

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Bureau, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OFFICE OF THE STATE PUBLIC DEFENDER
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through VI pertaining to the) PROPOSED ADOPTION
Office of the State Public Defender)

TO: All Concerned Persons

1. On September 27, 2006, at 1:00 p.m., a public hearing will be held in Room 160 of the Mitchell Building, 125 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the State Public Defender no later than 5:00 p.m. on September 20, 2006, to advise us of the nature of the accommodation that you need. Please contact Cathy Doyle, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; telephone (406) 496-6080; facsimile (406) 496-6098; e-mail to cmdoyle@mt.gov.

3. The proposed new rules provide as follows:

RULE I ORGANIZATION OF THE STATEWIDE PUBLIC DEFENDER SYSTEM (1) The organization and function of the statewide public defender system are described in this rule.

(a) History. The statewide public defender system was established by Chapter 449, Laws of Montana, 2005. The system is provided for in 47-1-104, MCA.

(b) Structure. The statewide system consists of the following:

(i) the Montana Public Defender Commission, comprised of eleven members appointed by the Governor. The commission is allocated to the Department of Administration for administrative purposes (2-15-1028, MCA);

(ii) the Office of the State Public Defender;

(iii) eleven regional offices; and

(iv) the Appellate Defender.

(2) Functions.

(a) Commission. The commission supervises the operations of the Chief Public Defender and the Office of the State Public Defender, as required by 47-1-105, MCA.

(b) Chief Public Defender. The Chief Public Defender administers the Office of the State Public Defender as required by 47-1-201 and 47-1-202, MCA.

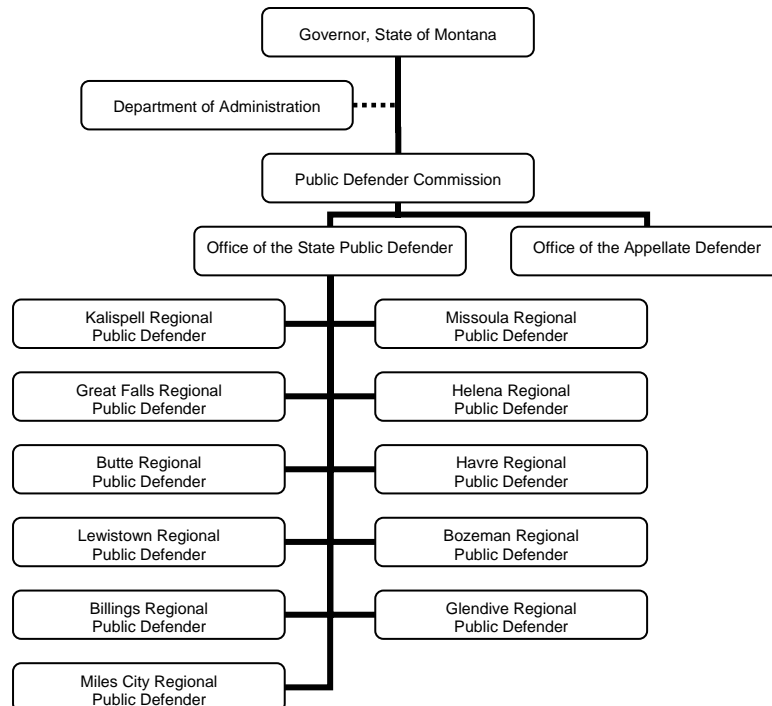
(3) Contact Information.

(a) Montana Public Defender Commission and Office of the State Public Defender, 44 West Park Street, Butte, MT 59701, telephone (406) 496-6080;

(b) Kalispell Regional Public Defender Office, 100 Financial Drive, Kalispell, MT 59901, telephone (406) 751-6080;

- (c) Missoula Regional Public Defender Office, 610 Woody, Missoula, MT 59802, telephone (406) 523-5140;
- (d) Great Falls Regional Public Defender Office, 415 2nd Avenue North #110, Great Falls, MT 59401, telephone (406) 454-6858;
- (e) Helena Regional Public Defender Office, 111 N. Last Chance Gulch, #4C, Helena, MT 59601, telephone (406) 444-0104;
- (f) Butte Regional Public Defender Office, P.O. Box 122, 118 Cherry St., Anaconda, MT 59711, telephone (406) 563-6586;
- (g) Havre Regional Public Defender Office, 415 4th Avenue, P.O. Box 268, Havre, MT 59501, telephone (406) 265-4373;
- (h) Lewistown Regional Public Defender Office, 505 West Main St., Ste. 418, Lewistown, MT 59457, telephone (406) 535-3703;
- (i) Bozeman Regional Public Defender Office, 502 South 19th, Ste. 211, Bozeman, MT 59718, telephone (406) 582-2450;
- (j) Billings Regional Public Defender Office, 207 North Broadway, Ste. 201, P.O. Box 459, Billings, MT 59101, telephone (406) 256-6861;
- (k) Glendive Regional Public Defender Office, 100½ South Merrill, Ste. 3, Glendive, MT 59330, telephone (406) 377-3113;
- (l) Miles City Regional Public Defender Office, 11 South 7th Street, Miles City, MT 59301, telephone (406) 234-1702; and
- (m) Office of Appellate Defender, 301 S. Park, Helena, MT 59601, telephone (406) 841-2001.

(4) Organization Chart.



AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASONABLE NECESSITY: The agency is proposing New Rule I to provide an overview of its organization, governance, and to set out contact information.

RULE II PROCEDURES FOR ADOPTING, AMENDING, AND REPEALING AGENCY RULES (1) The Public Defender Commission, for purposes of establishing agency rulemaking procedures, adopts and incorporates by reference Attorney General's Model Procedural Rules 1 found in ARM 1.3.102 and 2 through 7 found in ARM 1.3.205 through 1.3.210. A copy of the Attorney General's Model Rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASONABLE NECESSITY: The agency is proposing New Rule II to notify the general public how the commission will adopt new rules or amend and/or repeal previously adopted rules.

RULE III PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS (1) The Public Defender Commission adopts and incorporates by reference Attorney General's Model Procedural Rules 22 through 24 and 28 found in ARM 1.3.227 through 1.3.229 and 1.3.233 which set forth the procedures for the issuance of declaratory rulings. A copy of the Model Rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASONABLE NECESSITY: The agency is proposing New Rule III to notify the general public of procedures for the issuance of declaratory rulings.

RULE IV DEFINITIONS (1) "Applicant" means a person who seeks public defender services.

(2) "Regional office" means an office authorized under 47-1-104(2), MCA.

AUTH: 47-1-105, MCA
IMP: 47-1-105, 47-1-111, 47-1-216, MCA

REASONABLE NECESSITY: The agency is proposing New Rule IV to define terms as they are used in these rules.

RULE V DETERMINATION OF INDIGENCY (1) The office shall prepare forms to capture financial information from an applicant for public defender services.

(2) The office shall distribute the forms to courthouses, jails, and other venues determined appropriate by the office.

(3) The applicant will complete the forms in accordance with instructions provided on the forms and forward them to the appropriate regional office.

(4) The staff of the regional office shall review an applicant's forms and determine whether, based on the provisions of 47-1-111, MCA, an applicant is indigent and qualifies for public defender services. The applicant will be notified of this determination, regardless of outcome.

(5) All information collected on the forms shall be treated as confidential except when judicial review of the determination is requested. At that time, the forms shall be submitted to the court for camera inspection.

AUTH: 47-1-105, 47-1-111, MCA

IMP: 47-1-105, 47-1-111, MCA

REASONABLE NECESSITY: The agency is proposing New Rule V to notify the general public about how the agency will capture information from individuals applying for public defender services, how the review of this information will be accomplished by the agency, and how the individual will be notified about whether or not that individual qualifies for services which are based upon the individual's financial means.

RULE VI REASONABLE COMPENSATION (1) The commission shall meet at least biannually to review and approve the compensation rates based on criteria the commission deems appropriate.

(2) The commission shall determine appropriate compensation rates for:

(a) contract attorneys; and

(b) others who provide services related to the provision of public defender services.

(3) Any contracts for attorney or related services shall use these approved rates of compensation.

AUTH: 47-1-105, 47-1-216, MCA

IMP: 47-1-105, 47-1-216, MCA

REASONABLE NECESSITY: The agency is proposing New Rule VI to inform the general public as to how the agency will set rates for certain services provided to the agency.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Lawrence A. Murphy, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; faxed to the office at (406) 496-6098; or e-mailed to lamurphy@mt.gov, and must be received no later than 5:00 p.m., October 5, 2006.

5. Lawrence A. Murphy, Contract Manager, Office of the State Public Defender, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Adoption is available through the department's site on the World Wide Web at <http://publicdefender.mt.gov/>, under "Administrative Rule Notices." The department strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Office of the State Public Defender maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this office. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Office of the State Public Defender rulemaking actions. Such written requests may be mailed or delivered to Lawrence A. Murphy, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; faxed to the office at (406) 496-6098; e-mailed to lamurphy@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BY: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

BY: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

BY: /s/ James Park Taylor
James Park Taylor, Chair
Montana Public Defender Commission

Certified to the Secretary of State August 28, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.21.411,)	ON PROPOSED AMENDMENT,
the proposed adoption of)	ADOPTION, AND REPEAL
NEW RULE I, and the proposed)	
repeal of ARM 24.21.414, all)	
related to the apprenticeship and)	
training program)	

TO: All Concerned Persons

1. On September 29, 2006, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the first floor conference room (room 104) of the Walt Sullivan Building, 1327 Lockey Ave., Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., September 25, 2006, to advise us of the nature of the accommodation that you need. Please contact the Apprenticeship and Training Program, Workforce Program and Oversight Bureau, Workforce Services Division, Department of Labor and Industry, Attn: Mark Maki, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3556; fax (406) 444-3037; TDD (406) 444-5549; or e-mail mmaki@mt.gov.

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

24.21.411 MINIMUM GUIDELINES FOR REGISTRATION OF PROGRAMS

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

(h) Provision for the payment of wages that are consistent with the requirements of ~~ARM 24.21.414~~ 39-6-108, MCA, if the apprenticeship is in a building construction occupation.

(i) through (s) remain the same.

AUTH: 39-6-101, MCA

IMP: 39-6-106, 39-6-108, MCA

REASON: It is reasonably necessary to amend the rule in order to implement the repeal of ARM 24.21.414 provided for by Chapter 538, L. of 2005 (Senate Bill 217) and to insert a reference to the statute enacted by that legislation.

4. The rule proposed to be adopted provides as follows:

NEW RULE I APPROVAL FOR APPRENTICESHIP PROGRAM WHEN EMPLOYER IS PARTICIPANT IN COLLECTIVE BARGAINING AGREEMENT

(1) Pursuant to 29 CFR 29.12, this rule applies when both of the following criteria are met:

(a) a collective bargaining agreement, apprenticeship standards, or other instrument governing the operation of an apprenticeship program, provides for participation by a union in any manner in the formation or operation of the substantive matters of an apprenticeship program; and

(b) an employer or employers' association that is a signatory to or participant in that collective bargaining agreement, apprenticeship standard, or other such instrument, is proposing a new apprenticeship program for registration by the department.

(2) The employer or employers' association shall simultaneously furnish to the department and the union a copy of its application for registration of the proposed apprenticeship program and a copy of its proposed apprenticeship program standards.

(3) Where union participation is exercised in the program, the union must submit written acknowledgment to the department of the union's agreement with, no objection to, or other comment on the proposed new registration.

(4) Where union participation is not exercised in the program, the union may submit written acknowledgment to the department of the union's agreement with, no objection to, or other comment on the proposed new registration.

(5) The union has 30 days within which to submit its comments under (3) and (4). The department may not approve a new program until after the 30-day deadline has passed. The department may take into account the comments of the union when deciding whether or not to approve a proposed apprenticeship program.

AUTH: 39-6-101, MCA

IMP: 39-6-101, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in response to demands for such a rule by the United States Department of Labor. In the fall of 2005, the United States Department of Labor reviewed the department's Apprenticeship and Training Program for compliance with federal law. This review indicated that Montana does not have a rule that implements the provisions of 29 CFR 29.12(10)(b). The federal regulation requires that when a union is a participant in a collective bargaining agreement, jointly-managed apprenticeship standards, or other instrument related to an apprenticeship program, the union must be given an opportunity to object if a new program in the same or like occupation is proposed by an employer or employers' association who is a participant in the same collective bargaining agreement, jointly-managed apprenticeship standards, or other instruments. This rule will also ensure compliance with National Labor Relations Board requirements by affording due process to unions when an employer wishes to register a new apprenticeship program. In order for the Montana Apprenticeship and Training Program to continue to maintain its status as the official apprenticeship registration agency in Montana for both state and federal purposes, the department is proposing the above new rule. Failure to adopt an appropriate rule could lead to

loss of the department's status as the federally recognized apprenticeship registration agency for Montana.

5. The rule proposed for repeal is as follows:

24.21.414 WAGE RATES TO BE PAID IN BUILDING CONSTRUCTION OCCUPATIONS found at ARM page 24-1373.

AUTH: 39-6-101, MCA

IMP: 39-6-101, 39-6-106, MCA

REASON: ARM 24.21.414 set wages for apprentices in construction occupations. There is reasonable necessity to repeal ARM 24.21.414 in order to implement Chapter 538, L. of 2005 (Senate Bill 217), which specifically repealed this rule. The matters previously addressed by this rule will now be addressed by 39-6-108, MCA.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Mark Maki, Supervisor
Workforce Services
Statewide Workforce Program and Oversight Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

by facsimile to (406) 444-3037; or by e-mail to mmaki@mt.gov, and must be received by no later than 5:00 p.m., October 6, 2006.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains lists 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 mailing lists shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the department has rulemaking authority. Such written requests may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena,

Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

10. The Hearings Bureau of the Centralized Services Division of the department has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State August 28, 2006

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through XVIII pertaining to)	PROPOSED ADOPTION,
elections, the amendment of ARM)	AMENDMENT, AND REPEAL
44.3.101, 44.3.104, 44.3.114, 44.3.1101,))	
44.3.1701, 44.3.2001, 44.3.2003,)	
44.3.2005, 44.3.2010, 44.3.2110,)	
44.3.2111, 44.3.2113, 44.3.2114,)	
44.3.2203, 44.3.2301, 44.3.2302,)	
44.3.2303, 44.3.2304, 44.3.2401,)	
44.3.2402, 44.3.2403, 44.3.2404 and)	
44.3.2601 pertaining to elections, and)	
the repeal of ARM 44.3.1731 through)	
44.3.1750, 44.3.1760 through 44.3.1775,))	
44.3.1781 through 44.3.1787, and)	
44.3.2112 pertaining to elections)	

TO: All Concerned Persons

1. On September 28, 2006, at 10:00 a.m. the Secretary of State will hold a public hearing in Room 261 of the Office of the Secretary of State, State Capitol Building, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., September 21, 2006, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; phone (406) 444-5375; fax (406) 444-3020; or e-mail jdoggett@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I CRITERIA AND PROCESS FOR A PERSON TO BECOME A DESIGNATED AGENT FOR AN ELECTOR WITH A DISABILITY (1) Consistent with 13-1-116, MCA, an elector with a disability who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to Title 13, MCA, and for delivering the disabled elector's absentee ballot application to the county election administrator, as provided in 13-13-213, MCA.

(2) An application for designation of an agent by an elector under this section:

(a) must be made on a form prescribed by the Secretary of State which shall state the authorization of the elector, the purpose of the agency, and shall require

that the authorization be witnessed by two disinterested witnesses and signed by the designated agent;

(b) may be obtained from local election officials, from the office of the Secretary of State, and from any other entity that provides the form; and

(c) must be completed in its entirety.

(3) An agent chosen under this rule must not be the elector's employer, an agent of the individual's employer, or an officer or agent of the voter's union.

(4) An election official must ask if the person being designated an agent is the voter's employer or employer's agent or officer or agent of the voter's union. If the proposed agent is one of those individuals, the voter must choose another person to be the elector's agent.

(5) An agent must be chosen by the individual with a disability.

AUTH: 13-1-116, MCA

IMP: 13-1-116, MCA

NEW RULE II BENCHMARK PERFORMANCE STANDARD FOR VOTING SYSTEMS PRIOR TO CERTIFICATION (1) The benchmark performance standard for voting systems approved under 13-17-101, MCA, is based on commonly accepted industry standards for readily available technologies. These standards shall at the time of certification conform to all applicable federal requirements, as well as state requirements listed in the Montana Code Annotated and Administrative Rules of Montana.

AUTH: 13-17-103, MCA

IMP: 13-17-103, MCA

NEW RULE III PERFORMANCE CERTIFICATION OF VOTING SYSTEMS PRIOR TO ELECTION (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall test and certify that the system is performing properly.

(2) The Secretary of State shall ensure that at least 10% of all voting systems in the state have been randomly tested and certified at least once every calendar year. This rule shall be implemented through review by the Secretary of State of its prescribed voting system testing and certification forms completed by the county.

AUTH: 13-17-211, MCA

IMP: 13-17-212, MCA

NEW RULE IV UNIFORM PROCEDURES FOR USING VOTING SYSTEMS (1) For each voting system approved under 13-17-101, MCA, the system must comply, as applicable, with the following procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer and distributor of the database, as well as the election judge handbook provided by the office of the Secretary of State, (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply):

(a) performance certification under 13-17-212, MCA;

- (b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2), MCA;
- (c) the procedures to be followed if the comparison under 13-15-206(2)(b), MCA, reveals discrepancies;
- (d) how to operate and test the system during counts or recounts;
- (e) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417, MCA; and
- (f) testing and certification of voting systems pursuant to 13-17-212, MCA, including a random test conducted by a county election administrator or designee of 5% of voting systems, a minimum of one per county, on election day, to validate the accuracy of voted paper ballots with the voting system results.

AUTH: 13-17-211, MCA

IMP: 13-17-211, MCA

NEW RULE V HANDLING VOTING SYSTEM ERROR DURING COUNT

- (1) During a count of paper ballots in which votes are being automatically tabulated by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested, as applicable, in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply.
- (2) If the test does not show any errors, the count must proceed using the voting system.
- (3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly, votes cast on paper ballots must be counted manually in accordance with 13-15-206(2), MCA.

AUTH: 13-15-206, 13-15-209, MCA

IMP: 13-15-209, MCA

NEW RULE VI METHOD OF CORRECTION OF BALLOT (1) If an

appointment has been made to replace a candidate, as provided in 13-10-326, 13-10-327, or 13-10-328, MCA, or if a candidate for Lieutenant Governor has been advanced to the candidacy for Governor, as provided in 13-10-328, MCA, after the ballots have been prepared but before the election, the election administrator may:

- (a) correct the ballot in a manner consistent with the following:
 - (i) if the ballot is a paper ballot that is not produced for use with a voting system, follow the procedures in (2) or (3);
 - (ii) if the ballot is a paper ballot that is produced for use with a voting system, correction of the ballot shall be in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the

manufacturer of the voting system, as well as the election judge handbook provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply;

(b) have the entire ballot redone; or

(c) have a separate ballot prepared only for the office for which the new candidate is a candidate.

AUTH: 13-12-204, MCA

IMP: 13-12-204, MCA

NEW RULE VII REJECTED BALLOTS -- HANDLING PROVIDED BY RULE

(1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes must be enclosed in an envelope or container marked "REJECTED BALLOT(S) OF ABSENTEE ELECTORS".

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204, MCA, must be marked "voted in person" and must be initialed by election judges.

(3) After being handled and marked as provided in this rule, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked. After a package or container is sealed pursuant to this section, a package or container may not be opened without a court order.

AUTH: 13-15-108, MCA

IMP: 13-15-108, MCA

NEW RULE VIII SEALING BALLOTS AND VOTING SYSTEMS

(1) When a recount of paper ballots that was conducted using a voting system has been finished, ballots must again be sealed in the same package or envelope (unless the package or envelope is unusable), in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply. All such procedures must ensure to the greatest degree possible the security of the voting systems from intentional and unintentional misuse.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody.

AUTH: 13-16-417, 13-17-211, MCA

IMP: 13-16-417, 13-17-211, MCA

NEW RULE IX MAINTENANCE OF ACTIVE AND INACTIVE VOTER

REGISTRATION LISTS FOR ELECTIONS (1) Election administrators shall, in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable--address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) Any notices returned to the election administrator after using the procedures provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) A procedure used by an election administrator pursuant to this rule must be completed at least 90 days before a primary or general election for federal office.

AUTH: 13-2-108, MCA

IMP: 13-2-220, MCA

NEW RULE X LATE REGISTRATION PROCEDURES (1) In addition to and consistent with the procedures specified in the Montana Code Annotated, and due to administrative necessity, the following shall apply to late registration:

(a) Election administrators shall close late registration at noon on the day before election day. Any elector wishing to register after noon on the day before election day may do so by submitting a voter registration application at the county election administrator's office the day before election day or on election day during polling hours, and appearing at the county election office on election day in order to vote.

(2) Except as provided in (3)(a), an elector who registers or changes the elector's voter information pursuant to this rule may vote in the election only if the elector votes at the county election administrator's office. For the purposes of this rule, voting at the county election administrator's office includes:

(a) immediately after registering under the procedures of this rule, receiving and casting an absentee ballot at the county election administrator's office; and

(b) at any time after registering under the procedures of this rule, receiving and returning an absentee ballot directly to the county election administrator's office,

either in person or by mail, subject to applicable deadlines.

(3) An elector who changes residence to a different county within Montana 30 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) update the elector's registration information and vote in the elector's new county of residence, subject to the late registration provisions of 13-2-301 or 13-2-304, MCA.

(4) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election, and may not receive another ballot from the county in which the voter is newly registered. This voter registration shall become effective on the day following the day of the election for which the elector has already been sent an absentee ballot.

AUTH: 13-2-108, MCA

IMP: 13-2-304, 13-2-514, MCA

NEW RULE XI STATEWIDE VOTER REGISTRATION DATABASE (1) In addition to the procedures specified under (2), (3), and (4) and ARM 44.3.2001, election officials authorized to use the statewide voter registration database must, as applicable, comply with the following procedures specified in the instruction manuals, user guides, and technical manuals as provided by the manufacturer and distributor of the database, (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply):

(a) maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123, MCA;

(e) technical security of the statewide voter registration database;

(f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA; and

(g) quality control measures for the system and system users.

(2) Consistent with (1)(d), as soon as a county election administrator enters voter registration information into the statewide voter registration database, the database will automatically make that information available to the Secretary of State.

(3) Consistent with (1)(f):

(a) the driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA, may not be provided unless required by a court order, or permitted by written request and the consent of the Secretary of State; and

(b) at the option of each county election administrator and of the Secretary of

State, all identifying information about an individual protected from disclosure pursuant to 13-2-115, MCA, including but not limited to the individual's name, may not be provided, unless required by a court order, requested by another agency in writing in the official course of business, or permitted by written consent of the Secretary of State.

(4) An elector who was properly registered prior to January 1, 2003, must be considered a legally registered elector.

AUTH: 13-2-108, MCA

IMP: 13-2-108, MCA

NEW RULE XII PROCEDURES FOR CHALLENGES (1) An elector's right to vote may be challenged at any time by any registered elector. The challenger must fill out and sign an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this rule:

(a) prior to the close of registration under 13-2-301, MCA, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402, MCA; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107, MCA.

(4) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than five days before an election, "as soon as possible", as used in this section, means no later than five days after the challenge.

(5) The Secretary of State shall provide standardized affidavit forms for

challengers and challenged electors.

(6) Any challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote.

AUTH: 13-13-301, MCA

IMP: 13-13-301, MCA

NEW RULE XIII BALLOT LOG (1) The election administrator shall keep an official log of all ballots transmitted and received via a facsimile device.

AUTH: 13-21-104, MCA

IMP: 13-21-104, MCA

NEW RULE XIV ELECTOR AFFIRMATION (1) If the affirmation is missing or the ballot unreadable, the election administrator shall attempt to notify the elector of this problem.

AUTH: 13-21-104, MCA

IMP: 13-21-104, MCA

NEW RULE XV BALLOT ACCEPTANCE (1) If the returned faxed ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot until the ballots are ready to be transcribed.

AUTH: 13-21-104, MCA

IMP: 13-21-104, MCA

NEW RULE XVI TRANSCRIPTION OF BALLOTS (1) On or before election day, the election administrator shall have the ballots transcribed using the procedure prescribed for assistance to voters with disabilities.

(2) No less than two election judges shall participate in the transcription process to transfer the elector's vote from the faxed ballot to the standard ballot used in the precinct.

(3) There may be noted next to the elector's name in the precinct register "Fax Ballot".

(4) A faxed ballot identifying number shall be written on the original transcribed ballot and the facsimile ballot.

(5) The election judges who transcribed the ballot shall sign in the log next to the name of the elector.

AUTH: 13-21-104, MCA

IMP: 13-21-104, MCA

NEW RULE XVII ELECTION JUDGES AND BALLOT SECRECY (1) No one participating in the fax ballot process may reveal any information about the elector's

ballot.

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

NEW RULE XVIII ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow United States electors to receive and transmit election materials electronically, as long as the identity of each elector is confirmed and facilities are available that provide secrecy and security to the greatest extent possible. The procedures in this subchapter shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically.

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

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

44.3.101 INTRODUCTION, SCOPE, AND INTENT ~~(1) Public Law 98-435 was passed by the 98th Congress to promote the fundamental right to vote by improving access for handicapped and elderly individuals to all polling places in Montana.~~

~~(2)~~(1) The purpose of these rules is to establish minimum guidelines to be used in determining whether facilities used for voting in certain elections are accessible to electors with disabilities ~~handicapped~~ and elderly electors pursuant to the Americans with Disabilities Act, 42 U.S.C. 12132 and the Voting Accessibility for the Elderly and Handicapped Act, Public Law 98-435, passed by the 98th Congress.

~~(3) Where accessibility is determined to be impractical or impossible, these rules will establish procedures intended to provide an alternative means of casting a ballot for elderly and handicapped electors.~~

~~(4)~~(2) It is the intent of the Secretary of State's office that county governing bodies and election administrators work together and proceed in good faith to fully comply with the Americans with Disabilities Act. ~~develop long-range plans for achieving the most practical state of compliance possible by 1990.~~

~~(5)~~(3) ~~The title of Public Law 98-435 is the Voting Accessibility for the Elderly and Handicapped Act.~~ For the purpose of clarity and throughout these rules, Pub. L. 98-435 shall be referred to as the Voting Accessibility Act. The Americans with Disabilities Act will be referred to as the ADA.

~~(6)~~(4) These rules shall only apply to elections conducted under 13-1-104(1) and 13-1-107, MCA.

AUTH: 13-1-202, 13-3-205, MCA
IMP: 13-1-202, 13-3-205, MCA

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY (1) To be designated as accessible to ~~handicapped~~ individuals with disabilities and elderly

voters, the standards for a polling place approved pursuant to 13-3-205(1), MCA, prior to October 1, 2005, whenever possible, must be consistent with the standards for accessibility established by the American National Standards Institute and the Uniform Federal Accessibility Standards. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this section. ~~must meet the following criteria, as provided by Uniform Federal Accessibility Standards:~~

~~(a) At least one existing or temporary parking place shall be designated for use by voters with disabilities or impaired mobility for each 900 electors registered to vote at that polling place. The designated parking place(s) shall be in close proximity to the accessible entrance to the building containing the polling place and shall be no less than 14 feet wide. The area surrounding the parking place(s) shall be firm, stable, and generally level.~~

~~(b) The exterior circulation route shall be as direct as site conditions allow and shall be free of:~~

~~(i) steps (unless ramps are provided);~~

~~(ii) abrupt changes in level exceeding 1/2 inch which could create a tripping hazard or divert the direction of the caster wheels on a wheelchair;~~

~~(iii) rough surfaces such as gravel or grass; and~~

~~(iv) any rise exceeding one inch in ten inches of travel.~~

~~(c) Walkways, occurring at any point in the exterior circulation route, shall have:~~

~~(i) a minimum clear width of 36 inches;~~

~~(ii) no abrupt edge over 1/2 inch in height;~~

~~(iii) no grating with openings larger than 1/2 inch perpendicular to the direction of travel; and~~

~~(iv) no slope in the direction of travel greater than one inch in 20 inches, unless it shall be considered a ramp and conform to the requirements of section (e) of this rule.~~

~~(d) Curb cuts shall have a clear width of 36 inches and side slopes of no more than one inch in ten inches.~~

~~(e) Ramps may be used to retrofit any polling place which has steps in the circulation route but nothing herein shall be construed as a requirement for the installation of temporary ramps. Any part of a circulation path shall be considered a ramp if it has a slope that is greater than one inch rise in 20 inches of horizontal run. The following requirements apply to both existing and temporary ramps:~~

~~(i) hand rails are required on both sides of ramps which exceed a rise greater than six inches or a horizontal projection greater than 72 inches and shall extend 12 inches beyond the top and bottom;~~

~~(ii) wheel guides of at least two inches in height shall be provided on both sides of the ramp if the ramp does not abut, on at least one side, on a wall or other structure or with the ground;~~

~~(iii) ramps must have nonslip surfaces and a clear width of at least 36 inches;~~

~~(iv) ramps must be designed or positioned to provide a landing at both the top and bottom of the ramp. When a landing area is used to open a door, the landing must be at least five feet by four feet if the door opens away from the ramp, five feet~~

by five feet if the door opens toward the ramp and five feet by 42 inches long if the door is secured in an open position during polling hours.

~~(f) The entrance to the building in which the polling place is located shall:~~

~~(i) be at least 32 inches of clear width with a threshold no more than 1/2 inch in height;~~

~~(ii) have a level, stable and slip-resistant surface at least 50 inches wide, at least 18 inches of which is directly adjacent to the latch side of the door unless the door is secured in an open position during polling hours, and five feet deep on both the inside and outside of the door; and~~

~~(iii) have a door that requires neither complicated hand movements, a tight grasp, nor an excessive force to open.~~

~~(g) The interior circulation route shall:~~

~~(i) be free of any obstacles or protuberances that might impede the clear movements of a visually impaired elector; and~~

~~(ii) have a clear height of 79 inches and a clear width of 36 inches.~~

~~(h) The polling place shall be of sufficient size to provide seating and adequate, unobstructed space for reasonable movement of elderly and disabled electors.~~

(2) Polling places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this subchapter.

AUTH: 13-1-202, 13-3-205, MCA

IMP: 13-1-202, 13-3-205, MCA

44.3.114 COMPLAINTS (1) Within five working days following the receipt of a written notification from the United State's Attorney General or a person who is personally aggrieved by the noncompliance of his polling place with the Voting Accessibility Act, the Americans with Disabilities Act, and/or these rules, the Secretary of State shall transmit a copy of the notification to the appropriate election administrator.

(2) through (4) remain the same.

(5) At any time before, during, or after this process the complainant retains the right to file an action in any court of appropriate jurisdiction or to withdraw the complaint. No exhaustion of this administrative remedy is required.

AUTH: 13-1-202, 13-3-205, MCA

IMP: 13-1-202, 13-3-205, MCA

44.3.1101 SCHEDULE OF FEES FOR THE CENTRALIZED VOTER FILE STATEWIDE VOTER DATABASE LISTS AND EXTRACTS (1) Upon written request, the Secretary of State through its vendor shall furnish, for noncommercial use to private individuals or entities, a list of registered electors as compiled and maintained in its centralized voter file statewide voter database. ~~For each record the charge is .009 cents. For paper copies there is an additional charge of 50 cents per~~

page per copy. For the statewide list or available extracts from the statewide list the charge is \$1,000.00. For a legislative representative district list the charge is \$100.00, for a legislative senate district list the charge is \$150.00, and for a county list the charge is \$200.00. For a subscription for ongoing access to the database and all other available extracts or lists the charge is \$5,000.00 for one year.

AUTH: 2-15-404, 13-2-122, MCA
IMP: 13-2-115(2), 13-2-122, MCA

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

- (1) remains the same.
(2) Unless the context clearly requires otherwise, the following terms shall have the following meanings:
(a) "Applicant" means any person, county governing body, or business entity which has applied for inspection of a voting machine or device under these rules.
(b) through (7) remain the same.

AUTH: 13-17-103, 13-17-107(1), MCA
IMP: 13-17-104, 13-17-107, MCA

44.3.2001 VOTER REGISTRATION VERIFICATION (1) Consistent with 13-2-109, 13-2-110, 13-2-205, ~~and 13-2-207~~, and 13-2-304, MCA, the rules in this subchapter shall be used to determine whether information provided is sufficient to be accepted and processed, for verifying accuracy, establishing procedures for provisional and legal registration and effect on ID requirements, and notifying electors of their status.

AUTH: 13-2-109, MCA
IMP: 13-2-109, MCA

44.3.2003 APPLICATION FOR VOTER REGISTRATION (1) Applicants for voter registration may apply by the procedures specified in 13-2-110, and 13-2-304, MCA:

- (a) in person;
(b) by mail; or
(c) as may otherwise be provided by law.

AUTH: 13-2-109, MCA
IMP: 13-2-110, MCA

44.3.2005 VOTER REGISTRATION CARD INFORMATION REQUIREMENTS (1) and (2) remain the same.

(3) An applicant for voter registration who does not provide the applicant's driver's license number, the last four digits of the applicant's social security number, or a form of identification required in ARM 44.3.2002(6), shall be registered as a provisionally registered elector pending receipt and verification, at any time up to

and including on election day, of one of the required numbers or receipt of a form of identification required.

(4) If an applicant does not provide all required information and the election administrator is unable to obtain that information, except for the information in (2) on the form prescribed by the Secretary of State, the applicant shall not be registered as "pending" in the statewide voter registration database. The applicant shall not be registered unless and until the required information is provided.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

44.3.2010 APPLICANTS INELIGIBLE DUE TO AGE OR RESIDENCE REQUIREMENTS (1) An applicant for voter registration who is not eligible to register because of residence or age requirements, but who will be eligible on or before election day, may apply for voter registration pursuant to 13-2-110, MCA. ~~An election official shall register the applicant as a provisionally registered elector. The statewide voter registration database shall not include in the register the name of any individual who will not be at least 18 years of age on or before election day.~~

~~(2) The election administrator shall change the status of a provisionally registered elector under this rule to the status of a legally registered elector at the time when the elector becomes eligible, without requiring any additional information from the elector.~~

AUTH: 13-2-109, MCA

IMP: 13-2-110, 13-2-205, MCA

44.3.2110 PROCEDURES AT THE POLLING PLACE FOR DETERMINING THE SUFFICIENCY OF IDENTIFICATION – PRIOR TO CASTING A BALLOT

(1) through (3) remain the same.

(4) Consistent with 13-13-114(3) and (4), and 13-1-116, MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules.

AUTH: 13-13-603, MCA

IMP: 13-1-116, 13-13-114, MCA

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE – PRIOR TO CASTING A BALLOT (1) An individual who provides identification specified in ARM 44.3.2110, but whose name does not appear on the precinct register, shall be permitted to:

(a) provide information to an election official at the polling place to verify the individual's registration, subject to the following: ; and

(i) an elector whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator or designee a certificate of the error, stating the precinct in which the elector is entitled to vote, and present the certificate (which will entitle the elector to vote a regular ballot) to an election judge;

(ii) the certificate shall be marked "voted" by the election judges and returned by them with the precinct register. The elector should sign the back of the precinct register or in a location specified by the county election administrator;

(iii) if the elector is for any reason unable to secure a certificate of error, the elector may vote by signing an oath that his name was erroneously omitted, if the election administrator or designee can confirm such omission by telephone to the chief election judge of the precinct. The oath shall be marked "voted" by the election judges and returned by them with the precinct register. The elector should sign the back of the precinct register or in a location specified by the county election administrator; and

(b)(iv) if the election official is unable to verify the individual's eligibility while the elector is at the polling place, sign the precinct register and cast a provisional ballot if the election official is unable to verify the individual's eligibility while the elector is at the polling place.

(2) remains the same.

(3) Consistent with 13-13-114(3) and (4), and 13-1-116, MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules.

AUTH: 13-13-603, MCA

IMP: 13-13-114, MCA

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE – CASTING A BALLOT (1) through (5) remain the same.

(6) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), MCA, the election administrator or designee shall compare the elector's signature on the affirmation required under 13-13-601, MCA, to the elector's signature on the elector's voter registration card.

(a) If the signatures match, the election administrator or designee shall handle the ballot as provided in 13-15-107(6), MCA.

(b) Except as provided in (6)(c), if the signatures do not match, the election administrator or designee must, on the sixth day after election day, follow the procedures specified in ARM 44.3.2114(6).

(c) If under (6)(b) the signatures do not match, the election administrator or designee must determine whether the elector had an election administrator or election judge or another person who has been designated by the elector as the

elector's agent provide a signature or identifying mark on the registration card or on the affirmation required under 13-13-601, MCA. If this has occurred, the election administrator or designee shall handle the ballot as provided in (6)(a). If the election administrator or designee determines that the signatures do not match, and this is not attributable to the elector's decision to have an election administrator or election judge or agent provide the elector's signature, the election administrator or designee must, on the sixth day after election day, follow the procedures specified in ARM 44.3.2114(6)(b).

(6) remains the same, but is renumbered (7).

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-601, 13-15-107, MCA

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY
AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) through (5) remain the same.

(6) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), MCA, the election administrator or designee shall compare the elector's signature on the affirmation required under 13-13-601, MCA, to the elector's signature on the elector's voter registration card.

(a) If the signatures match, the election administrator shall handle the ballot as provided in 13-15-107(6), MCA.

(b) If the signatures do not match, and the elector fails to provide sufficient identification by the deadline, the ballot must be rejected and handled as provided in 13-15-108, MCA, and this section.

(6)(7) Consistent with 13-15-107, MCA, an election official shall handle a provisional ballot outer envelope which holds a ballot cast provisionally by an elector whose voter information is verified after the close of polls on election day as follows:

- (a) remove the provisional ballot outer envelope from the unverified provisional ballot container;
- (b) mark it to indicate the reason(s) why it was verified and removed;
- (c) remove the provisional ballot secrecy envelope, which must be opened to remove the provisional ballot, and which must then be grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot under (8)(7); and
- (d) place the provisional ballot outer envelope in the verified provisional ballot container.

(7) through (9) remain the same, but are renumbered (8) through (10).

AUTH: 13-13-603, MCA

IMP: 13-15-107, MCA

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE
BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR

(1) Consistent with 13-13-212, MCA, an elector may apply for an absentee ballot by using a standardized form provided by rule by the Secretary of State, or by making a written

request which must include the applicant's birth date and must be signed by the applicant, except that if the election administrator can independently obtain the applicant's birth date, the application shall not be rejected for lack of the applicant's birth date. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211, MCA.

(2) remains the same.

(3) Consistent with 13-13-213(1), MCA, and except as provided in 13-13-213(4), MCA, all absentee ballot application forms must be addressed to the appropriate election official. The elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116, MCA, or a third party, may collect the elector's application and forward it to the election administrator.

(4) When applying for an absentee ballot under 13-13-212, MCA, or at any other time by written request of the elector, an elector may also request to be mailed an absentee ballot, subject to the procedures in (5) and (6), as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(5) An election administrator who receives a request under (4) shall determine whether the elector's signature on the request matches the elector's signature on the elector's voter registration card, prior to placing the elector on a list of individuals who wish to receive absentee ballots in subsequent elections.

~~(5)~~(6) The election administrator shall mail an address confirmation form, prescribed by the Secretary of State, at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for ~~each~~ subsequent elections.

~~(6)~~(7) The confirmation form specified under ~~(5)~~(6) shall be returned to the election administrator within the time period specified for receipt of absentee ballot applications under 13-13-211, MCA.

~~(7)~~(8) An elector who has been removed from the register of electors who have requested an absentee ballot for each subsequent election may subsequently request to be mailed an absentee ballot for ~~each~~ subsequent elections.

AUTH: 13-13-212, MCA

IMP: 13-13-211, 13-13-212, 13-13-213, MCA

44.3.2301 VOTER IDENTIFICATION AND PROVISIONAL VOTING BY ABSENTEE AND MAIL BALLOT – GENERAL (1) Election officials and election workers shall follow 13-1-116, 13-13-201, 13-13-204, 13-13-241, 13-13-602, and 13-15-107, MCA, and these rules in regard to voter identification and provisional voting by absentee and mail ballot.

AUTH: 13-13-603, MCA

IMP: 13-13-603, MCA

44.3.2302 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Absentee or mail ballot elector identification form" means a form prescribed by the secretary of state and printed by the election administrator that:~~
~~(a) includes the elector's preprinted name and preprinted address;~~
~~(b) asks but does not require an elector to provide the elector's Montana driver's license number or Montana state identification number or the last four digits of the elector's social security number, and states that if the elector does not have any of the above, the elector may enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, and that if the elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address;~~
and

~~(c) if sufficient, is permitted to be used by an absentee or mail ballot elector as a government document meeting the requirements of identification under (7).~~

~~(2) through (7)(a) remain the same, but are renumbered (1) through (6)(a).~~

~~(b) a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, MCA, government check, or other government document that shows the elector's name and current address.~~

~~(c) remains the same.~~

(7) "Legally registered electors" include but are not limited to electors who were properly registered prior to January 1, 2003.

~~(8) remains the same.~~

AUTH: 13-13-603, MCA

IMP: 13-13-201, 13-13-214, 13-13-241, 13-13-602, 13-15-107, MCA

44.3.2303 ABSENTEE OR MAIL BALLOT ELECTOR IDENTIFICATION FORM (1) An election official or election worker shall enclose with the materials sent to each provisionally registered elector instructions notifying the elector of the requirement to provide one of the forms of required identification defined in ARM 44.3.2302(6). ~~an absentee or mail ballot elector identification form defined under ARM 44.3.2302(1) and prescribed by the Secretary of State.~~

AUTH: 13-13-603, MCA

IMP: 13-13-201, 13-13-603, MCA

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING – DETERMINING THE SUFFICIENCY OF IDENTIFICATION (1) After completion of the signature verification procedures in 13-13-241 or 13-19-309, MCA, as applicable,

the election administrator shall determine prior to an election whether a provisionally registered absentee or mail ballot elector has provided sufficient identification defined in ARM 44.3.2302(6)(7) to allow a ballot to be counted:

(a) remains the same.

(b) Upon receipt of the absentee or mail ballot elector identification form, the election administrator shall accept as sufficient this properly completed form as one of the forms of required identification defined in ARM 44.3.2302(6)(7).

(c) If the absentee or mail ballot elector identification form is verified through a voter verification system process or another form of identification provided in ARM 44.3.2302(6)(7) is sufficient, an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient identification was provided by the elector.

(d) An election official or election worker shall retain in a sealed package the copy of identification provided by the provisionally registered absentee or mail ballot elector. The sealed package containing the copy of identification may not be opened without a court order.

(e) A legally registered elector includes but is not limited to an elector who was properly registered prior to January 1, 2003.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-201, 13-13-241, 13-19-309, MCA

44.3.2401 BALLOT FORM AND UNIFORMITY (1) The following shall be prescribed by the Secretary of State in the forms booklet and election judge handbook, as applicable, that is provided to each election administrator:

(a) through (5) remain the same.

(6) Consistent with 13-13-205, MCA:

(a) The election administrator shall ensure that paper ballots are printed and available for absentee voting at least:

(i) 30 days prior to an election for those elections held in compliance with 13-1-107(1), MCA;

(ii) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), MCA; and

(b) 45 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1), MCA.

(c) If paper ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to 13-27-410, MCA.

AUTH: 13-12-202, MCA

IMP: 13-12-202, MCA

44.3.2402 DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1) Before being counted, each questionable vote on a paper ballot set aside under 13-15-206(2)(a) or (3)(b), MCA, must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to the rules below:

(a) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) The following general rules shall apply in a count or recount of paper and opti-scan ballots:

(a) through (f) remain the same.

(g) more than one designated voting area has been marked, but no clear mark is used to indicate the correct vote. This includes, but is not necessarily limited to, instances in which an "X" has been marked in either or both of the designated voting areas. The election official shall cause this to be counted as an overvote;

(h) through (j) remain the same.

AUTH: 13-15-206, MCA

IMP: 13-15-206, MCA

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1) Before being counted, each questionable write-in vote on a paper ballot set aside under 13-15-206(2)(a) or (3)(b), MCA, must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to the rules below:

(a) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) Except as provided in (3), Only only votes for declared write-in candidates shall be counted. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a), MCA. The following rules shall apply to determining a valid write-in vote in a count or recount of paper and opti-scan ballots:

(a) through (f) remain the same.

(3) Consistent with 13-10-211, MCA, votes for undeclared write-in candidates may be counted if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent.

AUTH: 13-15-206, MCA

IMP: 13-10-211, 13-15-206, MCA

44.3.2404 DETERMINING A VALID VOTE ON AN ELECTRONIC VOTING SYSTEM DIRECT RECORDING ELECTRONIC (DRE) BALLOT (1) A vote on ~~an touch-screen direct recording electronic voting system or other~~ electronic voting system consists of a voter's selection of a candidate or answer to a ballot question appearing on the voting surface of the device, followed by the voter activating the cast vote indicator.

(a) All ~~DRE~~ electronic voting system equipment shall provide for the use of a device for the voter to enter the name of a write-in candidate where applicable. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a), MCA.

(b) If a voter does not mark a candidate, judicial retention choice, or issue choice, the valid votes for other candidates or issues on the same ballot shall be counted.

AUTH: 13-15-206, MCA

IMP: 13-15-206, MCA

44.3.2601 ADMINISTRATIVE COMPLAINT PROCEDURES (1) remains the same.

(2) Under this rule, any individual who believes that there is a violation of any provision of Title III of the Help America Vote Act of 2002 (hereinafter referred to as Title III), or 13-13-601, 13-13-602, or 13-13-114, MCA, including a violation which has occurred, is occurring, or is about to occur, may file a complaint.

(3) through (5) remain the same.

(6) At the request of the complaint, there shall be a hearing on the record. If a hearing shall be held at a date and time and place determined by the presiding officer ~~secretary of state~~ and at the officer's discretion, ~~of the secretary of state~~ the hearing may be conducted by telephone or upon written documentation. If the hearing is on consolidated complaints, then the complainants shall designate a single representative party to advocate for the consolidated complaint. If the presiding officer permits witnesses to testify, then they must be sworn in prior to their testimony being given. If a complainant fails to pursue a complaint, then the complaint shall be dismissed with prejudice.

(7) If, under this rule, the presiding officer ~~secretary of state~~ determines that there is a violation of any provision of Title III or 13-13-601, 13-13-602, or 13-13-114, MCA, the Secretary of State shall provide an informal opinion.

(8) If, under this rule, the Secretary of State determines that there is no violation, or that the complainant did not follow the above procedures in filing the complaint, or the complaint does not on its face allege a violation of Title III with regard to a federal election, or a violation of 13-13-601, 13-13-602, or 13-13-114, MCA, with regard to a federal or state election, the Secretary of State shall dismiss the complaint and publish the results of the procedures.

(9) and (10) remain the same.

~~(11) If a final determination of a complaint was not made within 90 days of the filing of the complaint and the complainant did not agree in writing to an extension, then the complaint shall be referred to a review panel comprised of three~~

~~staff members of the office of the secretary of state. The three-member review panel shall issue a final determination on the complaint within 60 days of the referral. The review panel shall make its determination on the record of the hearing and shall not conduct any further proceedings, if the hearing was held and completed. If the hearing was not held or completed, then the review board shall conduct the hearing as prescribed above.~~

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

AUTH: 13-1-202, MCA

IMP: 13-1-202, MCA

5. The Secretary of State's office proposes to repeal the rules as follows:

44.3.1731 PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES BEFORE THE POLLS OPEN found at ARM 44-137.

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

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

44.3.1732 PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - WHILE THE POLLS ARE OPEN found at ARM 44-138.

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

IMP: 13-10-209, 13-13-114, 13-13-115, 13-17-305, MCA

44.3.1733 PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - AFTER THE POLLS CLOSE found at ARM 44-139.

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

IMP: 13-13-115, 13-13-117, 13-13-241, 13-13-242, 13-15-101, 13-15-201, 13-15-202, 13-15-204, 13-15-205, MCA

44.3.1734 PROCEDURES FOR USE OF AVM (AUTOMATIC VOTING MACHINES) - BEFORE THE POLLS OPEN found at ARM 44-140.

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

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

44.3.1735 PROCEDURES FOR USE OF AVM VOTING MACHINES - WHILE THE POLLS ARE OPEN found at ARM 44-141.

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

IMP: 13-12-209, 13-13-114, 13-13-115, 13-17-305, MCA

44.3.1736 PROCEDURES FOR USE OF AVM VOTING MACHINES - AFTER THE POLLS CLOSE found at ARM 44-142.

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

IMP: 13-13-115, 13-13-117, 13-13-241, 13-13-242, 13-15-101, 13-15-201, 13-15-202, 13-15-204, 13-15-205, MCA

44.3.1737 DEFINITIONS - COMPUTER ELECTION SYSTEMS VOTOMATIC (CES) found at ARM 44-143.

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

44.3.1737A PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) PRIMARY ELECTION found at ARM 44-144.

AUTH: 13-17-206, MCA
IMP: 13-17-206, MCA

44.3.1738 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - BEFORE THE POLLS OPEN found at ARM 44-145.

AUTH: 13-17-107(2), MCA
IMP: 13-12-201 through 13-12-208, 13-13-115, 13-17-206, MCA

44.3.1739 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - WHILE THE POLLS ARE OPEN found at ARM 44-146.

AUTH: 13-17-107(2), MCA
IMP: 13-12-209, 13-13-114, 13-13-115, 13-15-103, 13-17-305, MCA

44.3.1740 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - AFTER THE POLLS CLOSE found at ARM 44-148.

AUTH: 13-17-107(2), MCA
IMP: 13-13-115, 13-15-101, 13-15-201, 13-15-202, 13-15-204, 13-15-205, 13-17-117, MCA

44.3.1741 CENTRAL COUNTING CENTER FOR TABULATION OF COMPUTER ELECTION SYSTEMS - VOTOMATIC (CES) BALLOTS found at ARM 44-150.

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

44.3.1742 CENTRAL COUNTING CENTER PROCEDURES AND BOARD DUTIES - OBSERVATION BOARD found at ARM 44-150.

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

44.3.1743 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD found at ARM 44-151.

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

44.3.1744 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - INSPECTION BOARD found at ARM 44-152.

AUTH: 13-17-107(2), MCA
IMP: 13-13-117, 13-15-203, 13-17-107, MCA

44.3.1745 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - DUPLICATION BOARD found at ARM 44-155.

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

IMP: 13-17-107, MCA

44.3.1746 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - WRITE-IN TALLY BOARD found at ARM 44-156.

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

IMP: 13-13-117, 13-15-202, 13-17-107, MCA

44.3.1747 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - BALLOT TABULATION BOARD found at ARM 44-158.

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

IMP: 13-1-303, 13-15-202, 13-17-107, MCA

44.3.1748 CENTRAL COUNTING CENTER PROCEDURES DUTIES - BALLOT SEALING BOARD found at ARM 44-158.1.

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

IMP: 13-1-303, 13-17-107, MCA

44.3.1749 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - ELECTION RESULTS BOARD found at ARM 44-158.1.

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

IMP: 13-15-101, 13-17-107, MCA

44.3.1750 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - CLOSING OF COUNTING CENTER found at ARM 44-158.2.

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

IMP: 13-1-303, 13-17-101, MCA

44.3.1760 DEFINITIONS - AMERICAN INFORMATION SYSTEMS (AIS-315) found at ARM 44-158.2.

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

IMP: 13-17-107(2), MCA

44.3.1761 BALLOT PREPARATIONS - AMERICAN INFORMATION SYSTEMS (AIS-315) found at ARM 44-158.2.

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

IMP: 13-17-107(2), MCA

44.3.1762 PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - BEFORE THE POLLS OPEN found at ARM 44-159.

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

IMP: 13-17-107(2), MCA

44.3.1763 PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - WHILE THE POLLS ARE OPEN found at ARM 44-159.

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

IMP: 13-17-107(2), MCA

44.3.1764 PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - AFTER THE POLLS CLOSE found at ARM 44-161.

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

IMP: 13-17-107(2), MCA

44.3.1765 CENTRAL TABULATING CENTER PROCEDURES found at ARM 44-161.

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

IMP: 13-17-107(2), MCA

44.3.1766 CENTRAL TABULATING CENTER PROCEDURES AND BOARD DUTIES - OBSERVATION BOARD found at ARM 44-162.

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

IMP: 13-17-107(2), MCA

44.3.1767 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD found at ARM 44-162.

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

IMP: 13-17-107(2), MCA

44.3.1768 CENTRAL TABULATING CENTER PROCEDURE AND DUTIES - STAGING BOARD found at ARM 44-163.

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

IMP: 13-17-107(2), MCA

44.3.1769 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - BALLOT TABULATION BOARD found at ARM 44-163.

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

IMP: 13-17-107(2), MCA

44.3.1770 CENTRAL TABULATION CENTER PROCEDURES AND DUTIES - DUPLICATION BOARD found at ARM 44-164.

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

IMP: 13-17-107(2), MCA

44.3.1771 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - RESOLUTION BOARD found at ARM 44-164.

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

IMP: 13-17-107(2), MCA

44.3.1772 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - WRITE-IN TALLY BOARD found at ARM 44-165.

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

IMP: 13-17-107(2), MCA

44.3.1773 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - BALLOT SEALING BOARD found at ARM 44-166.

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

IMP: 13-17-107(2), MCA

44.3.1774 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - ELECTION RESULTS BOARD found at ARM 44-166.

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

IMP: 13-17-107(2), MCA

44.3.1775 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - CLOSING OF TABULATING CENTER found at ARM 44-166.

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

IMP: 13-17-107(2), MCA

44.3.1781 USE AND SCOPE - COMPUTER ELECTION SYSTEM OPTECH I found at ARM 44-171.

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

IMP: 13-17-107(2), MCA

44.3.1782 DEFINITIONS - COMPUTER ELECTION SYSTEMS OPTECH I found at ARM 44-171.

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

IMP: 13-17-107(2), MCA

44.3.1783 BALLOT PREPARATION - COMPUTER ELECTION SYSTEMS - OPTECH I found at ARM 44-172.

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

IMP: 13-17-107(2), MCA

44.3.1784 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - ACCURACY TESTING AND CERTIFICATION found at ARM 44-172.

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

IMP: 13-17-107(2), MCA

44.3.1785 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - BEFORE THE POLLS OPEN found at ARM 44-173.

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

IMP: 13-17-107(2), MCA

44.3.1786 PROCEDURES FOR USE OF CES OPTECH I – WHILE THE POLLS ARE OPEN found at ARM 44-173.

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

IMP: 13-17-107(2), MCA

44.3.1787 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - AFTER THE POLLS CLOSE found at ARM 44-175.

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

IMP: 13-17-107(2), MCA

44.3.2112 PROCEDURES AT THE POLLING PLACE FOR CHALLENGES – PRIOR TO CASTING A BALLOT found at ARM 44-189.

AUTH: 13-13-603, MCA

IMP: 13-13-301, MCA

6. Reasonable Necessity: These rules are being proposed pursuant to legislation enacted during the 2003 and 2005 legislative sessions. The main purpose of these rules is to ensure the full implementation of updates to election laws that were passed during these legislative sessions. The rules attempt to continue to ensure that every eligible Montanan is able to exercise his or her right to vote, while at the same time protecting the integrity of the election process.

The cumulative effect of the change in the cost of the database lists and extracts to the entities that have purchased the lists in the past is a decrease of about \$2,000.00 in cost. Additional files and extracts will be available for the first time as a result of the creation of the statewide voter database, and there will be a number of individuals and entities who will purchase the file and/or extracts for the first time. The cost to the entity or individual will depend on the file or extract they choose to purchase. The number of entities affected by this rule is five to ten. This is based upon the number of current purchasers. The number of new customers is estimated to be 20 to 50.

Certain rules relating to voting systems are being proposed to be repealed because they refer to and regulate the use of technology and systems that are no longer in use. A rule relating to challenges is being proposed to be repealed since it is included in amended form in a new section of the proposed rules.

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@mt.gov, and must be received no later than 5:00 p.m., October 6, 2006.

8. Janice Doggett, at the address above, has been designated to preside over and conduct the hearing.

9. 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 that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, Uniform Commercial Code, or a 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) 444-4263, e-mailed to jabranscum@mt.gov, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

10. These rule actions will be adopted in time to apply the changes to all procedures for the November 7, 2006, General Election.

11. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

SECRETARY OF STATE

/s/ BRAD JOHNSON
Secretary of State

/s/ JANICE DOGGETT
Rule Reviewer

Certified to the Secretary of State, August 28, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.59.1705 pertaining to licensing) AND ADOPTION
examination and continuing education)
provider requirements, and the adoption of)
NEW RULE I pertaining to records to be)
maintained)

TO: All Concerned Persons

1. On June 22, 2006, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-373 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1498 of the 2006 Montana Administrative Register, issue number 12.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has amended ARM 2.59.1705 exactly as proposed.

3. The division has adopted the following new rule as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE I (2.59.1710) RECORDS TO BE MAINTAINED (1) through (1)(b) remain as proposed.

~~(c) correspondence sent and received by the mortgage broker;~~

~~(d) (c) a record of any and all contact between the mortgage broker or loan originator and the with the borrower relating to the rate, terms, or conditions of the loan;~~

~~(e) (d) a copy of the evidence of insurance or insurance binder as required by the lender hazard insurance, which is adequate to cover replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;~~

(f) through (h) remain as proposed but are renumbered (e) through (g).

~~(i) (h) a copy of all documentation used to support the borrower's income as required by the lender;~~

~~(j) (i) a copy of all documentation used to support the borrower's assets as required by the lender;~~

(k) remains as proposed but is renumbered (j).

~~(l) (k) a copy of the policy of title insurance commitment on the property securing the loan; and~~

~~(m) (l) a copy of all closing documents, including closing instructions and the first three pages of the deed of trust, Good Faith Estimate and final Truth in Lending disclosure signed by the borrower.~~

(2) remains as proposed.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-124, 32-9-125, MCA

4. The following comments were received and appear with the division's responses:

Comment 1: Comments were received in regard to ARM 2.59.1705(13) stating that the fee increase in approving continuing education provider credit hours will be passed onto mortgage brokers and loan originators through their expense in renewing licenses. One comment suggested that the initial application fee remain \$350 and that each additional course be approved for \$100.

Response 1: The division acknowledges that the cost of increasing fees in approving continuing education credits may result in approved education providers passing on this fee increase to mortgage broker and loan originators. However, the cost of approving the continuing education credit hours should be commensurate with the time that an examiner allocates to the review and approval of those materials. On average it is necessary for the division's examiners to allocate two hours of review per each credit hour approved. It is reasonable for the division to increase the fee associated with approving these continuing education courses to \$50 for each credit hour approved.

Comment 2: Comments were received in regard to New Rule I(1)(k) stating that it was not common for mortgage brokers to receive a copy of the promissory note from title companies. One of these comments also stated that it would be burdensome for mortgage brokers to obtain a copy of the promissory note since it is an item that mortgage brokers have no control over.

Response 2: The division disagrees. The division cannot conduct a thorough review of residential mortgage loan files without reviewing a copy of the promissory note.

Comment 3: A comment was received in regard to New Rule I(1)(l) stating it is not common for mortgage brokers to receive a copy of the policy of title insurance, but only a copy of the title insurance commitment or binder.

Response 3: The division agrees and amends New Rule I(1)(l) accordingly.

Comment 4: A comment was received in regard to New Rule I(1)(l) stating that this rule should be amended to include a copy of the title insurance commitment on the property securing the loan.

Response 4: The division agrees and amends New Rule I(1)(l) accordingly.

Comment 5: A comment was received in regard to New Rule I(1)(m) stating it is not common for mortgage brokers to maintain copies of all closing documents, which include the loan closing instructions issued by the lender, the mortgage lender's

Good Faith Estimate, or the final Truth in Lending disclosure statement. The comment recommended that this rule be amended to include only closing documents that are typically prepared by mortgage brokers and closing documents that are routinely sent to mortgage brokers. The comment stated that the standard for these documents should include the Good Faith Estimate prepared by the mortgage broker, the initial Truth in Lending disclosure statement, any mortgage broker agreement or disclosure between the mortgage broker and the applicant, any disclosure that the mortgage broker has prepared and delivered to the applicant and a signed copy of the HUD-1 or HUD-1a Settlement Statement.

Response 5: The division acknowledges this comment and has amended this rule. The division notes that it cannot conduct a thorough examination of mortgage broker and loan originator residential mortgage loan files without a final copy of the Truth in Lending disclosure.

Comment 6: A comment was received in regard to New Rule I(1)(m) stating that it is not common for mortgage brokers to receive copies of closing instructions or closing documents signed by the borrower. The comment also states that it would be burdensome for mortgage brokers to retain all the documents set forth by this proposed rule. The comment recommends that this rule be revised to a copy of the note, Truth in Lending disclosure, first three pages of the deed of trust, and the final HUD-1.

Response 6: The division acknowledges this comment and has amended this rule. The division notes that it cannot conduct a thorough examination of mortgage broker and loan originator residential mortgage loan files without a final copy of the Truth in Lending disclosure.

Comment 7: Comments were received in regard to New Rule I stating that this rule would not protect consumers from misrepresentations, deceit, or fraud nor would it protect mortgage brokers from inaccurate allegations.

Response 7: The division disagrees. New Rule I sets forth which documents must be contained in a residential mortgage loan file. These documents are essential in performing an examination of a mortgage broker's business activity as well as to investigate any complaints made by a consumer relative to a brokered residential mortgage loan. The retention of these documents serves to protect both the interests of consumers as well as mortgage brokers and loan originators who conduct their business in accordance with state and federal laws.

Comment 8: Comments were received in regard to New Rule I stating that the retention of documents set forth by this rule would be time consuming and expensive. These comments stated that this rule would have a negative financial impact on mortgage brokers and loan originators if they had to spend more time on record retention and less time providing their services to borrowers.

Response 8: The division acknowledges that there may be some expense for mortgage brokers or loan originators to maintain the records set forth in New Rule I, but it cannot conduct a thorough examination of mortgage broker and loan originator residential mortgage loan files without this documentation.

Comment 9: A comment was received in regard to New Rule I stating that the retention of documents related to a borrower's personal information is in contradiction of Montana privacy laws, which require the destruction of a borrower's personal information.

Response 9: The division disagrees. The division is not aware of any state law that would require a mortgage broker to destroy documents set forth in New Rule I after a loan is closed.

Comment 10: Comments were received in regard to New Rule I(2) stating that this rule would provide authority to the division to investigate any bank account related to a mortgage broker's business activity. These comments also stated that 32-9-130(4)(a), MCA, only specifies loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

Response 10: The division disagrees. Pursuant to 32-9-130(4)(a), MCA, the department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee. New Rule I(2) does not expand department powers beyond what the department currently has under 32-9-130, MCA.

Comment 11: Comments were received in regard to New Rule I(1)(d) stating that it is not realistic for a mortgage broker or loan originator to be able to record any and all contact with a borrower.

Response 11: The division acknowledges this comment and has amended this rule to include only contact with the borrower that is relating to the rate, term, and conditions of the loan.

Comment 12: A comment was received in regard to New Rule I(1)(e) stating that this rule be amended to a copy of the evidence of insurance or insurance binder as required by the lender.

Response 12: The division agrees and amends this rule accordingly.

Comment 13: Comments were received in regard to New Rule I(1)(i) stating that documentation to support a borrower's income are not always required by a lender. One comment recommended that this rule be amended to a copy of all documentation used to support the borrower's income as required by the lender.

Response 13: The division agrees and amends this rule accordingly.

Comment 14: Comments were received in regard to New Rule I(1)(j) stating that documentation to support a borrower's assets are not always required by a lender. One comment recommended that this rule be amended to a copy of all documentation used to support the borrower's assets as required by the lender.

Response 14: The division agrees and amends this rule accordingly.

Comment 15: A comment was received in regard to New Rule I(1)(e) stating that it is unnecessary for mortgage brokers and loan originators to retain preliminary title reports or evidence of hazard insurance in their loan files since lenders will not fund loans without evidence of these items.

Response 15: The division agrees and amends this rule accordingly.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 28, 2006.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
4.11.1201 through 4.11.1209 relating to a)
specific agricultural ground water)
management plan)

TO: All Concerned Persons

1. On July 27, 2006, the Montana Department of Agriculture published MAR Notice No. 4-14-163 relating to the proposed repeal of the above-stated rules at page 1765 of the 2006 Montana Administrative Register, Issue Number 14.

2. The agency has repealed ARM 4.11.1201, 4.11.1202, 4.11.1203, 4.11.1204, 4.11.1205, 4.11.1206, 4.11.1207, 4.11.1208, and 4.11.1209 exactly as proposed.

3. The following comment was received and appears with the department's response:

COMMENT 1: A written statement from Thomas A. Fuhringer representing the Tri-County Water Board was received in support of the proposed repeal.

RESPONSE: The department concurs.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, August 28, 2006.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
36.22.1242 relating to privilege and)
license tax rates on oil and gas)

To: All Concerned Persons

1. On July 27, 2006, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-115 regarding the proposed amendment of ARM 36.22.1242 at page 1827 of the 2006 Montana Administrative Register, Issue No. 14.

2. The department has amended ARM 36.22.1242 as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

36.22.1242 REPORTS BY PRODUCERS – TAX REPORT – TAX RATE

(1) Each owner or operator of an oil or gas well or any other well (except an injection well reported on Form No. 5) shall file or cause to be filed with the board on or before the last day of each month following the month being reported on Form No. 6 containing all information required by said form and accurately reporting the status of each well thereon as of the last day of the month reported.

(2) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported therefrom shall be 30.00 percent (~~.09/10~~ 0.9/10 of 1%) of the rate authorized in 82-11-131, MCA, (3/10 of 1%) of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after October 1, 2006.

3. The following comments were received and appear with DNRC's responses:

COMMENT: Commenter stated that there was an error in MAR Notice No. 36-22-115, and that the rate for the license and privilege tax should be 0.9/10 of 1%, not 0.09/10 of 1%.

RESPONSE: DNRC agrees and amends ARM 36.22.1242 accordingly.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director, Natural Resources and Conservation

/s/ Linda Nelson
LINDA NELSON
Chairman, Board of Oil and Gas Conservation

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State August 28, 2006.

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

In the matter of the adoption of New)	NOTICE OF ADOPTION AND
Rules I through IV and amendment of)	AMENDMENT
ARM 37.114.101, 37.114.201,)	
37.114.203, 37.114.204, 37.114.205,)	
37.114.312, 37.114.313, 37.114.314,)	
37.114.315, 37.114.503, 37.114.504,)	
37.114.506, 37.114.509, 37.114.510,)	
37.114.515, 37.114.516, 37.114.518,)	
37.114.519, 37.114.521, 37.114.522,)	
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37.114.548, 37.114.555, 37.114.557,)	
37.114.558, 37.114.560, 37.114.561,)	
37.114.563, 37.114.565, 37.114.566,)	
37.114.568, 37.114.570, 37.114.573,)	
37.114.575, 37.114.577, 37.114.579,)	
37.114.588, 37.114.589, 37.114.591,)	
37.114.592, 37.114.595, 37.114.1002,)	
and 37.114.1005 pertaining to the)	
control of communicable diseases)	

TO: All Interested Persons

1. On June 22, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-384 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 1512 of the 2006 Montana Administrative Register, issue number 12.

2. The department has adopted new rules I (37.114.514), II (37.114.578), III (37.114.581), and IV (37.114.105) as proposed.

3. The department has amended ARM 37.114.101, 37.114.201, 37.114.203, 37.114.205, 37.114.312, 37.114.313, 37.114.315, 37.114.503, 37.114.504, 37.114.506, 37.114.509, 37.114.510, 37.114.515, 37.114.516, 37.114.518, 37.114.519, 37.114.521, 37.114.522, 37.114.525, 37.114.527, 37.114.528, 37.114.530, 37.114.534, 37.114.537, 37.114.539, 37.114.540, 37.114.542, 37.114.548, 37.114.555, 37.114.557, 37.114.558, 37.114.560, 37.114.561, 37.114.563, 37.114.565, 37.114.566, 37.114.568, 37.114.570, 37.114.573, 37.114.575, 37.114.577, 37.114.579, 37.114.588, 37.114.589, 37.114.591, 37.114.592, 37.114.595, 37.114.1002, and 37.114.1005 as proposed.

4. The department has amended the following rules as proposed with the

following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.114.204 REPORTS AND REPORT DEADLINES (1) through (5) remain as proposed.

(6) In the event of a chickenpox outbreak, the local health officer may elect to report a weekly summary count of suspected and confirmed cases in lieu of individual case reports. Individual case reports will resume when the health officer determines the outbreak has ended.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.314 INVESTIGATION OF A CASE (1) remains as proposed.

(2) If the local health officer finds that the nature of the disease and the circumstances of the case or outbreak warrant such action, the local health officer must:

(a) examine or ensure that a ~~physician~~ health care provider examines any infected person in order to verify the diagnosis;

(b) through (3) remain as proposed.

AUTH: 50-1-202, 50-2-118, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-17-105, 50-18-102, 50-18-107, 50-18-108, MCA

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

ARM 37.114.204 REPORTS AND REPORT DEADLINES

COMMENT #1: A local health department asserts that it would be unrealistic to report single cases of chickenpox in that county, as it would be time consuming, particularly in circumstances where there is an outbreak.

RESPONSE: The department disagrees that it would be unrealistic to report single cases of chickenpox, in general. However, the department does agree that it could be difficult for local health officers to make individual case reports of chickenpox during an outbreak. The department will amend the rules to allow local health officers to report cases of chickenpox during an outbreak by providing a weekly summary count of suspected and confirmed cases. The department will add a new (6) to ARM 37.114.204 to provide an exception.

37.114.314 INVESTIGATION OF A CASE

COMMENT #2: A local health officer inquires, regarding ARM 37.114.314(2), whether the requirement that a physician must examine an infected person would preclude an examination by a nurse practitioner or a physician assistant, and

whether the requirement should be modified to allow examination by a nurse practitioner or a physician assistant.

RESPONSE: Based on the definition of "physician" in ARM 37.114.101(25), the department agrees that the rule could be construed to allow examination only by a physician. The department further agrees that the preferable standard would allow other licensed health care providers who are competent to perform such examinations to do so. Therefore, the department will amend the rule to allow examinations by "health care providers", which term is already defined at ARM 37.114.101(12). The department will modify ARM 37.114.314(2)(a) by striking the term "physician" and replacing it with the term "health care provider".

/s/ Denise Pizzini
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State August 28, 2006.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2006. This table includes those rules adopted during the period April 1 through June 30, 2006 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2006, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2006 Montana Administrative Register.

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