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**MONTANA
ADMINISTRATIVE
REGISTER**

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-2-278 (Public Employees' Retirement Board) Notice of Proposed Adoption - Members of Retirement Systems Who May Elect Coverage under the Guaranteed Annual Benefit Adjustment. No Public Hearing Contemplated.	1843-1844
2-2-279 Notice of Public Hearing on Proposed Amendment and Repeal - Employment Preference for Persons with Disabilities.	1845-1854
2-2-280 Notice of Public Hearing on Proposed Adoption and Repeal - Payroll Administration - Decedent's Warrants.	1855-1860
2-2-281 Notice of Public Hearing on Proposed Amendment - Recruitment - Selection.	1861-1866

AGRICULTURE, Department of, Title 4

4-14-95 Notice of Proposed Amendment - Change of Implementing Statutes for ARM 4.13.1004 through 4.14.1007. No Public Hearing Contemplated.	1867-1868
4-14-96 Notice of Proposed Repeal - Grading Standards for Mustard Seed. No Public Hearing Contemplated.	1869-1870

Page Number

COMMERCE, Department of, Title 8

8-80-25 (Division of Banking and Financial Institutions) Notice of Public Hearing on Proposed Adoption - Annual Fees - Examinations - Reports by the Foreign Capital Depositories. 1871-1881

8-87-24 (State Banking Board) Notice of Public Hearing on Proposed Adoption - Application Procedure for a Charter - Notice of Hearing - Grounds for Denial - Procedural Rules for Determination - Procedural Rules for Discovery and Hearing - Application Charter Fee for the Foreign Capital Depositories. 1882-1894

CORRECTIONS, Department of, Title 20

20-7-13 Notice of Public Hearing on Proposed Adoption - Siting and Construction Standards of Private Correctional Facilities in Montana. 1895-1900

JUSTICE, Department of, Title 23

23-3-110 Notice of Public Hearing on Proposed Adoption - Valuation and Taxation of Light Motor Vehicles - Imposition of Fees in Lieu of Tax on Buses, Heavy Trucks, Truck Tractors and Trailers. 1901-1909

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-80 Notice of Proposed Amendment - Medical Assistance Facilities - Laboratory Services. No Public Hearing Contemplated. 1910-1912

SECRETARY OF STATE, Title 44

44-2-96 Notice of Public Hearing on Proposed Amendment - Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register. 1913-1915

RULE SECTION

AGRICULTURE, Department of, Title 4

NEW Grading Standards for Mustard Seed. 1916

STATE AUDITOR, Title 6

NEW Regulation of Living Trusts. 1917-1919

Page Number

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD State Payment for Day Care Services to
REP Eligible Providers and Parents. 1920

PUBLIC SERVICE REGULATION, Department of, Title 38

NEW Montana Interim Universal Access Program. 1921-1925

INTERPRETATION SECTION

Opinions of the Attorney General.

8 Bonds - Open-space Bond Proceeds Used for
Maintenance and Planning - Cities and Towns -
Use of Open-space Bond Proceeds - Land Use -
Open-space Bond Proceeds - Local Government -
Municipality's Use of Open-space Bond
Proceeds - Parks - Open-space Bond Proceeds
Used for Maintenance of Open-space Land. 1926-1929

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee. 1930
How to Use ARM and MAR. 1931
Accumulative Table. 1932-1942
Boards and Councils Appointees. 1943-1951
Vacancies on Boards and Councils. 1952-1959

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of proposed adoption) NOTICE OF PROPOSED
of Rule I concerning members of) ADOPTION
retirement systems who may elect)
coverage under the Guaranteed Annual) NO PUBLIC HEARING
Benefit Adjustment.) CONTEMPLATED

TO: All Interested Persons.

1. On November 20, 1997, the Public Employees' Retirement Board proposes to adopt rule I about members of retirement systems who may elect coverage under the Guaranteed Annual Benefit Adjustment.

2. The proposed new rule is as follows:

RULE I. ELECTION FOR GUARANTEED ANNUAL BENEFIT ADJUSTMENT
COVERAGE (GABA) (1) Members, contingent annuitants, and survivors of the following retirement systems must file an election to receive the benefit increases provided by GABA:

- (a) Judges' Retirement System (JRS);
- (b) Highway Patrol Officers' Retirement System (HPORS);
- (c) Municipal Police Officers' Retirement System (MPORS);

and

- (d) Firefighters' Unified Retirement system (FURS).

(2) The election must be made on forms provided by the Board and must be received by the board on or before December 31, 1997.

(3) Members, contingent annuitants, and survivors who fail to file the election by December 31, 1997, will not receive benefit increases under GABA. These people will continue to receive the minimum benefits in effect before July 1, 1997. The division will notify these people that they will receive the minimum benefits but not increases under GABA.

(4) A revocation of an election must be made by the member in writing and must be received by the board on or before December 31, 1997. All elections are irrevocable as of January 1, 1998.

AUTH: 19-2-403, 19-2-1101, 19-5-901, 19-6-710, 19-9-1009, 19-13-1010, MCA

IMP: 19-2-1101, 19-5-901, 19-6-710, 19-9-1009, 19-13-1010, MCA

3. Rule I is needed to implement Chapter 287, laws of 1997. The rule amplifies what will happen if a member, survivor, or contingent annuitant does not file an election with the board.

4. Interested persons may present their data, views, or arguments about the proposed amendments in writing by November 17, 1997, to:

Mike O'Connor, Administrator
Public Employees' Retirement Division
P.O. Box 200131
Helena, Montana 59620-0131

A fax may be sent to (406) 444-5428.

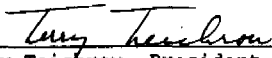
An electronic message may be sent to the following Internet address:

Keith McCallum
kmccallum@mt.gov

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to the above address. The Board must receive written requests for a public hearing by November 17, 1997.


6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the 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 later. The Board will publish notice of the hearing in the Montana Administrative Register. Ten percent of the people directly affected is 4340 based on August 1997 payroll reports of active and retired members.

7. The Public Employees' Retirement Division maintains an interested persons list and sends copies of proposed rule notices to everyone on the list. Anyone wishing to be placed on the list may contact the Public Employees' Retirement Division at (406)444-3154 and ask to be placed on the interested persons list for proposed rule changes.


Terry Teichrow, President
Public Employees' Retirement Board



Dal Smilie, Chief Legal Counsel
Rule Reviewer


Kelly Jenkins, General Counsel
Rule Reviewer

Certified to the Secretary of State on October 6, 1997.

20-10/20/97

MAR Notice No. 2-2-278

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
2.21.1412 through	)	ARM 2.21.1412 THROUGH
2.21.1414, 2.21.1422	)	2.21.1414, 2.21.1422
through 2.21.1425,	)	THROUGH 2.21.1425,
2.21.1427 through	)	2.21.1427 THROUGH
2.21.1429, and 2.21.1432,	)	2.21.1429, AND 2.21.1432
and the repeal of ARM	)	AND REPEAL OF ARM
2.21.1417, 2.21.1418, and	)	2.21.1417, 2.21.1418, AND
2.21.1421 related to	)	2.21.1421 RELATED TO
employment preference for	)	EMPLOYMENT PREFERENCE FOR
persons with disabilities	)	PERSONS WITH DISABILITIES

TO: All Interested Persons.

1. On November 12, 1997, a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.1412 through 2.21.1414, 2.21.1422 through 2.21.1425, 2.21.1427 through 2.21.1429, and 2.21.1432 and repeal of ARM 2.21.1417, 2.21.1418 and 2.21.1421 related to employment preference for persons with disabilities.

2. The rules proposed for repeal are found at pages 2-782, 2-783, and 2-787 of the Administrative Rules of Montana.
(Auth. 39-30-106, MCA; Imp. 39-30-103, MCA)

3. The proposed amendments provide as follows:

2.21.1412 SHORT TITLE (1) This policy may be cited as the ~~handicapped~~ persons' with disabilities employment preference policy.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1413 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana, executive, legislative and judicial branches, and covered local governments to provide preference in employment to eligible ~~handicapped~~ persons with disabilities and certain spouses, when they are substantially equal in qualifications to others applying for initial appointments to positions.

(2) It is the objective of this policy to establish uniform practices and procedures for the administration of the preference by public employers covered by the Handicapped Persons' with Disabilities Employment Preference Act, 39-30-101, et seq., MCA.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1414 GENERAL ELIGIBILITY (1) As provided in 39-30-

202, MCA, "No handicapped person with a disability or eligible spouse is entitled to receive employment preference as provided in 39-30-201, MCA, unless:

(a) ~~he the individual~~ is a United States citizen;

(b) ~~he the individual~~ has resided continuously in the state for at least 1 year immediately before applying for employment;

(c) if applying for municipal or county employment, ~~he the individual~~ has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(d) ~~he the individual~~ meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which ~~he the individual~~ is applying."

(2) A person with a disability must be an individual whose disability is certified by the department of public health and human services, as provided in ARM 2.21.1427.

(3) As provided in 39-30-103, MCA, an eligible spouse is "the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability."

(4) The marital relationship will be verified by the department of public health and human services in accordance with Montana law.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1422 POSITIONS EMPLOYMENT COVERED (1) Public employers covered by the Persons with Disabilities Employment Preference Act, 39-30-101 et seq., MCA, include:

(a) "any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(b) any county, city, or town.

(2) The term does not include a school district, a college of technology, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town."

(3) All positions designated as permanent or seasonal are employment is covered by the employment preference. Seasonal positions are those for which there is a permanent need, but which are interrupted by the seasonal nature of the work.

(4) Temporary and short-term employment is Excluded from the employment preference are positions which are designated as temporary. Temporary positions are employment is established for a definite period of time not to exceed 9 12 months. Short-term employment is established for a definite period not to exceed 90 days in one year.

(5) As provided in 39-30-103, MCA, position means "a position occupied by a permanent or seasonal position employee

as defined in 2-18-101, MCA for ~~a~~ the state position or a position occupied by a similar permanent or seasonal position employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary position employee as defined in 2-18-101, MCA for ~~a~~ the state position or a similar temporary position employee with a public employer other than the state;

(b) - (4) Remain the same.

~~(5)~~ (6) A person hired into a temporary position employee shall not be considered a current employee for purposes of ARM 2.21.1423. If a ~~person hired into a temporary position employee~~ is considered in the applicant pool for a permanent or seasonal position employment, the selection is considered an initial hire and the employment preference must be applied.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1423 APPLYING PREFERENCE (1) As provided in 39-30-201, MCA, an applicant who is eligible for preference under these rules shall be hired over any other applicant with substantially equal qualifications who is not a preference-eligible applicant, when:

(a) Remains the same.

(b) the hiring is an initial hiring to ~~a position employment~~ covered in ARM 2.21.1422.

(2) A preference-eligible applicant who is a handicapped person with a disability shall be hired over any other preference-eligible applicant with substantially equal qualifications when the applicant also meets the requirements of ~~(1) (a) and (b) of this rule.~~

(3) Remains the same.

(a) a department, as defined in 2-15-102, MCA, for a position within the executive branch;

(b) ~~a legislative agency, such as the consumer counsel, legislative environmental policy office, legislative audit division, legislative services division, or legislative fiscal division,~~ for a position within the legislative branch;

(c) - (e) Remain the same.

(4) A personnel action limited to current employees of a specific public entity identified in ~~subsections (3) (a) through (c) of [this rule],~~ current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in ~~subsections (3) (a) through (c) of [this rule],~~ or current participants in a federally-authorized employment program is not an initial hiring."

(5) - (6) Remain the same.

(7) The public employer covered by the Handicapped Persons⁴ with Disabilities Employment Preference Act, ~~(39-30-101 et seq., MCA)~~, has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination of the applicant's qualifications for the position and that substantially equally qualified applicants were afforded preference.

(8) - (e) Remain the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1424 CLAIMING PREFERENCE - DOCUMENTATION AND

VERIFICATION (1) As provided in 39-30-206, MCA, "a public employer shall, by posting or on the application form, give notice of the preferences that ~~39-30-101, et seq., MCA~~ ~~the~~ Handicapped Persons⁴ with Disabilities Employment Preference Act¹ provides in public employment." The notice shall appear at the place where applications are received.

(2) - (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 ~~handicapped~~ person with a disability, a document from the department of ~~social and rehabilitation~~ public health and human services certifying that the applicant is eligible for preference as a ~~handicapped~~ person with a disability;

(b) from an eligible spouse of a ~~handicapped~~ person with a disability, a document from the department of ~~social and rehabilitation~~ public health and human services certifying the ~~handicapped~~ person with a disability has a total disability ~~is totally disabled~~, is unable to use the preference because of the disability, and is married to the eligible spouse in accordance with Montana law. ~~The spousal relationship will be certified for not more than 1 year.~~

(c) - (8) Remain the same.

(9) A public employer may release general information relating to a successful applicant's eligibility for preference upon request. The information provided should not be specific to the nature of the disability or other personally identifying information. Examples of general information would be "an eligible spouse of a ~~totally disabled~~ person who is totally disabled," or "a ~~handicapped~~ person with a disability."

(10) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1425 DURATION OF PREFERENCE

(1) Subject to provisions of 39-30-203, MCA, a ~~handicapped~~ person with a disability as described in ARM 2.21.1410, qualifies for employment preference as long as the disabling condition persists.

(2) The spouse of a ~~totally handicapped~~ person who is totally disabled as described in ARM 2.21.1417, qualifies for employment preference as long as:

(a) the ~~totally handicapped~~ person who is totally disabled is unable to use the preference due to the severity of the disabling condition; and

(b) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1427 CERTIFICATION OF HANDICAPPED PERSONS WITH DISABILITIES

(1) As provided in 39-30-107, MCA, "the department

of ~~social and rehabilitation public health and human services~~ shall certify persons with disabilities as handicapped for the purpose of employment preference."

(2) In order to be eligible for employment preference, a handicapped person with a disability must be certified by the department of ~~social and rehabilitation public health and human services~~ to have, as provided in 39-30-103, MCA, a "physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment." The certification process may also consider impairments which limit an individual's ability to know or reason; or an individual's ability to make a choice or decision. ~~(3) The handicapped person with a disability~~ shall have a professional diagnosis establishing the disabling condition. ~~The handicapped person's~~ medical evidence shall be provided by a licensed physician or a licensed practitioner competent to treat and diagnose the particular disabling condition.

~~(4)~~ (3) Each disabling condition will be individually evaluated on a case-by-case basis to determine eligibility for employment preference with the exception of those persons specifically excluded in ~~section (6) (e)~~ of this rule.

(5) ~~To determine if a physical impairment exists, the department of public health and human services shall consider at least the following:~~

~~(a) for the purpose of determining whether a person will be considered to be a person handicapped by blindness, the department shall consider the definition in 53-7-301, MCA: "blind individual means an individual whose central visual activity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees or who has other eye conditions which render vision equally defective or who has an eye condition which will cause blindness."~~

~~(b) for the purpose of determining whether a person will be considered to be a person handicapped by deafness, the department shall consider the definition in 49-4-502, MCA: "deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language."~~

~~(c) for the purpose of determining whether a person will be considered to be a handicapped person, the department shall consider at least the following disorders to constitute neuromuscular disorders:~~

- ~~(i) cerebral palsy;~~
- ~~(ii) cystic fibrosis;~~
- ~~(iii) multiple sclerosis;~~
- ~~(iv) muscular dystrophy;~~
- ~~(v) epilepsy;~~

~~(vi) paraplegia,~~
~~(vii) quadriplegia, or~~
~~(viii) other diagnosable diseases or dysfunctions recognized in medical literature as affecting neuromuscular performance.~~

~~(d) for the purpose of determining whether a person will be considered to be a handicapped person, the department shall consider at least the following disorders to constitute organic disorders.~~

~~(i) diabetes,~~
~~(ii) heart disease,~~
~~(iii) cardiovascular disease,~~
~~(iv) stroke,~~
~~(v) respiratory/pulmonary dysfunctions,~~
~~(vi) hemie dysfunctions,~~
~~(vii) lymphatic dysfunctions,~~
~~(viii) endocrine dysfunctions, or~~
~~(ix) genito-urinary dysfunctions and other diagnosable diseases or dysfunctions recognized in medical literature as affecting organic performance.~~

~~(e) for the purpose of determining whether a person will be considered to be a handicapped person, the department shall consider at least the following disorders to constitute orthopedic disorders.~~

~~(i) disfigurement,~~
~~(ii) anatomical loss,~~
~~(iii) skeletal/muscular dysfunction and impairment,~~
~~(iv) other diagnosable dysfunctions recognized in medical literature, as affecting orthopedic performance.~~

~~(6) For the purpose of determining whether a person will be considered to have a mental impairment the department of public health and human services shall apply the following definition, as provided in 39-30-103, MCA:~~

~~(a) mental impairment means "suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals, or~~

~~(b) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.~~

~~(c) (4) As provided in 39-30-103, MCA, "The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge."~~

~~(7) Handicapped certification for employment preference shall not be denied merely because of a person's current or former employment.~~

~~(8) (5) The department of social and rehabilitation public health and human services will establish a process and standards for certifying handicapped persons with disabilities for employment preference. The process shall include, but is not limited to:~~

(a) a determination established by a professional medical diagnosis that the person has a physical or mental impairment as defined by these rules; and

(b) a determination that the physical or mental impairment substantially limits one or more major life activities and as a consequence of the handicap disability, the person's ability to obtain, retain, or advance in employment opportunities have been or may be is substantially limited; or

(c) Remains the same.

(d) a determination that the disabled person with a disability is totally disabled, and that he is unable to use his the preference because of the disability and therefore his the person's spouse is eligible for preference.

~~(9) Each determination will rely on the professional judgment of the counselor and medical consultant designated by the department of social and rehabilitation services to make the determination.~~

~~(10)(6)~~ Each determination will be provided in writing in a standard form as established by the department of social and rehabilitation public health and human services. The written notice shall include a statement regarding the duration of the certification. The written notice shall be provided to the handicapped person with a disability within 30 days of the receipt of all information necessary to make the certification decision.

(11) Remains the same and is renumbered (7).

~~(12)(8)~~ The person requesting certification by the department of social and rehabilitation public health and human services is responsible for providing all information necessary to document his the claim to be certified for employment preference. All costs of obtaining the necessary information, including medical evidence to substantiate his the claim, are the responsibility of the person requesting the certification.

~~(13)(9) Where a handicapped person has been determined to have a disability so severe that he is unable to use his preference and therefore his spouse is eligible to use his preference, the written notice of certification for an eligible spouse should must clearly state the preference-eligible person is an eligible spouse and that the certification is valid for not more than 1 year.~~

~~(14)(10)~~ The department of social and rehabilitation public health and human services shall insure ensure the confidentiality of information gathered when making employment preference determination in accordance with federal and state law and as provided in ARM 2.21.1424.

~~(15)(11)~~ Any handicapped person with a disability, as provided in 39-30-103, MCA, who is dissatisfied with the department of social and rehabilitation public health and human services' certification decision regarding eligibility for employment preference, shall be advised of his the right to file a request for an administrative review of that action and right to a fair hearing if he is dissatisfied with the outcome of the administrative review. The administrative review shall be conducted by the administrator of vocational rehabilitative

services division or a designee. The fair hearing shall be conducted in accordance with the fair hearing rules of the department of ~~social and rehabilitation public health and human~~ services as provided for in ARM 46.2.201 et seq.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1428 HIRING DECISIONS (1) As provided in 39-30-206, MCA, "If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference." ~~The notice shall include whether the position was obtained as the result of application of preference by the public employer.~~

(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) Public employers who maintain active application files or conduct continuous recruitment must give written notice to each person claiming preference 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.

(4) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1429 INTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

(1) As provided in 39-30-207, MCA, "an applicant who believes he has not been accorded his rights under [the Handicapped Persons¹ with Disabilities Employment Preference Act, 39-30-101, et seq., MCA], may, within 30 days of receipt of the notice of the hiring decision, submit to the public employer a written request for an explanation of the public employer's hiring decision."

(2) - (a) Remain the same.

(b) ~~that~~ the applicant is requesting an explanation from the hiring authority regarding the hiring decision; and

(c) Remains the same.

(3) As provided in 39-30-207, 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~~ shall safeguard the confidentiality of information ~~he the employer~~ has considered in accordance with state and federal law and as provided in ARM 2.21.1424.

(4) Remains the same.

(Auth. 39-30-106, MCA; Imp. 39-30-101 et seq., MCA)

2.21.1432 CONFLICT WITH FEDERAL LAW (1) Remains the same.

(2) An agency ~~which that~~ believes such a conflict exists shall submit the position and documentation of the laws or regulations in conflict for review by the State Personnel

Division, Department of Administration, ~~Mitchell Building~~ P.O. Box 200127, Helena, Montana 59620-0127. The division shall determine if the position is excluded from application of the preference.

(Auth. 39-30-106, MCA, Imp. 39-30-108, MCA)

3. Amendment of ARM 2.21.1412 through 2.21.1414, 2.21.1422 through 2.21.1425, 2.21.1427 through 2.21.1429, and 2.21.1432 is necessary because of changes made in House Bills No. 53 and No. 172 of the 55th Legislature. The terms "handicapped" and "handicapped person" have been replaced with the terms "person who is disabled" and "person with a disability" in HB 53. References to positions have been changed to references to employment, the length of temporary employment has been extended to 12 months, and a new category of short-term worker has been added in HB 172. Minor editing changes are proposed to conform to the administrative rule style recommended by the Office of the Secretary of State. In addition, ARM 2.21.1417, 2.21.1418, and 2.21.1421 have been proposed for repeal and the substance of those rules integrated into ARM 2.21.1414 and 2.21.1422. These changes provide a better organizational structure for the rules and continue State Personnel Division's efforts to reduce the number of rules required to administer the law.

ARM 2.21.1428(1) is amended in order to make the requirement for written notice of a hiring decision consistent with veterans' employment preference, 39-29-101, MCA. ARM 2.21.1424(7)(b) and ARM 2.21.1427(13) are amended to remove the requirement of annual certification of the marital relationship for spouses of persons with disabilities. This is proposed in order to streamline this process. The list of qualifying conditions in ARM 2.21.1427(5) was deleted. The list did not and could not list every possible disabling condition and therefore was confusing and cumbersome in the rule. The Department of Public Health and Human Services makes determinations of eligibility on a case by case basis.

4. The State Personnel Division maintains an interested persons list and sends copies of proposed rule notices to everyone on the list. Anyone wishing to be placed on the list may contact the State Personnel Division at (406)444-3871 and ask to be placed on the interested persons list for proposed rule changes.

5. 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, P.O. Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than November 18, 1997.

6. Anne Massey-Bauer, address given in paragraph 5 above,
MAR Notice No. 2-2-279 20-10/20/97

has been designated to preside over and conduct the hearing.

7. 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 5 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 October 6, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
adoption of new rules	)	ON PROPOSED ADOPTION OF
related to payroll	)	NEW RULES RELATED TO
administration and repeal	)	PAYROLL ADMINISTRATION
of ARM 2.21.3001 through	)	AND REPEAL OF ARM
2.21.3006 related to	)	2.21.3001 THROUGH
decendent's warrants	)	2.21.3006 RELATED TO
	)	DECEDENT'S WARRANTS

TO: All Interested Persons.

1. On November 12, 1997, a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the adoption of proposed rules I through VI related to payroll administration and repeal of ARM 2.21.3001 through 2.21.3006 related to decedent's warrants.

2. The rules to be repealed are on pages 2-997 through 2-999 of the Administrative Rules of Montana.
(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. The proposed new rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the state central payroll policy.
(Auth. 2-18-401, MCA; Imp. 2-18-401 et seq., MCA)

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

(1) "Assignee" means the financial institution or non-profit organization that receives the assigned portion of the employee's wages.

(2) "Assignor" means the state employee who assigns a portion of the employee's wages to a financial institution or a non-profit organization.

(3) "Central payroll" means the work unit located in the department of administration that is responsible for final payroll processing.

(4) "Financial institution" means any commercial bank, savings and loan association, or credit union.

(5) "Insurance" means the products offered by insurance companies authorized to conduct business in this state and that have been approved by the insurance commissioner pursuant to the applicable provisions of the laws governing the filing of insurance rates and forms.

(6) "Investment programs" mean annuities, bonds, retirement programs, and other legitimate investment opportunities.

(7) "Mandatory payroll deduction" means a deduction that

is withheld from the employee's pay as required by law, a court, a collective bargaining agreement, or any other legal instrument.

(8) "Non-profit organization" means any charitable, educational or scientific organization which qualifies under federal tax law as an organization able to receive tax deductible contributions.

(9) "Voluntary payroll deduction" means an automatic deduction requested by a state employee to be withheld from the employee's state payroll warrant which is not otherwise provided for by federal or state law, rule, regulation, or collective bargaining agreement.

(Auth. 2-18-401, MCA; Imp. 2-18-401 et seq., MCA)

RULE III TIME AND TRAVEL EXPENSE REPORTING (1) An employee shall submit time records after the close of each bi-weekly pay period and in the manner prescribed by the employing agency.

(2) An employee shall submit claims for reimbursement of travel expenses in the manner and within time lines prescribed by the agency, but no later than 3 months after incurring the expense. The employee shall attach all necessary receipts and documentation to the claim. In accordance with Montana Operations Manual volume I policy 1-0370.30, an employee who fails to turn in travel claims within 3 months of incurring the expense waives the right to reimbursement.

(3) If an employee fails to submit a time record as required in this rule, the employee's supervisor shall submit a time record based on the supervisor's knowledge of hours worked, including overtime or compensatory time, and leave used. The employee is responsible for documenting and notifying the agency of any necessary corrections after the fact.

(4) If an employee fails to submit time records and travel claims as provided in this rule, the employee is subject to disciplinary action as provided in the discipline handling policy, ARM 2.21.6505 et seq.

(Auth. 2-18-401, MCA; Imp. 2-18-405, MCA)

RULE IV FINAL PAY WARRANT FOR EMPLOYEES TERMINATED FOR CAUSE OR LAID OFF (1) Pursuant to 39-3-205, MCA, when an employee is terminated for cause or laid off, the employing agency may pay the employee's final wages on the next regularly occurring pay day for the pay period that includes the last day the employee worked.

(2) In accordance with 39-3-205, MCA, if an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the agency may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft.

(Auth. 2-18-401, MCA; Imp. 2-18-405 and 39-3-205, MCA)

RULE V DECEDENT'S WARRANT (1) A decedent's warrant is a legally binding document which permits a state employee to designate a person to receive the employee's pay, benefits, and/or travel allowances due at the time of the employee's

death. Anyone, including a minor, may be designated as the person to receive a decedent's warrant.

(2) Warrants for money due the employee or the estate will be reissued in the name of the designated person and will be delivered to that person without recourse to estate administration procedures if the properly completed form is on file with the employing agency at the time of the employee's death.

(3) Only one warrant will be issued by the department of administration as a replacement for each warrant the decedent would have received.

(4) The "designation of person authorized to receive decedent's warrants" form is required. Instructions are printed on the form and must be reviewed for accuracy by the employing agency.

(5) An employee may change a designation at any time by filing a new designation form. Upon termination and after all salary, benefits, and travel warrants made payable to the employee have been delivered to the employee and paid, the designation must be automatically canceled and filed in the employee's personnel file.

(6) Upon the death of an employee, the employing agency completes the information on the designation form (employee's name, date of death, and signature of certifying officer). If the employee has completed an older form that does not have this information printed on the side, this information must be typed on the right-hand margin. The employing agency keeps the original of the designation form on file at all times. Two photocopies of the designation form must be sent to the department of administration with each unnegotiated warrant. The designation form and unnegotiated warrants may not be sent to central payroll.

(7) When an employee paid through electronic fund transfer dies, the last regularly occurring pay warrant will be electronically deposited into the employee's checking or savings account. The final remittance for any unpaid wages, benefits and/or travel claims will be generated as a warrant and delivered to the designee.

(8) Applicable warrants are to be identified by number, date, and amount on the reverse side of the original designation. After all warrants have been delivered to the designee, the designation must be canceled and filed.

(9) Warrants must be delivered to a designee by the department of administration and accompanied by a photocopy of the designation on file.

(10) Neither refund of retirement contributions nor payment of death benefits is covered by the designation of decedent's warrant.

(Auth. 2-18-401, MCA; Imp. 2-18-412, MCA)

RULE VI VOLUNTARY PAYROLL DEDUCTIONS (1) Central payroll may establish the following types of voluntary payroll deductions for:

(a) purchasing insurance;

(b) depositing money into a financial institution or

investment program;

(c) contributing to a non-profit organization through the state employees' combined giving campaign; and

(d) transferring funds to any organization when the department of administration determines that allowing the deduction is in the best interests of the state.

(2) All requests for voluntary payroll deductions must be submitted in writing to central payroll and signed by the authorized representative of the firm or organization. The following information must be provided:

(a) the purpose of the deduction;

(b) an agreement not to solicit state employees during normal working hours unless a permit has been granted by the department of administration, general services division;

(c) an agreement to remit, upon telephone notice by central payroll, any corrected balance due the state of Montana by placing a check in the mail within 24 hours;

(d) forms for voluntary payroll deduction for approval by central payroll; and

(e) the name, address, and telephone number of the responsible contact person representing the firm or organization.

(3) Any firm or organization requesting approval of a voluntary deduction must present a minimum of 50 state employees' signatures on a petition in support of the request.

(4) In reviewing applications for payroll deduction, central payroll investigates:

(a) compliance with all federal and state regulatory requirements;

(b) to ensure that applicants have no on-going consumer investigations; and

(c) any other relevant factors.

(5) When a voluntary deduction is approved, an employee shall request the deduction by contacting the employing agency's payroll section.

(6) Central payroll may revoke approval for a voluntary payroll deduction if:

(a) the number of state employees authorizing the voluntary payroll deduction falls below 50. Central payroll must send immediate notice to the authorized representative for the voluntary payroll deduction that the deduction has fallen below the minimum requirement and that the firm or organization has 30 days to meet the requirement;

(b) the organization or the organization's agents solicit state employees during normal working hours without proper authorization or solicit state employees by implying that the organization's product is approved, authorized or in any way supported by the state; or

(c) the organization fails to comply with any of the requirements in this rule.

(7) When the approval of a payroll deduction has been revoked, central payroll must send immediate notice by certified mail to the contact person responsible for the payroll deduction and by state mail or regular mail to all state agencies.

(8) Thirty days after notice of the revocation of approval of a voluntary payroll deduction is sent to all state agencies, central payroll must remove the payroll deduction from the central payroll system.

(9) The department of administration may establish and/or maintain a voluntary payroll deduction when less than 50 employees request the deduction, if allowing the deduction is in the best interest of the state.

(Auth. 2-18-401, MCA; Imp. 2-18-401 et seq., MCA)

4. Rules I through VI are necessary to establish payroll rules in compliance with 2-18-401, MCA.

Rule III is necessary to create a specific requirement that state employees are responsible for submitting accurate and timely time and travel records. Agencies have requested rule making to explicitly require employees to submit time records in order to comply with 2-18-405, MCA.

Rule IV is necessary to comply with 39-3-205, MCA, which now allows employers to pay an employee terminated for cause on the next regular payday.

Rules related to decedent's warrants were previously found at ARM 2.21.3001 through 2.21.3006 and are proposed for repeal. Requirements for decedent's warrants are incorporated into the payroll rules.

Rules V and VI are necessary to provide written guidance for agency payroll personnel, financial institutions, and state employees concerning payroll deductions.

5. The State Personnel Division maintains an interested persons list and sends copies of proposed rule notices to everyone on the list. Anyone wishing to be placed on the list may contact State Personnel Division at (406)444-3871 and ask to be placed on the interested persons list for proposed rule changes.

6. 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, P.O. Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than November 18, 1997.

7. Anne Massey-Bauer, address given in paragraph 6 above, has been designated to preside over and conduct the hearing.

8. 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 6 above, or telephone (406) 444-3982. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY: 
Dal Sallie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State October 6, 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
2.21.3704, 2.21.3708,	)	ARM 2.21.3704,
2.21.3715, 2.21.3718,	)	2.21.3708, 2.21.3715,
2.21.3719, 2.21.3723, and	)	2.21.3718, 2.21.3719,
2.21.3726 related to	)	2.21.3723, AND 2.21.3726
recruitment and selection	)	RELATED TO RECRUITMENT
	)	AND SELECTION

TO: All Interested Persons.

1. On November 12, 1997, a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.3704, 2.21.3708, 2.21.3715, 2.21.3718, 2.21.3719, 2.21.3723, and 2.21.3726 related to recruitment and selection.

2. The proposed amendments provide as follows:

2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT FOLLOWING LAY-OFF (1) - (b) Remain the same.

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

(d) - (4) Remain the same.

(a) This step is called internal to agency recruitment, which is limited to current agency employees and employees laid off from the agency. An agency may post a ~~vacant position~~ vacancy internally in compliance with agency policy or provision of a collective bargaining agreement. The agency shall notify employees laid off from the agency of internal ~~vacant positions~~ vacancies for 1 calendar year from the effective date of lay-off. Reemployment of a person who was terminated at the ~~expiration~~ and of seasonal employment is internal recruitment. If a selection is not made internally, the agency shall post the vacancy externally to the job registry program.

(b) This step is called job registry recruitment, ~~which and it~~ is limited to participants on the job registry. An agency shall post all permanent and temporary ~~vacant positions~~ vacancies, except positions exempt under ~~2-18-102 2-18-103~~ and 2-18-104, MCA, to the job registry before posting to the general public. Seasonal ~~positions are~~ employment is included at this step if the agency ~~will be employing~~ is hiring persons who were not employees terminated at the ~~expiration and~~ of the previous seasonal employment.

(c) This step is called simultaneous internal to agency and job registry recruitment. An agency may recruit ~~for a position~~ internally to the agency and to the job registry at the

same time, unless this conflicts with agency policy or provision of a collective bargaining agreement. Internal applicants and job registry participants shall be treated as one applicant pool. Both groups shall be given equal consideration, ~~however,~~ job registry participants do not receive additional preference. In order to break a tie between two candidates with substantially equal qualifications, the candidate with longer state government service shall be selected. If no one is selected at this step, an agency may post a ~~vacant position vacancy~~ externally to the general public.

(d) This step is called general public recruitment. An agency may post a ~~vacant position vacancy~~ externally to the general public if there are no qualified participants on the job registry or the agency does not hire a referred job registry participant for documented, job-related reasons. An employee who ~~does not elect not to participate on the job registry or whose eligibility to participate on the job registry has expired~~ and who subsequently applies as an external applicant for a ~~vacant position vacancy~~ is not entitled to any additional consideration or preference.

(5) Within 3 working days of receiving notice of a ~~vacant position vacancy~~, the job registry coordinator shall ~~contact~~ advise the agency personnel officer with ~~of~~ one of the following ~~options possible outcomes~~:

(a) - (b) Remain the same.

(c) ~~The coordinator will need~~ Additional time, up to 7 working days, ~~is required~~ to review placement files for possible qualified participants.

(6) An agency shall determine if the referred participants are qualified. An agency may hire with or without a competitive selection process for participants who are referred from the job registry. An agency may use its usual selection procedures, such as supplemental questions, structured interview, performance test, or reference checks for participants. Because recruitment from the job registry program is not a solicitation for applications from the general public, veterans', ~~handicapped persons~~ with disabilities and Indian employment preferences do not apply.

(7) The agency shall hire one of the participants unless ~~the selection procedures define the no participant as not is qualified or there is a bona fide occupational qualification that the participant does not meet.~~

(8) If ~~2 two~~ or more participants listed on the job registry are equally qualified for a vacant position, the agency shall select the participant with the longest continuous state government service.

(9) Remains the same.

(10) An agency should notify all ~~qualified~~ participants determined qualified by the agency if a job registry participant is selected or if ~~an the~~ agency is going to recruit externally to the general public.

(11) Remains the same.

(12) ~~An employee may remain on the job registry until employment at a grade equal to or higher than the position from~~

~~which the employee was laid off is secured.~~ The job registry coordinator will ask participants ~~on the job registry~~ to update materials annually. ~~Participation on the registry will be suspended if an employee fails to contact the coordinator within 30 days of the request. Participation may be reactivated by contacting the coordinator.~~

(13) An employee's participation on the job registry ends when:

(a) the employee secures employment at a grade equal to or higher than the position from which the employee was laid off. Acceptance of permanent employment at a lower grade or acceptance of seasonal, temporary or short-term employment does not end an employee's right to continue participation on the job registry;

(b) an employee refuses a reinstatement offer, as provided in ARM 2.21.5007. An agency shall notify the job registry coordinator when a reinstatement offer is refused; or

(c) ~~when an employee withdraws in writing from participation. Acceptance of a permanent position at a lower grade or acceptance of a seasonal or a temporary position does not end an employee's right to continue participation in the job registry. ; or~~

(d) two years have elapsed, either since the employee's effective date of lay-off or since the date of the employee's completion of job training provided under 2-18-1201 et seq., MCA, whichever is later.

(14) Remains the same.

(15) A laid-off employee who is ~~subsequently~~ reemployed in a ~~permanent position as a permanent employee while still participating on the job registry need~~ shall not serve the qualifying period for use of annual leave and sick leave. Leave which the employee has elected to bank transfers to the new position.

(16) Remains the same.

(17) An employee who is hired from the registry in a position at a grade lower than the one held at lay-off is treated as a voluntary demotion under pay plan rule 1812, demotions. Pay for an employee who is demoted as the result of a RIF, but who is not laid - off, is administered using pay plan rule 1812, demotions.

(18) In some cases, a demotion as a result of a RIF may be considered "exceptional circumstances" for purposes of a pay plan exception, as provided in pay plan rule 1828, individual pay plan exceptions ~~department of administration authorized.~~

(19) A termination caused by lay-off does not constitute a break in service for purposes of calculating longevity increment hours, unless the employee has refused to accept a reinstatement offer or the employee's eligibility to participate on the job registry has ended, pursuant to the State Employee Protection Act, 2-18-1201 et seq., MCA. On reemployment if the employee is ever reemployed, the employee's longevity increment hours are restored. Only actual years of employment count toward longevity.

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

49-3-201, MCA)

2.21.3708 EXTERNAL RECRUITMENT (1) External recruitment must be used if a selection is not made through internal recruitment, a training assignment, or job registry recruitment ~~as explained in ARM 2.21.3704~~. The vacancy announcement must be sent to the job service for each all permanent and seasonal ~~position employment~~ that is opened to external recruitment.

(2) Vacancy announcements for temporary ~~positions employment~~, as defined in 2-18-101, MCA, ~~or for permanent positions a department is filling on a temporary basis may~~ must be sent to the job service at the department's discretion unless the department decides, on a case-by-case basis, that the position must be filled immediately or other conditions exist that make it impractical to do so.

~~(3) When a department fills a permanent position on a temporary basis, vacancy announcements may should be sent to the job service at the department's discretion.~~

(4) Remains the same and renumbered (3).

~~(5) (4)~~ Vacancy announcements may be distributed to other recruitment sources, such as newspapers, the internet, Indian community colleges, placement organizations for women and/or persons with disabilities, in addition to the job service and other agencies in a manner consistent with department policy.

(6) - (7) Remain the same and renumbered (5) and (6).

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

2.21.3715 EQUAL EMPLOYMENT OPPORTUNITIES (1) Remains the same.

(2) As provided in 49-2-201, MCA, each department shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall must be made available to the general public. Records must be maintained for a period of time consistent with the employee record keeping policy, ARM 2.21.6605 et seq. ~~(also found at policy 3-0110, Montana operations manual, volume III)~~.

(3) Remains the same.

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

2.21.3718 JOB ANALYSIS (1) Remains the same.

(2) The minimum requirement for a job analysis is a description of the current position description duties of the job.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

2.21.3719 DEVELOPMENT OF SELECTION PROCEDURES (1) Remains the same.

(2) Selection procedures must be developed by persons familiar with the position (job experts) in advance of any review of applicant qualifications.

~~(3) Selection procedures shall be developed in advance of any review of applicant qualifications.~~

(4) - (5) Remain the same and renumbered (3) - (4).

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

2.21.3723 INTENTIONAL MISREPRESENTATION (1) ~~Where~~ When an applicant has made intentional misrepresentation during the application recruitment and selection process, the applicant may be excluded from further employment consideration for the position or may be removed from appointment.

(2) Applicants shall be notified that willful misstatements ~~or of~~ qualifications may ~~be~~ exclude them from further consideration for the position or lead to removal from appointment employment.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

2.21.3726 DOCUMENTATION (1) The following materials must be included in the documentation for each selection:

(a) a description of the current duties of the job the position description;

(b) - (i) Remain the same.

(2) It is recommended that the items mentioned listed in ~~(1)(a)~~ ~~(i) above this rule~~ be maintained for 3 years ~~in the department offices~~ in case of litigation. The materials must be retained for at least 2 years after last use.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

3. Amendment to these rules is necessary because of changes made by bills passed by the 55th Legislature. Amendment of ARM 2.21.3704 is necessary because of changes made in House Bill No. 567. That bill put a two-year time limit on participation on the job registry. Therefore, language stating that an employee may stay on the registry until finding similar employment has been removed. References to a handicapped person have been replaced with person with a disability in accordance with House Bill No. 53. Changes are further proposed to reflect House Bill No. 172. The definitions of permanent, seasonal and temporary positions have been removed and replaced with definitions of permanent, seasonal and temporary employee. The definition of permanent status has also been changed.

Amendment of ARM 2.21.3708 is proposed to encourage agencies to post all vacancies for statewide consistency.

Amendment of ARM 2.21.3718 and 2.21.3726 is proposed to allow for new models of job analysis and job description currently under revision through the competency-based pay project administered by the State Personnel Division, Department of Administration.

Minor editing changes are proposed to ARM 2.21.3704, 2.21.3708, 2.21.3715, 2.21.3718, 2.21.3719, 2.21.3723, and 2.21.3726 to conform to the administrative rule style recommended by the Office of the Secretary of State.

4. The State Personnel Division maintains an interested persons list and sends copies of proposed rule notices to everyone on the list. Anyone wishing to be placed on the list may contact State Personnel Division at (406)444-3871 and ask to be placed on the interested persons list for proposed rule changes.

5. 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, P.O. Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to amasseybauer@mt.gov. All responses must be received no later than November 18, 1997.

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

7. 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 5 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 October 6, 1997.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
change of implementing) AMENDMENT
statutes for ARM 4.13.1004)
through 4.13.1007)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 21, 1997, the Department of Agriculture proposes to change the implementing statutes for rules ARM 4.13.1004 through 4.13.1007, to conform to the 1997 legislative change to the implementing statutes.

2. The purpose of this notice is to amend the history note of each rule to reflect the new statute the rules now implement. The original statute was repealed in the 1997 legislative session but the operative part of the statute remains and was placed under a new statutory section as will be indicated below.

4.13.1004 BARLEY PROTEIN (1) - (2) Remain the same.

AUTH: 80-4-709, MCA

IMP: 80-4-704, 80-4-709 and 80-4-710, MCA

4.13.1005 MALTING BARLEY GERMINATION (1) - (2) Remain the same.

AUTH: 80-4-709, MCA

IMP: 80-4-704, 80-4-709 and 80-4-710, MCA

4.13.1006 CHIT (1) - (2) Remain the same.

AUTH: 80-4-709, MCA

IMP: 80-4-704, 80-4-709 and 80-4-710, MCA

4.13.1007 STARCH STRENGTH (1) - (2) Remain the same.

AUTH: 80-4-709, MCA

IMP: 80-4-704, 80-4-709 and 80-4-710, MCA

3. Interested persons may present their data, views, or arguments concerning the proposed amendment in writing to Will Kissinger, Montana Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than November 18, 1997.

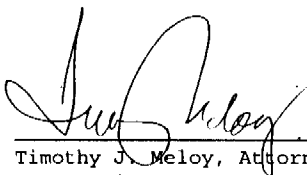
4. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Will Kissinger, Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than November 18, 1997.

5. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from any 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 and mailed to all interested persons. Ten percent of these persons directly affected has been determined to be 1450 persons based on 14,500 Montana farmers who raise wheat and barley.

6. As required by HB 389, 1997 Montana legislative session, this notice advises that the department maintains an interested person list for purposes of providing notice on rule making matters. Any person wishing to be on that list must provide to the department, in writing, their name, mailing address and a brief description of the subject matter in which they are interested.



Ralph Peck, Director
DEPARTMENT OF AGRICULTURE



Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State this 6th Day of October 1997.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
repeal of ARM 4.12.3801 and	)	REPEAL
4.12.3802 regarding grading)	
standards for mustard seed)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 21, 1997, the Department of Agriculture proposes to repeal ARM 4.12.3801 and 4.12.3802 relating to the grading standards for mustard seed.

2. Rules proposed to be repealed are as follows:

4.12.3801 STANDARD CLASSES OF MUSTARD SEED, the rule proposed to be repealed, can be found on page 4-539 of the Administrative Rules of Montana.

AUTH: 80-4-704, MCA

IMP: 80-4-704, MCA

4.12.3802 DEFINITIONS AND SPECIFICATIONS, the rule proposed to be repealed, can be found on page 4-539 and page 4-540 of the Administrative Rules of Montana.

AUTH: 80-4-704, MCA

IMP: 80-4-704, MCA

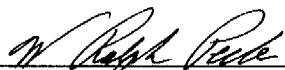
REASON: The statutes under which these rules were originally adopted, 80-4-301, 80-4-302 and 80-4-307, MCA, were repealed in the 1997 legislative session and effective October 21, 1997 the department will have adopted new rules to replace these rules proposed for repeal.

3. Interested persons may submit their written data, views, or arguments concerning the proposed action(s) to Will Kissinger, Administrator, Agricultural Development Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201, Phone (406) 444-2402, FAX (406) 444-5409, or E-Mail: AGR@MT.GOV, no later than November 18, 1997.

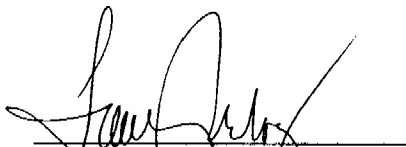
4. If a party who is directly affected by the proposed action(s) wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Will Kissinger, Administrator, Agricultural Development Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201, Phone (406) 444-2402, FAX (406) 444-5409, or E-Mail: AGR@MT.GOV no later than November 18, 1997.

5. If the department receives requests for a public hearing on the proposed action(s) from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action(s); 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 approximately 30 persons based on an estimate of the number of mustard seed growers and buyers in the Mustard Seed Trade.

6. As required by HB 389, 1997 Montana legislative session, this notice advises that the department maintains an interested person list for purposes of providing notice on rule making matters. Any person wishing to be on that list must provide to the department, in writing, their name, mailing address and a brief description of the subject matter in which they are interested.



Ralph Peck, Director
DEPARTMENT OF AGRICULTURE



Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State this 5th Day of October 1997.

BEFORE THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of rules pertaining	)	THE ADOPTION OF NEW RULES
to annual fees, examinations,	)	PERTAINING TO ANNUAL FEES,
and reports by the Foreign	)	EXAMINATIONS AND REPORTS BY
Capital Depositories	)	FOREIGN CAPITAL DEPOSITORIES

TO: All Interested Persons;

1. On September 8, 1997, the Division of Banking and Financial Institutions published a notice of public hearing on the proposed adoption of rules pertaining to foreign capital depositories at page 1534, 1997 Montana Administrative Register, Issue No. 17. The public hearing was held on October 7, 1997, in Helena, Montana. Comments were received from the Administrative Code Committee indicating concerns with the publication of the rules. The staff of the Administrative Code Committee advised the department that the rules were published under the division but should have been published under the State Banking Board and the division. After consultation with the staff of the Administrative Code Committee it was determined that the division would still hold a hearing as originally proposed on October 7, 1997. The staff of the Administrative Code Committee agreed that the division and board would republish the rules under the proper authority as new proposals, following the requirements of MAPA.

2. On November 18, 1997, at 10:30 a.m., a public hearing will be held in the Upstairs Conference Room, Department of Commerce, 1424 9th Avenue, Helena, Montana, to consider the adoption of rules pertaining to the foreign capital depositories.

3. The proposed new rules will read as follows:

"I. AUTHORITY, PURPOSE AND SCOPE: DEFINITIONS (1) This sub-chapter prescribes the regulations of the commissioner of banking and financial institutions and the department of commerce, issued pursuant to the Montana Foreign Capital Depository Act.

(2) For purposes of sub-chapter 8, the following definitions apply:

(a) "Act" means the Montana Foreign Capital Depository Act, 32-8-101, et seq., MCA.

(b) "Board" means the state banking board provided for in 2-15-1803, MCA.

(c) "Capital" means currency that is convertible to United States dollars or personal property, including tangible personal property.

(d) "Cash" or "funds" means currency, cashier's checks, money orders and other monetary instruments as defined in the

Bank Secrecy Act (Public Law 91-508, October 1970). A copy of Public Law 91-508 may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546. The Bank Secrecy Act (Public Law 91-508) is hereby adopted and incorporated by reference. Neither "cash" nor "funds" includes precious metals or other tangible personal property that may be held by a foreign capital depository.

(e) "Charter" means a certificate issued by the board through the commissioner to a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign capital depository.

(f) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211, MCA.

(g) "Controlling person" means any person who directly or indirectly or acting through or in concert with one or more persons holds 5% or more of the equity in a foreign capital depository or who is otherwise determined by the board to exercise controlling authority over decisions affecting the management and operation of a foreign capital depository.

(h) "Customer" means a person who is using or has used the services of a foreign capital depository or for whom a foreign capital depository has acted as a fiduciary.

(i) "Department" means the department of commerce established in 2-15-1801, MCA. The "division of banking and financial institutions" is part of the department.

(j) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

(k) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana and chartered by the board to conduct business as a foreign capital depository in accordance with the act and solely at and using locations within the state of Montana.

(l) "Incorporators" means the persons who act as the original corporate organizers of a foreign capital depository pursuant to 35-1-215, MCA.

(m) "Money laundering" is the process through which the existence, illegal source, true ownership or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear legitimate, thereby helping to evade detection, prosecution, seizure or taxation; or the use of such proceeds to conduct a financial transaction prescribed by 18 U.S.C. section 1956.

(n) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

(o) "Person" means an individual, partnership, corporation, limited liability company, association, trust or other legal entity."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-107, 32-8-301,

32-8-302, 32-8-308, MCA

REASON: The statement of intent to the act authorizes the

department "to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a depository." Section 32-8-107, MCA, authorizes the department to adopt rules to implement section 32-8-301, MCA, "Regulation and supervision of a foreign capital depository," section 32-8-302, MCA, "Costs of regulation of a foreign capital depository," and section 32-8-308, MCA, "Reports -- contents and restrictions."

In rule 1, the department sets forth the definitions which will be necessary for charter applicants to know in order to be fully informed of the requirements of the act and regulations for eligibility and application to be a depository. The regulations faithfully follow the statutory definitions except where some definitions have been amplified in order to clarify the scope of the regulations for the benefit of charter applicants and others. These amplifications are as follows:

Reference to the division of banking and financial institutions is included in the definition of the department in rule 1(2)(i) because, under Montana law, the division is within the department and the commissioner exercises supervision and control over the activities and employees of the division as part of his duties. See section 32-1-211, MCA.

The act directs the board in section 32-8-103(7), MCA, to identify an individual "who is otherwise determined by the board to exercise controlling authority." The definition of "controlling person" in rule 1(2)(g) amplifies the statutory definition of controlling person to give notice that the board will exercise its authority to consider a controlling person to include anyone who directly or indirectly, or acting in concert with another, holds 5% or more of the equity in a depository.

The act broadly prescribes that "it is the intent of the legislature to protect both state and national interests by promoting legal and technical standards and procedures to deter, prevent and detect money laundering and other types of financial crimes." Section 32-8-102(8), MCA. The act's mandate to deter money laundering is implemented by supplementing the statutory definition of money laundering to inform applicants and others that the legal definition of money laundering includes use of illicitly derived funds to conduct a financial transaction, whether or not existence, illegal source, true ownership or unlawful application of illicitly acquired funds is concealed or disguised.

"Incorporators" is defined because section 32-8-201(1)(b), MCA, of the act requires applicants to "make and file articles of incorporation in accordance with section 32-1-301, MCA," which under Montana law, is a function performed by incorporators.

"II. ANNUAL REGULATION FEES (1) A foreign capital depository shall pay to the department an annual supervision and examination fee. Such fee shall be commensurate with the costs incurred by the department in conducting such examination

but not less than \$500 per examination, including \$200 per day for each examiner engaged in examination of the depository, the actual cost of travel expenses in the event that travel outside of the state of Montana is deemed necessary and a reasonable amount to cover the actual costs of counsel and other department resources. The \$500 minimum charge may be waived by the department when such charge clearly exceeds the hours spent on an examination. The amount of such fee shall be determined by the department and the fee assessed on or before December 31 of each year.

(2) The fees described in this rule shall be due on or before every 30th day of January after the first grant of a charter, and when collected, deposited by the department in the account established pursuant to 32-8-306, MCA, for use of the department in its regulatory function."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-302, MCA

REASON: Section 32-8-107, MCA, of the act authorizes the department to adopt rules implementing section 32-8-302, MCA, which requires the department to provide for an annual fee that is commensurate with the cost of conducting examinations of a depository. The rule explains the manner in which the cost is incurred by the examination responsibility.

"III EXAMINATIONS (1) The department shall examine a foreign capital depository at least once each year and may examine or investigate a foreign capital depository more frequently at any time it deems such action necessary or desirable, except as otherwise provided in 32-8-303, MCA, which allows federal reserve system examinations to be substituted for the department's examination.

(2) At least once annually the examination shall consist of a comprehensive review of the records, operations and affairs of the foreign capital depository, which review shall include inquiry into:

(a) whether the depository is operating in a safe and sound manner;

(b) the accounting and financial record keeping practices of the depository;

(c) the continued accuracy of each representation contained in the application for a charter, and whether:

(i) there have been material changes in the financial condition of any director, executive officer or controlling person of the foreign capital depository;

(ii) any person not previously constituting a controlling person has become a controlling person of the foreign capital depository; or

(iii) there has been a material change in the ownership of any controlling interests.

(d) compliance with reporting and record keeping requirements pursuant to 32-8-309, 32-8-315 and 32-8-503, MCA, the Bank Secrecy Act, the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended), and the

Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended) and relevant implementing regulations. The Bank Secrecy Act, the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended), and the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended) and the relevant implementing regulations are hereby adopted and incorporated by reference. A copy of the federal law may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546. The department shall evaluate whether the depository's program for compliance satisfies the criteria set forth in [rule V];

(e) the depository's diligence in ascertaining the true identity of its customers (including, without limitation, such customers' citizenship and residency), the legitimacy of the customers' business and the lack of criminal record of such customers (and, in the case of corporations, controlling persons of such corporations);

(f) the implementation of the depository's know-your-customer policy in satisfaction of the criteria set forth in [rule IV];

(g) implementation of the privacy requirements of 32-8-501 through 32-8-524, MCA, including whether a comprehensive system of controls has been implemented, extended and communicated throughout the organization and whether there have been any events of noncompliance with such sections;

(h) with respect to precious metals accounts, compliance with applicable legal requirements, including the limitations contained in 32-8-403 and 32-8-404, MCA;

(i) implementation of an effective security program, similar to the security program prescribed at 12 C.F.R. section 326.3 (May 1991). The federal law 12 C.F.R. section 326.3 is hereby adopted and incorporated by reference. A copy of the federal law may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546; and

(j) any other matter concerning the operation, management, soundness and integrity of the foreign capital depository deemed relevant by the department.

(3) Employees of the department shall not divulge any information or prior notice, directly or indirectly, to any officer, director, agent, representative or employee of the depository concerning the time or date of examination of the depository except in accordance with internal policy prescribed by the department."

Auth: Sec. 32-8-107, 32-8-205, 32-8-301, MCA; IMP, Sec. 32-8-303, MCA

REASON: Section 32-8-107, MCA, of the act authorizes the department to adopt rules pursuant to section 32-8-205, MCA, regarding "Regulation and supervision -- rules." The rule sets forth the information that will be reviewed by the examiner. The review of the foreign capital depository is consistent with

the examination of banks chartered by the state of Montana. The rules take into account the unique nature of a foreign capital depository and the change in control of the institution. An examination of federal laws is encompassed in the examination.

"IV CRITERIA FOR KNOW-YOUR-CUSTOMER POLICY (1) A depository's know-your-customer policy shall conform to the substance of the know-your-customer regulations, if any, issued by the federal reserve, or, in the absence of such regulations, such policy shall make adequate provision for:

(a) identifying and verifying the true identity of customers, their sources of funds and backgrounds. Such description shall include the name and address of the international private investigative service proposed to be used by the foreign capital depository in performing background checks on prospective depositors;

(b) developing a profile of the customer's anticipated transactions and determining whether the customer is a suitable client for the foreign capital depository;

(c) monitoring customers' depository activities to determine whether they are consistent with initial profiles and documenting any depository activity varying from such initial profiles;

(d) complying with the reporting and other requirements of the Bank Secrecy Act, the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended) and Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended); and

(e) implementing a program for internal audits to ensure that the know-your-customer system is functioning properly.

(2) Implementation of such policy shall be evaluated on the following bases:

(a) whether a comprehensive system of internal controls to assure ongoing compliance has been established and extended to employees throughout the organization;

(b) whether defined standards have been communicated throughout the organization;

(c) whether documented records of compliance that facilitate third-party review are maintained; and

(d) whether proper measures are taken in the event of failure to comply with the policy."

Auth: Sec. 32-8-107, 32-8-301, MCA; IMP, Sec. 32-8-301, MCA

REASON: Section 32-8-107, MCA, authorizes the department to adopt rules pursuant to section 32-8-301, MCA, "Regulation and supervision -- rules." This rule implements the know-your-customer regulations issued by the federal reserve. This assures that the institution has provided a policy to verify the true identity of customers, transactions and reporting requirements.

"V CRITERIA FOR ANTI-MONEY LAUNDERING COMPLIANCE

(1) A program for compliance with the Bank Secrecy Act,

the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended) and the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended) shall be evaluated on the basis of whether the depository has established and maintained procedures reasonably designed to assure and monitor its compliance with such law.

(2) A compliance program, shall, at a minimum:

(a) provide for a system of internal controls to assure ongoing compliance;

(b) provide for independent testing for compliance to be conducted by depository personnel or by an outside party;

(c) designate an individual responsible for coordinating and monitoring day-to-day compliance; and

(d) provide training for appropriate personnel."

Auth: Sec. 32-8-107, 32-8-301, MCA; IME, Sec. 32-8-301, 32-8-309, 32-8-314, 32-8-501, MCA

REASON: Section 32-8-107, MCA, of the act authorizes the department to adopt rules pursuant to section 32-8-301, MCA, which requires the department to meet its responsibility for prudential supervision of depositories. Section 32-8-309, MCA, requires a depository to comply with applicable provisions of the Federal Bank Secrecy Act, Money Laundering Control Act of 1986 and the Annunzio-Wylie Anti-Money Laundering Act. The procedures set forth in this rule encompass the basic requirements under federal law. Accordingly, the department has proposed rule V to implement these statutory requirements.

"VI QUARTERLY AND ANNUAL REPORTS (1) Within 30 days of the end of each calendar quarter ending March 31, June 30 and September 30, a foreign capital depository shall submit to the department a quarterly report, verified as required in 32-8-308, MCA, which shall include financial statements of the depository for and at the close of the just-concluded calendar quarter, including a balance sheet that reflects not only the assets and liabilities of the depository itself but all assets held for the benefit of, and accounts and liabilities in favor of, all customers, together with a report on operations for the just-completed quarter and the year-to-date period ending at the conclusion of the quarter, and such other information and in such format as the department may require in Form FCD-Q.

(2) A foreign capital depository shall submit to the department an annual report, in the form of Form FCD-K and verified as required in 32-8-308, MCA, containing the following information, within 60 days of the close of the calendar year:

(a) the information required by [rule v];

(b) financial statements of the depository for and at the close of the just-concluded calendar year, including a balance sheet that reflects not only the assets and liabilities of the depository itself but all assets held for the benefit of, and accounts and liabilities in favor of, all customers, and a statement of income and expenses for the calendar year prepared in accordance with generally accepted accounting principles, all certified by an independent certified public accountant;

(c) a description of how the depository's know-your-

customer policy and implementation thereof meet the criteria set forth in [rule IV];

(d) a description of its procedures for filing suspicious activity reports, and a description of its procedures for compliance with federal anti-money laundering law and how these procedures satisfy the criteria set forth in [rule V];

(e) a description of security measures designed to deter and prevent theft, fraud and corruption, demonstrating fulfillment of the minimum security procedures set forth at 12 C.F.R. section 326 (or its successor provision);

(f) a statement that all assets of the depository and the capital of its customers have been maintained within the state of Montana and at locations specified in the depository's charter application, as amended from time to time, for the identification of the types and locations of facilities used to maintain or hold the assets of depositors, with consent authorizations, in the form required by the department, from the owner and controlling party with respect to all facilities, submitting to such record keeping and audit requirements as the department may require;

(g) a description of the frequency and content of employee training programs regarding disclosure and other aspects of financial privacy;

(h) evidence that the foreign bank maintains a registered office and registered agent in the state in accordance with 35-1-1032, MCA; and

(i) such other information as may be required by Form FCD-K."

Auth: Sec. 32-8-107, 32-8-301, MCA; IMP, Sec. 32-8-308, MCA

REASON: Section 32-8-107, MCA, of the act authorizes the department to adopt rules pursuant to section 32-8-301(1)(e), MCA, which requires a depository to file an annual report. The requirements of the annual report will afford the division with financial information to assess the overall financial soundness and the depository's compliance with federal and state law mandates. By requiring that the foreign bank maintain a registered agent in the state of Montana provides for an entity to be served with any formal documentation. It also serves to inform the public of the name and address of the agent for the foreign bank.

"VII SUSPICIOUS ACTIVITY REPORTS (1) The department hereby adopts and incorporates by reference the regulations set forth at 12 C.F.R. section 208.20 (May 1991), which shall govern the circumstances under which a suspicious activity report is required to be filed with the financial crimes enforcement network of the United States department of the treasury and other matters concerning such reports as therein set forth. A copy of the federal law may be obtained from the Division of Banking and Financial Institutions, Department of

Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546.

(2) Within three business days of its filing of a report with the financial crimes enforcement network, a foreign capital depository shall furnish to the department a copy of any such report or notice.

(3) The department hereby adopts and incorporates by reference the form of suspicious activity report prescribed by the federal reserve board in accordance with 12 C.F.R. section 208.20(b)(3). A copy of the federal form may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546."

Auth: Sec. 32-8-107, 32-8-301, MCA; IMP, 32-8-301, 32-8-309, MCA

REASON: Section 32-8-107, MCA, of the act authorizes the department to adopt rules pursuant to section 32-8-301(1)(c), MCA, which requires the department to establish the form of suspicious activity reports and the conditions under which a suspicious activity report must be filed with the department. The information required under this rule is consistent with federal anti-money laundering law to deter and prevent theft, fraud and corruption and to require minimum security measures from the institution. Rule VII implements this statutory mandate.

"VIII OTHER REPORTS REQUIRED (1) The commissioner shall have the power from time-to-time to call for special reports from a depository when, in the judgment of the commissioner, such special reports are necessary or would be of substantial assistance to the commissioner in its prudent supervision of the depository. Such reports shall be in writing, verified as required in 32-8-308, MCA.

(2) A director, officer or controlling person of a depository shall furnish immediate notice to the commissioner upon learning that any application or report submitted by or in connection with a depository contains a material misstatement or fails to include a statement or fact necessary for the application or report not to be misleading.

(3) Upon the request of the commissioner, a depository shall furnish to the commissioner its records of any or all transfers or withdrawals of currency from the depository in an amount equal to or greater than \$10,000. Such records may be in a written or electronic format, and must contain the customer's name, last-known address and if the customer is an individual, his or her passport number.

(4) A foreign capital depository shall report to the department within five business days any change in the stock ownership by a controlling person that either:

(a) affects more than 20% of the total outstanding stock of the depository; or

(b) results in the acquisition or disposition of more than a 50% interest in the total outstanding stock of the

depository.

(5) Unless a specific timing requirement is imposed by statute or the regulations of the department, board or commissioner, reports required by the commissioner shall be filed within 30 days of receipt of a request of a report or within 30 days after the occurrence of the event which triggers the reporting requirement."

Auth: Sec. 32-8-107, 32-8-301, 32-8-308, MCA; IMP, 32-8-301, 32-8-308, 32-8-315, MCA

REASON: Section 32-8-107, MCA, of the act authorizes the department to adopt rules pursuant to section 32-8-308, MCA, which requires reports to the department in the manner and at the time required by the commissioner. The rule allows the commissioner the authority to request such financial information and reports to maintain the safety and soundness of the institution while assuring financial privacy to the customers. Rule VIII implements this statutory mandate.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, no later than 5:00 p.m., November 19, 1997.

5. The Division will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., November 12, 1997, to advise us of the nature of the accommodation that you need. Please contact Chris Olson, Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 444-2091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4186. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Chris Olson at the above-stated address.

6. Persons who wish to be informed of all Division of Banking and Financial Institutions administrative rulemaking hearings or other administrative hearings may be placed on a list of interested persons by advising the Division at the rulemaking hearing or in writing to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546.

7. Annie M. Bartos, Chief Counsel, will preside over and conduct the hearing.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 6, 1997.

BEFORE THE STATE BANKING BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of rules pertaining	)	THE ADOPTION OF NEW RULES
to application procedure for a	)	PERTAINING TO THE FOREIGN
charter, notice of hearing,	)	CAPITAL DEPOSITORIES
grounds for denial, procedural)	
rules for determination,)	
procedural rules for discovery)	
and hearing, application)	
charter fee for the Foreign)	
Capital Depositories)	

TO: All Interested Person:

1. On September 8, 1997, the Division of Banking and Financial Institutions published a notice of public hearing on the proposed adoption of rules pertaining to foreign capital depositories at page 1534, 1997 Montana Administrative Register, Issue No. 17. The public hearing was held on October 7, 1997, in Helena, Montana. Comments were received from the Administrative Code Committee indicating concerns with the publication of the rules. The staff of the Administrative Code Committee advised the department that the rules were published under the division but should have been published under the board and the division. After consultation with the staff of the Administrative Code Committee it was determined that the division would still hold a hearing as originally proposed on October 7, 1997. The staff of the Administrative Code Committee agreed that the division and board would republish the rules under the proper authority as new proposals, following the requirements of MAPA.

2. On November 18, 1997, at 11:00 a.m., a public hearing will be held in the Upstairs Conference Room, Department of Commerce, 1424 9th Avenue, Helena, Montana, to consider the adoption of rules pertaining to the foreign capital depositories.

3. The proposed new rules will read as follows:

"I. AUTHORITY, PURPOSE AND SCOPE; DEFINITIONS (1) This sub-chapter prescribes the regulations of the state banking board, issued pursuant to the Montana Foreign Capital Depository Act.

(2) For purposes of sub-chapter 8, the following definitions apply:

(a) "Act" means the Montana Foreign Capital Depository Act, 32-8-101, et seq., MCA.

(b) "Board" means the state banking board provided for in 2-15-1803, MCA.

(c) "Capital" means currency that is convertible to

United States dollars or personal property, including tangible personal property.

(d) "Cash" or "funds" means currency, cashier's checks, money orders and other monetary instruments as defined in the Bank Secrecy Act (Public Law 91-508, October 1970). A copy of Public Law 91-508 may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546. The Bank Secrecy Act (Public Law 91-508) is hereby adopted and incorporated by reference. Neither "cash" nor "funds" includes precious metals or other tangible personal property that may be held by a foreign capital depository.

(e) "Charter" means a certificate issued by the board through the commissioner to a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign capital depository.

(f) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211, MCA.

(g) "Controlling person" means any person who directly or indirectly or acting through or in concert with one or more persons holds 5% or more of the equity in a foreign capital depository or who is otherwise determined by the board to exercise controlling authority over decisions affecting the management and operation of a foreign capital depository.

(h) "Customer" means a person who is using or has used the services of a foreign capital depository or for whom a foreign capital depository has acted as a fiduciary.

(i) "Department" means the department of commerce established in 2-15-1801, MCA. The "division of banking and financial institutions" is part of the department.

(j) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

(k) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana and chartered by the board to conduct business as a foreign capital depository in accordance with the act and solely at and using locations within the state of Montana.

(l) "Incorporators" means the persons who act as the original corporate organizers of a foreign capital depository pursuant to 35-1-215, MCA.

(m) "Money laundering" is the process through which the existence, illegal source, true ownership or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear legitimate, thereby helping to evade detection, prosecution, seizure or taxation; or the use of such proceeds to conduct a financial transaction prescribed by 18 U.S.C. section 1956.

(n) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

(o) "Person" means an individual, partnership, corporation, limited liability company, association, trust or other legal entity."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-107, 32-8-201, 32-8-202, 32-8-203, and 32-8-205, MCA

REASON: The statement of intent to the act authorizes the board "to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a depository." Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-201, MCA, "Charter eligibility and application requirements," section 32-8-202, MCA, "Charter application -- grounds for denial," and section 32-8-205, MCA, "Application, charter, and renewal fee." Section 32-8-203, MCA, "Suspension, revocation, and restoration of charter," which is not referenced in section 32-8-107, MCA, provides that the board may suspend or revoke the charter of a depository.

In rule I, the board sets forth the definitions which will be necessary for charter applicants to know in order to be fully informed of the requirements of the act and regulations for eligibility and application to be a depository. The regulations faithfully follow the statutory definitions except where some definitions have been amplified in order to clarify the scope of the regulations for the benefit of charter applicants and others. These amplifications are as follows:

Reference to the division of banking and financial institutions is included in the definition of the department in rule I(2)(i) because, under Montana law, the division is within the department and the commissioner exercises supervision and control over the activities and employees of the division as part of his duties. See section 32-1-211, MCA.

The word "funds" has been added as an alternative to the statutory definition of "cash" in rule I(2)(d) to inform a charter applicant and others that both the act and regulations use the words "funds" and "cash" interchangeably.

The act directs the board in section 32-8-103(7), MCA, to identify an individual "who is otherwise determined by the board to exercise controlling authority." The definition of a "controlling person" in rule I(2)(g), amplifies the statutory definition of controlling person to give notice that the board will exercise its authority to consider a controlling person to include anyone who directly or indirectly, or acting in concert with another, holds 5% or more of the equity in a depository.

The act broadly prescribes that "it is the intent of the legislature to protect both state and national interests by promoting legal and technical standards and procedures to deter, prevent and detect money laundering and other types of financial crimes." Section 32-8-102(8), MCA. The act's mandate to deter money laundering is implemented by supplementing the statutory definition of money laundering to inform applicants and others that the legal definition of money laundering includes use of illicitly derived funds to conduct a financial transaction, whether or not in existence, illegal source, true ownership or unlawful application of illicitly acquired funds is concealed or disguised.

"Incorporators" is defined because section 32-8-201(1)(b), MCA, of the act requires applicants to "make and file articles

of incorporation in accordance with section 32-1-301, MCA," which under Montana law, is a function performed by incorporators.

"II APPLICATION PROCEDURE FOR A CHARTER (1) One or more individual incorporators desiring to organize a foreign capital depository shall file with the commissioner an application to the board for a charter for a foreign capital depository. The application shall be signed by each of the incorporators, sworn to before a notary, officer or other official recognized by the laws of this state or under federal law as having the power to administer oaths or witness and attest to execution, and the application shall contain the following information in addition to any other information as may be required pursuant to 32-8-201, MCA, including the form of application prescribed by the commissioner:

(a) the names, addresses, places of residence and principal occupations of the incorporators and the stockholders initially subscribing to purchase the capital stock of the applicant and the number of shares subscribed by each initial subscriber;

(b) the name of the city or town and county in which the principal office of the depository is to be located;

(c) the names, principal occupations, addresses, places of residence and business and professional experience of all proposed officers, including the officer designated as managing officer for the applicant;

(d) the number of the board of directors and the names, principal occupations, addresses, places of residence and business and professional experience of the applicant's initial board members;

(e) the purposes for which the depository is formed, which shall be limited to those services for nonresident aliens allowed to the depository under the act;

(f) the financial statements that contain sufficient detail to substantiate each controlling person's net worth;

(g) the document from a certified public accountant confirming that the applicant has satisfied the requirements of capital adequacy as required by [rule V];

(h) the business plan pro forma statement containing operational projections over a period of three years as required by [rule IV];

(i) the intended location of each place of business and identification and location of any facilities (all of which places of business and facilities must be located in Montana) that will be used to maintain or hold assets deposited with, or the funds or other assets of, the depository, including the identity and qualifications of any one who will control or hold any such assets or funds and documentation of the proposed policies and procedures for assuring compliance by parties with the act and administrative rules pertaining to privacy and all other matters;

(j) the officers and employees of the applicant proposed to be bonded, the amount of bonds to be provided and the surety

company or sureties proposed to issue said bonds, which bonds shall be in such form as is provided or approved by the commissioner and issued by a surety company qualified and authorized to do business in Montana or otherwise approved by the commissioner; and

(k) such other information relevant to an applicant's fitness to operate a foreign capital depository, as the commissioner or board may require.

(2) Subject to the provisions of [rule IX(3)], an application fee of \$25,000 shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.

(3) The proposed articles of incorporation in accordance with 32-1-301, MCA, shall be submitted with the application for a charter.

(4) The form for applying for a charter for a foreign capital depository (Form FCD-1) may be obtained from the Commissioner of Banking and Financial Institutions, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-107, 32-8-201, 32-8-205, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-201, MCA, "Charter eligibility and application requirements." The board rules parallel, as much as possible, the rules applicable for applying for a bank charter under Montana law. See state banking board, procedural rules, ARM 8.87.201 through 8.87.203. The benchmark established by the Montana banking rules provides both applicants and department employees with a reference to standards and procedures that are known and have been applied in the past to banks. The charter application rules recognize the unique requirements of the Foreign Capital Depository Act, including the ability of a party located in Montana to maintain and hold assets or funds on the behalf of the depository.

Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-205, MCA, "Application, charter, and renewal fee." Section 32-8-205(1), MCA, of the act requires the board to establish an application fee that is "commensurate with the cost of conducting a background check on the person applying for the charter." The application fee of an applicant who receives a charter is deductible from the statutory charter fee of \$50,000 pursuant to section 32-8-205(2), MCA. The board has set an application fee of \$25,000 based on its responsibility to conduct background checks in the United States and foreign countries, on each incorporator, director, executive officer and controlling person of the proposed foreign capital depository. Based upon the review of costs that may be assessed by investigative and security firms, the board has determined that the \$25,000 is a reasonable application fee. This fee is also based upon review of the application information by other consultants, including accountants, security advisors and bank examiners.

"III EVIDENCE OF GOOD CHARACTER AND PROSPECTIVE COMPLIANCE WITH FEDERAL LAW (1) An application under [rule II] shall be accompanied by:

(a) documents certifying that the identity of each incorporator, director, executive officer and controlling person of the proposed foreign capital depository has been verified by means of a background check. Such background check, which shall be in addition to any background check that the commissioner or designated personnel of the division of banking and financial institutions shall conduct pursuant to [rule VIII(2)], shall be conducted by a reputable and licensed private investigative service and include inquiry into each individual's financial means, employment history, credit history, criminal record and record of tax delinquencies, if any;

(b) a written copy of the applicant's know-your-customer policy and a written description of the implementation method for such policy, prepared in reasonable detail. Such policy shall be approved by the applicant's board of directors and noted in the applicant's official records. The criteria for such policy are set forth in [rule IV] pertaining to foreign capital depositories adopted by the division of banking and financial institutions; and

(c) a written description of the applicant's personnel training and pre-employment screening programs, plan for establishing a security program similar to the security program prescribed by 12 C.F.R. section 326.3, methods of compliance with applicable federal record keeping and reporting laws and any contracts entered with parties to provide any services or facilities related to these requirements, prepared in reasonable detail."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-107, 32-8-201, 32-8-202, 32-8-301, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-201, MCA, "Charter eligibility and application requirements." The provisions of rule III set forth the acts' requirements of section 32-8-201(1)(c)(ii)-(iv), MCA, and the requirement of section 32-8-202(2), MCA, that the person planning to own, operate or manage the depository be of good character. A review of the owner, director and officer's background also encompasses inquiry into the employment history, credit history, criminal record and record of any tax delinquencies. Any problem that exists in any one of these areas may be of concern to the board which may require further investigation and inquiry.

Rule III(1)(c), refers to the security program prescribed by 12 C.F.R. section 326.3, which is applicable to federally insured financial institutions. The rule provides that an applicant should describe a security program that "is similar to" the record keeping and reporting standards in the federal regulation. The federal regulation specifies pragmatic standards that are well-known in the banking industry and provides for reasonable suggestions such as having a qualified

security officer, maintaining records and installing an adequate security system.

"IV BUSINESS PLAN AND PRO FORMA STATEMENT (1) An application under [rule II] shall be accompanied by a business plan and pro forma statement, containing at a minimum:

(a) a three-year projected comparative balance sheet, income statement and statement of cash flows, showing projections of income, costs, profits and cash flows;

(b) a three-year estimate of the volume of deposits to be made with the proposed depository, with an explanation of the applicant's reasons for believing it will develop such volume of business; and

(c) a statement of proposed expenditures for fixed assets such as premises, fixtures, furniture and equipment, a statement of estimated start-up costs and evaluation of relevant changes in financial markets."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-201, MCA, "Charter eligibility and application requirements." Rule IV requires an applicant to submit a business plan in order to apply for a charter as required by section 32-8-201(1)(iv), MCA. The rule specifies that the business plan must address the likely sources for deposits and capital costs that will be incurred. The rule specifies that the business plan provide a projection for at least three years. This information will provide the state banking board with an assessment of the applicant's financial ability and planning required to operate the institution. It will also serve to assist the institution in planning its projected cash flow as it relates to income projection and expenditures.

"V CAPITAL ADEQUACY (1) An application under [rule II] shall be accompanied by:

(a) a statement from a certified public accountant confirming that the applicant has financial assets in excess of liabilities in an amount sufficient to secure the services that the applicant intends to provide as set forth in the business plan; and

(b) evidence that the applicant's initial paid-in capital is sufficient to establish an undivided profits account in an amount great enough to absorb any initial operating losses under the business plan and pro forma statement submitted by the applicant pursuant to [rule IV] and foreseeable business conditions."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201 and 32-8-202, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement sections 32-8-201 and 32-8-202, MCA. Section 32-8-201(1)(c)(iv), MCA, requires a business plan and section 32-8-201(1)(c)(vi), MCA, requires a document from a

certified public accountant confirming that the applicant has financial assets in excess of liabilities in an amount established by board rule. Section 32-8-202(5), MCA, provides that the board shall adopt rules concerning the method and process for determining whether an applicant for a charter is financially sound. Under the act, a depository has a broad range of services that it may provide, but is not required to provide all of these services. The rule specifies that the capital adequacy of the applicant will be considered in light of the services that it intends to provide.

"VI APPLICANTS THAT ARE SUBSIDIARIES OF FOREIGN BANKS

(1) A subsidiary of a foreign bank may obtain a charter as a foreign capital depository if, in addition to the other requirements of this subchapter, such applicant:

(a) obtains approval from the board of governors of the federal reserve to operate in the United States in accordance with the Foreign Bank Supervision Enhancement Act of 1991 (12 U.S.C. section 3101, et seq.); and

(b) submits the following information with its application for a charter:

(i) a description of the history, background and business of the foreign bank, including an organizational chart showing parent and affiliated corporations and their country of organization;

(ii) background and financial information on each controlling person of the applicant;

(iii) a description of the management structure, including the board of directors and principal officers of the foreign bank and any of its affiliates that will constitute a controlling person of the applicant;

(iv) a consolidated statement of the foreign bank's financial condition as of a date within 90 days prior to the date of application for a charter and audited consolidated financial statements, including statements of income and expense, for the foreign bank's latest three fiscal years, both certified by the foreign bank's chief executive or chief financial officer;

(v) a description of the bank regulatory system in the home country of the foreign bank, and if different, any foreign bank that owns the foreign bank whose subsidiary is applying for a charter as a foreign capital depository, describing:

(A) the extent to which each foreign bank is subject to comprehensive regulation or supervision on a consolidated basis in the home country;

(B) the powers and functions of the home country banking authorities, including frequency and scope of examinations;

(C) the function of any central bank and its relationship to private banking institutions in the home country; and

(D) the deposit insurance system, if any, in the home country.

(vi) a written statement from the banking authorities in the home country stating that they acknowledge the establishment of the proposed subsidiary foreign capital

depository, and that the foreign bank is duly organized and is in good standing;

(vii) a duly executed instrument demonstrating that the foreign bank has established a registered office and registered agent in the state of Montana in accordance with 35-1-1032, MCA; and

(viii) such additional documents or information as the commissioner or board may require."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, MCA

REASON: Section 32-8-107, MCA, authorized the board to adopt rules to implement section 32-8-201, MCA. Section 32-8-201(2), MCA, provides that foreign banks that have obtained approval from the federal reserve system may apply for a depository charter. The rule sets forth the information required from a subsidiary of a foreign bank. The information is based upon similar requirements of the federal reserve board in reviewing applications of foreign banks to operate in the United States. The information provides the state banking board with information about the regulatory banking system in a foreign country, including the applicant's understanding of the manner in which the foreign regulatory system operates. The written acknowledgment from the home country regulator serves to inform the foreign country regulator of the institution's application to operate in this state under the act. The commissioner or board may require additional information if the application is incomplete, or if it is determined that further information is necessary to clarify the application. A hearing is required on each application which provides the board and commissioner with authority to inquire through testimony of the applicant during the hearing.

"VII NOTICE OF HEARINGS (1) A public hearing must be conducted upon all accepted applications for a charter in accordance with the Montana Administrative Procedure Act relating to a contested case.

(2) Applicants will be notified of official acceptance of applications for charters. Upon receipt of such notification, the applicant shall, within five days, cause notices to be published in newspapers of general circulation throughout the state, so as to provide statewide notification to any interested parties of their right to protest the application.

(3) Any person desiring to protest an application must notify the department in writing of the intent to protest, setting forth the reasons for the protest, within 15 days of the date of the publication of the notice described above.

(4) The applicant and all persons timely filing notice of intent to protest an application required by this regulation shall be notified of the date for a public hearing before the board as established by the department. The hearing must be conducted no sooner than 30 days and no later than 90 days following the mailing of the notification of official acceptance of the application for a foreign capital depository charter. Intention to appear at such hearing by an individual

filing a protest must be filed in writing with the commissioner within 15 days from the date of notification of a hearing date or the publication of notice, whichever is later. Failure to file notice of an intention to appear at the hearing shall constitute grounds for dismissal of the protest by the commissioner."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, 32-8-202, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement sections 32-8-201 and 32-8-202, MCA, which specify the application requirements and grounds for denial of an application. Consistent with applications for banking charters, rule VII provides for a public hearing on any accepted application in accordance with the Montana Administrative Procedure Act. Any person who may protest the application must notify the department in writing. This serves to identify issues to the department and the applicant as stated by the individual filing of the protest, to be prepared to address during the hearing. The hearing affords all parties an opportunity to present their position to the state banking board. The hearing is formal and testimony including evidence may be presented to the board. A time period for the hearing is set so as to assure that expediency is afforded to the applicant and individual who protests the application. If the individual fails to appear at the hearing, the rules provide the commissioner and board with the authority to dismiss the protest.

"VIII GROUND FOR DENIAL (1) In order to ensure that the business of a foreign capital depository will be conducted in accordance with the intent of the act and to protect the privacy and other interests of depositors, the board shall deny a charter application if it finds that a person planning to own, operate or manage the foreign capital depository is not of good character or financial integrity, or if the applicant for a charter is not adequately prepared to comply with or ensure compliance with Montana law or federal law and regulations relating to money laundering and other financial crimes or is not financially sound.

(2) The board authorizes the commissioner and designated personnel of the division of banking and financial institutions to gather all available information relative to an application filed with the commissioner pursuant to [rule II], including such background information and information regarding any of the applicant's incorporators, stockholders, directors, officers, controlling persons or other persons associated with the application as the commissioner or designated division personnel may deem prudent or appropriate. Information so gathered must be reported to the board in such form and in such manner as the board directs. The commissioner is also authorized to make, or cause to be made, such investigations determined to be warranted under the existing circumstances and must make the information obtained available to the board.

(3) Notwithstanding any other provisions of this rule or

the act, final determination to grant, conditionally or otherwise or deny any application for a charter, shall be in the sole discretion of the board. The board may grant a charter to an applicant unconditionally or upon such terms and conditions (financial or otherwise) as the board deems prudent or appropriate."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-202, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-202, MCA, "Charter grounds -- grounds for denial." Rule VIII implements the statutory requirements of section 32-8-202, MCA. The grounds for denial are set forth to provide the basis of the foreign capital depository's assurance to abide by Montana and federal law as it relates to money laundering deterrence of financial crimes and fiscal soundness. The board is provided with the authority to conditionally grant a charter upon the terms and conditions the board deems necessary to assure fiscal and legal requirements by the institution are met.

"IX PROCEDURAL RULES FOR DETERMINATIONS: APPROVAL CONDITIONS (1) In the event that an application is incomplete in any respect or if additional information is required, the applicant will be so notified by the division of banking and financial institutions and allowed up to 60 days in which to perfect the application or provide additional information. An extension of this 60-day period may be obtained from the division of banking and financial institutions by showing good cause why it should be extended.

(2) In the event that an application for a charter for a foreign capital depository does not include information required by [rule II] through [rule VI], the board may direct that if a charter is to be issued for the applicant it shall be conditioned upon the submission of such information at least 60 days prior to the opening of the foreign capital depository and that the board finds said information unobjectionable.

(3) In the event that a charter for a foreign capital depository is granted to an applicant, the applicant, within five business days of receipt by the applicant of notice of approval of the charter, shall pay to the department an initial charter fee of \$50,000, less the fee paid to the department at the time of the application pursuant to [rule II(2)], which fee shall be deposited in the account established pursuant to 32-8-306, MCA, and thereafter shall not be refunded in whole or in part."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, 32-8-205, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-205, MCA, "Application, charter, and renewal fees." Rule IX specifies an application fee. This fee is determined based upon the estimate of costs and resources incurred in the review and hearing procedures provided to the applicant. In addition, it addresses how the

board will procedurally address application determinations where the application is incomplete. The board provides a 60-day period to allow the institution to supplement and provide additional application information to the division and board. It is possible that the applicant would need the additional time to acquire documentation from other entities, states or countries to complete the information submitted to the board.

"X ANNUAL FEES (1) A foreign capital depository shall pay an annual charter renewal fee in the amount of \$10,000 to the department."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-205, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement section 32-8-205, MCA, which requires the board, among other matters, to set an annual charter renewal fee in an amount not to exceed \$10,000. The board has implemented the requirements of section 32-8-205(3), MCA, by setting an annual charter renewal fee of \$10,000.

"XI PROCEDURAL RULES FOR DISCOVERY AND HEARINGS (1) In the case of hearings concerning the issuance, suspension or revocation of a foreign capital depository charter, or in enforcement actions:

(a) the attorney general's model rules, as stated in ARM 1.3.101 through 1.3.234, with the exceptions set forth in ARM 8.2.104 through 8.2.106, are hereby adopted and incorporated by reference. A copy of the attorney general's model rules (June 30, 1992) may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546. Prehearing discovery procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time period established in discovery may be shortened at the discretion of the board; and

(b) The board adopts "Robert's Rules of Order".

Auth: Sec. 32-8-107, 32-8-205, 32-8-301, MCA; IMP, Sec. 32-8-201, 32-8-202, 32-8-203, 32-8-205, 32-8-301, MCA

REASON: Section 32-8-107, MCA, authorizes the board to adopt rules to implement sections 32-8-201, 32-8-202, and 32-8-205, MCA. In addition, section 32-8-203, MCA, provides that the board may suspend or revoke the charter of a depository under certain circumstances. Rule XI adopts the Attorney General's Model Rules and the Robert's Rules of Order for conducting hearings authorized by the act.

The rules are proposed to implement Senate Bill 83. Rulemaking authority is granted to the state banking board under 32-8-107, MCA, of the Montana Foreign Capital Depository Act. The Foreign Capital Depository Act requires that the board adopt rules. The charter eligibility and application requirements, grounds for denial of the charter, including the suspension, relocation and restoration of a charter for a foreign capital depository. All hearings involving the

issuance, suspension or revocation of charters invoke the due process protections afforded under the Montana Administrative Procedure Act. The hearing is conducted under the Montana Administrative Procedure Act which is set forth in the Attorney General's Model Rules. The board is also involved in issues of discovery, should the time limitations need to change from the time period set forth under the Montana Rules of Civil Procedure.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the State Banking Board, c/o the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, no later than 5:00 p.m., November 19, 1997.

5. The Board will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Board no later than 5:00 p.m., November 12, 1997, to advise us of the nature of the accommodation that you need. Please contact Chris Olson, State Banking Board, c/o the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 444-2091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4186. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Chris Olson at the above-stated address.

6. Persons who wish to be informed of all State Banking Board administrative rulemaking hearings or other administrative hearings may be placed on a list of interested persons by advising the Board at the rulemaking hearing or in writing to the State Banking Board, c/o the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546.

7. Annie M. Bartos, Chief Legal Counsel, has been designated to preside over and conduct the hearing.

THE STATE BANKING BOARD

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 6, 1997.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of new rules I through VII)	ON THE PROPOSED ADOPTION
pertaining to the siting and)	OF NEW RULES
construction standards of)	
private correctional)	
facilities in Montana)	

TO: All Interested Persons

1. On Monday, November 17, 1997, at 9:30 a.m., a public hearing will be held in the downstairs conference room at the Department of Corrections, 1539 11th Avenue, Helena, Montana, to consider the proposed adoption of new rules I through VII pertaining to the establishment of private correctional facilities in Montana.

2. Any person/party may be placed on the Department of Corrections' list of interested persons/parties by contacting Ms. Stephanie Powell, Paralegal, in writing, at the address listed below.

3. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, please contact the Department no later than 4:00 p.m. on Wednesday, November 12, 1997, to advise the Department of the nature of the accommodation you need. Please contact Ms. Stephanie Powell, P.O. Box 201301, Helena, MT 59620-1301; telephone (406) 444-3909; FAX (406) 444-4920. Persons with disabilities who need an alternative accessible format of this document in order to participate in the rule-making process are requested to contact Ms. Powell.

4. The proposed new rules provide as follows:

RULE 1 DEFINITIONS For purposes of this chapter, the following definitions apply:

- (1) "Department" means department of corrections.
- (2) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated. The term includes a regional correctional facility, as defined in 53-30-503, MCA, if privately operated or privately owned and operated.
 - (a) The term does not include a private detention center or a regional jail governed by Title 7, chapter 32, part 22, MCA.
- (3) "Airport and landing field" means any area of land owned, leased, controlled, operated or maintained by the United States, the state of Montana, or any county or municipality or any of the authorized agencies or branches of a county or municipality within the state of Montana that is

used or is made available for the landing and takeoff of aircraft.

(4) "Proposers" means entities submitting a response to the department's request for proposal.

(5) "Hospital" means an accredited hospital, including an emergency room, recognized and licensed by the state.

AUTH: 53-30-604, MCA

IMP: 53-30-604, MCA

RULE II SITE SELECTION OF PRIVATE CORRECTIONAL FACILITIES (1) Private correctional facilities must be sited pursuant to American Correctional Association standards.

(2) Private correctional facilities must be sited near a civilian population center with at least the following services:

(a) within 30 minutes emergency response time of a hospital;

(b) within 30 minutes emergency response time of a full-time or volunteer fire department;

(c) within one hour driving time of scheduled public or private transportation services that provide regular travel to and from the area of the private correctional facility; and

(d) within one hour driving time of an airport and landing field:

(i) suitable for landing and take-off of charter-type aircraft; and

(ii) listed on the state system plan of airports as maintained by the Montana department of transportation, aeronautics division.

(3) Proposed sites for private correctional facilities must accommodate:

(a) a secure facility;

(b) a facility size of at least 500 beds with expansion capability;

(c) the custody levels and population needs set forth in the request for proposal;

(d) the contour of the land, building design, distance, or a vegetative buffer zone or terrain features that mitigate local concern for the appearance of a prison in the area;

(e) necessary support services;

(f) utilities;

(g) secure access;

(h) unobstructed surveillance capabilities; and

(i) safety of the public.

(4) Access roads to the site must be capable of supporting vehicular traffic during both the construction and operational periods.

(5) Proposed sites for private correctional facilities must follow all applicable state statutes, rules and regulations including, but not limited to, site planning, environmental, construction, and permitting statutes, rules and regulations.

(6) Proposed sites for private correctional facilities must be located above a 100-year flood plain.

(7) Proposed sites for private correctional facilities must be qualified for site development as a prison in conformance with applicable local zoning ordinances.

(8) If a private correctional facility will be connected to existing public utilities, or will be providing an acceptable alternative, the facility shall:

(a) be connected to both an approved waste water treatment system and an approved water supply system;

(b) provide proof that the existing water and sewer systems have the capability to handle the increased usage; and

(c) be approved by the appropriate state and local entities responsible for the system.

AUTH: 53-30-604, MCA

IMP: 53-30-604, MCA

RULE III. LOCATION OF PRIVATE CORRECTIONAL FACILITIES IN PROXIMITY TO SCHOOLS (1) The closest property boundary of the private correctional facility must be at least one air mile from the closest property boundary of a public or nonpublic school.

AUTH: 53-30-604, MCA

IMP: 53-30-607, MCA

RULE IV. OBTAINING PUBLIC SUPPORT FOR PROPOSED PRIVATE CORRECTIONAL FACILITY SITES (1) Proposed sites for private correctional facilities must have community support, including endorsement by local officials.

(2) To gain public support and input into the siting process for private correctional facilities, proposers shall ensure at least two public hearings are held in the county and municipality of the proposed site.

(a) If the nearest municipality to the proposed site is also the county seat, the public hearings shall be held in the municipality and shall be conducted by the county governing body.

(b) If the nearest municipality to the proposed site is not the county seat, a hearing shall be held in the municipality, and a hearing shall be held in the county seat.

(3) If the proposed site is located within a municipality, the governing body of the municipality shall conduct the hearings.

(4) If the proposed site is not located within a municipality, the county governing body shall conduct the hearings.

(5) If the proposed site is located within seven and one-half air miles of an adjacent county, the proposers shall also hold a third public hearing in the municipality of the adjacent county that is located within closest proximity of the proposed site. The hearing shall be conducted by the county governing body of that adjacent county.

(6) Hearings must be held at a time convenient for the public to attend.

(7) The governing body conducting the hearing shall provide adequate public notice of the hearings, which shall, at a minimum, meet the following criteria:

(a) if the proposed site is located in a rural area, the governing body shall publish notice of the public hearing in a local weekly newspaper as well as in the nearest daily newspaper;

(b) if the proposed site is located in or near a major municipality, the governing body shall publish notice of the hearing in at least one major newspaper of general circulation in the proposed site area;

(c) notices must be published at least seven days prior to the date and time of the hearing;

(d) notices must also be published on the date of hearing, if the newspaper is published on that date; and

(e) notices must include:

(i) the date, time, and place of public hearing; and

(ii) the name and phone number of the entity responsible for requesting the hearing.

(8) In addition to the public notices, the governing body shall also provide specific notice to:

(a) state legislators in the county of the proposed site and all counties immediately adjacent to the proposed site;

(b) county and municipal elected officials in the county of the proposed site;

(c) the hospital board or administrator in the nearest municipality of the proposed site;

(d) the district school board(s) or superintendent(s) in the nearest municipality of the proposed site;

(e) county governing boards and county elected officials in each county immediately adjacent to the county of the proposed site; and

(f) all municipal governing bodies of municipalities located within 50 air miles of the proposed site.

(9) The entity holding the public hearing shall make reasonable accommodations for persons with disabilities who wish to participate in the hearing(s).

(10) The entity holding the public hearing shall ensure minutes are taken during the hearing, and:

(a) a copy of the minutes be transcribed;

(b) a copy of any written information received from hearing participants must be attached to the minutes; and

(c) a copy of the names, addresses, and phone numbers of persons attending the hearing must be attached to the minutes.

AUTH: 53-30-604, MCA

IMP: 53-30-607, MCA

RULE V LETTERS IN SUPPORT OF PROPOSED SITES FOR PRIVATE CORRECTIONAL FACILITIES

(1) The governing body of the political subdivision in which the proposed facility is to be located shall adopt a resolution in support or in opposition to the proposed facility.

(2) If the proposed facility is located within a municipality, the county governing body shall also adopt a

resolution in support or in opposition to the proposed facility.

(3) If the governing body adopts a resolution in support of the proposed facility, proposers shall obtain letters of support and/or concern regarding the proposed facility from:

(a) the local school board(s) or superintendent(s) in the nearest municipality;

(b) the hospital board(s) or administrator(s) in the nearest municipality;

(c) the county sheriff in the county of the proposed site;

(d) the chief of police in the nearest municipality;

(e) each area state legislator in the county of the proposed site;

(f) each state district court judge or chief judge of the district, justice court judge, and city and/or municipal court judge in the nearest municipality and county of the proposed site; and

(g) the city attorney and county attorney in the nearest municipality and the county of the proposed site.

(4) If the proposed site is located within seven and one-half air miles of an adjacent county, proposers shall also obtain letters of support and/or concern from the officials listed in (3)(a)-(g) in the adjacent county.

(5) If the governing body adopts a resolution in support of the proposed facility, proposers shall provide supporting documentation of its intent to site a correctional facility to the director of the Montana department of corrections.

AUTH: 53-30-604, MCA

IMP: 53-30-607, MCA

RULE VI. DESIGN AND CONSTRUCTION OF PRIVATE CORRECTIONAL FACILITIES (1) Design and construction of private correctional facilities must conform to applicable American Correctional Association standards for prisons.

(2) Prior to initiating facility construction, design and construction of private correctional facilities must be reviewed and approved by the Montana department of administration architectural and engineering division (A&E), and the department.

(a) In addition to being awarded the contract, the prevailing proposer must obtain letters of approval from A&E and the department.

(3) Design and construction of private correctional facilities must conform to all applicable federal, state, and local codes.

(a) Compliance must be documented by the authority having jurisdiction.

(b) Successful proposers shall provide the department and A&E with copies of all building and occupancy permits.

(4) Any contractor or subcontractor performing construction of any type on private correctional facilities shall:

(a) Provide a copy of a labor and materials bond to the department and A&E; and

(b) Perform work in accordance with all state and local laws, rules and ordinances.

AUTH: 53-30-604, MCA

IMP: 53-30-604 and 53-30-606, MCA

RULE VII TITLE TO PROPERTY (1) Sites selected for building private correctional facilities must be free and clear of legal restrictions on the land, such as, but not limited to, deed restrictions and federal use restrictions.

(2) Sites selected for building private correctional facilities shall not be used or planned for conservation, preservation, or scientific areas.

AUTH: 53-30-604, MCA

IMP: 53-30-604, MCA

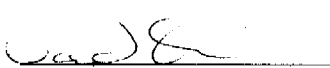
5. The adoption of Rules I through VII is reasonably necessary to implement the legislative directives for siting, design, construction, management, operation and licensure of private correctional facilities in Montana, and to ensure public participation in the siting process. These rules are also reasonably necessary to ensure the construction of private correctional facilities that are safe, secure, humane, and "operated consistently with public policy." Section 53-30-601, MCA (1997).

6. Interested persons may present their views either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Stephanie Powell, Paralegal, Montana Department of Corrections, P.O. Box 201301, Helena, MT 59620-1301 and must be received no later than November 24, 1997.

7. Sally Johnson, Professional Services Division Administrator, has been designated to preside over and conduct the hearing.



Rick Day, Director
Department of Corrections



David L. Ohler
Rule Reviewer

Certified to the Secretary of State, October 6, 1997.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC
adoption of new rules providing	)	HEARING
for the valuation and taxation of)	
light motor vehicles and for the)	
imposition of fees in)	
lieu of tax on buses, heavy)	
trucks, truck tractors and)	
trailers.)	

TO: All Interested Persons.

1. On November 12, 1997 at 10:00 a.m., a public hearing will be held in the main floor auditorium of the Scott Hart Building, at 303 North Roberts, Helena, Montana, to consider the adoption of new rules I through VII governing the valuation, taxation and imposition of fees in lieu of taxes on vehicles.

As a result of legislation enacted by the 55th Montana legislature, effective January 1, 1998, the Department of Justice will be responsible for valuation and taxation of light motor vehicles and for the imposition of fees in lieu of tax on buses, heavy trucks and truck tractors and trailers within the state.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you desire an accommodation, please contact the department no later than Thursday, November 6, 1997, to advise it of the nature of the accommodation that you need. Please contact Gordon Hage, Assistant Administrator, Motor Vehicle Division at 303 N. Roberts, P.O. Box 201419, Helena, MT 59620-1419, telephone 406-444-1772 or fax 406-444-1631.

3. The proposed new rules provide as follows:

Rule I. DEFINITIONS Unless the context requires otherwise, the following definitions apply to [Rule II through Rule VII]:

(1) "Applicant" means a person seeking to title, register or renew registration for a vehicle.

(2) "Bus" means, as provided in 61-1-115, MCA, "every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation."

(3) "Dealer" means a new or used car dealer licensed by the department in accordance with Title 61, chapter 3, MCA.

(4) "Declared weight" means the total unladen weight of a bus, heavy truck, truck tractor or trailer plus the weight of the maximum load to be carried on the vehicle as provided by the

applicant in an original or prior registration application submitted to the department.

(5) "Department" means the department of justice or its designated agent.

(6) "Heavy truck" means a truck that has a manufacturer's rated capacity of more than 1 ton. The term also includes a van or sport utility vehicle that has a manufacturer's rated capacity of more than 1 ton.

(7) "Light vehicle" means, as provided in 61-1-139, MCA, "a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less." The term also includes an amphibious vehicle with a manufacturer's rated capacity of 1 ton or less.

(8) "Manufacturer's rated gross combined weight" means, as provided in 61-3-528, MCA, "the manufacturer's published weight of the allowable load for a truck tractor and trailer combined and includes the weight of the truck tractor and the trailer."

(9) "Manufacturer's rated gross vehicle weight" means, as provided in 61-3-528, MCA, "the manufacturer's published weight of the allowable load for a truck and includes the weight of the truck."

(10) "Manufacturer's suggested retail price" (or "MRSP") means the price suggested by the manufacturer for each given type, style, or model of light vehicle, inclusive of equipment standard to the vehicle and exclusive of price additions or deductions for optional accessories available from the manufacturers or the price of any special equipment or after-manufacture accessories attached to the vehicle.

(11) "Rated capacity" (or "RC") means the manufacturer's rated gross vehicle weight for a bus or heavy truck or the manufacturer's rated gross combined weight for a truck tractor.

(12) "Truck" means, as provided in 61-3-528, MCA, "a motor vehicle designed to carry an entire load. The truck may consist of a chassis and body or a chassis-cab and body or it may be of unitized construction so that the body and cab appear to be a single unit."

(13) "Truck tractor" means, as provided in 61-1-108, MCA, "every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn."

(14) "Sport utility vehicle" means, as provided in 61-1-140, MCA, "a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use. The term does not include trucks having a manufacturer's rated capacity of 1 ton or more."

AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-503, 61-3-504, 61-3-529, 61-3-530, MCA.

Reason: The 1997 Montana legislature changed the way motor vehicles (excluding new motor vehicles) and trailers are valued

and taxed and reassigned the duty of overseeing valuation and taxation from the department of revenue to the department of justice. These rules are intended to facilitate both the electronic conversion of current motor vehicle records from the old tax system to the new tax system and provide the framework for entry of additional vehicles on the system via original title and registration applications. The rules also provide the department with the ability to establish an MSRP or RC, necessary components to the new taxation system for vehicles, for a particular vehicle in the absence of availability of that information from nationally recognized vehicle valuation guides, and then later replace a manually-assigned MSRP or RC with the actual or a standardized MSRP or RC as additional information becomes available.

Considering the number of records involved, efficiency, in addition to uniformity and understandability, are paramount objectives of these rules. The current database maintained on the statewide motor vehicle computer system by the department of justice contains 1.9 million vehicle records, one million of which are currently registered and approximately 800,000 of which are subject to mail renewal notice requirements for the 1998 tax year.

Rule II ASSIGNMENT OF MANUFACTURER'S SUGGESTED RETAIL

PRICE (1) Each light vehicle must be assigned an MSRP as prescribed in the database maintained by the Department on the statewide motor vehicle computer system. The assignment must be based on the vehicle identification number, make, model and year. If more than one MSRP may be attributed to a particular vehicle make, model and year, the lowest MSRP will be assigned to that vehicle in the database for purposes of calculating the light vehicle tax.

(2) For those light vehicles for which an MSRP cannot be electronically assigned from the department's database, the department will establish an MSRP, based on one of the following methods, and manually enter it on the system:

(a) the department may refer to nationally recognized vehicle valuation publications to locate the vehicle's MSRP;

(b) the department may derive an MSRP for the vehicle by factoring, as appropriate, from a known MSRP for the same or similar vehicle make and model from a different year of manufacture to the subject year; or

(c) the department may extrapolate an MSRP by using a known or standard "trade-in" value and age for the same or similar vehicle make and model from a prior registration period, as available on the system, and the appropriate age-vehicle type factor from the depreciation schedule, as provided in 61-3-503, MCA.

(3) A vehicle that has a deemed taxable value of \$500.00 as of December 31, 1997, will not be assigned an MSRP, but will retain a depreciated value for taxation purposes of \$500.00 for the remainder of its life.

(4) If an MSRP has been manually assigned to a vehicle in

accordance with (2)(b) or (c) above, the MSRP is subject to being replaced if, at a later time, the actual MSRP for that vehicle is published or the department adopts a standard MSRP for that vehicle make, model, and year, and the published or standard MSRP is included in the department's database.

AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-503, 61-3-504, MCA.

Reason: In addition to the reason stated for Rule I, Rule II is designed to provide the framework by which an MSRP can be assigned to a vehicle in the absence of ready availability of that value from the nationally recognized vehicle valuations sources. The department has procured electronic tapes of vehicle valuations for purposes of implementing the new tax system, but those records only go back to 1981, the year in which the seventeen digit vehicle identification number was required for all vehicles. For vehicles older than sixteen years of age or unique or unusual newer vehicles, MSRP must be either manually input into the computer system by department staff, based on reference to historical vehicle valuation guide, or determined using trend factors or extrapolation from known determinants, such as MSRP for an earlier year of manufacture or market value of a vehicle at a particular age. Additionally, this rule gives the department the ability to change an MSRP or RC prospectively once an actual or standardized MSRP or RC is obtained.

Rule III VEHICLE YEAR OF MANUFACTURE AND AGE (1) All vehicles will be assigned a year of manufacture. If the year of manufacture cannot be determined from electronic records maintained on the system by the department or from information provided by the applicant at the time of original registration, the year of manufacture will be determined as follows:

(a) a rebuilt light vehicle, bus, heavy truck or truck tractor will be assigned the manufacture year of the vehicle body;

(b) a custom-built vehicle will be assigned the year stated on the manufacturer's certificate of origin or if the former is not available, the year of original registration;

(c) a glider kit will be assigned the year stated on the manufacturer's certificate of origin;

(d) a replica vehicle will be assigned the year of manufacture of the vehicle being replicated; and

(e) a homemade trailer will be assigned the year in which a vehicle identification number is assigned to the trailer by the department. If the trailer has previously been registered in another jurisdiction which has not designated a year of manufacture, the year of manufacture is deemed to be the year the vehicle was initially registered in the other jurisdiction. If the previous jurisdiction excluded the trailer from registration, the year of manufacture will be assigned based on a statement from the applicant made under penalty of law. No license plates or permits will be issued for a homemade trailer until a year of manufacture has been assigned by the department and the trailer has been inspected.

(2) The age of a vehicle is determined by subtracting the year of manufacture for the vehicle, as determined by the department, from the calendar year for which the tax or fee in lieu of tax is due, subject to the exceptions provided for in 61-3-522, 61-3-523, 61-3-527 and 61-3-530, MCA for certain motor homes, travel trailers, campers, motorcycles, quadricycles or trailers, pole trailers or semi-trailers that have a declared weight of less than 26,000 pounds and that are not subject to proportional registration.

AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-503, 61-3-529, 61-3-530, MCA.

Reason: In addition to the reasons stated above, Rule III is necessary because the age of a vehicle is an essential element for the determination of a vehicle tax or fee in lieu of tax under the new tax system. While the year of manufacture, and therefore, the age of most vehicles is apparent, in other situations, it is not. As a result, a uniform method to establish a year of manufacture in these instances is critical.

Rule IV ASSIGNMENT OF RATED CAPACITY FOR BUSES, HEAVY TRUCKS, TRUCK TRACTORS AND TRAILERS (1) Each bus, heavy truck or truck tractor must be assigned an RC based on the manufacturer's rated gross vehicle weight for such bus or heavy truck or the manufacturer's rated gross combined weight for such truck tractor as prescribed in the database maintained by the department. The assignment must be based on the vehicle identification number, make, model and year for the bus, heavy truck or truck-tractor. If more than one manufacturer's rated gross vehicle weight or gross combined weight may be attributed to a particular bus, heavy truck or truck-tractor, the lowest RC will be assigned to that vehicle for purposes of inclusion in the database.

(2) For any bus, heavy truck or truck tractor for which a rated capacity cannot be electronically assigned from the department's database, the department shall assign a rated capacity equal to the declared weight of the vehicle as provided by the applicant at the time of original or subsequent registration or as recorded in the vehicle record maintained on the department's motor vehicle computer system.

(3) A trailer will be assigned a rated capacity equal to its declared weight.

(4) If a rated capacity has been assigned to a vehicle in accordance with (2) above, the rated capacity is subject to being replaced if, at a later time, the rated capacity as stated by the manufacturer is published or located or the department adopts a standard rated capacity for that vehicle, and the published or standard rated capacity is included in the department's database.

AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-529, 61-3-530, MCA.

Reason: In addition to the reasons stated above, it is important to establish a method by which rated capacity for a vehicle can be determined if that information cannot be readily

obtained from nationally recognized vehicle value guides. As with light vehicles, an electronic tape of rated capacity for buses, heavy trucks, and truck tractors has been loaded into the department's motor vehicle computer system to automatically assign rated capacity to a vehicle record based on the vehicle's identification number, make, model and year, however, those tapes only apply to vehicles less than seventeen years of age. Moreover, if there are errors or omissions in a vehicle record, even though the vehicle may be of recent vintage, the actual manufacturer's rated capacity may not be susceptible to electronic assignment and an alternate number must be used. In the absence of information from published vehicle guides, the department will have to rely on information obtained from the vehicle owner as to the vehicle's rated capacity. With respect to trailers, manufacturers do not customarily assign a rated capacity, therefore, declared weight must be utilized.

Rule V COMPUTATION OF TAX FOR LIGHT VEHICLES (1) Each year on the anniversary date of the registration of a light vehicle, the department will calculate the vehicle's depreciated value for taxation using its MSRP and the appropriate factor for vehicle age and type, as provided in 61-3-503, MCA.

(2) The department will depreciate light vehicles that are more than 16 years of age by multiplying .90 by the vehicle's depreciated value for the preceding registration period, as calculated in accordance with 61-3-502(2), MCA, until the vehicle arrives at a depreciated value of \$500.00 or less, in which case its depreciated value shall be deemed to be \$500.00 thereafter.

AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-503, 61-3-504, MCA.

Reason: In addition to the reasons stated above, this rule is necessary as it explains the method by which vehicles older than 16 years of age will be depreciated for tax purposes, until a valuation floor of \$500.00 is reached.

Rule VI PRORATION OF VEHICLE TAXES OR FEES WHILE IN DEALER INVENTORY (1) A light vehicle, bus, heavy truck, truck tractor or motor home will be considered properly reported as being in a dealer's inventory as of the day and month the county treasurer for the county in which the dealer is licensed signs the certificate for proration of vehicle tax or fee in lieu of tax submitted by the dealer for that vehicle or enters notice of abatement on the department's motor vehicle computer system. The certificate must be submitted in a form prescribed by the department and must pertain to a single vehicle.

(2) An applicant may receive the benefit of an abatement of taxes or fees in lieu of taxes only if the certificate signed by the county treasurer for the county in which the dealer is licensed, is submitted to the county treasurer for the county in which application for title, registration or temporary permit for the subject vehicle is made on or before the date of application, unless the electronic vehicle record maintained by the department contains notice of abatement of taxes or fees in

lieu of taxes at the time the application is submitted.

(3) If a dealer fails to properly report a vehicle as being in the dealer's inventory prior to the time an applicant appears in the county treasurer's office to apply for title, registration or receive a temporary permit for that vehicle, the applicant is not entitled to any proration of taxes or fees in lieu of taxes due.

(4) If the certificate for proration is submitted after the application for title, registration or a temporary permit has been submitted by the applicant, retroactive abatement of taxes or fees in lieu of taxes will not be permitted.

(5) For purposes of proration, any portion of a month will be treated as a whole month.

AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-501, 61-3-503, 61-3-504, 61-3-529, MCA.

Reason: This rule is being proposed as a complement to the adoption of the new tax system in order to standardize the process by which tax or fee abatement is handled. To date, this procedure has not been the subject of an administrative rule and as a result, county treasurers throughout the state have had to deal with havoc, uncertainty, and frustration created by after-the-fact submissions of dealer inventories and requests for tax or fee abatement. This rule is proposed to ensure fairness and predictability in the process by establishment of a definitive procedure that must be followed before a vehicle is qualified for abatement. In the absence of compliance with this procedure, denial of the abatement will occur. At present, the department must rely on paper evidence of qualification of a vehicle for abatement by use of certificates signed by the county treasurer of the county in which the dealer is licensed. In the future, the department intends to computerize notice of abatement so that once a vehicle has been properly reported to the appropriate county treasurer, that information is captured in the system and is readily available throughout the system when an application for title is presented for that vehicle and reliance on presentation of the signed proration certificate will no longer be necessary. In the meantime, a paper trail will have to suffice.

Rule VII. GENERAL PROVISIONS (1) If the statewide motor vehicle computer system is temporarily out-of-service when an applicant comes in to title or register a vehicle, the transaction must be delayed until the computer system is operational.

(2) If taxes or fees in lieu of taxes on a vehicle subject to the provisions of 61-3-504 or 61-3-529, MCA, have not been paid for the immediate previous year, the back taxes or fees will be computed under these rules, unless the applicant can prove that a different amount is owed based on the applicant's submission of the preceding year's mail renewal card (or like document prepared by the department) with the proper amount stated.

(3) No adjustments, including but not limited to a refund

of taxes or fees in lieu of taxes paid in a prior tax year, will be made as a result of an MSRP or RC being replaced by a published or standard MSRP or RC in a subsequent tax year.
AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-501, 61-3-503, 61-3-504, 61-3-529, MCA.

Reason: In addition to the reasons stated above, this rule is necessary for several reasons. First, under the new system, electronically assigned MSRPs or RCs cannot be overridden by manual entry at the local level. Therefore, if a local official attempts to calculate and collect taxes or fees based on an estimate of the MSRP or RC, the manual calculation cannot be entered later to override the electronic computation and in all likelihood, a discrepancy will be created. Rather than creating a problem that requires correction and may occasion additional inconvenience to the taxpayer, the department would prefer that transactions be deferred until the system is again operational. Many counties already employ such a system under the current system. Secondly, this rule helps ease the transition from the old tax system to the new tax system for motor vehicles. State law presently permits the collection of back taxes or fees for the immediately preceding tax year, along with taxes or fees for the current tax year, on a vehicle. For tax year 1998, it is virtually impossible for the department to calculate back taxes or fees for 1997 if not previously paid, using the old tax system, thus, this rule permits the department to use the new tax system to calculate back taxes or fees in the absence of written documentation presented by the applicant as to the taxes or fees owed for 1997. After 1998, subparagraph (2) will be moot. Finally, this rule makes it clear that any subsequent changes in MSRP or RC will be prospective in nature and will not work to entitle applicants to an adjustment, upwards or downwards on taxes or fees paid in a prior year.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gordon Hage, Assistant Administrator, Motor Vehicle Division, 303 N. Roberts, P.O. Box 201419, Helena, MT 59620-1419, or fax 406-444-1631, no later than November 17, 1997.

5. Brenda Nordlund, Assistant Attorney General, Department of Justice, 215 North Sanders, P.O. Box 2001401, Helena, Montana 59620-1401 has been designated to preside over and conduct the hearing.

6. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions it proposes. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including but not limited to rules proposed by the Motor Vehicle Division, the Forensic Science Division,

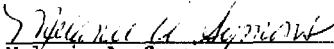
the Highway Patrol Division, the Fire Prevention and Investigation Bureau, the Law Enforcement Services Division, the Board of Crime Control or the Law Enforcement Academy, or proposed rules pertaining to certificates of public advantage for health care.

Such written request may be mailed or delivered to the Montana Attorney General's Office, Attn: Interested Party Notice, Justice Building, 215 North Sanders, P.O. Box 2001401, Helena, MT 59620-1401, faxed to the office at 406-444-3549, or may be made by completing a request form at any rules hearing held by the department.

MONTANA DEPARTMENT OF JUSTICE

By: 

JOSEPH P. MAZUREK
Attorney General



Melanie A. Symons
Asst. Attorney General/Rule Reviewer

Certified to the Secretary of State October 6, 1997.

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

In the matter of the amendment) NOTICE OF PROPOSED
of rule 16.32.399D pertaining) AMENDMENT
to medical assistance)
facilities - laboratory) NO PUBLIC HEARING
services) CONTEMPLATED

TO: All Interested Persons

1. On December 1, 1997, the Department of Public Health and Human Services proposes to amend rule 16.32.399D pertaining to medical assistance facilities - laboratory services.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.32.399D. MEDICAL ASSISTANCE FACILITIES: -- LABORATORY SERVICES (1) The medical assistance facility must maintain, or have available, clinical laboratory services adequate to fulfill the needs of its patients and meeting the following standards:

(a) The facility, at a minimum, must provide basic laboratory services, ~~essential to the immediate diagnosis and treatment of the patients, including including the following tests:~~

(i) ~~chemical examinations of urine by stick or tablet methods, or both (including urine ketones); dipstick or tablet reagent urinalysis (non-automated) for the following:~~

(A) Bilirubin;

(B) Glucose;

(C) Hemoglobin;

(D) Ketone;

(E) Leukocytes;

(F) Nitrite;

(G) pH;

(H) Protein;

(I) Specific gravity; and

(J) Urobilinogen.

(ii) ~~microscopic examinations of urine sediment; fecal occult blood;~~

(iii) ~~hemoglobin or hematocrit; ovulation tests - visual color comparison tests for human luteinizing hormone;~~

(iv) ~~blood sugar; urine pregnancy tests - visual color comparison tests;~~

(v) ~~gram stain; erythrocyte sedimentation rate - non-automated;~~

(vi) ~~examination of stool specimens for occult blood; hemoglobin - copper sulfate - non-automated;~~

(vii) pregnancy tests; blood glucose by glucose monitoring

devices cleared by the Food and Drug Administration for home use.

(viii) primary culturing for transmittal to a Medicare-certified laboratory, and spun micro hematocrit; and

(ix) sediment rate, ESE hemoglobin by single analyte instruments with self contained or component features to perform specimen/reagent interaction, providing direct measurement and readout.

(b) The facility must have a contractual agreement with a Medicare-approved hospital or independent laboratory for any additional laboratory services that are needed by a patient. For any additional laboratory services that are required by a patient, beyond those tests specified in (1)(a) above, the facility must ensure that those laboratory services are performed in a laboratory, whether operated by the facility or contracted with by the facility, certified in accordance with 42 CFR Part 493 (1996). The department hereby adopts and incorporates by reference 42 CFR Part 493 (1996) which sets forth the standards for certification of laboratories performing laboratory services beyond those tests specified in (1)(a) above. A copy of 42 CFR Part 493 (1996) may be obtained from the Department of Public Health and Human Services, Licensing Bureau, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951.

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

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-101, 50-5-103 and 50-5-204, MCA

3. The Clinical Laboratory Improvement Amendments of 1988 (CLIA), implemented by 42 CFR Part 493, apply to laboratories or other entities that perform laboratory testing of human specimens for the purpose of providing information for the diagnosis, prevention, or treatment of disease or impairment of, or the assessment of the health of human beings. That Act grants authority to state licensure agencies to empower them to license or accredit laboratories on behalf of the federal Department of Health and Human Services.

The federal Department of Health and Human Services recently completed an inspection of the state licensure requirements for Medical Assistance Facilities (MAF). In so far as that inspection related to laboratory services provided by a MAF, the Department of Health and Human Services identified several federal requirements that were not addressed by the applicable State licensure rule, ARM 16.32.399D. On review of the cited federal requirements, the department believes the proposed changes to ARM 16.32.399D are reasonably necessary to effectuate the most current minimum licensure standards for operation of Medical Assistance Facilities thereby protecting public health and safety.

First, the basic laboratory services/tests enumerated in ARM 16.32.399D were not reflective of the current tests

required by 42 CFR §493.15. Accordingly, the department proposes the amendment of ARM 16.32.399D(1)(a) to enumerate in that rule the current tests that a MAF, at minimum, must provide as basic laboratory services.

Secondly, ARM 16.32.399D did not require that a MAF providing laboratory services or tests, beyond those tests delineated under ARM 16.32.399D(1)(a), provide those services or tests through a laboratory certified in accordance with 42 CFR Part 493. Accordingly, the department proposes amending ARM 16.32.399D(1)(b) to require that a laboratory be certified in accordance with 42 CFR Part 493 thereby ensuring the accuracy and safety of testing methodologies.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 21, 1997. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 21, 1997.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, 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 are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one based on the number of individuals affected by rules pertaining to medical assistance facilities - laboratory services.

Dawn Sliva
Rule Reviewer

Michael B. Billings for
Director, Public Health and
Human Services

Certified to the Secretary of State October 6, 1997.

20-10/20/97

MAR Notice No. 37-80

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed amendment of ARM	)	ON PROPOSED AMENDMENT OF
1.2.419 regarding scheduled	)	ARM 1.2.419 FILING,
dates for the Montana	)	COMPILING, PRINTER PICKUP
Administrative Register	)	AND PUBLICATION OF THE
	)	MONTANA ADMINISTRATIVE
	)	REGISTER

TO: All Interested Persons.

1. On November 10, 1997, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the Secretary of State no later than 5:00 p.m. on November 3, 1997, to advise us the nature of the accommodation that you need. Please contact Kathy Lubke, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2055; FAX (406) 444-5833.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

19978 Schedule

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January 25	January 6	January 27	January 16 15
January 13 16	January 14 20	January 16 21	January 27 29
January 27	January 28	January 30	February 10
February 10 2	February 11 3	February 13 4	February 24 12
February 24 17	February 25 18	February 27 19	March 10
			February 26
March 10 2	March 11 3	March 13 4	March 24 12
March 24 16	March 25 17	March 27 18	April 7 March 26
April 7 6	April 8 7	April 10 8	April 21 16
April 21 20	April 22 21	April 24 22	May 5 April 30

May 54	May 65	May 86	May 1914
May 1918	May 2019	May 2220	June 2May 28
June 91	June 102	June 123	June 2311
June 2315	June 2416	June 2617	July 7June 25
July 76	July 87	July 98	July 2116
July 2120	July 2221	July 2422	August 4July 30
August 42	August 54	August 75	August 1013
August 2517	August 2618	August 2819	September 8
			August 27
September 8	September 91	September 112	September 2210
August 31			
September 2214	September 2315	September 2516	October 6
			September 24
October 6	October 7	October 9	
September 28	September 29	September 30	October 208
October 2013	October 2114	October 2315	November 3
			October 22
November 3	November 4	November 6	
October 26	October 27	October 28	November 175
November 179	November 1810	November 2012	December 1
			November 12
November 23	November 24	November 25	December 3
December 17	December 28	December 42	December 1517

(2) Remains the same.

AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

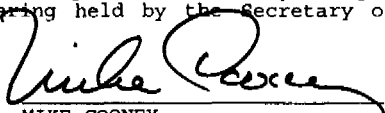
4. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1998.

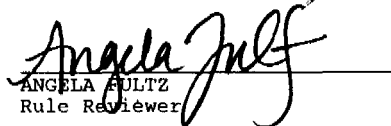
5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Kathy Lubke, Administrative Rules Bureau, Secretary of State's Office, 1236 Sixth Avenue, P. O. Box 202801, Helena, Montana 59620-2801, and must be received no later than November 17, 1997.

6. Kathy Lubke, address given in paragraph 5 above, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes

the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.


MIKE COONEY
Secretary of State


ANGELA FULTZ
Rule Reviewer

Dated this 6th day of October 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 4.13.1009))
establishing the grading)
standards for mustard seed)
)

TO: All interested persons:

1. On August 18, 1997, the Department of Agriculture published a notice of proposed adoption to the above-stated new rule I (ARM 4.13.1009) pertaining to the grading standards for mustard seed. The notice was published at page 1413 of the 1997 Montana Administrative Register, issue number 16.

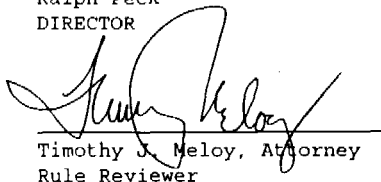
2. The department has adopted new rule I (ARM 4.13.1009) exactly as proposed.

3. One written comment was received from WIFE supporting the new rule.

DEPARTMENT OF AGRICULTURE



Ralph Peck
DIRECTOR



Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State this 6th Day of October
1997.

BEFORE THE STATE AUDITOR
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF ADOPTION
adoption of new rules I)
through VI concerning the)
regulation of living trusts)
)

TO: All Interested Persons

1. On August 18, 1997, the state auditor for the state of Montana published notice of public hearing on the proposed adoption of new rules I through VI, pertaining to the regulation of living trusts. The notice was published at page 1415 of the 1997 issue number 16 of the Montana Administrative Register.

2. The Agency has adopted Rules I(6.12.1201), III (6.12.1203), and VI (6.12.1206) exactly as proposed. The Agency has adopted Rules II (6.12.1202), IV (6.12.1204) and V(6.12.1205) with the following changes.

RULE II(6.12.1202) DEFINITIONS As used in this subchapter, unless the context indicates otherwise:

- (1) remains the same as proposed.
- ~~(2) Except when in conflict with this rule, the definitions in 30-10-103, MCA, apply.~~
- (3) remains the same as proposed, but is renumbered (2).

AUTH: 30-10-905, MCA

IMP: 30-10-901 through 30-10-915, MCA

RULE IV (6.12.1204) LIVING TRUST REPRESENTATIVE BOOKS AND RECORDS (1) Each living trust representative shall make and keep all books and records relating to the representative's offering and sales of living trusts, including, but not limited to, the following:

- (a) through (c) remain the same as proposed.
- (d) a correspondence file containing all correspondence to ~~or~~ and received from the public; and
- (e) a file containing a copy of all letters of solicitation to clients with whom a living trust agreement is executed.
- (2) Records made and kept pursuant to (1) shall be maintained and preserved for a period of at least 5 years.
- (2) and (3) remain as proposed, but are renumbered (3) and (4).

AUTH: 30-10-905, MCA

IMP: 30-10-905, MCA

RULE V(6.12.1205) SALES AND PROMOTIONAL MATERIAL (1)
Sales and promotional material used in connection with the offer or sale of living trusts by persons required to be licensed under 30-10-904, MCA. to persons in this state must be filed with the state auditor at least 10 days prior to use in this state.

(2) remains the same as proposed.

AUTH: 30-10-905, MCA

IMP: 30-10-909 and 30-10-913, MCA

3. A public hearing on the proposed rules was held on September 8, 1997. Three persons attended the hearing. Two persons at the hearing submitted data, views, and arguments on the proposed rules. One written comment was received. The agency has fully considered all submissions received respecting the proposed rules and responds as follows:

GENERAL COMMENTS:

COMMENT: The jurisdiction being placed within the office of the State Auditor may lead to living trusts being confused with an insurance product or a security product.

RESPONSE: The Agency agrees that while the law clearly makes a distinction that a living trust is neither an insurance product nor a security, the codification of the Living Trust Act under Title 30, chapter 10, MCA, (Securities Regulation), may confuse the issue. To further clarify the issue, the Agency revises Rule II(6.12.1202), removing reference to the Securities Act.

COMMENT: It seems appropriate to include a rule concerning the fees that must be paid to be licensed.

RESPONSE: The Agency disagrees that it is necessary to include a rule concerning fees at this time since the fees are set by statute. If it becomes necessary for the Agency to increase fees pursuant 30-10-907, MCA, in the future, the Agency will do so by rule.

COMMENT REGARDING RULE IV (6.12.1204):

COMMENT: Subsection (1) should also require that records be kept of letters of solicitation to the clients with whom a living trust agreement is executed with the representative as well as all other correspondence between the representative and client. Subsection (1)(d) should use the word "and" rather than "or" to clarify that all correspondence to and from the public must be maintained. In addition, it was suggested there should be a reasonable time limit attached to the rule.

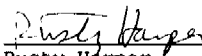
RESPONSE: The Agency agrees and revises Rule IV(6.12.1204) to reflect the suggested changes.

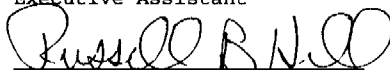
COMMENT REGARDING RULE V(6.12.1205):

COMMENT: Requiring sales and promotional material be submitted prior to use will put an undue burden on Living Trust Representatives.

RESPONSE: The agency disagrees. 30-10-913, MCA, directs the State Auditor to take action if "it appears...that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of" the Living Trust Act. Fraudulent and untrue statements used in broad-based marketing of living trusts often appear in promotional materials. Reviewing these materials prior to use allows the state auditor to identify a violation before the consumer is victimized. Upon review of this rule following the comment, however, the rule is revised to clarify that Rule V(6.12.1205) applies only to those persons required to be licensed under the Living Trust Act.

MARK O'KEEFE
State Auditor

By: 
Rusty Harper
Executive Assistant

By: 
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State this 3rd day of October,
1997.

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

In the matter of the amendment	)	NOTICE OF AMENDMENT AND
of 11.14.101, 11.14.102,	)	REPEAL
11.14.601, 11.14.602, 11.14.604)	
and 11.14.605, and the repeal)	
of 46.10.404, 46.10.408,)	
46.10.409, 46.10.410,)	
46.18.214, 46.18.314,)	
46.18.501, 46.18.502, 46.18.505)	
and 46.18.506 pertaining to)	
state payment for day care)	
services to eligible providers)	
and parents)	

TO: All Interested Persons

1. On August 18, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of 11.14.101, 11.14.102, 11.14.601, 11.14.602, 11.14.604 and 11.14.605, and the repeal of 46.10.404, 46.10.408, 46.10.409, 46.10.410, 46.18.214, 46.18.314, 46.18.501, 46.18.502, 46.18.505 and 46.18.506 pertaining to state payment for day care services to eligible providers and parents at page 1427 of the 1997 Montana Administrative Register, issue number 16.

2. The Department has amended rules 11.14.101, 11.14.102, 11.14.601, 11.14.602, 11.14.604 and 11.14.605 and repealed rules 46.10.404, 46.10.408, 46.10.409, 46.10.410, 46.18.214, 46.18.314, 46.18.501, 46.18.502, 46.18.505 and 46.18.506 as proposed.

3. No comments or testimony were received.

Dawn Blair
Rule Reviewer

Michael Billings
Director, Public Health and
Human Services

Certified to the Secretary of State October 6, 1997.

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

In the Matter of Adoption	)	NOTICE OF ADOPTION
of Rules Pertaining to the	)	OF RULES ON MONTANA
Montana Interim Universal	)	INTERIM UNIVERSAL
Access Program.	)	ACCESS PROGRAM
)	

TO: All Interested Persons

1. On July 21, 1997 the Department of Public Service Regulation published notice of the proposed adoption of rules relating to the Montana Interim Universal Access Program at pages 1253 through 1258, issue number 14 of the 1997 Montana Administrative Register.

2. The Department has adopted the following rules as proposed.

RULE I. 38.5.2001 DEFINITIONS

RULE IV. 38.5.2004 DETERMINATION OF DISCOUNT AMOUNT

RULE VIII. 38.5.2008 AUDITING

RULE IX. 38.5.2009 MONTANA INTERIM UNIVERSAL ACCESS PROGRAM SURCHARGE RATE

3. The Department has amended and adopted the following rules:

RULE II. 38.5.2002 DESIGNATION AS A PUBLIC ACCESS POINT

(1) To be designated as a public access point an applicant must facilitate public access by being open a minimum of ~~30~~ 20 hours a week, including ~~6~~ 6 hours outside the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. The required minimum hours for public access may be waived by the administrator based on the special needs and circumstances of a community. The administrator may require additional information from the applicant in order to make a determination of special needs and circumstances.

(2) Remains as proposed. AUTH: Sec. 69-3-822, MCA; IMP, Secs. 69-3-856 through 69-3-860, MCA

RULE III. 38.5.2003 PRIORITY FOR FUNDING FROM THE MONTANA INTERIM UNIVERSAL ACCESS PROGRAM (1) The first priority is to provide funding for one public access point in each Montana community. Applications from public access points will be given first consideration for funding from the Montana interim universal access program. If more than one application is filed by public access points located within

the same community, the decision for granting discounts to the applicants will be based on a determination of the specific needs of the community and how the applicants would meet those needs. If funds remain, after funding public access points, the administrator will consider applications from schools and tribal colleges, libraries, and rural health care providers. ~~Preference in funding will be given to those entities not eligible for discounted telecommunications services from the federal universal service fund.~~ AUTH: Sec. 69-3-822, MCA; IMP, Secs. 69-3-856 through 69-3-860, MCA

RULE V. 38.5.2005 APPLICATION FOR DISCOUNTED SERVICES

(1) through (2)(g)(i) Remain as proposed.

(ii) the applicant will not resell or in any way share, transfer or use the discounted services in such a manner so as to effectively resell the service;

(iii) through (4)(d) Remain as proposed. AUTH: Sec. 69-3-822, MCA; IMP, Secs. 69-3-856 through 69-3-860, MCA

RULE VI. 38.5.2006 APPLICATION DEADLINES AND DISBURSEMENT OF FUNDS

(1) Public access points, schools, libraries, and health care providers may apply for discounts from the FY98 Montana interim universal access fund on or before ~~January~~ February 1, 1998. Applications must be filed with the Montana Public Service Commission, PO Box 202601, Helena, MT 59620-2601. Applicants will be notified of the approved discount amount by ~~March~~ April 1, 1998. Discount funds will be disbursed no later than ~~April~~ May 1, 1998. The application deadline (February 1, 1998) and subsequent dates may be waived by the commission on a showing that there has been an unavoidable delay in the federal application process.

(2) Remains as proposed. AUTH: Sec. 69-3-822, MCA; IMP, Secs. 69-3-856 through 69-3-860, MCA

RULE VII. 38.5.2007 REDUCTION OF DISCOUNTS (1) If funds from the Montana interim universal access account are not sufficient to fully reimburse public access points for authorized discounts, the amount of the discounts to each eligible user public access point will be reduced proportionally. If public access points are fully funded, and remaining funds are not sufficient to fully reimburse other eligible users, remaining funds will be reduced proportionally.

(2) Remains as proposed. AUTH: Sec. 69-3-822, MCA; IMP, Secs. 69-3-856 through 69-3-860, MCA

4. Comments:

Rule I: The Montana State Library commented that this rule eliminates eligibility for libraries in tribal colleges and community colleges.

Response: This definition is the same as the federal definition and is required by 69-3-856(4), MCA (SB89, Section 21(4)). This definition does not preclude tribal colleges

from applying for discounts. Section 69-3-858(1), MCA (SB89, Section 23(1)) does not contemplate discounts to community colleges or their libraries, but community colleges or any library may apply for a discount as a public access point.

Rule II: The Montana State Library commented that the minimum hours should be changed so as not to discourage rural libraries from applying for discounts.

Response: The rule has been amended.

Rule III: The Montana Telephone Association (MTA) commented that the last sentence of this rule is inconsistent with 69-3-859(5), MCA (SB89, Section 24(5)). MTA argues that this section means that every dollar of federal funding reduces the total state fund by a like amount.

Response: The Commission disagrees with MTA's interpretation of the law. The Commission interprets 69-3-859(5), MCA, to mean that for each dollar an applicant receives from federal funds, that applicant will receive one less dollar from state funds. The dollar from state funds, however, will be available to another applicant.

MTA commented that the rules cannot target funds to a particular class.

Response: The last sentence of proposed Rule III has been deleted.

Rule IV: MTA commented that this rule should clarify that "any discount will be offset by any funding received from Federal programs."

Response: Rule VII(2) clarifies this point.

Rule V: MTA commented that Rule V(2)(g)(ii) should be clarified to indicate that an applicant will not "resell or in any way share, transfer or use the discounted service in such a manner so as to effectively resell the service." MTA also commented that Rule V(2)(h) should apply only to applicants for public access points.

Response: Proposed Rule V(2)(g)(ii) has been amended. Section 69-3-858(4), MCA (SB89, Section 23(4)) does not support MTA's comment on proposed Rule V(2)(h). All applications require a resolution of support.

Rule VI: Sprint Communications commented that no mechanism is included to ensure that the supported programs continue all year. Sprint contends that if a recipient program is discontinued prior to the end of the fiscal year, subsidies should be returned to the fund. MTA commented that disbursements should be made monthly, rather than in a lump sum. Staff commented that the dates should be changed in the first year and an opportunity for waiver of the dates should be available if action on applications for federal funds is delayed.

Response: The Commission agrees with Sprint but disagrees that the proposed rules need changing. The application process will include verification from the applicant and provider that the service has been provided and, if not, funds returned. Returned funds will be available to other eligible users. Regarding MTA's comment, nothing in the

statute requires monthly disbursements. The Commission believes that the best method of administering the funds is an annual disbursement with applicant's verification of expenditures and the provider's verification of service completed. The Commission agrees with the staff's comment and the rule has been amended accordingly.

Rule VII: Regarding Rule VII(1) MTA commented that the rule is in conflict with the funding priority established in statute. Regarding Rule VII(2) Sprint contends that leftover funds at the end of the first year should be used to reduce the amount that needs to be collected the next year.

Response: The Commission agrees that Rule VII(1) potentially conflicts with the priority established in the statute. The rule has been amended. Regarding Sprint's comment the program is designed so that funds remaining after the first year will be used to reduce the amount collected the second year. If funds remain after the second year the Department of Revenue can determine their disposition, or the legislature can address the issue during the 1999 session.

Rule IX: The Department of Revenue (DOR) commented that Rule IX(1)(2)(3) should be amended to strike the word "intrastate" and add "that originate or terminate" after "telecommunication services." DOR also suggests that the exemption for customer premise equipment (69-3-860(1)(d), MCA (SB89, Section 25(1)(d)) be included in rule. Sprint commented that the rate should be applied to current customer bills during fiscal year 1998. Sprint states the rate should be set using historical retail revenue since it is impossible to know what the level of revenue will be in a given fiscal year. Sprint also suggests that a rule state that payment of a surcharge is an explicit subsidy and may be shown as a separate line item on each carrier's retail telecommunications service bills.

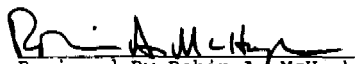
Response: The language in Rule IX comes almost directly from statute and the Commission believes that reference to the definition of "retail revenue" clarifies legislative intent. DOR's suggested language is worse than the proposed rule because it omits the statutory language "and are billed for a service address in Montana." That language is necessary to conform the rule to 69-3-860(1)(a), MCA (SB89, Section 25(1)(a)). The PSC rules do not preclude DOR from explaining what revenue is subject to the surcharge on their own forms or own rules. With respect to DOR's suggestion that the exemption for "customer premise equipment" be included in rule, the Commission notes that rules, "may not unnecessarily repeat statutory language." 2-4-305(2), MCA. The statute is clear and there is no necessary reason to repeat the statute in rule.

Regarding Sprint's comments, the rate is being applied to current customer bills in FY98. Also, 69-3-860, MCA (SB89, Section 25), gives the Commission authority to determine the rate methodology necessary to raise the required funding. It also allows the DOR to write rules concerning the collection

of funds. The Commission relies on the DOR to use the latest available and most reliable data to determine the surcharge. DOR may adjust the surcharge rate as necessary to ensure proper collection of revenues. As to Sprint's suggestion that a rule be drafted to state that the surcharge is an explicit subsidy which may be shown as a line item on a bill, the statute is clear and a rule is not necessary.


NANCY MCCAFFREE, Vice Chair

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 6, 1997.


Reviewed By Robin A. McHugh

VOLUME NO. 47

OPINION NO. 8

BONDS - Open-space bond proceeds used for maintenance and planning;
CITIES AND TOWNS - Use of open-space bond proceeds;
LAND USE - Open-space bond proceeds;
LOCAL GOVERNMENT - Municipality's use of open-space bond proceeds;
PARKS - Open-space bond proceeds used for maintenance of open-space land;
MONTANA CODE ANNOTATED - Title 76, chapter 6, part 1; sections 7-16-4104, 76-6-109, -110.

- HELD: 1. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act for the maintenance of open-space land acquired with the bond proceeds.
2. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act to fund the development of a comprehensive plan for purchase, use, development, and maintenance of open-space land.

October 2, 1997

Mr. David L. Nielsen
Helena City Attorney
316 North Park
Helena, MT 59623

Dear Mr. Nielsen:

You have requested my opinion on the following questions:

1. Whether the Helena City Commission may use municipal general obligation bond proceeds for the maintenance of the fields and lands acquired with bond proceeds.
2. Whether the Helena City Commission may use a portion of the bond proceeds to pay for the creation of a comprehensive parks, recreation and open-space plan.

On July 22, 1996, the Commission for the City of Helena approved a resolution for an election authorizing the city to issue bonds for the purposes described in Mont. Code Ann. title 76, chapter 6, part 1. Title 76, chapter 6, is known as the Open-Space Land and Voluntary Conservation Easement Act ("the Act"). Mont. Code Ann. § 76-6-101. The purposes of the Act are threefold:

- (1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or

geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

Mont. Code Ann. § 76-6-103.

The term "open-space land" as used in the Act means any land which is provided or preserved for:

- (a) park or recreational purposes;
- (b) conservation of land or other natural resources;
- (c) historic or scenic purposes; or
- (d) assisting in the shaping of the character, direction, and timing of community development.

Mont. Code Ann. § 76-6-104.

The Act also grants public bodies extensive powers to implement its provisions. Public bodies are defined as "the state, counties, cities, towns, and other municipalities." Mont. Code Ann. § 76-6-104(4). Under Mont. Code Ann. § 76-6-109(1), a public body is granted "all the powers necessary or convenient to carry out the purposes and provisions" of the Act. Specifically, the Act authorizes a public body to provide for the construction, maintenance, operation, or repair of any facility or structure necessary for the provision, preservation, maintenance and management of open-space land. Mont. Code Ann. § 76-6-109(1)(e).

A public body is also granted broad funding authority to carry out the purposes of the Act. Section 76-6-109(2) provides:

For the purposes of this chapter, the state or a city, town, other municipality, or county may:

- (a) appropriate funds;
- (b) levy taxes and assessments according to existing codes and statutes not to exceed 1 mill; [and]
- (c) **issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state**

Mont. Code Ann. § 76-6-109(2) (emphasis added). Thus, in order to effectuate the purposes of the Act, a city may issue and sell general obligation bonds.

In its resolution submitting the bond question to the voters, the City of Helena expressly referred to the Act and the necessity to create, preserve, and maintain open-space land. The resolution also refers to the general bonding authority of the city as provided in Mont. Code Ann. § 7-7-4221 and the authority of the city to call for an election on the bond issue under Mont. Code Ann. § 7-7-4223.

Questions have arisen as to the authority of the city to issue such bonds. Such questions include whether the resolution and election were invalid because the city should have been acting pursuant to Mont. Code Ann. § 7-16-4104. Among other things, that section authorizes a city to issue bonds for the purpose of purchasing and improving lands for public parks and grounds, as well as for the purchase and construction of athletic fields. Total indebtedness incurred pursuant to that section, including the then-existing indebtedness, may not exceed 16.5 percent of the taxable value of the taxable property of the city. Mont. Code Ann. § 7-16-4104(2). This debt limit stands in contrast to the general limitation on municipal bonded indebtedness of 28 percent of the city's taxable value as described in Mont. Code Ann. § 7-7-4201 and referenced by the city in its resolution calling for the open-space bond election.

Section 76-6-109(2) authorizes the issuance of bonds to effectuate the purposes of the Act. It was this provision that was referenced in the city's resolution and it was pursuant to this authority that the city referred the bond election to the voters. The bond election was not based upon Mont. Code Ann. § 7-16-4104. The Act specifically provides that the powers it confers are "in addition and supplemental to the powers conferred by any other law." Further, even if there were an inconsistency between the Act and section 7-16-4104, the Act states that if any of the provisions in the Act are inconsistent with any other law, the provisions of the Act are controlling. Mont. Code Ann. § 76-6-105(1). Therefore, the restrictions in Mont. Code Ann. § 7-16-4101 do not apply here.

Your first question is whether the city may use the proceeds from the open-space bonds for the maintenance of fields and lands acquired with such proceeds. Mont. Code Ann. § 76-6-109(2) grants broad authorization for the use of bond proceeds in that bonds may be issued "for the purposes of the [Act]." One purpose of the Act is to provide "for the preservation of . . . significant open-space land." Mont. Code Ann. § 76-6-103(2). The term "open space land" includes land provided and preserved for park or recreational purposes. Mont. Code Ann. § 76-6-104(3)(a). Under Mont. Code Ann. § 76-6-109(1)(e), a public body is granted the authority to provide for the maintenance, operation, or repair of facilities that may be necessary to the provision, preservation, maintenance, and management of property as open-space land. The specific reference to "maintenance" in § 76-6-109(1)(e) clearly indicates the legislature's intent to allow expenditure of funds for maintenance. Under the broad authority granted to a public body by the Act, bond proceeds may be used to maintain open-space land acquired by expenditure of the bond proceeds. You have not requested an opinion as to expenditure of bond proceeds to

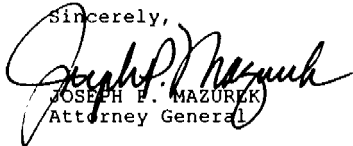
maintain open-space land not acquired by expenditure of bond proceeds and, accordingly, I express no opinion on that question.

You have also asked whether open-space bond proceeds may be used to fund the development of a comprehensive plan. Montana Code Annotated § 76-6-110(1) authorizes a city to perform comprehensive planning for the urban area. Funds may be appropriated and made available for such planning. Mont. Code Ann. § 76-6-110(2). The term "comprehensive planning" as defined in Mont. Code Ann. § 76-6-104(1) generally includes planning to implement the purposes of the Act. As such, under Mont. Code Ann. § 76-6-109(2), bond proceeds may be used to fund the comprehensive planning process.

THEREFORE, IT IS MY OPINION:

1. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act for the maintenance of open-space land acquired with the bond proceeds.
2. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act to fund the development of a comprehensive plan for purchase, use, development, and maintenance of open-space land.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/ja/dm

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 June 30, 1997. This table includes those rules adopted during the period July 1, 1997 through September 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 June 30, 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.

ADMINISTRATION, Department of, Title 2

- | | |
|-----------|---|
| I | and other rules - State Procurement, p. 1107, 1816 |
| 2.13.201 | and other rules - 9-1-1 Emergency Telephone Systems, p. 1691 |
| 2.21.122 | and other rules - Sick Leave, p. 971, 1440 |
| 2.21.216 | and other rules - Annual Vacation Leave, p. 966, 1442 |
| 2.21.619 | and other rules - Holidays, p. 962, 1444 |
| 2.21.3603 | and other rules - Veterans' Employment Preference, p. 956, 1445 |
| 2.21.3802 | and other rules - Probation, p. 952, 1446 |
| 2.21.5006 | and other rule - Reduction in Work Force, p. 946, 1447 |
| 2.21.8011 | and other rules - Grievances, p. 949, 1448 |
| 2.21.8107 | and other rule - Equal Employment Opportunity, p. 964, 1449 |

(Public Employees' Retirement Board)

- | | |
|----------|--|
| 2.43.203 | and other rules - Review of an Administrative Decision - Service Credit for Compensated Hours - Granting of Service Credit and Membership Service as a Result of Court Action, p. 1103, 1660 |
|----------|--|

(State Compensation Insurance Fund)

- I and other rules - Employers' Liability - Premium Rates, p. 1697

AGRICULTURE, Department of, Title 4

- I Establishing Grading Standards for Mustard Seed, p. 1413
I License Fees for Commodity Dealers/Public Warehouse Operators, p. 741, 1023
I Use of Pesticides in Alfalfa Seed Crops, p. 616, 985
4.5.109 and other rules - Noxious Weed Trust Fund Procedures, p. 974, 1264
4.12.1508 Conditions Governing Importation of Mint and Mint Rootstock, p. 1005, 1450

STATE AUDITOR, Title 6

- I Fidelity Bond, p. 1706
I Transactional Exemptions for Cooperative Associations, p. 1496
I-VI Regulation of Living Trusts, p. 1415
6.6.511 Medicare Supplement Insurance, p. 1421, 1818
6.6.4001 Valuation of Securities, p. 371, 688
6.6.4002 Definitions of Money Market Funds, p. 1502
6.6.4101 Accreditation Fees, p. 1623
6.6.5101 Plan of Operation of the Small Employer Health Reinsurance Program, p. 1500

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 1419
6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 369, 664, 1357

COMMERCE, Department of, Title 8

(Chemical Dependency Counselors Certification Program)

- I Fees, p. 1008, 1451

(Board of Cosmetologists)

- 8.14.401 and other rules - Practice of Cosmetology - Electrology - Manicuring and Esthetics, p. 1709

(Board of Dentistry)

- 8.16.408 and other rules - Inactive to Active Status Licenses for Dentists and Dental Hygienists - General Standards - Denturist Examination - Denturist Inactive to Active Status License - Reinstatement of Denturist Licenses, p. 848, 1265

(State Electrical Board)

- 8.18.402 and other rules - Applications - General Responsibilities - Screening Panel, p. 1625

(Board of Hearing Aid Dispensers)

- 8.20.401 Traineeship Requirements and Standards - Examinations - Definitions - Transactional Document Requirements, p. 1743
8.20.401 and other rules - Hearing Aid Dispensers, p. 3009, 832

(Board of Horse Racing)

- 8.22.502 and other rules - Parimutuel Wagering - Fees - Permissible Medication, p. 526, 889

(Board of Medical Examiners)

- 8.28.414 and other rules - Physician Temporary Certificate - Fee Schedule - Acupuncture - Podiatry - Nutrition Practice Rules, p. 1746

(Board of Nursing)

- 8.32.413 and other rules - Conduct of Nurses - Survey and Approval of Schools - Annual Report - Definitions - Registered Nurse's Responsibility to the Nursing Process - Standards for Schools of Nursing - Standards for IV Therapy - Charge Nurse for Licensed Practical Nurses, p. 2638, 626, 1176

(Board of Nursing Home Administrators)

- 8.34.404A and other rules - Nursing Home Administrators, p. 3174, 1, 237
8.34.414A Application for Licensure, p. 1423

(Board of Optometry)

- 8.36.406 and other rules - General Practice Requirements - Unprofessional Conduct - Fees - Disciplinary Actions - Continuing Education Concerning the Practice of Optometry, p. 2238, 2654, 305

(Board of Outfitters)

- 8.39.505 and other rules - Outfitter Applications and Renewals - Guide or Professional Guide Licenses and Qualifications - Safety Provisions - Unprofessional Conduct, p. 1330
8.39.512 and other rule - Licensure - Inactive - Fees for Outfitter, Operations Plan and Guide or Professional Guide, p. 530, 667, 1178

(Board of Pharmacy)

- 8.40.404 and other rules, Fees - Internship Regulations - Pharmacy Technicians, p. 1628

(Board of Physical Therapy Examiners)

- 8.42.402 and other rules - Examinations - Fees - Temporary Licenses, p. 852, 1359

(Board of Plumbers)

8.44.402 and other rule - Definitions - Fees, p. 1751

(Board of Professional Engineers and Land Surveyors)

8.48.507 Classification of Experience, p. 1504

(Board of Private Security Patrol Officers and Investigators)

8.50.423 and other rules - Private Security Patrol Officers and Investigators, p. 2656, 633

(Board of Psychologists)

8.52.402 and other rules - Practice of Psychology, p. 3, 538, 637

(Board of Public Accountants)

8.54.402 and other rules - Practice of Public Accounting, p. 3018, 540

(Board of Radiologic Technologists)

8.56.602C and other rules - Permit Examinations - Permit Fees - Inspections - Continuing Education - Continuing Education--Waiver, p. 977, 1576

(Board of Real Estate Appraisers)

8.57.403 and other rules - Real Estate Appraisers, p. 2665, 308

8.57.411 Continuing Education, p. 532, 1360

(Board of Realty Regulation)

8.58.410 Foreign Land Sales Practices Act, p. 1010

8.58.411 and other rules - Fees - Continuing Education - Renewal of License, p. 1333, 1819

8.58.419 Grounds for License Discipline - General Provisions - Unprofessional Conduct, p. 467, 1026

8.58.419 Grounds for License Discipline - General Provisions - Unprofessional Conduct, p. 3101, 399

(Board of Respiratory Care Practitioners)

8.59.402 and other rules - Respiratory Care Practitioners, p. 8, 542

(Board of Sanitarians)

8.60.413 Fee Schedule, p. 1243, 1578

(Board of Social Work Examiners and Professional Counselors)

8.61.403 and other rules - Practice of Social Work and Licensed Professional Counseling, p. 239, 986

(Board of Speech-Language Pathologists and Audiologists)

8.62.413 Fees, p. 1012, 1453

(Board of Passenger Tramway Safety)

8.63.503 and other rules - Passenger Tramway Safety Industry, p. 2952, 401

(Board of Veterinary Medicine)

- 8.64.401 and other rules - Definitions - Application Requirements - Temporary Permits - Support Personnel, p. 1633

(Building Codes Bureau)

- 8.70.101 and other rules - Building Codes Bureau, p. 1509
8.70.101 and other rule - Uniform Building Code - Boiler Inspection, p. 855, 1179

(Banking and Financial Institutions Division)

- I-XVII Foreign Capital Depositories, p. 1534
8.87.204 and other rules - Application Procedures to Establish a New Branch Bank - Procedural Rules for a Banking Board Hearing, p. 1014, 1454

(Local Government Assistance Division)

- 8.94.3705 and other rules - Federal Community Development Block Grant (CDBG) Program, p. 19, 1181
8.94.4101 and other rules - State of Montana Single Audit Act - Report Filing Fee Schedule, p. 743, 1027

(Board of Investments)

- 8.97.910 and other rules - INTERCAP Revolving Program, p. 750, 1028
8.97.1301 and other rules - General Requirements for All Investments in Mortgages and Loans, p. 859, 1361, 1579, 1823

(Economic Development Division)

- 8.99.401 and other rules - Microbusiness Advisory Council - Microbusiness Finance Program, p. 1547

(Hard-Rock Mining Impact Board)

- 8.104.203A Administration of the Hard-Rock Mining Impact Act - Definitions, p. 981, 1337

(Travel Promotion and Development Division)

- I Tourism Advisory Council, p. 619, 987

EDUCATION, Title 10

(Office of Public Instruction)

- 10.16.1101 Protection in Evaluation Procedures, p. 373, 892

(Board of Public Education)

- 10.55.603 Accreditation - Curriculum Development and Assessment, p. 756, 871, 1185
10.56.101 Student Assessment, p. 754, 870, 1186
10.57.107 Teacher Certification - Emergency Authorization of Employment, p. 2961, 312
10.57.211 Teacher Certification - Test for Certification, p. 757, 872, 1187
10.57.215 Teacher Certification - Renewal Requirements, p. 759, 873, 1188

- 10.58.505 Teacher Education Programs - Business Education,
p. 2962, 313

(State Library Commission)

- 10.101.101 and other rule - State Library Commission - Library
Service Advisory Council, p. 1119

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- I Defining Guiding Services for Use of Class B-10 and
B-11 Licenses Which Are Outfitter-sponsored
Nonresident Big Game Combination Licenses, p. 1753
12.6.101 Regulations for Ice Fishing Shelters, p. 247, 638
12.6.901 Restriction of Motor-propelled Water Craft on Hauser
Reservoir, p. 669, 1029
12.6.901 Restriction of Motor-propelled Water Craft on
Various Lakes in the Seeley Lake Area and Beavertail
Pond, p. 131, 639

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.110 Subdivisions - Emergency Amendment - Certification
of Plat Approval, p. 543
17.36.303 Subdivisions - Authority of the Department to Allow
Use of Alternative Water Systems in Subdivisions,
p. 375, 1458
17.40.201 and other rules - Operator Certification - Revising
Water and Waste Water Operator Certification Rules,
p. 3182, 545
17.50.412 and other rules - Solid Waste Management - Conform
with EPA Flexibility - Allow Reduced Regulatory
Requirements for Certain Wastes, p. 671, 1031
17.50.530 and other rule - Solid Waste Management - Class II
Landfill Requirements, p. 377, 689

(Board of Environmental Review)

- I Water Quality - Temporary Water Standards for Daisy
Creek, Stillwater River, Fisher Creek, and the
Clark's Fork of the Yellowstone River, p. 1652,
1872, 2211, 1049, 2502, 534, 1636
17.8.102 and other rules - Air Quality - Updating the
Incorporations by Reference, p. 1126, 1581
17.8.120 Air Quality - Variance Procedures, p. 763, 1189
17.8.210 Air Quality - Ambient Air Quality Standards for
Sulfur Dioxide, p. 1124, 1582
17.8.302 and other rule - Air Quality - Incorporating by
Reference Federal Regulations and other Materials
Related to Air Quality Emission Standards -
Standards of Performance for New Stationary Sources
of Air Pollutants, p. 760, 1191
17.8.316 Air Quality - Particulate Matter Emissions from
Incinerators, p. 874, 1193
17.8.504 and other rule - Air Quality - Air Quality Operation
Fees - Air Quality Permit Application Fees, p. 1142,

- 1585
- 17.8.514 Air Quality - Open Burning Fees, p. 1131, 1587
- 17.30.636 Water Quality - Emergency Amendment - Operation of Dams to Avoid Harm to Beneficial Uses of Water, p. 1199
- 17.30.636 Water Quality - Operation of Dams to Avoid Harm to Beneficial Uses of Water, p. 1122, 1588
- 17.30.716 Water Quality - Simplify Review of Individual Sewage Systems Under the Nondegradation Policy, p. 1133
- 17.30.1003 and other rule - Water Quality - Montana Ground Water Pollution Control System Regulations, p. 1138
- 17.30.1501 and other rules - Water Quality - Permitting of In-Situ Uranium Mining, p. 3199, 402
- (Petroleum Tank Release Compensation Board)
- I Applicable Rules Governing the Operation and Management of Tanks - Interpretation of 75-11-308(1)(e), MCA, p. 1755
- 17.58.333 Petroleum Board - Designating a Representative for Reimbursement, p. 3197, 403
- 17.58.342 Eligible Reimbursement for Per Diem Expenses, p. 1757

TRANSPORTATION, Department of, Title 18

- 18.7.301 and other rules - Motorist Information Signs, p. 679, 1034
- 18.8.509 and other rules - Motor Carrier Services Program, p. 1638
- 18.8.509 and other rule - Motor Carrier Services Program, p. 2964, 546, 1035
- 18.8.511A Motor Carrier Services Program - When Flag Vehicles are Required, p. 21, 647

- (Transportation Commission)
- I-XV Railroad Crossing Signalization - Signal Removal - Improved Crossing Surface Installation, p. 3028, 642, 896

JUSTICE, Department of, Title 23

- 23.16.101 and other rules - Public Gambling, p. 2504, 404

- (Board of Crime Control)
- 23.14.801 Definition of "Uncertifiable Officer", p. 536, 1036

LABOR AND INDUSTRY, Department of, Title 24

- I-XI Workers' Compensation Administrative Assessment, p. 380, 686, 1364
- 24.16.9007 Prevailing Wage Rates - Service Occupations and Certain Bricklayer Rates, p. 621, 1037
- 24.29.4314 Workers' Compensation Data Base System, p. 1021
- 24.30.102 Occupational Safety and Health Standards for Public Sector Employment, p. 396, 692

LIVESTOCK, Department of, Title 32

(Board of Livestock)

32.3.212 Brucellosis Vaccination(s), p. 1641

(Board of Milk Control)

32.24.301 and other rule - Producer Class I Pricing, p. 3201, 434

32.24.501 and other rules - Quota Rules, p. 2718, 3215, 314

32.24.504 and other rules - Quota Rules, p. 1339, 1662

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I&II Streamside Management Zone, p. 1552

I-III and other rule - Extensions of Time to Complete a Water Use Permit or Change Authorization - Application and Special Fees, p. 1643

I-XII Administration of the Yellowstone Controlled Groundwater Area, p. 22, 469

36.17.601 and other rules - Renewable Resources Grant and Loan Program, p. 983, 1268

(Board of Land Commissioners and Department of Natural Resources and Conservation)

36.25.146 and other rule - State Land Leasing, p. 3110, 315

(Board of Oil and Gas Conservation)

36.22.1231 and other rules - Notice of Application and Objections - Injection Fee and Well Classification - Disposal by Injection - Application--Contents and Requirements - Board Authorization - Notice of Commencement of Discontinuance--Plugging of Abandoned Wells - Records Required, p. 1245, 1589

36.22.1303 and other rules - Well Plugging Requirement - Plugging and Restoration Bond - Financial Responsibility, p. 1646

36.22.1408 Underground Injection Control - Financial Responsibility, p. 3107, 471

36.22.1423 Injection Fees - Well Classification, p. 32, 473

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

Establishment of a Negotiated Rulemaking Committee on Bed and Breakfast Establishments, p. 1774

Establishment of a Negotiated Rulemaking Committee on Guest Ranches and Outfitting and Guide Facilities, p. 1778

I and other rules - Laboratory Analysis Fees, p. 823, 1041

I and other rules - Medicaid Reimbursement Methodology, p. 775, 1269

I-IX and other rules - Rules in Titles 11 and 46 Pertaining to Mental Health Managed Care Services

- for Medicaid Recipients and other Eligible Persons, p. 147, 548, 898
- I-X and other rules - Targeted Case Management, p. 2755, 496, 898
- I-XVIII Montana Telecommunications Access Program, p. 2967, 505
- I-XXI and other rules - Youth Care Facilities, p. 1759
- I-XXI and other rule - Minimum Standards for Mental Health Centers, p. 1556
- 11.5.1002 Day Care Rates, p. 879, 1387
- 11.7.313 Model Rate Matrix Used to Determine Foster Care Maintenance Payments, p. 1149, 1663
- 11.7.901 Interstate Compact on the Placement of Children, p. 3205, 316
- 11.12.115 and other rules - Qualifications of Child Care Staff, Foster Parents, and Regular Members of Foster Parents' Households, p. 1145, 1664
- 11.14.101 and other rules - State Payment for Day Care Services to Eligible Providers and Parents, p. 1427
- 11.14.101 and other rules - Day Care Facilities - Certification for Day Care Benefits, p. 249
- 11.14.106 and other rules - Excluding Care of Children of a Single Family from Day Care Facility Licensing and Registration Rules - State Payment for Registered or Licensed Day Care and Unregistered Day Care, p. 135, 578
- 16.6.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Records and Statistics, p. 1460
- 16.10.1507 Area Requirements, Deck Areas, Handholds for Swimming Pools and Spas, p. 145, 580
- 16.30.102 and other rules - Emergency Medical Services Licensure Requirements and Procedures, p. 801, 1201
- 16.30.901 and other rules - Transfer from the Department of Health and Environmental Sciences - Living Wills, p. 1462
- 16.32.302 Minimum Standards of Construction for a Licensed Health Care Facility, p. 1574
- 16.32.922 Inspection Fees for Personal Care Facilities, p. 877, 1203
- 20.3.401 and other rules - Chemical Dependency Counselor Certification Rules, p. 1249, 1590
- 20.14.302 and other rule - Voluntary Admissions to Montana State Hospital, p. 1347
- 46.6.903 and other rules - Independent Living Program, p. 765, 1204
- 46.12.101 and other rules - General Medicaid Provider Requirements, p. 2724, 474
- 46.12.204 Copayments and Qualified Medicare Beneficiaries, p. 820, 1208
- 46.12.503 and other rules - Medicaid Coverage - Reimbursement of Hospital Services, p. 883, 1209
- 46.12.539 Fee Schedule for Audiology Services, p. 1247, 1665
- 46.12.550 and other rules - Home Health Services, p. 771, 1042

- 46.12.1229 and other rules - Medicaid Nursing Facility Services Reimbursement, p. 805, 1044
- 46.12.3803 Medically Needy Assistance Standards, p. 2750, 502
- 46.12.4801 and other rules - Health Maintenance Organizations, p. 811, 1210
- 46.12.4804 and other rules - Health Maintenance Organizations, p. 2418, 503
- 46.12.5003 and other rules - Passport to Health Program, p. 1350
- 46.13.302 and other rules - Low Income Energy Assistance Program (LIEAP), p. 2136, 2887, 504
- 46.13.303 and other rules - Low Income Energy Assistance, p. 1649

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VI Unauthorized Changes of Primary Interexchange Carrier or Local Exchange Carrier ("Slamming"), p. 1259
- I-IX Montana Interim Universal Access Program, p. 1253
- I-IX IntraLATA Equal Access Presubscription, p. 299
- I-LVIII Local Exchange Competition and Dispute Resolution in Negotiations between Telecommunications Providers for Interconnection, Services and Network Elements, p. 2528, 319, 651
- 38.3.706 Motor Carrier Insurance Endorsements (applicable to Large Motor Coaches), p. 624, 1062
- 38.5.1010 and other rules - Electric Safety Codes - Electric Service Standards - Pipeline Safety (including Drug and Alcohol Testing), p. 2777, 317
- 38.5.2204 Pipeline Safety Incident Reporting Requirements, p. 827, 1215

REVENUE, Department of, Title 42

- I Agricultural Improvements from Property Land Classification, p. 3112, 506
- I-VIII Restaurant Beer/Wine License Lottery Process, p. 1654
- I-XIII and other rules - Assessment of Property - Issuing Tax Notices, p. 1165, 1593
- I-XIII and other rules - Temporary - Assessment of Property - Issuing Tax Notices Under Senate Bill 195, p. 1153, 1591
- 42.2.601 Tax Assessment Review Process, p. 1814
- 42.12.106 and other rule - Licensing of Restaurants Which Meet Certain Minimum Qualifications, p. 1151, 1825
- 42.19.1203 and other rules - Industrial Property Trend - New Industrial Property - Personal Property Trended Depreciation Schedules, p. 1782
- 42.20.140 and other rules - Real Property, p. 1438, 1827
- 42.20.166 and other rule - Forest Land Rules, p. 3208, 507

SECRETARY OF STATE, Title 44

(Commissioner of Political Practices)

- I-II Lobbying Activities - Reporting of Lobbying Payments
by Principals, p. 829
44.10.327 and other rule - Reporting of Contributions or
Expenditures by Incidental Political Committees,
p. 1354, 1828

-1943-

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in September 1997, appear. Vacancies scheduled to appear from November 1, 1997, through January 31, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 1997.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Environmental Review (Environmental Quality)			
Ms. Kim Lacey	Governor	Hanson	9/22/1997
Glasgow			12/31/1998
Qualifications (if required): public member			
Board of Medical Examiners (Commerce)			
Ms. Debby Barrett	Governor	reappointed	9/25/1997
Dillon			9/1/2001
Qualifications (if required): public member			
Dr. Daniel Charles Brooke	Governor	reappointed	9/25/1997
Miles City			9/1/2001
Qualifications (if required): doctor of medicine			
Dr. Kay E. Dorr	Governor	MacLean	9/25/1997
Glasgow			9/1/2001
Qualifications (if required): public member			
Ms. Linda Melick	Governor	reappointed	9/25/1997
Lewistown			9/1/2001
Qualifications (if required): licensed nutritionist			
Mr. Daniel Muniak	Governor	Spear	9/25/1997
Jordan			9/1/2001
Qualifications (if required): licensed physician assistant-certified			
Board of Nursing Home Administrators (Commerce)			
Mr. Douglas Faus	Governor	Billing	9/26/1997
Chester			5/28/1998
Qualifications (if required): nursing home administrator			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Burial Preservation Board (Indian Affairs)			
Mr. Francis Auld	Governor	reappointed	9/15/1997
Elmo			8/22/1999
Qualifications (if required): representative of the Salish Kootenai Tribe			
Mr. Carl Fourstar	Governor	reappointed	9/15/1997
Poplar			8/22/1999
Qualifications (if required): representative of the Assiniboine Tribe			
Ms. Jennie Parker	Governor	reappointed	9/15/1997
Ashland			8/22/1999
Qualifications (if required): representative of the Northern Cheyenne Tribe			
Mr. David Schwab	Governor	reappointed	9/15/1997
Polson			8/22/1999
Qualifications (if required): representative of the State Historic Preservation Office			
Dr. Randall Skelton	Governor	reappointed	9/15/1997
Missoula			8/22/1999
Qualifications (if required): physical anthropologist			
Ms. Juanita Stovall	Governor	Stovall	9/15/1997
Billings			8/22/1999
Qualifications (if required): representative of the public			
Mr. Clarence "Curly Bear" Wagner	Governor	reappointed	9/15/1997
Browning			8/22/1999
Qualifications (if required): representative of the Blackfeet Tribe			

-1945-

BOARD AND COUNCIL APPOINTERS FROM SEPTEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Gambling Study Commission (Legislative Services)			
Professor Rodney Brod	Governor	not listed	9/3/1997
Missoula			6/30/1999
Qualifications (if required): representative of Sociology Department of the University of Montana			
Dr. Robert Caldwell	Governor	not listed	9/3/1997
Helena			6/30/1999
Qualifications (if required): mental health professional			
Ms. Barbara Nemecek	Governor	not listed	9/3/1997
Billings			6/30/1999
Qualifications (if required): doctorate in social science pertinent to socioeconomic analysis			
Professor Shannon Taylor	Governor	not listed	9/3/1997
Bozeman			6/30/1999
Qualifications (if required): representative of the school of business at Montana State University			
Ms. Phoebe Williams	Governor	not listed	9/3/1997
Deer Lodge			6/30/1999
Qualifications (if required): business owner with no economic interest in the gambling industry			
Governor's Council on Families (Public Health and Human Services)			
Ms. Kathleen Heiser	Governor	McCall	9/15/1997
Billings			6/24/1998
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Health Care Advisory Council (Public Health and Human Services)			
Mr. Max Agather	Governor	reappointed	9/2/1997
Kalispell			6/30/1999
Qualifications (if required):	representing Region 5		
Ms. Laurie Ekanger	Governor	Blouke	9/2/1997
Helena			6/30/1999
Qualifications (if required):	representing the Executive Branch		
Dr. Lawrence R. Palazzo	Governor	reappointed	9/2/1997
Glasgow			6/30/1999
Qualifications (if required):	representing Region 1		
Ms. Kathleen Richardson	Governor	reappointed	9/2/1997
Havre			6/30/1999
Qualifications (if required):	representing Region 2		
Ms. Joan Taylor	Governor	Lewis	9/2/1997
Helena			6/30/1999
Qualifications (if required):	representing Region 4		
Ms. Kristianne Wilson	Governor	Burgess	9/2/1997
Billings			6/30/1999
Qualifications (if required):	representing Region 3		
Missouri River Basin Advisory Council (Natural Resources and Conservation)			
Mr. Don Pfau	Governor	Ross	9/15/1997
Lewistown			2/25/1999
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Geographic Information Council (Administration)			
Mr. Richard Aspinall	Governor	not listed	9/9/1997
Bozeman			9/9/1999
Qualifications (if required):	representative of the University System		
Mr. Harold Blattie	Governor	not listed	9/9/1997
Columbus			9/9/1999
Qualifications (if required):	representative of local government		
Mr. Stuart Blundell	Governor	not listed	9/9/1997
Helena			9/9/1999
Qualifications (if required):	representative of private business active in land information systems		
Ms. Mary Bryson	Governor	not listed	9/9/1997
Helena			9/9/1999
Qualifications (if required):	director of a state agency		
Mr. Don Childress	Governor	not listed	9/9/1997
Helena			9/9/1999
Qualifications (if required):	designee of director of a state agency		
Mr. Lance Clappitt	Governor	not listed	9/9/1997
Denver, CO			9/9/1999
Qualifications (if required):	federal representative		
Mr. Steve Fourstar	Governor	not listed	9/9/1997
Billings			9/9/1999
Qualifications (if required):	representative of Native American Tribes of Montana		
Mr. Steve Hellenhal	Governor	not listed	9/9/1997
Billings			9/9/1999
Qualifications (if required):	representative of local government		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Geographic Information Council (Administration) Cont.			
Mr. Dan Matés	Governor	not listed	9/9/1997
Billings			9/9/1999
Qualifications (if required):	federal representative		
Ms. Lois A. Menzies	Governor	not listed	9/9/1997
Helena			9/9/1999
Qualifications (if required):	director of the Department of Administration		
Mr. Jon Sesso	Governor	not listed	9/9/1997
Butte			9/9/1999
Qualifications (if required):	representative of local government		
Mr. Steve Solem	Governor	not listed	9/9/1997
Missoula			9/9/1999
Qualifications (if required):	federal representative		
Ms. Karen Stregé	Governor	not listed	9/9/1997
Helena			9/9/1999
Qualifications (if required):	state librarian		
Mr. Dan Sullivan	Governor	not listed	9/9/1997
Butte			9/9/1999
Qualifications (if required):	representative of public utilities		
Noxious Weed Advisory Council (Agriculture)			
Ms. Linda Ellison	Director	not listed	9/8/1997
Bozeman			6/30/1999
Qualifications (if required):	sportsman/wildlife group		
Rep. Bob Gilbert	Director	not listed	9/8/1997
Sidney			6/30/1999
Qualifications (if required):	Montana Weed Control Association		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Norxious Weed Advisory Council	(Agriculture) Cont.		
Mr. Charles M. Jarecki	Director	not listed	9/8/1997
Polson			6/30/1999
Qualifications (if required):	at-large member		
Mr. W. Ralph Peck	Director	not listed	9/8/1997
Helena			6/30/1999
Qualifications (if required):	director		
Mr. Steve Roth	Director	not listed	9/8/1997
Big Sandy			6/30/1999
Qualifications (if required):	livestock production		
Mr. Jim Squires	Director	not listed	9/8/1997
Glendive			6/30/1999
Qualifications (if required):	agriculture crop production		
Rep. Robert Thoft	Director	not listed	9/8/1997
Stevensville			6/30/1999
Qualifications (if required):	biological research and control		
Ms. Nancy Thuesen	Director	not listed	9/8/1997
Reserve			6/30/1999
Qualifications (if required):	consumer group		
Mr. Bob Ullom	Director	not listed	9/8/1997
Billings			6/30/1999
Qualifications (if required):	herbicide dealer and applicator		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Success</u>	<u>Appointment/End Date</u>
Teachers' Retirement Board (Administration)			
Ms. Virginia Egli	Governor	Kranick	9/8/1997
Glendive			7/1/2001
Qualifications (if required): retired teacher			
Ms. Jima Severson	Governor	not listed	9/8/1997
Havre			7/1/2001
Qualifications (if required): classroom teacher active in the retirement system			
Mr. James Turcotte	Governor	Oftedal	9/8/1997
Clancy			7/1/2001
Qualifications (if required): public member			
Youth Justice Council (Justice)			
Ms. Peggy Beltrone	Governor	not listed	9/3/1997
Great Falls			6/10/1999
Qualifications (if required): representative of local government			
Ms. Kate Mrgudic	Governor	not listed	9/3/1997
Helena			6/10/1999
Qualifications (if required): representative of prevention programs			
Mr. Dee Jay Poynter	Governor	not listed	9/3/1997
East Helena			6/10/1999
Qualifications (if required): youth representative			
Mr. Jared Rosling	Governor	not listed	9/3/1997
East Helena			6/10/1999
Qualifications (if required): youth representative			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

Board/current position holder	Appointed by	Term end
Alfalfa Seed Committee (Agriculture)		
Mr. Thomas Matchett, Billings	Governor	12/21/1997
Qualifications (if required): public member		
Mr. Gayle Patrick, Malta	Governor	12/21/1997
Qualifications (if required): public member		
Appellate Defender Commission (Administration)		
Ms. Beverly Kolar, Geyser	Governor	1/1/1998
Qualifications (if required): public member		
Board of Chiropractors (Commerce)		
Dr. Marvin S. Harris, Great Falls	Governor	1/1/1998
Qualifications (if required): practicing chiropractor		
Board of Horse Racing (Commerce)		
Mr. Joe Erickson, Cascade	Governor	1/20/1998
Qualifications (if required): horse racing industry in District 3		
Board of Occupational Therapy Practice (Commerce)		
Ms. Alice O'Donnell, Anaconda	Governor	12/31/1997
Qualifications (if required): public member		
Board of Speech Pathologists and Audiologists (Commerce)		
Ms. Rosemary Reynolds, Absarokee	Governor	12/31/1997
Qualifications (if required): speech-language pathologist		
Mr. Jeffrey Griffin, Great Falls	Governor	12/31/1997
Qualifications (if required): audiologist		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capitol Advisory Council (Administration) Mr. Allan Mathews, Missoula Qualifications (if required): none specified	Director	1/25/1998
Ms. Madalyn Quinlan, Helena Qualifications (if required): none specified	Director	1/25/1998
Mr. Fredric L. Quivik, Froid Qualifications (if required): none specified	Director	1/25/1998
Mr. Mark Reavis, Butte Qualifications (if required): none specified	Director	1/25/1998
Mr. Bob Frazier, Missoula Qualifications (if required): none specified	Director	1/25/1998
Capitol Restoration Commission (Administration) Ms. Marilyn Miller, Helena Qualifications (if required): none specified	Speaker	12/20/1997
Children's Trust Fund Board (Family Services) Ms. Judy Garrity, Helena Qualifications (if required): representative of Department of Family Services	Governor	1/1/1998
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): public member	Governor	1/1/1998
Judge Gary Acevedo, Pablo Qualifications (if required): public member	Governor	1/1/1998
Mr. Kirk Astroth, Bozeman Qualifications (if required): public member	Governor	1/1/1998

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

Board/current position holder	Appointed by	Term end
Children's Trust Fund Board (Family Services) Cont. Ms. Judy Birch, Helena Qualifications (if required): representative of Office of Public Instruction	Governor	1/1/1998
Concealed Weapon Advisory Council (Justice) Ms. Kim Christopher, Polson Qualifications (if required): law enforcement official	Governor	11/13/1997
Rep. Bob Clark, Ryegate Qualifications (if required): law enforcement official	Governor	11/13/1997
Sheriff Bill Slaughter, Bozeman Qualifications (if required): law enforcement official	Governor	11/13/1997
Rep. Rick Jore, Ronan Qualifications (if required): legislator	Governor	11/13/1997
Mr. Gary Marbut, Missoula Qualifications (if required): gun owner	Governor	11/13/1997
Chief Robert Jones, Great Falls Qualifications (if required): law enforcement official	Governor	11/13/1997
Ms. Melissa Tuemmler, Uln Qualifications (if required): gun owner	Governor	11/13/1997
Department of Corrections Advisory Council (Corrections) Mr. T. Larson Medicine Horse, Hardin Qualifications (if required): sheriff and Native American representative	Governor	12/11/1997
Judge Marge Johnson, Great Falls Qualifications (if required): district court judge	Governor	12/11/1997

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Corrections Advisory Council (Corrections) Cont.		
Mr. Jim Reno, Billings	Governor	12/11/1997
Qualifications (if required): representing education programs		
Mr. Paul Stengel, Miles City	Governor	12/11/1997
Qualifications (if required): public member		
Sen. Bob Hockett, Havre	Governor	12/11/1997
Qualifications (if required): representing education/vocational education		
Mr. Tom Esch, Kalispell	Governor	12/11/1997
Qualifications (if required): county attorney		
Ms. Nancy Brosten, Swan Lake	Governor	12/11/1997
Qualifications (if required): member of the Swan River Correctional Training Center		
Rep. Bob Keenan, Bigfork	Governor	12/11/1997
Qualifications (if required): representative of the Swan River Correctional Training Center		
Rep. Royal C. Johnson, Billings	Governor	12/11/1997
Qualifications (if required): legislator		
Commissioner Doug Barone, Glendive	Governor	12/11/1997
Qualifications (if required): county commissioner		
Ms. Candy Wimmer, Helena	Governor	12/11/1997
Qualifications (if required): representing the Board of Crime Control and the Youth Justice Council		
Sen. Ethel Harding, Polson	Governor	12/11/1997
Qualifications (if required): legislator and a victim representative		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Corrections Advisory Council (Corrections) Cont. Judge Ted Mizner, Anaconda Qualifications (if required): district court judge	Governor	12/11/1997
Sen. Vivian M. Brooke, Missoula Qualifications (if required): legislator and active in women's issues	Governor	12/11/1997
Mr. Steve Rice, Miles City Qualifications (if required): representing Juvenile Justice	Governor	12/11/1997
Mr. John Strandell, Great Falls Qualifications (if required): member of the Regional Correctional Facility	Governor	12/11/1997
Ms. Anita Richards, Seeley Lake Qualifications (if required): member of the Montana Sentencing Commission and a victim representative	Governor	12/11/1997
Ms. Kathy Ogren, Missoula Qualifications (if required): representing business/vocational education	Governor	12/11/1997
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Sen. Sharon Estrada, Billings Qualifications (if required): state senator	Governor	1/1/1998
Fort Peck-Montana Compact Board (Commerce) Ms. Karen Barclay-Fagg, Helena Qualifications (if required): none specified	Governor	11/6/1997

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

Board/current position holder	Appointed by	Term end
Judicial Nomination Commission (Justice)		
Judge Diana Barz, Billings	Governor	1/1/1998
Qualifications (if required): district judge		
Ms. Pam Rein, Big Timber	Governor	1/1/1998
Qualifications (if required): public member		
Martin Luther King, Jr., Holiday Commemorative Commission (Commerce)		
Ms. Angelina Vallejo Cormier, Billings	Governor	1/12/1998
Qualifications (if required): representing ethnic and business groups		
Mr. Robert Fourstar, Wolf Point	Governor	1/12/1998
Qualifications (if required): representing ethnic groups		
Reverend Bob Freeman, Billings	Governor	1/12/1998
Qualifications (if required): representing ethnic and religious groups		
Dr. Frederick Gilliard, Great Falls	Governor	1/12/1998
Qualifications (if required): representing education groups		
Mr. Anthony Caldwell, Great Falls	Governor	1/12/1998
Qualifications (if required): public member		
Ms. Carol Murray, Browning	Governor	1/12/1998
Qualifications (if required): public member		
Mr. Bill Jones, Great Falls	Governor	1/12/1998
Qualifications (if required): representing human rights groups		
Ms. Kay Maloney, Great Falls	Governor	1/12/1998
Qualifications (if required): representing human rights groups		

-1957-

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Martin Luther King, Jr., Holiday Commemorative Commission	(Commerce) Cont.	
Reverend Phillip Caldwell, Great Falls	Governor	1/12/1998
Qualifications (if required): representing ethnic and religious groups		
Ms. Cristina Medina, Helena	Governor	1/12/1998
Qualifications (if required): representing ethnic and human rights groups		
Mr. Benjamin Pease, Jr., Billings	Governor	1/12/1998
Qualifications (if required): public member		
Mr. Brian Schnitzer, Billings	Governor	1/12/1998
Qualifications (if required): representing religious and business groups		
Ms. Michelle Wilkerson, Great Falls	Governor	1/12/1998
Qualifications (if required): representing ethnic and human rights groups		
Ms. Bonnie Craig, Missoula	Governor	1/12/1998
Qualifications (if required): representing ethnic and education groups		
Mrs. Pat Ojo, Missoula	Governor	1/12/1998
Qualifications (if required): public member		
Ms. Donna Ruff, Fairview	Governor	1/12/1998
Qualifications (if required): representing labor and ethnic groups		
Montana State Lottery Commission (Commerce)		
Mr. Larry O'Toole II, Plentywood	Governor	1/1/1998
Qualifications (if required): attorney		
Ms. Carol Thomas, Great Falls	Governor	1/1/1998
Qualifications (if required): public member		

-1959-

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1997 through JANUARY 31, 1998

Board/current position holder	Appointed by	Term end
Old West Trail Association (Commerce)		
Mr. John Rabenberg, Fort Peck	Governor	1/1/1998
Qualifications (if required): public member		
Private Land-Public Wildlife Advisory Council (Fish, Wildlife and Parks)		
Mr. Russ Smith, Phillipsburg	Governor	1/18/1998
Qualifications (if required): outfitter		
Mr. Steve Christensen, Corvallis	Governor	1/18/1998
Qualifications (if required): landowner		
Mr. Alan Charles, Miles City	Governor	1/18/1998
Qualifications (if required): hunter		
Resource Conservation Advisory Council (Natural Resources and Conservation)		
Mr. Robert Fossum, Richland	Director	11/30/1997
Qualifications (if required): none specified		
Ms. Marieanne Hanser, Billings	Director	11/30/1997
Qualifications (if required): none specified		
Mr. Tom Stelling, Fort Shaw	Director	11/30/1997
Qualifications (if required): none specified		

20-10/20/97

Montana Administrative Register