

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
4.12.3009 and 4.12.3402 relating to seed)
laboratory fees)

TO: All Concerned Persons

1. On August 10, 2006, the Montana Department of Agriculture published MAR Notice No. 4-14-167 relating to the above-stated rules at page 1929 of the 2006 Montana Administrative Register, Issue Number 15.

2. The agency has amended ARM 4.12.3009 and 4.12.3402 exactly as proposed.

3. The following comments were received and appear with the Department of Agriculture's response:

Comments 1 and 2: Two comments were received opposing the increase of testing fees for the Montana State Seed Laboratory indicating that margins are tight in the seed industry and a price increase would necessitate that the commenter's business would go to a laboratory with lower prices and the best service, further reducing the amount of samples submitted to the laboratory and revenue generated by the laboratory. It was also stated the timeliness of analysis reporting and accuracy of test results have diminished over the past several seasons. The commenters believe that before the rates are increased, the testing quality and turnaround time must be improved. One of the two commenters stated they would support a fee increase at that time, but not before the quality and timeliness improved. A raise now will just reduce volume and jeopardize the existence of the laboratory.

Response: The Montana Department of Agriculture and the Montana State Seed Laboratory understand the tight economic market of the seed industry, and that increased laboratory costs may impact the ability of producers to sell seed at competitive prices. The proposed laboratory fees will generate revenue needed for equipment maintenance and personnel training to increase the efficiency of the laboratory. The proposed fee increases will also be used to purchase a computer program to allow electronic access of test results submitted by the customer, thus improving the laboratory's timeliness in sample processing and reporting. The Montana Seed Growers Association and the Montana Seed Trade Association support the increased fees and feel this will help to resolve some of the laboratory's current issues.

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, September 11, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I)	NOTICE OF ADOPTION
-identification decal for video gambling)	AND AMENDMENT
machines; NEW RULE II-define system)	
availability; and the amendment of ARM)	
23.16.1802, 23.16.1803, 23.16.1807,)	
23.16.1823, 23.16.1826, 23.16.1916A, and)	
23.16.2101 concerning definitions, online)	
permitting for video gambling machines,)	
issuance of updated gambling operator)	
licenses after permitting, renewal of)	
gambling operator licenses, quarterly)	
reporting requirements, accounting system)	
vendor license fee, and requirement for)	
parties to multi-game agreements to connect)	
to an approved system)	

TO: All Concerned Persons

1. On August 10, 2006, the Department of Justice published MAR Notice No. 23-16-179 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 1936, 2006 Montana Administrative Register, Issue Number 15.

2. The Department of Justice has adopted New Rules I (23.16.1811) and II (23.16.2102) as proposed, and amended ARM 23.16.1802, 23.16.1803, 23.16.1823, 23.16.1826, 23.16.1916A, and 23.16.2101 exactly as proposed.

3. In the proposal notice, ARM 23.16.1807(4) was renumbered as (3), but (4) should have been completely interlined and (5) renumbered to (3). The department amends the rule with the following changes, stricken matter interlined, new matter underlined:

23.16.1807 ISSUANCE OF VIDEO GAMBLING MACHINE PERMIT DECAL

(1) remains as proposed.

(2) ~~The machine may not abut another machine, wall, or other obstruction which would obscure a person's ability to see and read the permit decal.~~ The gambling operator must receive the updated operator's license listing all renewed or newly permitted video gambling machines before the video gambling machines may be placed in service.

(3) remains as proposed.

(4) ~~A permit decal may only be affixed to the machine issued the permit and is not transferable to any other machine.~~

4. A public hearing was held on August 31, 2006. The following comments were received and appear with the Department of Justice's responses.

General Comments: Mark Staples representing the Montana Tavern Association provided verbal comments generally in support of progress being made to implement the new database. Mr. Staples indicated support for more specific issues to be offered by representatives of gambling organizations.

Rich Miller representing the Gambling Industry Association offered verbal comments generally in support of progress being made to implement the new database, but questioned specific plans for implementation. He had additional concerns that all gambling locations may not have the technological capacity to go online for some machine permits and letters of withdrawal, and suggested the rules authorize electronic transfer of a license and the operator's use of a facsimile license in place of the original.

Response: The department believes that most remote transactions will be initiated from the route operator's office location and not the location where the machines are vended. For most permitting transactions, the issuance of an updated license should occur almost immediately after submission of the online application.

Proposed Rule I:

Comment 1 on required documents: Mr. Miller suggested the department specify what tapes and documents are required to be submitted under (5)(b) of New Rule I.

Response 1: The division plans to create a form for the route operator to certify that the decal has been placed on the properly identified video gambling machine and an audit ticket that provides the serial number of the video gambling machine.

Comment 2 on decal placement: Mr. Miller offered verbal comments and Ronda Wiggers provided written comments in regard to the need for more specific instructions on the placement of the permanent identification decal.

Response 2: The department plans to provide specific instructions for removal and replacement of the existing permit decal with the permanent identification decal. In the past the department has provided specific placement instructions for different types of video gambling machines and plans to utilize similar instructions for the permanent identification decal.

Comment 3 on machine owners placing decals: Mr. Miller offered verbal comments and Ronda Wiggers provided written comments questioning who should place the permanent identification decal on machines.

Response 3: The department plans to allow route operators to place decals on all of the video gambling machines that they own. The department plans to utilize staff to place decals on the machines owned by individual operators. Route operators have staff doing service work on machines and are familiar with placing the decals. Because route operators will likely be the first to move machines, they need to get the permanent decals on the machines as soon as possible. The department believes that there will be less urgency with operator owned video gambling machines. Operator owned video gambling machines make up approximately 25% of all video gambling machines.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State September 11, 2006.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.174.401 fees and 24.174.402)
dangerous drug fee schedule)

TO: All Concerned Persons

1. On July 27, 2006, the Board of Pharmacy (board) published MAR Notice No. 24-174-55 regarding the proposed amendment of the above-stated rules at page 1814 of the 2006 Montana Administrative Register, issue no. 14.

2. On August 17, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the August 25, 2006, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: A commenter supported the proposed fee increases except for the fee increase for pharmacy interns. The commenter felt that students are already burdened financially, and that the board should not add to the burden by increasing the licensing fee for a pharmacy intern.

RESPONSE 1: The board concluded that all licensees, including interns, should share in the costs of administrating the board's services. The board further noted that the proposed intern licensing fee is comparable with other states, and that it is a one time fee whereas most states require an annual renewal.

COMMENT 2: One commenter noted that the fee increases were substantial overall, but acknowledged that fees had not changed for a long time. The commenter specifically objected to fee increases for interns and technicians, stating that students have a huge debt burden and they should be welcomed into the profession without the insult of a fee increase. The commenter also stated that technicians' responsibilities are expanding and felt that the fee increase would be an added insult.

RESPONSE 2: The board noted that the proposed intern licensing fee is comparable with other states, and that it is a one time fee whereas most states require an annual renewal. The board discussed that technician wages have been steadily increasing. The board compared technician registration fees in neighboring states and noted that with the increase, the fee is now similar to other states. The board also noted that the technicians' initial registration fee is being increased by 50% whereas other registration fees are being increased by 100%.

COMMENT 3: One commenter opposed the increase to the pharmacy technician and technician-in-training registration and renewal fees and instead recommended raising the proposed fee increase for pharmacists from \$110 to \$125 to accomplish a similar increase in revenue. The commenter noted the value of pharmacy technicians, and stated his opinion that pharmacists could afford the additional \$15 per year in support of technicians.

RESPONSE 3: The board agreed with the comments about the value of pharmacy technicians. The board discussed the steady increase in technician wages and compared technician registration fees in neighboring states, noting that with the proposed increase, the fee is now similar to other states. The board considered that the pharmacist license fee is already being increased by 100% and concluded that an increase of greater than 100% was too much. Further, the board concluded that all licensees must share in the cost of administering the board's services.

COMMENT 4: One commenter supported the proposed fee increases except for the fee increase for technicians. The commenter noted that the increase in licensing fees would cost a technician an unfair amount when compared to the income of technicians. The commenter suggested a fee increase for pharmacists from \$110 to \$120 instead of increasing the fee for technicians, stating that the increase in annual revenue from pharmacist licensing fees would offset the elimination of the technician fee increase.

RESPONSE 4: See RESPONSE 3.

4. The board has amended ARM 24.174.401 and 24.174.402 exactly as proposed.

BOARD OF PHARMACY
MARK MEREDITH, R. Ph., CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

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

Certified to the Secretary of State September 11, 2006

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

In the matter of the adoption of New)	CORRECTED NOTICE OF
Rules I through XXIX and amendment of)	ADOPTION, AMENDMENT,
ARM 37.95.102, 37.95.106, 37.95.108,)	AND REPEAL
37.95.121, 37.95.132, 37.95.139,)	
37.95.140, 37.95.141, 37.95.214,)	
37.95.215, 37.95.225, 37.95.602,)	
37.95.610, 37.95.611, 37.95.613,)	
37.95.702, 37.95.705, 37.95.706,)	
37.95.708, and 37.95.1005 and the)	
repeal of ARM 37.95.109, 37.95.618,)	
37.95.620, 37.95.701, and 37.95.907)	
pertaining to licensure of day care)	
facilities)	

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-366 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 2572, of the 2005 Montana Administrative Register, issue number 24, and on January 26, 2006, published MAR Notice No. 37-368 regarding the amended notice of proposed adoption, amendment, and repeal of the above-stated rules at page 201 of the 2006 Montana Administrative Register, issue number 2, and on June 1, 2006, published notice of the adoption of the proposed rules at page 1424 of the 2006 Montana Administrative Register, issue number 11.

2. This corrected notice is being filed to correct an error in the notice of adoption published on June 1, 2006 at page 1424 of the 2006 Montana Administrative Register, issue number 11.

3. The following rules are corrected as follows, new material underlined, deleted material interlined:

37.95.102 DEFINITIONS (1) through (25) remain as adopted.

~~(26) "Nonteaching director" means a facility director who meets the requirements as outlined in ARM 37.95.622 but who does not regularly provide direct care to children who attend the day care facility.~~

(27) through (53) remain as adopted but are renumbered (26) through (52).

AUTH: 52-2-704, 53-4-212, 53-4-503, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-501, 53-4-504, 53-4-601, 53-4-611, 53-4-612, MCA

RULE XVI (37.95.622) DAY CARE CENTERS: STAFFING QUALIFICATIONS (1) through (1)(d) remain as proposed.

(2) Each center will have a director. The director shall have a bachelor's degree in a related field plus one year experience in child day care or child development associate certification (CDA) or three years experience in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, the director must meet the qualification of a primary caregiver.

~~(2)~~ (3) A center director must obtain 15 hours of approved education or training on an annual basis.

(3) through (3)(g) remain as adopted but are renumbered (4) through (4)(g).

~~(4)~~ (5) Course completion as indicated in ~~(3)~~(4)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.

(5) through (5)(c) remain as adopted but are renumbered (6) through (6)(c).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

4. In the comments and responses in the notice of adoption, Comments #47 through #58, the department erroneously indicated that it was adopting Rule XVI as ARM 37.95.149 when in fact Rule XVI was adopted as ARM 37.95.622.

In response to Comment #47, the department agreed Rule XVI(2) through (4)(b) (37.95.622) as proposed would be withdrawn, and the department would retain the original language in ARM 37.95.620(1) for day care center director qualifications. The original text of ARM 37.95.620(1) was to be moved to Rule XVI (37.95.622), and the remainder of ARM 37.95.620 was to be repealed. The department neglected to show the language change in the notice of adoption.

As a result of the department agreeing to retain the original language for day care center director qualifications, the term "nonteaching director" is not used in the rules. The department is therefore removing the term's definition from ARM 37.95.102.

5. All other rule changes adopted, amended, and repealed remain the same.

6. The replacement pages for this corrected notice were submitted to the Secretary of State for the June 30, 2006 deadline.

/s/ Michelle Maltese
Rule Reviewer

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

Certified to the Secretary of State September 11, 2006.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.2.203, priority handling of)
documents)

TO: All Concerned Persons

1. On June 22, 2006, the Secretary of State published MAR Notice No. 44-2-134 regarding the proposed amendment of the above-stated rule at page 1569 of the 2006 Montana Administrative Register, Issue Number 12.

2. The following rule is amended exactly as proposed: ARM 44.2.203.

3. On July 19, 2006, a public hearing was held to take comments and the comment period was open until July 20, 2006. No comments or testimony were received.

/s/ Mark A. Simonich for
Brad Johnson
Secretary of State

/s/ Janice Frankino Doggett
Janice Frankino Doggett
Rule Reviewer
Secretary of State

Dated this 11th day of September 2006.

CITIES AND TOWNS - Whether urban renewal districts may include property outside the boundaries of a municipality;

COUNTIES - Whether urban renewal districts may include property outside the boundaries of a municipality; industrial districts and tax increment financing;

COUNTY GOVERNMENT - Whether urban renewal districts may include property outside the boundaries of a municipality; industrial districts and tax increment financing;

MUNICIPAL GOVERNMENT - Whether urban renewal districts may include property outside the boundaries of a municipality;

STATUTORY CONSTRUCTION - Mont. Code Ann. § 7-15-4201 to -4299;

TAXATION AND REVENUE - Industrial districts and tax increment financing;

MONTANA CODE ANNOTATED - Sections 1-2-101, 7-11-101 to -108, -104, 7-15-4201 to -4299, -4206(8), -4210, -4211 -4216, -4234, -4236, -4251(2), -4255, -4267, -4281, -4282, -4283(8), -4297 to -4299, -4298(4), -4299(1)(e);

MONTANA LAWS OF 1989 - Chapter 712.

- HELD:
1. An urban renewal project consisting in part of property outside a municipality is not permitted under the Urban Renewal Law. Tax increment financing may not be used to support such a project.
 2. Since MetraPark does not engage in a "secondary, value-added industry," financing for infrastructure improvements at MetraPark is not permitted under the Tax Increment Financing Industrial Development Act.

September 6, 2006

Mr. Daniel L. Schwarz
Chief Deputy Yellowstone County Attorney
217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025

Dear Mr. Schwarz:

The Yellowstone County Board of County Commissioners has requested my opinion on the following questions:

1. May a county enter into an interlocal agreement with a city to effectuate an urban renewal multi-jurisdictional tax increment financing district (TIF) which includes the properties of both the city and the county?

2. If such a district is allowed by law, which governing body will have ultimate budget and spending authority regarding the TIF?
3. May the county set up an industrial TIF consisting only of properties located within the county and subject only to county authority?
4. If such an industrial district TIF is legally established, may funds generated from the TIF be utilized for improvements at MetraPark in Billings?

I.

Your questions require the interpretation of Montana's Urban Renewal Law, Mont. Code Ann. § 7-15-4201 to -4299.

Your first question focuses on whether property within a county but outside a municipality may be subject to an urban renewal plan. I have concluded that it may not.

The Urban Renewal Law makes repeated references to conferring defined powers upon a "municipality." For purposes of the law, a "municipality" is defined as "any incorporated city or town in the state." Mont. Code Ann. § 7-15-4206(8). Before a municipality may exercise any of the powers conferred by the law, it must adopt a resolution "finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality." Mont. Code Ann. § 7-15-4210. (Emphasis added.) The law grants authority "in every municipality" to develop a comprehensive plan for the "development of the municipality as a whole" Mont. Code Ann. § 7-15-4211. The urban renewal plan must include "the urban renewal area for the municipality" Mont. Code Ann. § 7-15-4216. The mayor will appoint a board of commissioners to manage and conduct the business of an urban renewal project. Mont. Code Ann. § 7-15-4234, -4236. And a municipality is granted general powers "to undertake and carry out urban renewal projects within the municipality" Mont. Code Ann. § 7-15-4251(2). (Emphasis added.) There is no suggestion anywhere in the statute that an urban renewal project may be undertaken outside of the boundaries of a municipality by either a city or a county. Tax increment financing may not be used to support such a project since a project consisting in part of property outside a municipality is not permitted under the Urban Renewal Law.

The statutes do provide opportunities for a county to cooperate in a municipal urban renewal plan. Mont. Code Ann. § 7-15-4255, for example, allows a municipality to contract with another public agency to upgrade services or facilities in an urban renewal project. Similarly, Mont. Code Ann. § 7-15-4267 provides for the

cooperation of other public bodies in accomplishing urban renewal projects. Mont. Code Ann. § 7-15-4281 specifically allows a county to provide financial assistance for a project. No provision of the code, however, expands the scope of permissible urban renewal project to include lands outside the municipal boundary.

Montana Code Annotated § 7-11-101 to -108 defines the authority of cities and counties to enter interlocal agreements. Mont. Code Ann. § 7-11-104 makes clear that a city and county may enter an agreement for any project "that any of the public agencies entering into the contract is authorized by law to perform." Thus it is clear that an interlocal agreement between a city and county may facilitate a project that either may already perform, but does not expand the authority of the parties to allow them to engage in a project that neither is otherwise allowed to do. Since the law does not contemplate a city urban renewal project incorporating lands outside the city limits, an interlocal agreement between a city and county may not serve to create such a project.

The answer to your first question makes an answer to your second question unnecessary.

II.

Tax increment financing is authorized not only for urban renewal districts but also for industrial districts and technology districts. Mont. Code Ann. § 7-15-4282. Your last two questions inquire about the use of an industrial district TIF for improvements at MetraPark. I assume that MetraPark is located outside of the city limits of Billings.

I concur with your conclusion that a county may establish an industrial district on county property located outside of a city or town. The code broadens the definition of "municipality" for purposes of an industrial district. Mont. Code Ann. § 7-15-4283(8) (for purposes of an industrial district, "municipality . . . means any incorporated city or town, county, or city-county consolidated local government."). But I cannot concur that an industrial district TIF can be created to make improvements to MetraPark.

Montana passed the Tax Increment Financing Industrial Development Act in 1989. The Act consists of three sections, Mont. Code Ann. § 7-15-4297 to -4299. The preamble to the Act, which is not codified, places the language of the statute into context for purposes of interpretation:

WHEREAS, the State of Montana wishes to encourage the attraction and retention of secondary, value-adding industrial manufacturing that uses Montana timber, mineral, oil and gas, coal, and agricultural resources in the production of products in the state; and

WHEREAS, secondary, value-adding industries are those industries that transform raw resources into processed substances from which industrial or consumer products may be manufactured; and

WHEREAS, secondary, value-adding industries, in order to be competitive in today's world economy, require expensive infrastructure that is beyond the means of most Montana communities; and

WHEREAS, Montana law currently provides certain property tax benefits to new and expanding industries, including secondary, value-adding industries, but has little to directly encourage the development of needed industrial infrastructure to attract secondary, value-adding industries; and

WHEREAS, additional creative use of Montana's current tax laws could encourage increased investment in secondary, value-adding industries in the state through the use of tax increment financing for infrastructure improvements in areas in which the infrastructure would be available for secondary, value-adding industrialization.

1989 Mont. Laws, ch. 712.

The Act goes on to list certain legislative findings. Among them are that "the state's tax increment financing laws should be used to encourage the creation of areas in which needed industrial infrastructure for secondary, value-adding industries could be developed." Mont. Code Ann. § 7-15-4298(4). An industrial district may be created if the proposed district "has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries." Mont. Code Ann. § 7-15-4299(1)(e).

The language of the statute is plain and unambiguous on its face. In the interpretation of a statute, one may not "insert that which has been omitted or omit that which has been inserted." Mont. Code Ann. § 1-2-101.

In this regard, the intent of the legislature governs the interpretation of the statute. Matter of Estate of Baier (1977), 173 Mont. 396, 567 P.2d 943. Its intent must, if possible, be determined from the plain meaning of the words used. If the interpretation of the statute can be so determined, the courts may not go further and apply other means of interpretation. Softich v. Baker (1976), 171 Mont. 135, 556 P.2d 902.

Haker v. Southwestern R.R., 176 Mont. 364, 369, 578 P.2d 724, 727 (1978).

Any doubt as to the legislative intent is fully resolved by the Preamble. Taken together with the language of the statute, it is clear that the legislature intended to allow the creation of industrial districts and the use of tax increment financing within those districts for the purpose of developing infrastructure "available for secondary, value-adding" industries. If the term "secondary, value-adding industries" needed any clarification, that clarification is provided by the Preamble. "Secondary, value-

adding industries are those industries that transform raw resources into processed substances from which industrial or consumer products may be manufactured."

As meritorious as the activities conducted at MetraPark may be in the promotion of Montana's primary and secondary industries, these activities do not constitute the manufacturing transformation of primary, raw resources into "processed" substances. Financing for infrastructure improvements at MetraPark is not permitted under the Tax Increment Financing Industrial Development Act.

THEREFORE, IT IS MY OPINION:

1. An urban renewal project consisting in part of property outside a municipality is not permitted under the Urban Renewal Law. Tax increment financing may not be used to support such a project.
2. Since MetraPark does not engage in a "secondary, value-added industry," financing for infrastructure improvements at MetraPark is not permitted under the Tax Increment Financing Industrial Development Act.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/je/jym

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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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in August 2006 appear. Vacancies scheduled to appear from October 1, 2006, through December 31, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 1, 2006.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Athletics (Labor and Industry)			
Ms. Jamie Jones Great Falls	Governor	McCarl	8/16/2006 4/25/2007
Qualifications (if required): public representative			
Board of Banking (Administration)			
Mr. Jon Redlin Lambert	Governor	reappointed	8/14/2006 7/1/2009
Qualifications (if required): state bank officer of a large size bank			
Mr. Russ Ritter Helena	Governor	reappointed	8/14/2006 7/1/2009
Qualifications (if required): public representative			
Board of Personnel Appeals (Labor and Industry)			
Ms. Alice Whiteman Bonner	Governor	Brobst	8/14/2006 1/1/2009
Qualifications (if required): full time management employee in an organization with a collective bargaining unit			
Board of Pharmacy (Labor and Industry)			
Mr. William D. Burton Helena	Governor	reappointed	8/3/2006 7/1/2011
Qualifications (if required): licensed pharmacist			
Board of Plumbers (Labor and Industry)			
Ms. Debi Friede Havre	Governor	Laknar	8/18/2006 5/4/2007
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Professional Engineers and Professional Land Surveyors (Labor and Industry)			
Ms. Liz Blair Whitefish Qualifications (if required): public representative	Governor	Markle	8/3/2006 7/1/2010
Mr. David Elias Anaconda Qualifications (if required): licensed land surveyor	Governor	Applebury	8/3/2006 7/1/2010
Mr. Steve Wright Columbia Falls Qualifications (if required): licensed chemical engineer	Governor	reappointed	8/3/2006 7/1/2010
Board of Public Accountants (Labor and Industry)			
Mr. Gary Kasper Fairfield Qualifications (if required): licensed public accountant	Governor	reappointed	8/15/2006 7/1/2011
Board of Radiologic Technologists (Labor and Industry)			
Ms. Kelli Bush Butte Qualifications (if required): radiologic technician	Governor	Carter	8/14/2006 7/1/2009
Board of Realty Regulation (Labor and Industry)			
Ms. Judith Peasley Seeley Lake Qualifications (if required): public representative	Governor	Hilgendorf	8/3/2006 5/9/2010

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Water Well Contractors (Natural Resources and Conservation)			
Mr. Kevin Haggerty Bozeman Qualifications (if required): water well contractor	Governor	reappointed	8/3/2006 7/1/2009
Commissioner of Political Practices (Secretary of State)			
Commissioner Dennis Unsworth Helena Qualifications (if required): not listed	Governor	Higgins	8/30/2006 1/1/2011
Economic Development Advisory Council (Commerce)			
Mr. Jim Atchison Colstrip Qualifications (if required): public representative	Governor	reappointed	8/28/2006 7/23/2009
Mr. Jim Lee Glendive Qualifications (if required): public representative	Governor	Lutts	8/28/2006 7/23/2009
Ms. Elizabeth Marchi Whitefish Qualifications (if required): public representative	Governor	reappointed	8/28/2006 7/23/2009
Mr. Joe Menicucci Belgrade Qualifications (if required): public representative	Governor	Holland	8/28/2006 7/23/2009

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Economic Development Advisory Council (Commerce) cont.			
Mr. Richard Sangray Box Elder	Governor	Sansaver	8/28/2006 7/23/2009
Qualifications (if required): public representative			
Flathead Basin Commission (Natural Resources and Conservation)			
Ms. Katie Hunt Kalispell	Governor	Wood	8/18/2006 6/30/2007
Qualifications (if required): public representative			
Mental Disabilities Board of Visitors (Governor)			
Ms. Joan-Nell Macfadden Great Falls	Governor	reappointed	8/14/2006 7/1/2008
Qualifications (if required): experience with emotionally disturbed children			
Ms. Sandra Mihelish Helena	Governor	Cahill	8/14/2006 7/1/2008
Qualifications (if required): experience with welfare of mentally ill individuals			
Mr. Graydon Davies Moll Polson	Governor	reappointed	8/14/2006 7/1/2008
Qualifications (if required): experience with developmentally disabled adults			
Petroleum Tank Release Compensation Board (Environmental Quality)			
Ms. Adele Michels Plentywood	Governor	Bateridge	8/18/2006 6/30/2009
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Petroleum Tank Release Compensation Board (Environmental Quality) cont.			
Mr. Steve Michels Raynseford	Governor	Schumacher	8/15/2006 6/30/2009
Qualifications (if required): service station dealer			
Rangeland Resources Committee (Natural Resources and Conservation)			
Ms. Diane Ahlgren Winnett	Governor	Haughian	8/28/2006 0/0/0
Qualifications (if required): rancher from Eastern Montana			
Mr. Les Gilman Alder	Governor	reappointed	8/28/2006 0/0/0
Qualifications (if required): rancher from Western Montana			
Mr. Steve Hedstrom Raynesford	Governor	reappointed	8/28/2006 0/0/0
Qualifications (if required): rancher from Central Montana			
Ms. Tracy Hentges Wolf Point	Governor	Anderson	8/28/2006 0/0/0
Qualifications (if required): rancher from Northern Montana			
Mr. John Hollenback Gold Creek	Governor	reappointed	8/28/2006 0/0/0
Qualifications (if required): rancher from West of the Divide			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Rangeland Resources Committee (Natural Resources and Conservation) cont.			
Mr. Michael Lane Three Forks Qualifications (if required): rancher from Southern Montana	Governor	reappointed	8/28/2006 0/0/0
Small Business Health Insurance Pool Board (State Auditor)			
Ms. Connie Welsh Helena Qualifications (if required): management level individual with knowledge of state employee health benefit plans	Governor	reappointed	8/10/2006 1/1/2009
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services)			
Mr. Eric Eck Helena Qualifications (if required): representative of the Public Service Commission	Governor	reappointed	8/14/2006 7/1/2009
Ms. Marce French Lewistown Qualifications (if required): nondisabled senior citizen	Governor	Davis	8/18/2006 7/1/2009
Ms. Cheryl Gillespie Helena Qualifications (if required): representative of the largest local exchange company	Governor	reappointed	8/14/2006 7/1/2009
Ms. Christy Keto Havre Qualifications (if required): representative of an interLATA interexchange carrier	Governor	reappointed	8/14/2006 7/1/2009

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
9-1-1 Advisory Council (Administration)		
Mr. Mark Lerum, Helena Qualifications (if required): Helena Police Department	Director	11/3/2006
Mr. Geoff Feiss, Helena Qualifications (if required): Montana Telecommunications Association	Director	11/3/2006
Mr. Jeff Brandt, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Mr. Steve Larson, Helena Qualifications (if required): Montana State Fire Chiefs Association	Director	11/3/2006
Mr. Chuck Winn, Bozeman Qualifications (if required): Montana State Fire Chiefs Association	Director	11/3/2006
Mr. Joe Calnan, Montana City Qualifications (if required): Montana State Volunteer Fire Fighters Association	Director	11/3/2006
Mr. Larry Sheldon, Helena Qualifications (if required): Qwest Communications	Director	11/3/2006
Mr. Don Hollister, Kalispell Qualifications (if required): Century Tel	Director	11/3/2006
Ms. Jenny Hansen, Helena Qualifications (if required): Department of Administration	Director	11/3/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
9-1-1 Advisory Council (Administration) cont. Mr. Brian Wolf, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Ms. Lisa Kelly, Kalispell Qualifications (if required): Century Tel	Director	11/3/2006
Ms. Margaret Morgan, Helena Qualifications (if required): Western Wireless	Director	11/3/2006
Mr. Craig Bender, Great Falls Qualifications (if required): 3 Rivers Wireless	Director	11/3/2006
Mr. Mike Doto (city not listed) Qualifications (if required): Montana State Volunteer Fire Fighters Association	Director	11/3/2006
Mr. Phil Maxwell (city not listed) Qualifications (if required): Montana Telecommunications Association	Director	11/3/2006
Ms. Anne Kindness (city not listed) Qualifications (if required): Helena Police Department	Director	11/3/2006
Mr. Dennis Luttrell (city not listed) Qualifications (if required): Qwest Communications	Director	11/3/2006
Ms. Aimee Grmoljez, Helena Qualifications (if required): Verizon Wireless	Director	11/3/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
9-1-1 Advisory Council (Administration) cont. Mr. Stanley Kaleczyc (city not listed) Qualifications (if required): Verizon Wireless	Director	11/3/2006
Mr. Terry Ferestad, Billings Qualifications (if required): Western Wireless	Director	11/3/2006
Mr. Ernie Peterson (city not listed) Qualifications (if required): 3 Rivers Wireless	Director	11/3/2006
Ms. Becky Berger, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Ms. Anita Moon, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Board of Barbers and Cosmetologists (Labor and Industry) Ms. Verna Dupuis, Bozeman Qualifications (if required): cosmetologist	Governor	10/1/2006
Ms. Karan Charles, Miles City Qualifications (if required): barber	Governor	10/1/2006
Board of Occupational Therapy Practice (Labor and Industry) Ms. Cindy Stergar, Butte Qualifications (if required): Public Representative	Governor	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Occupational Therapy Practice (Labor and Industry) cont. Ms. Elspeth Richards, Missoula Qualifications (if required): occupational therapist</p>	Governor	12/31/2006
<p>Ms. L. Delores Gilbert, Sidney Qualifications (if required): public member</p>	Governor	12/31/2006
<p>Mr. Tim Tracy, Kalispell Qualifications (if required): Occupational Therapist</p>	Governor	12/31/2006
<p>Board of Outfitters (Labor and Industry) Mr. Craig Madsen, Great Falls Qualifications (if required): fishing outfitter</p>	Governor	10/1/2006
<p>Mr. Russ Smith, Philipsburg Qualifications (if required): hunting and fishing outfitter</p>	Governor	10/1/2006
<p>Country of Origin Labeling Advisory Council (Labor and Industry) Director Keith Kelly, Helena Qualifications (if required): Department of Labor and Industry Commissioner</p>	Governor	12/31/2006
<p>Ms. Linda Nielsen, Nashua Qualifications (if required): Board of Livestock Representative</p>	Governor	12/31/2006
<p>Rep. Bob Bergren, Havre Qualifications (if required): Legislative Representative</p>	Governor	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Country of Origin Labeling Advisory Council (Labor and Industry) cont. Director Nancy K. Peterson, Helena Qualifications (if required): Department of Agriculture Director	Governor	12/31/2006
Director Anthony J. Preite, Helena Qualifications (if required): Department of Commerce Director	Governor	12/31/2006
Mr. Dan Teigen, Teigen Qualifications (if required): Livestock Industry Representative	Governor	12/31/2006
Ms. Margaret Novak, Chester Qualifications (if required): Retail Food Industry Representative	Governor	12/31/2006
Mr. John Munsell, Miles City Qualifications (if required): Consumer	Governor	12/31/2006
Mr. John Lehfeldt, Lavina Qualifications (if required): Livestock Industry Representative	Governor	12/31/2006
District Court Judge 4th Judicial District Department 2 (Justice) Judge Robert L. Dusty Deschamps III, Missoula Qualifications (if required): none specified	Governor	12/31/2006
Horse Racing Task Force (Governor) Sen. Dale Mahlum, Missoula Qualifications (if required): public representative	Governor	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Horse Racing Task Force (Governor) cont. Mr. Shawn Real Bird, Garryowen Qualifications (if required): public representative	Governor	12/31/2006
Ms. Sherry Meador, Clancy Qualifications (if required): public representative	Governor	12/31/2006
Mr. Joe Birdrattler, Browning Qualifications (if required): public representative	Governor	12/31/2006
Mr. Ben Carlson, Billings Qualifications (if required): public representative	Governor	12/31/2006
Mr. Bill Schmitt, Great Falls Qualifications (if required): public representative	Governor	12/31/2006
Mr. Ron Thiebert, Kalispell Qualifications (if required): public representative	Governor	12/31/2006
Mr. John Tooke, Miles City Qualifications (if required): public representative	Governor	12/31/2006
Independent Living Council (Public Health and Human Services) Mr. Bob Maffit, Helena Qualifications (if required): Independent Living Center representative	Governor	12/1/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Lewis and Clark Bicentennial Commission (Historical Society) Mr. John G. Lepley, Fort Benton Qualifications (if required): representative of the public	Governor	10/1/2006
Ms. Marcy Hamburg, Savage Qualifications (if required): public member	Governor	10/1/2006
Montana Noxious Weed Trust Fund Advisory Council (Agriculture) Sen. Mack Cole, Forsyth Qualifications (if required): at large representative	Director	10/20/2006
Mr. Bob Bushnell (city not listed) Qualifications (if required): sportsman/wildlife group representative	Director	10/20/2006
Montana Small Business Development Center Advisory Council (Commerce) Mr. Andy Poole, Helena Qualifications (if required): none specified	Director	12/15/2006
Sen. Jon Tester, Big Sandy Qualifications (if required): none specified	Director	12/15/2006
Ms. Shirley Beck, Philipsburg Qualifications (if required): none specified	Director	12/15/2006
Mr. Ken Green, Whitefish Qualifications (if required): none specified	Director	12/15/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Small Business Development Center Advisory Council (Commerce) cont.		
Mr. Paul Tuss, Havre Qualifications (if required): none specified	Director	12/15/2006
Mr. John Langenheim, Bozeman Qualifications (if required): none specified	Director	12/15/2006
Ms. Michelle Johnston, Helena Qualifications (if required): none specified	Director	12/15/2006
Mr. Steve Holland, Bozeman Qualifications (if required): none specified	Director	12/15/2006
Ms. Kathy Jones, Great Falls Qualifications (if required): none specified	Director	12/15/2006
Mr. Dan Killoy, Miles City Qualifications (if required): none specified	Director	12/15/2006
Mr. Joe Unterreiner, Kalispell Qualifications (if required): none specified	Director	12/15/2006
Ms. Reatha Montoya, Colstrip Qualifications (if required): none specified	Director	12/15/2006
Mr. Steve Louttit, Helena Qualifications (if required): none specified	Director	12/15/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Small Business Development Center Advisory Council (Commerce) cont.		
Ms. Sara Hamlen, Townsend Qualifications (if required): none specified	Director	12/15/2006
Mr. Scott Atwood, Billings Qualifications (if required): none specified	Director	12/15/2006
Mr. Hale Williams, Missoula Qualifications (if required): none specified	Director	12/15/2006
State Employee Group Benefits Advisory Council (Administration)		
Sen. Mike Cooney, Helena Qualifications (if required): representing the Legislature	Director	12/31/2006
Mr. Thomas Schneider, Helena Qualifications (if required): representing the Labor Organization	Director	12/31/2006
Mr. Dale Taliaferro, Helena Qualifications (if required): representing Retired State Employees	Director	12/31/2006
Ms. Mary Dalton, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Mr. Bartley J. Campbell, Helena Qualifications (if required): representing the Legislative Branch	Director	12/31/2006
Mr. Steve Barry, Helena Qualifications (if required): representing State Employees	Director	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2006 through DECEMBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont.		
Mr. Richard Cooley, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Mr. Monte Brown, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Ms. Amy Carlson, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Ms. Connie Welsh, Helena Qualifications (if required): Ex-Officio Member	Director	12/31/2006
Mr. Eric Feaver, Helena Qualifications (if required): representing the Labor Organization	Director	12/31/2006
Ms. Christi Jacobsen, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
State Historic Preservation Review Board (Historical Society)		
Mr. Douglas Johnson, Hamilton Qualifications (if required): having historic property administration expertise	Governor	10/1/2006
Mr. Conrad Fisher, Lame Deer Qualifications (if required): having traditional cultural property expertise	Governor	10/1/2006