to serve the qualifying period once. After a break in service, an employee must again complete the qualifying period to be eligible to use annual vacation leave.~~

(3) ~~Annual vacation leave credits accrue from the first day of employment, except as provided in (1) for employees in temporary positions. Leave credits may not be advanced nor may leave be taken retroactively.~~

(4) ~~Remains the same.~~

(5) ~~If annual vacation leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 6-month qualifying period, provided a break in service does not occur. As provided in 2-18-611 (2), MCA, a seasonal employee "must immediately report back for work when operations resume in order to avoid a break in service." Returning seasonal employees must report to work by the date and time specified by the agency to avoid a break in service.~~

(6) ~~Remains the same.~~

(7) ~~When a person is simultaneously employed in different agencies as provided in (6) this rule, vacation leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position.~~

(8) ~~When a person who is simultaneously employed as provided in (6) this rule exceeds the maximum accrual of vacation leave credits, the number of hours forfeited will be apportioned to each position in proportion to the balance of vacation credits for each position.~~

(9) ~~Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Vacation leave credits will not accrue for those hours exceeding 40 hours in a workweek that are paid as overtime hours or are recorded as compensatory time hours. A full-time state employee shall not earn less than or more than the full-time annual leave accrual rate provided by ARM 2.21.223, except as provided in paragraph (10) of this rule.~~

(10) ~~As provided in 2-18-611 (4), MCA, "an employee may not accrue annual vacation leave credits while in a leave-without-pay status."~~

(11) ~~Remains the same.~~

(12) ~~Where an employee has been laid off and has been allowed by the agency elected to maintain annual leave credits, as provided in ARM 2.21.5007 (9), the employee shall not take any accrued annual leave credits. The employee may take those annual leave credits if reinstated or reemployed during the preference period by the same agency or another state agency as a permanent employee, or if employed during the preference period by another state agency which agrees to accept the annual leave credits. If the employee is not reinstated or reemployed during the preference period by a state agency, the employee shall may elect to be cashed out at any time, as provided in ARM 2.21.233, at the salary rate the employee earned at the effective date of lay-off. However, the employee shall be~~

cashed out when the employee's eligibility for participation in the job registry ends.

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-617 and 2-18-1204, MCA)

2.21.222 CALCULATING ANNUAL VACATION LEAVE CREDITS

(1) As provided in 2-18-612, MCA, "vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency, whether the employment is continuous or not." For purposes of this ~~paragraph~~ rule, agency means, as provided in 2-18-601 ~~(3)~~, MCA, "any legally constituted department, board, or commission of state, county, or city government or any political sub-division thereof."

RATE EARNED SCHEDULE

<u>Years of Employment</u>	<u>Working Days Credit per Year</u>
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(2) Remains the same.

(3) As provided in 2-18-612, ~~(2A and B)~~, MCA, "~~(2) (A)~~ For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(I) - (9) Remain the same.

(10) Where specific records of months or hours of employment are not readily available, the agency may approximate total service time, relying on the formula in paragraph ~~(9)~~ this rule.

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

2.21.223 PAY PERIOD ACCRUAL OF VACATION LEAVE CREDITS

(1) ~~Where an employee is paid through the state central payroll division, if~~ If the employee is in a pay status at least 80 hours or more in a bi-weekly pay period, the employee accrues the number of hours of vacation leave credits indicated in the following schedule:

FULL-TIME BI-WEEKLY PAY PERIOD SCHEDULE

<u>No. of Completed Years of Employment</u>	<u>80 hours or more in pay status per pay period</u>
0-10 years	4.62 hours
10-15 years	5.54 hours
15-20 years	6.46 hours
20 on	7.38 hours

(2) If an employee is in a pay status less than 80 hours in a bi-weekly pay period or works on an intermittent basis, the employee accrues the number of hours of vacation leave credits calculated by using the applicable amount from the following schedule multiplied by the hours worked:

PART-TIME BI-WEEKLY PAY PERIOD SCHEDULE

No. of Completed Years of Employment	Less than 80 hours in pay status per pay period
0-10 years	.058 x no. hours
10-15 years	.069 x no. hours
15-20 years	.081 x no. hours
20 on	.092 x no. hours

(3) - (4) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-611 and 2-18-612, MCA)

2.21.224 MAXIMUM ACCRUAL OF VACATION LEAVE CREDITS

(1) In accordance with 2-18-617, MCA, ~~all full-time and part-time employees serving in permanent and seasonal positions may accumulate two times the total number of annual leave credits they are the employee is eligible to earn per year, according to the rate earned schedule. Except as provided in subsections (2) - (5) below this rule, excess vacation leave credits will be forfeited unless the credits are used by the employee within 90 calendar days from the last day of the calendar year in which the excess credits were earned.~~

(2) - (5) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-617, MCA)

2.21.228 VACATION LEAVE RECORDS

(1) An employee's vacation leave credits earned and vacation leave credits used ~~must shall be recorded by the payroll/personnel/position control human resource information system. Agencies not paid through the state central payroll division must shall keep their own records.~~

(2) Remains the same.

(Auth. 2-18-604, MCA; Imp. 2-18-611, MCA)

2.21.230 ABSENCE DUE TO ILLNESS OR A WORK-RELATED INJURY

(1) Remains the same.

(2) As provided in 39-71-736 (4), MCA, an injured worker may take vacation leave without affecting the worker's eligibility for temporary total disability benefits.

(Auth. 2-18-604, MCA; Imp. 2-18-611 and 2-18-615, MCA)

2.21.232 LUMP-SUM PAYMENT UPON TERMINATION

(1) As provided in 2-18-617 (4), MCA, "an employee who terminates his employment for a reason not reflecting discredit on the employee is entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611."

(2) - (5) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-617 and 2-18-621, MCA)

3. Amendment of ARM 2.21.216, 2.21.217, 2.21.221 through 2.21.224, 2.21.228, 2.21.230, and 2.21.232 related to annual vacation leave is necessary because of changes made in House Bill No. 172 of the 55th Legislature. The definitions of permanent, seasonal and temporary positions have been removed and replaced with definitions of permanent, seasonal and temporary employee. A new category of short-term worker has been created and is referred to in this part. Proposed amendments to ARM 2.21.221 reflect changes made to the State

Employee Protection Act, 2-18-1201, et seq., MCA. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State.

4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 19, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.21.122,	)	ON PROPOSED AMENDMENT OF
2.21.123, 2.21.133,	)	ARM 2.21.122, 2.21.123,
2.21.138, 2.21.141,	)	2.21.133, 2.21.138,
2.21.143 and 2.21.144	)	2.21.141, 2.21.143 AND
related to sick leave	)	2.21.144 RELATED TO SICK
	)	LEAVE

TO: All Interested Persons.

1. On June 27, 1997, a public hearing will be held at 9:00 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.122, 2.21.123, 2.21.133, 2.21.138, 2.21.141, 2.21.143 and 2.21.144 related to sick leave.

2. The proposed amendments provide as follows:

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

(1) - (6) Remain the same.

(7) "Sick leave" means, as provided in 2-18-601, MCA, "a leave of absence with pay for a sickness suffered by an employee or ~~his a member of the employee's~~ immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606, [MCA]."

(8) - (9) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-611, 2-18-612, and 2-18-614, MCA)

2.21.123 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to grant ~~executive branch eligible~~ state employees sick leave benefits in accordance with ~~section~~ 2-18-618, MCA.

(2) Remains the same.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS (1) ~~All A permanent, seasonal, or temporary employees serving in positions that are permanent, temporary, seasonal, part-time, job share and intermittent are is eligible to earn sick leave credits. A short-term worker, as defined in 2-18-101, MCA, is not eligible to earn sick leave credits.~~

(2) - (10) Remain the same.

(11) Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Sick leave credits will not accrue for those hours exceeding 40 hours in a work week that are paid as overtime hours or are recorded as compensatory time hours. A full-time state employee shall not earn less than or

more than the full-time sick leave accrual rate provided by ARM 2.21.134, except as provided in ~~paragraph (12) of this rule.~~

(12) As provided in 2-18-618, MCA, "An employee may not accrue sick leave credits while in a leave-without-pay status."

(13) Remains the same.

(14) ~~Where when an employee who has been laid off and has been allowed by the agency elects to maintain sick leave credits, as provided in ARM 2.21.5007 (9), the employee shall not take any accrued sick leave credits. The employee may take those sick leave credits if reinstated or reemployed during the preference period by the agency, or if employed during the preference period by another state agency which agrees to accept the sick leave credits. If the employee is not reinstated or reemployed during the preference period by a state agency, the employee shall may elect to be cashed out, as provided in ARM 2.21.141, at any time at the salary rate the employee earned at the effective date of lay-off. However, the employee shall be cashed out when the employee's eligibility for participation in the job registry ends.~~

(Auth. 2-18-604, MCA; Imp. 2-18-615, 2-18-618 and 2-18-1204, MCA)

2.21.138 SICK LEAVE RECORDS (1) An employee's sick leave credits earned and sick leave credits used ~~must shall~~ be recorded by the ~~payroll/personnel/position control statewide human resource information~~ system. Agencies not paid through central payroll division ~~must shall~~ keep their own records.

(2) - (3) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.141 LUMP SUM PAYMENT UPON TERMINATION (1) Remains the same.

(2) As required by 2-18-618 ~~(6)~~, MCA, "an employee who receives a lump-sum payment . . . and is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated."

(3) Remains the same.

(4) As provided in 2-18-618 ~~(5)~~, MCA, "accrual of sick leave credits for calculating the lump-sum payment . . . begins July 1, 1971."

(5) - (9) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.143 ABUSE OF SICK LEAVE (1) Remains the same.

(2) Chronic, persistent, or patterned use of sick leave may be subject to progressive discipline, pursuant to ARM 2.21.6505 et seq. (See the discipline handling policy, title 2, chapter 21, sub-chapter 65, ARM or policy 3-0130, MOM.)

(3) - (4) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.144 INDUSTRIAL ACCIDENT (1) - (1)(a) Remain the same.

(b) Augmentation of workers' compensation temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits. ~~It is not necessary to Departments should~~ notify the state fund of sick leave benefits paid in this situation.

(Auth. 2-18-604, MCA; Imp. 2-18-615 and 2-18-618, MCA)

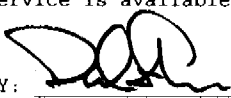
3. Amendment of ARM 2.21.122, 2.21.123, 2.21.133, 2.21.138, 2.21.141, 2.21.143 and 2.21.144 is necessary because of changes made in House Bill No. 172 of the 55th Legislature. The definitions of permanent and temporary positions have been removed and replaced with definitions of permanent and temporary employee. The definition of short-term worker has been added. Proposed amendment of ARM 2.21.133 reflects changes to the State Employee Protection Act, 2-18-1201, et seq., MCA. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State.

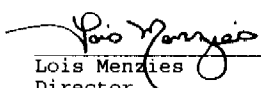
4. Interested persons may submit data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Anne Massey-Bauer, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than July 7, 1997.

5. Anne Massey-Bauer, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Anne Massey-Bauer, at the address given in paragraph 4 above, or telephone (406)-444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:

  
Dal Smilie  
Rule Reviewer

  
Lois Menzies  
Director

Certified to the Secretary of State May 19, 1997.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 4.5.109 and ) AMENDMENT AND REPEAL  
4.5.112; repeal of ARM 4.5.113; )  
relating to the Noxious Weed )  
Trust Fund procedures. )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 2, 1997, the Department of Agriculture proposes to amend ARM 4.5.109 and 4.5.112, and repeal ARM 4.5.113 pertaining to the Noxious Weed Trust Fund procedures.

2. The rules as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined)

4.5.109. REPORTING AND MONITORING PROCEDURES (1) The project sponsor or project manager shall monitor the progress and results of the project and evaluate its overall effectiveness. The project sponsor shall submit to the department quarterly fiscal reports and written progress reports as determined by contract. If the department determines through field or office evaluations that improper progress or fiscal reports have been filed, the project sponsor shall initiate necessary corrective action.

AUTH: 80-7-802, MCA

IMP: 80-7-814, MCA

REASON: The department is deleting the requirement for quarterly fiscal reports in ARM 4.5.109 because some noxious weed grants have none or limited activity in some quarters of the year. Other grants, based upon their purpose and documented or intended result, only need periodic fiscal reports. The department will determine the time schedule for fiscal reports, on a case-by-case basis based upon the type of grant, the schedule of grant activities, and the intended purpose of the grant.

4.5.112. NOXIOUS WEED MANAGEMENT COUNCIL (1) ~~The director of the department shall serve as chairman and also appoint the members of the noxious weed management council. Council appointments and terms will comply with 2-15-122, MCA. The members of the noxious weed management advisory council appointed by the director serve two-year terms. Members may serve for a maximum of three consecutive two-year terms.~~

AUTH: 80-7-802, MCA

IMP: 80-7-805, MCA



REASON: The department is amending ARM 4.5.112 because section 80-7-805, MCA, already states that the director appoints the members of the Advisory Council. This statute does not address terms of office. To ensure a viable and knowledgeable council, this rule establishes that council members will serve for two years and that a council member may serve three consecutive 2-year terms. The 2-year terms of office are appropriate for an individual council member to become knowledgeable of the grant process and evaluation of grants and to make recommendations to the director. Establishing a maximum of three consecutive 2-year terms for council members allows the director to retain some experienced council members and to concurrently appoint new council members.

4.5.113 DEALER RECORD REQUIREMENTS, the rule proposed to be repealed, can be found on page 4-107 of the Administrative Rules of Montana.

AUTH: 80-8-105 and 80-7-802, MCA  
IMP: 80-7-812, MCA

REASON: This rule is being repealed because the Noxious Weed Trust Fund is at \$2.5 million and the legislation requiring the herbicide surcharge has been repealed by the legislature. The requirement for dealer records is not needed because the herbicide surcharge was repealed.

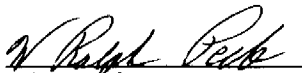
3. Interested persons may submit their written data, views, or arguments concerning the proposed actions to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, FAX (406)444-5409, or E-Mail: AGR@MT.GOV, no later than June 30, 1997.

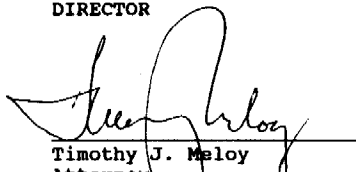
4. If a party who is directly affected by the proposed actions wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, FAX (406)444-5409, or E-Mail: AGR@MT.GOV no later than June 30, 1997.

5. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 6 weed districts based on the fact that there are 56 weed districts in the state.

DEPARTMENT OF AGRICULTURE

  
Ralph Peck  
DIRECTOR

  
Timothy J. Maloy  
Attorney  
Rule Reviewer

Certified to the Secretary of State office this 19th Day of May 1997.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of rules pertaining ) ON THE PROPOSED AMENDMENT  
to permit examinations and ) OF 8.56.602C PERMIT EXAMIN-  
fees, and adoption of new ) ATIONS AND 8.56.607 PERMIT  
rules pertaining to inspections) FEES, AND ADOPTION OF NEW  
and continuing education ) RULES I INSPECTIONS, II  
) CONTINUING EDUCATION AND III  
) CONTINUING EDUCATION--WAIVER

TO: All Interested Persons:

1. On June 24, 1997, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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

"8.56.602C PERMIT EXAMINATIONS (1) through (6) will remain the same.

(7) A passing score of ~~70%~~ 75% is required on each of the general and specified sections of the examination. Retakes of any portion or section of an examination shall require a 75% passing score.

(8) will remain the same."

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

**REASON:** This amendment is proposed to make the original passing score consistent with the re-take score.

"8.56.607 PERMIT FEES

(1) Application fee .....	\$60	\$30
(2) Examination fee & re-examination fee		
(a) General exam .....	30	<u>15</u>
(b) Each section .....	15	<u>5</u>

(3) through (7) will remain the same."

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

**REASON:** The fees are being lowered to comply with House Bill 240 and Senate Bill 238, mandated by the 1997 legislature, which limit the cash balances of boards.

3. The proposed new rules will read as follows:

"I INSPECTIONS (1) An inspection shall be conducted by the board or its designees in accordance with 37-14-222, MCA.

(2) A reinspection shall be made for any noncompliance found by the board or its designees in accordance with 37-14-307, MCA.

(3) The inspection will commence no later than twenty minutes after the inspector's arrival."

Auth: Sec. 37-14-202, MCA; IMP, Sec. 37-14-322, MCA

REASON: The Board has determined that, in order to ensure that radiologic technologists and limited permit holders who are performing x-ray procedures are currently licensed and that the public's health, safety and welfare are affected, it is appropriate to conduct inspections, within a designated time upon arrival, to verify compliance of licensee's performance during x-ray procedures. In addition to public safety concerns, the Board has received comments from the inspector for the Board, that long delays, or refusal to allow impromptu inspections, have occurred.

"II CONTINUING EDUCATION (1) All applicants for renewal of limited permits shall affirm that they have completed six contact hours (one hour equals not less than 55-60 minutes) of continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until after the licensee's first full year of licensure.

(2) The permit holder shall maintain records and documentation of completion of continuing education activities such as verification of participation forms, conference brochures, certificates, college or university transcripts or grade reports, articles and book reviews.

(3) All permit holders shall attach copies of their documentation of completion for continuing education activities to the renewal form.

(4) All continuing education must be germane to the radiographic portion of permit holder's profession and must contribute to the professional competence of a limited permit holder as determined by the board based on information presented on a form provided by the board.

(5) The board shall accept any continuing education offered or approved by the Montana or American society of radiologic technologists or the American medical association.

(6) Subject to approval by the board, continuing education may be earned through college course work, according to the following limitations:

- (a) the licensee must pass the course;
- (b) one semester credit shall equal 15 contact hours of continuing education; and
- (c) one quarter credit shall equal 10 contact hours of continuing education.

(7) Continuing education requirements may be met by retaking the limited permit general examination and receiving a passing score. They may also be met by passing an advanced level examination not previously passed and for which the individual is eligible (e.g. additional categories).

(8) The board shall accept any continuing education accrued by attending seminars, lectures or courses directly related to the individual's field of practice or operation not already herein approved by one of the professional organizations previously mentioned herein upon approval by the board. The sponsor or organization of any such continuing education may obtain board approved credit upon submission of information regarding the course content and participant evaluation procedures.

(9) Subject to approval by the board, continuing education may be earned for reading books germane to the profession, according to the following limitations:

(a) one contact hour shall be credited for each book or article up to a maximum of four contact hours per year; and

(b) documentation must be maintained in the form of a book review written by the licensee noting the author, title, publisher and publishing date of the book or article.

(10) Continuing education will not be granted to participants for attending the same course more than once in a twelve-month period.

(11) Continuing education credits earned that are more than the amount required will not be carried over into the following accreditation period.

(12) The board, in its discretion, reserves the right to deny credit for continuing education units that do not receive approval from the board within 30 days after attendance."

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

### "III. WAIVER OF CONTINUING EDUCATION REQUIREMENT

(1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a permit holder's ability to meet the minimum requirement of six contact hours prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by the renewal date. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline."

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

REASON: The Board has received comments regarding the question of x-rays performed by limited permit holders. In order to protect public health, safety and welfare and ensure continued competency in permitted x-ray categories, the board is implementing a continuing education requirement for limited permit holders.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., June 17, 1997, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Radiologic

Technologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Helena Lee.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Radiologic Technologists, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., June 30, 1997.

6. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RADIOLOGIC TECHNOLOGISTS  
JIM WINTER, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
R. PERRY ESKRIDGE, RULE REVIEWER

Certified to the Secretary of State, May 19, 1997.

BEFORE THE HARD-ROCK MINING IMPACT BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED REPEAL OF  
repeal of rule pertaining to ) ARM 8.104.203A PERTAINING TO  
the administration of the ) THE ADMINISTRATION OF THE  
Hard-Rock Mining Impact Act ) HARD-ROCK MINING IMPACT ACT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 2, 1997, the Hard-Rock Mining Impact Board proposes to repeal ARM 8.104.203A, which is located at page 8-3707, Administrative Rules of Montana. The authority section is 90-6-305, MCA, and the implementing section is 90-6-307, MCA. The reason for the proposed repeal is that the Board intends to replace the rule with more flexible policy definitions of "affected county," "potentially affected county," and "impact, or impacted, area." Under these definitions, the "impact, or impacted, area" would encompass all affected and potentially affected units of local government, as identified in the impact plan. This change would bring the stated definitions into conformity with the definitions that have been used, historically in the preparation of impact plans. The change would also allow approved impact plans to provide the information anticipated by the statute that governs the State's allocation of metal mines license tax revenue to counties.

2. Interested persons may submit their data, views or arguments concerning the proposed repeal in writing to the Hard-Rock Mining Impact Board, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile to (406) 444-4482, to be received no later than 5:00 p.m., June 30, 1997.

3. If a person who is directly affected by the proposed repeal wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Hard-Rock Mining Impact Board, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile to (406) 444-4482, to be received no later than 5:00 p.m., June 30, 1997.

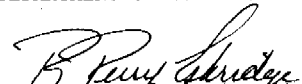
4. If the Board receives requests for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed repeal, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 more than 25 based on the number of local government entities that could be affected by the development of hard-rock mines.

HARD-ROCK MINING IMPACT BOARD

BY: 

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
R. PERRY ESCHRIDGE, RULE REVIEWER

Certified to the Secretary of State, May 19, 1997.



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

In the matter of the proposed amendment ) NOTICE OF PROPOSED  
of Rules 36.17.601, 36.17.602, and ) AMENDMENT  
36.17.606 pertaining to the renewable )  
resources grant and loan program ) NO PUBLIC HEARING  
CONTEMPLATED

To: All Interested Persons.

1. On July 2, 1997, the Department of Natural Resources and Conservation proposes to amend Rules 36.17.601, 36.17.602, and 36.17.606 pertaining to the renewable resources grant and loan program.

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

36.17.601 APPLICATION FEES Subsections (1) and (2) remain the same.

(3) Private applicants shall pay a \$150.00 non-refundable application fee for each ~~grant and/or~~ loan application submitted.

AUTH: 85-1-612, MCA  
IMP: 85-1-612, MCA

36.17.602 APPLICATION FORM AND CONTENT (1) Public grant and/or loan applicants and private grant and/or loan applicants shall submit applications in the form prescribed and according to guidelines published by the department. Application guidelines may be obtained and completed applications must be submitted with supporting documentation, to the Resource Development Bureau, Conservation and Renewable Resource Development Division, Department of Natural Resources and Conservation, ~~P.O. Box 202301, 1520 East Sixth Avenue PO Box 201601, 1625 Eleventh Avenue~~, Helena, MT 59620-2301 1601. The applicant shall submit additional information and documentation to the department if the application is incomplete.

AUTH: 85-1-612, MCA  
IMP: 85-1-612 and 85-1-616, MCA

36.17.606 ARRANGEMENTS FOR OBTAINING SECURITY INTERESTS Subsections (1) through (2)(e) remain the same.

(3) Private water users association or ditch company borrowers may provide security in the following manner, which may be in addition to any security items listed in (2) above:

- (a) a lien on the shares of stock in the association;
- (b) a lien on the revenues of the association;
- (c) a lien on the accounts receivable of the association; and/or
- (d) a lien on any water purchase agreements of the association.

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

AUTH: 85-1-612, MCA  
IMP: 85-1-613, 85-1-615 and 85-1-616, MCA

3. The purpose of the proposed amendments is to conform the administrative rules to the applicable statutes as amended by the 55th Legislature in Senate Bill 310.

4. Interested parties may submit their data, views or arguments concerning the proposed actions in writing to Larry Bloxson, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601, on or before June 30, 1997.

5. If a person who is directly affected by the proposed actions wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Larry Bloxson, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. The comments must be received on or before June 30, 1997.

6. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 based on the number of loan applications submitted and approved.

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

  
ARTHUR R. CLINCH, DIRECTOR

  
DONALD D. MACINTYRE,  
RULE REVIEWER

Certified to the Secretary of State on May 19, 1997.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of new rule I (ARM 4.10.709) )  
pertaining to the use of )  
pesticides in alfalfa seed )  
crops. )

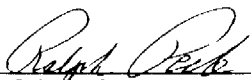
TO: All interested persons:

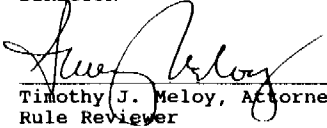
1. On April 7, 1997, the Department of Agriculture published a notice of proposed adoption to the above-stated new rule I (ARM 4.10.709) pertaining to the use of pesticides on pest infestations in alfalfa seed crops. The notice was published at page 616 of the 1997 Montana Administrative Register, issue number 7.

2. The department has adopted new rule I (ARM 4.10.709) exactly as proposed.

3. No written comments were received.

DEPARTMENT OF AGRICULTURE

  
Ralph Peck  
DIRECTOR

  
Timothy J. Meloy, Attorney  
Rule Reviewer

Certified to the Secretary of State this 14<sup>th</sup> Day of May  
1997.

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

In the matter of the                    )  
amendment and adoption of        )  
rules pertaining to the            )  
practice of social work            )  
and licensed professional        )  
counseling                            )

NOTICE OF AMENDMENT  
AND ADOPTION

TO: All Interested Persons:

1. On February 10, 1997, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment and adoption of rules pertaining to the practice of social work and licensed professional counseling at page 239, 1997 Montana Administrative Register, issue number 3.

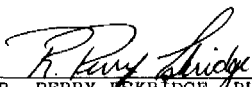
2. The Board has amended ARM 8.61.403, 8.61.405, 8.61.406, 8.61.601, 8.61.602, 8.61.604, 8.61.1201, 8.61.1202, 8.61.1204, 8.61.1205, 8.61.1601, 8.61.1602 and 8.61.1604 and has adopted new rule I (8.61.407), II (8.61.1206), III (8.61.301) and IV (8.61.302) exactly as proposed.

3. No comments or testimony were received.

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

BY:

  
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
R. PERRY SKRIDGE, RULE REVIEWER

Certified to the Secretary of State, May 19, 1997.

BEFORE THE TRAVEL PROMOTION AND DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption ) NOTICE ON THE ADOPTION OF  
of rule pertaining to the ) ARM 8.119.101 FOR THE TOURISM  
Tourism Advisory Council ) ADVISORY COUNCIL

TO: All Interested Persons:

1. On April 7, 1997, the Travel Promotion and Development Division published a notice of proposed adoption of the above-stated rule at page 619, 1997 Montana Administrative Register, issue number 7.

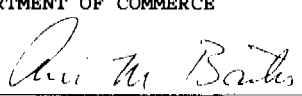
2. The Division has adopted the new rule exactly as proposed.

3. No comments or testimony were received.

TRAVEL PROMOTION AND DEVELOPMENT DIVISION

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 19, 1997.

VOLUME NO. 47

OPINION NO. 2

ARREST - County responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

CORRECTIONAL FACILITIES - Local; county responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

COUNTIES - Responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

MEDICINE - County responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

PRISONERS - County responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

MONTANA CODE ANNOTATED - Sections 7-32-2201, -2205, -2245, -2245(2), -4201;

MONTANA LAWS OF 1995 - Chapter 388, section 3.

HELD: A county is primarily responsible to third-party providers for post-arrest medical care given to a person who is ultimately charged with a violation of state law, but the county may thereafter seek recovery from another party pursuant to state law.

May 12, 1997

Mr. Brant Light  
Cascade County Attorney  
121 Fourth Street North  
Great Falls, MT 59401

Dear Mr. Light:

You have requested my opinion on the following question:

Is the county or the citizen responsible to third-party medical providers for post-arrest medical care provided to a citizen ultimately charged with a violation of state law?

Montana Administrative Register

11-6/2/97

Your letter of inquiry states that this question arises from a difference of opinion between your office and the Cascade County Commissioners and Sheriff regarding the effect of 1995 Montana Laws, chapter 388. That Act amended existing laws relating to the costs of medical care of inmates in local detention centers, and the difference of opinion concerns the effective scope of the amendment.

For purposes of answering your question, it is important to keep in mind two fundamental distinctions in the chronology of a criminal proceeding. The first distinction is between the pre-adjudication and post-adjudication phases of detention. The Eighth Amendment to the United States Constitution (barring cruel and unusual punishment) applies only to the post-adjudication phase of a person's detention. The Due Process Clause of the Fourteenth Amendment to the United States Constitution governs pre-adjudication treatment. City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 245 (1983). The second distinction is between the pre-detention (or apprehension) phase of a person's contact with law enforcement and the post-detention phase. As I discuss in detail below, these distinctions matter more in the context of Montana law.

Turning to the subject of medical care for persons apprehended for suspected criminal activity, I start with the requirements of the United States Constitution, as declared by the United States Supreme Court:

The Due Process Clause, however, does require the responsible government or governmental agency to provide medical care to persons . . . who have been injured while being apprehended by the police.

City of Revere, 463 U.S. at 244. After recognizing this right, the Court went on to observe:

[T]he injured detainee's constitutional right is to receive the needed medical treatment; how the city of Revere obtains such treatment is not a federal constitutional question.

Id. at 245. The City of Revere case involved both a pre-adjudication and a pre-detention situation, but the pre-detention versus post-detention distinction was not a factor in the determination of the case.

In Montana, pre-adjudication detention of those suspected of committing crimes is the duty of counties. Mont. Code Ann. §§ 7-32-2201, -2205. Municipalities may establish and maintain detention centers, but they are not under an affirmative duty to do so. Mont. Code Ann. § 7-32-4201. In 1988, the Montana Supreme Court had occasion to consider a hospital's claim for recovery of medical costs incurred by a defendant who was treated while under arrest by city police officers, but not yet in confinement. Referring to City of Revere, the Montana Supreme Court said this about the health and safety of prisoners prior to adjudication:

Consistent with the mandate of the United States Supreme Court, the Montana Legislature has adopted legislation providing for the care of prisoners. Section 7-32-2222, MCA, provides: [statute quoted in full].

Montana Deaconess Med. Ctr. v. Johnson, 232 Mont. 474, 476, 758 P.2d 756, 757 (1988). The Court went on to conclude that the case presented a factual situation not contemplated by the statute. Johnson was hospitalized immediately following his arrest, but before he was taken to the county jail:

By its terms, § 7-32-2222(3), MCA, is not triggered until such time as "the sheriff, jail administrator, or private party jailer" determines that a detained person requires medical care. In addition, the statute, when read as a whole, assumes incarceration in the county jail at the time the need for medical care arises. Such is clearly not the situation in the instant case.

Montana Deaconess, 232 Mont. at 477, 758 P.2d at 758.

Given this lack of statutory authority, the Court adopted a "common law" approach in deciding this issue, and stated in conclusion:

A county is the largest subdivision of the state. Section 7-1-2101, MCA. Consequently, the county is vested with the primary responsibility of enforcing the laws of the state and maintaining facilities in



furtherance of that task. See, §§ 7-4-2716, 7-32-2201, MCA. Sound reasoning dictates that the performance of the county's task necessarily includes the assumption of the associated financial burden.

We, therefore, hold that the county is financially responsible for medical costs incurred by a detained person ultimately charged with a violation of state law but who is unable to pay.

Montana Deaconess, 232 Mont. at 478-79, 758 P.2d at 759.

It was in part against this background that the legislature reexamined the issue of confinement costs for inmates, and passed 1995 Montana Laws, chapter 388, entitled in part: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CONFINEMENT COSTS FOR INMATES, INCLUDING COSTS OF MEDICAL CARE . . . ." As I noted at the outset, the difference of opinion leading to this opinion request stems from the passage of this Act, the pertinent part of which amended Montana Code Annotated § 7-32-2245:

Section 7-32-2245, MCA, is amended to read:

**7-32-2245. Payment of confinement costs by inmate.**

(1) An inmate found by the sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of his the inmate's confinement in a detention center. The rate for confinement costs rate at which the inmate must pay the costs must be established at the sentencing hearing must be determined in accordance with 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.

(2) An inmate is responsible for the actual costs of medication, medical services, or hospitalization while the inmate is detained in a detention center. Inability to pay may not be a factor

in providing necessary medical care for an inmate. This section does not restrict an inmate's right to use a third-party payor.

1995 Mont. Laws, ch. 388, § 3.

For our purposes, the most significant new language is (2) above, which became Montana Code Annotated § 7-32-2245(2). It is clear that this section, as well as other portions of the Act, establishes an inmate's ultimate responsibility for medical costs incurred while he or she is "detained in a detention center." However, the Act does not appear to do anything to change the law regarding primary responsibility for a detainee's medical costs, and it does not mention at all the medical costs of a "pre-detainee." Instead, the only changes made were in the areas of ~~ultimate~~ responsibility and methods of collection for medical costs, where it is made clear that the detainee bears the ultimate responsibility. I find no indication that the legislature intended to shift primary responsibility for the costs of a detainee's medical care.

As the United States Supreme Court said in City of Revere:

If, of course, the governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay. There are, however, other means by which the entity could meet its obligation.

City of Revere, 463 U.S. at 244-45. Establishing a detainee's ultimate responsibility for the costs of medical care is one thing, but changing the party responsible for the initial payment of the costs of medical care is quite another. If the legislature had meant to do this, they would have left some evidence of their intent, especially in light of the statement in § 7-32-2245(2), "Inability to pay may not be a factor in providing necessary medical care for an inmate."

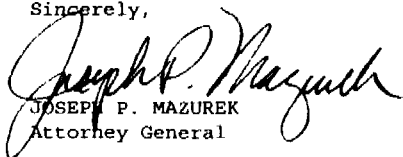
I find nothing in the body of chapter 388, its title, or its legislative history which would indicate that the legislature had any intention of changing the existing arrangement of primary and ultimate responsibility. For example, the Montana Deaconess case, and the rule of law it established, is nowhere mentioned. Mins., Mont. Sen. Comm. on Local Gov't, Feb. 2, 1995, at 1-6; Mins., Mont. House of Reps. Comm. on Local Gov't, Mar. 7, 1995, at 14-17.

Had it intended to do so, the legislature would have had to affirmatively establish some other means by which to meet the obligation imposed by the Due Process Clause. It is clear they did not. I note especially the fiscal note attached to the bill and the remarks of Cascade County Undersheriff John Strandell before the Senate Local Government Committee, where I find no evidence of legislative intent to enact the change about which you inquire.

THEREFORE, IT IS MY OPINION:

A county is primarily responsible to third-party providers for post-arrest medical care given to a person who is ultimately charged with a violation of state law, but the county may thereafter seek recovery from another party pursuant to state law.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/rfws/lrb

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1997. This table includes those rules adopted during the period April 1, 1997 through June 30, 1997 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1997, 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 1996 and 1997 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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