

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print 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 Services, at (406) 444-2055.

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

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 2.43.3502)	AMENDMENT
pertaining to the investment policy)	
statement for the Defined)	NO PUBLIC HEARING
Contribution Retirement Plan and)	CONTEMPLATED
ARM 2.43.5102 pertaining to the)	
investment policy statement for the)	
457 Deferred Compensation Plan)	

TO: All Concerned Persons

1. On June 26, 2009, the Montana Public Employees' Retirement Board (the board) proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on May 5, 2009, to advise us of the nature of the accommodation that you need. Please contact Ann Reber, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-0155; TDD (406) 444-1421; FAX (406) 444-5428; e-mail areber@mt.gov.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on January 10, ~~2008~~ 8, 2009. (2) and (3) remain the same.

AUTH: 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

2.43.5102 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 457 Plan (deferred compensation) Investment Policy Statement approved by the board on January 10, ~~2008~~ 8, 2009. (2) and (3) remain the same.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The board, as the administrator of the Defined Contribution Retirement Plan of the Public Employees' Retirement System and the Deferred Compensation Plan (sometimes called a 457 Plan), adopted the original investment policy statements for both plans by reference in 2002. The board last amended both investment policy statements on January 8, 2009. Most of the amendments are format changes. There are also several substantive amendments.

Three amendments impact both the Deferred Compensation and the Defined Contribution plans' investment policy statements:

(1) The Board amended Section IIIBa of each investment policy statement to set the minimum measurable operation history at three years, rather than five. Funds and investment houses are restructuring on a more frequent basis than in the past. This change will permit inclusion of a greater number of fund options, provided the fund managers have five years experience and the funds meet other requirements in the investment policy statements.

(2) Section IIIBa of each investment policy statement was also amended to permit reliance on the Certified Financial Analyst Institute (CFAI). The CFAI provides global standards for measuring portfolio management and investment analysis and certifies investment professionals. A manager who manages a composite fund pursuant to CFAI standards for a minimum of five years is recognized as a manager sufficiently skilled to manage a fund in either the Deferred Compensation Plan or the Defined Contribution Retirement Plan.

(3) The board amended Section III2 of each investment policy statement to permit reliance on "an appropriate industry accepted database." The board's current investment consultant, Wilshire Consulting, uses its own proprietary database when reviewing the funds. Previous consultants have used either "Morningstar" or the "Callan" database. Rather than mandate a specific database in the investment policy statement, the board would like the flexibility of selecting a database that corresponds with databases preferred by the board's investment consultant.

Finally, the board amended the Deferred Compensation (457) Plan's default fund. The board, on the advice of its investment consultant and the Employee Investment Advisory Council, selected the balanced fund as the default in that plan as opposed to the stable value fund. The balanced fund meets the definition of a qualified default investment alternative under the federal 2006 Pension Protection Act.

Section 2-4-307(3), MCA, requires that the amended investment policy statements be adopted by reference.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendments in writing to Roxanne Minnehan, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200,

P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail rminnehan@mt.gov and must be received no later than 5:00 p.m., May 22, 2009.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., May 22, 2009.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1037 persons based on approximately 2352 Defined Contribution Retirement Plan members and approximately 8020 457 Plan participants.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Ann Reber, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to areber@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State 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 if a discrepancy exists 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 Secretary of State works 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.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Melanie Symons
Melanie Symons, Legal Counsel
and Rule Reviewer

/s/ John Paull
John Paull, President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer
Department of Administration

Certified to the Secretary of State April 6, 2009.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 8.119.101 pertaining to the)	AMENDMENT
Tourism Advisory Council)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On May 16, 2009, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., May 1, 2009, to advise us of the nature of the accommodation that you need. Please contact Barbara Sanem, Department of Commerce, Montana Promotion Division, 301 South Park Avenue, P.O. Box 200533, Helena, Montana 59620-0533; telephone (406) 841-2769, TDD (406) 841-2702; fax (406) 841-2871; or e-mail bsanem@mt.gov.

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

8.119.101 TOURISM ADVISORY COUNCIL (1) remains the same.

(2) The Tourism Advisory Council incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2007~~ 2009," setting forth the regulations and procedures pertaining to the distribution of lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana Promotion Division, Department of Commerce, 301 South Park Avenue, Helena, Montana 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors' bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2007~~ 2009."

AUTH: 2-15-1816, MCA

IMP: 2-15-1816, MCA

REASON: It is reasonably necessary to amend this rule to provide clarification because the "2007 Regulations and Procedures for the Regional/CVB Tourism Organizations" have been revised and reorganized.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Leona Gregg, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2730; fax (406) 841-2730; or e-mail lgregg@mt.gov, and must be received no later than 5:00 p.m., May 14, 2009.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Leona Gregg at the above address no later than 5:00 p.m., May 14, 2009.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 20 persons based on 11 Convention and Visitor Bureaus, six Tourism Regions, and at least 184 potential applicants for grants of accommodation tax funds.

7. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works 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.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State April 6, 2009.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 23.12.1201 through 23.12.1207,)
concerning attendance at MLEA, and)
ARM 23.12.1412 and 23.12.1414,)
concerning performance criteria at)
MLEA)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 7, 2009, at 1:00 p.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice 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. on April 24, 2009, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

23.12.1201 REQUIREMENTS FOR PEACE OFFICERS AND PUBLIC SAFETY OFFICERS TO ATTEND BASIC PROGRAMS (1) An applicant to attend MLEA basic programs must be employed by a law enforcement or public safety agency within the state of Montana as a ~~peace officer, a reserve officer, or public safety officer~~ as defined in 44-4-401(2), MCA. ~~For purposes of this rule:~~

~~(a) a peace officer is defined by 7-32-303(1), 61-10-154(5), and 61-12-201, MCA;~~

~~(b) a reserve officer is defined by 7-32-201(5), MCA; and~~

~~(c) a public safety officer shall mean the following (which are defined in 7-4-2901, 7-4-2904, 7-4-2905, 7-31-203, 41-5-1701 through 41-5-1706, 44-4-302 through 44-4-305, and 46-23-1003 through 46-23-1005, MCA):~~

~~(i) a detention officer;~~

~~(ii) a corrections officer;~~

~~(iii) a juvenile detention officer;~~

~~(iv) a juvenile corrections officer;~~

~~(v) a public safety communications officer;~~

~~(vi) a detention center administrator;~~

~~(vii) a juvenile probation officer;~~

~~(viii) a juvenile parole officer;~~

- ~~(ix) an adult probation and parole officer;~~
- ~~(x) a misdemeanor probation officer;~~
- ~~(xi) county coroner; or~~
- ~~(xii) deputy county coroner.~~

(2) Each law enforcement officer basic course applicant shall first be required to pass a physical fitness abilities test developed by the department. An applicant who has passed the test shall be accepted on a first come, first served basis. If the specific course roster that an applicant applies to attend has been filled, the applicant will be placed on a waiting list for that course and also placed on the roster for the next available course. To meet statewide needs, the academy administrator may adjust the placement of applicants to certain course rosters.

(3) Reserve officers, ~~peace officers, or public safety officers~~ who apply to attend basic courses must meet the qualifications and requirements for preservice applicants.

AUTH: 44-10-202, MCA
IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: These changes are necessary to comport with the new definition of "public safety officer" stated in 44-4-401(2), MCA, as well as the fitness requirements stated in ARM 23.12.1414. These changes also simplify the rule and the definition. Adjusting (3) to cover only "reserve officers" is necessary because only reserve officers need to meet the qualifications for preservice applicants.

23.12.1203 BASIC COURSE ATTENDANCE REQUIREMENTS FOR PRESERVICE APPLICANTS (1) Preservice applicants are persons not employed as full-time or part-time ~~bona fide peace officers and public safety officers~~. Preservice applicants shall be selected to attend the MLEA basic course based on their ability to meet minimum qualifications. This includes successfully completing the pretest screening, a written and physical ability test, and POST oral interview, background investigation, criminal history, and test screening. Successful applicants will be ranked in accordance with ARM 23.12.1207. Scheduled attendance by the successful applicants to the basic course will be by order of rank from the applicant list and by course availability. Preservice applicants scheduled to attend the basic course shall receive reporting instructions and other information from the academy administrator.

AUTH: 44-10-202, MCA
IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: These changes are necessary to clarify who qualifies as a "preservice applicant" and to clarify what testing is required and that the testing is not a POST test.

23.12.1204 MINIMUM QUALIFICATIONS FOR PRESERVICE TESTING AND PRETEST SCREENING (1) Preservice applicants must meet the minimum

qualifications for peace officers ~~or public safety officers~~ as stated in 7-32-303, MCA, with the following exceptions:

(a) through (3) remain the same.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: These changes are necessary to specify that these are the minimum qualifications for "preservice" testing and to specify that the qualifications referenced are for "peace officers" not "public safety officers" as provided in 7-32-303, MCA.

23.12.1205 PRESERVICE TESTING PROCEDURES (1) The preservice applicant tests shall be administered by the academy and/or an approved designee, and shall be conducted whenever it is deemed necessary by the academy administrator. Applicants shall be notified of the test date, time, and location at least thirty days in advance of the test.

(2) remains the same.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: These changes are necessary to specify that these are "preservice" testing procedures and to allow the academy to accept test scores from other approved agencies.

23.12.1206 POST PRESERVICE TEST SCREENING PROCEDURES

(1) ~~POST~~ Preservice test screening shall be conducted for those applicants who have successfully completed the testing procedures, who have been ranked according to the ranking procedures, and in accordance with the space available in the basic courses to be presented by the academy in the year following the test date. The availability of space shall be determined by the academy administrator.

(2) remains the same.

(3) The academy administrator or designee shall conduct criminal history, prior employment, and character and background checks on each applicant selected for ~~POST test screening~~ further consideration after testing has occurred.

(4) remains the same.

(a) An alternate representative of a county sheriff's office, representative of a municipal police department, and a member of the general public will also be appointed to serve whenever a representative person is unable to attend an interview. All appointments to the board shall be made by the academy administrator ~~and confirmed by the POST advisory council~~.

(5) and (6) remain the same.

(7) Any information discovered during any portion of the ~~POST test~~ screening process that is contrary to the qualifications and requirements of 7-32-303, MCA, or of these rules will result in no further consideration of the applicant for attendance in a basic course.

AUTH: 44-10-202, MCA
IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: These changes are necessary to specify that these are "preservice" test screening procedures administered by the academy, not POST tests.

23.12.1207 RANKING OF PRESERVICE APPLICANTS FOR ELIGIBILITY TO ATTEND THE BASIC COURSE (1) through (2)(h) remain the same.

- (i) an additional 20 points will be added for a doctoral degree; and
 - (j) twenty points is the maximum number of points that can be added for a college degree; and
 - (k) ten additional points will be added to the written test score of a person who is a veteran.
- (3) through (6) remain the same.

AUTH: 44-10-202, MCA
IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This change is necessary to adequately recognize those who have served in our armed forces.

23.12.1412 OTHER STUDENT PERFORMANCE MEASURES (1) remains the same.

(2) Performance evaluations will be conducted on a regular basis by the academy administrator or their designee. Performance evaluations will be summarized orally and in writing and ~~will be~~ based upon the following behavioral categories:

(2)(a) through (4) remain the same.

(5) A copy of the performance evaluation criteria and a written summary of a student's performance evaluation will be provided to the student and to the student's agency administrator when applicable, and to any potential employer who inquires. A copy will be kept on file in the student's record maintained by the academy administrator.

AUTH: 44-10-202, MCA
IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This change is necessary to explain that students, in addition to being provided a copy of their written evaluation summary post-evaluation, will be provided the criteria used to evaluate their performance pre-evaluation.

23.12.1414 PHYSICAL ABILITIES PERFORMANCE REQUIREMENTS FOR THE LAW ENFORCEMENT OFFICER BASIC COURSE (1) All students will be required to perform ~~the following physical tests:~~ and pass a physical abilities test

prior to acceptance into the law enforcement officer basic course.

- ~~(a) pushups;~~
- ~~(b) situps;~~
- ~~(c) one and one half mile run; and~~
- ~~(d) sit and reach.~~

~~(2) A student may request a substitution for any of the above physical tests, but before any substitution is granted, the request will be reviewed by the academy administrator. The student may be asked to provide medical records documenting the need for the substitution, and these medical records may be submitted for review by a physician designated by the academy before any request for substitution is granted.~~

~~(3) and (4) remain the same but are renumbered (2) and (3).~~

~~(a) an entry fitness physical abilities test within 40 90 days of the start of the basic course;~~

- ~~(b) midterm fitness physical abilities test; and~~
- ~~(c) final fitness physical abilities test.~~

~~(5) (4) Students who arrive at the academy with an injury or condition that prevents them from attempting any of the prescribed fitness physical abilities tests will not be allowed to complete accepted into the basic course.~~

~~(6) (5) At the prescribed fitness physical abilities tests, the student must pass every physical test, meeting the required levels of performance as prescribed by administrative policy. Students who fail to meet the required performance levels will be given one opportunity for retest in all physical tests within ten business days of the posted date of failure. Failure to pass the prescribed physical fitness abilities test may result in expulsion or termination from the basic course.~~

~~(7) All basic course students expelled or terminated due to failure of the physical fitness tests will be dropped from the basic course session and may be required to reapply to complete a future session of the entire course.~~

~~(8) All basic course students must successfully complete the final fitness test in order to complete the basic course and attend graduation. Students who fail the final fitness test will be given one opportunity for retest within ten business days of the posted date of failure. Failure to successfully complete a retest within ten business days of the posted date of failure or failure to meet the fitness requirements upon reentry of the next successive basic course, will require reapplication and completion of the entire basic course.~~

AUTH: 44-10-102, 44-10-202, MCA

IMP: 44-10-102, 44-10-202, MCA

RATIONALE AND JUSTIFICATION: These changes are necessary to allow the academy to implement an age and gender neutral physical abilities test that more accurately simulates the physical abilities required by specific job tasks.

4. 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 J. Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay

Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than May 14, 2009.

5. An electronic copy of this Notice of Proposed Amendment and Adoption is available through the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of the 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 of Justice works 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.

6. The Department of Justice 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 of rules regarding the Division of Criminal Investigation, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. A copy of the request may be downloaded from the Department of Justice's web site at <http://doj.mt.gov/resources/forms.asp>, and may be mailed or delivered to Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; or e-mail kstelling@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

7. J. Stuart Segrest, Assistant Attorney General, has been designated to preside over and conduct the hearing.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General
Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on April 6, 2009.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.30.405 pertaining to) PROPOSED AMENDMENT
Vocational Rehabilitation Program)
payment for services)

TO: All Concerned Persons

1. On May 6, 2009, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on April 27, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) through (3) remain the same.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2008~~ 2009 U.S. Department of Health and Human Services poverty guidelines for households of different sizes.

(b) through (6)(a) remain the same.

AUTH: 53-7-102, 53-7-206, 53-7-315, MCA

IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-205, 53-7-310, MCA

4. The department is proposing to amend ARM 37.30.405, Vocational Rehabilitation Program: Payment for Services. This rule sets forth the criteria that

allow for the department to pay for services being made available to persons who are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

The proposed amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2008 United States Department of Health and Human Services poverty guidelines for households. The proposed rule change would revise this level by replacing the year 2008 guidelines with the year 2009 guidelines.

The department some time ago in reviewing the possible means by which to set maximum income levels for purposes of determining eligibility for financial support in the purchase of vocational rehabilitation services determined that these poverty guidelines were the most appropriate means. The poverty guidelines have been established by the federal government for use in many respects inclusive of eligibility determinations for certain federally funded assistance programs. The guidelines are based upon an established methodology and are annually revised. There is broad national acceptance and use of the guidelines. The department considered establishing its own methodology but found that it did not have the resources or expertise by which to develop and maintain its own methodology.

This proposed change, implementing the most recent set of relevant poverty level income amounts, is necessary so as to maintain the currency of the financial criteria. The older amounts as time passes, fail to account for various economic changes such as inflation, that are factors in dynamically defining and distinguishing a class of persons with limited income who are at or below the poverty level for purposes of federal programs and via this incorporated reference are the intended beneficiaries of the vocational rehabilitation services. Implementation of the most recent poverty guidelines assures the continuation of the appropriate coverage population.

5. 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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 14, 2009.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works 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.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Cary Lund
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State April 6, 2009.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to the administration)
of the 2009-2010 Federal Community)
Development Block Grant (CDBG))
Program)

TO: All Concerned Persons

1. On November 26, 2008, the Department of Commerce published MAR Notice No. 8-94-72 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2408 of the 2008 Montana Administrative Register, Issue Number 22.

2. The department has adopted the following rule as proposed: New Rule I (8.94.3725).

3. The department has thoroughly considered the comments received. One comment was received in support of the proposed adoption.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State April 6, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT AND
17.40.318 and the adoption of New Rule)	ADOPTION
I pertaining to state revolving fund and)	
public water and sewer projects eligible)	(WATER TREATMENT SYSTEMS
for categorical exclusion from MEPA)	AND OPERATIONS)
review)	(PUBLIC WATER AND SEWAGE
)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On January 29, 2009, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-282 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 55, 2009 Montana Administrative Register, issue number 2.

2. The board has amended ARM 17.40.318 and adopted New Rule I (17.38.103) exactly as proposed.

3. No comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

DEPARTMENT OF ENVIRONMENTAL
QUALITY

By: /s/ Richard H. Opper
RICHARD H. OPPER
Director

Certified to the Secretary of State, April 6, 2009.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 24.114.101 board organization,)	ADOPTION, AND REPEAL
24.114.201 procedural rules,)	
24.114.301 definitions, 24.114.401)	
fees, 24.114.402 architect seal,)	
24.114.403 architect business entity)	
practice, 24.114.407 emergency use,)	
24.114.501 and 24.114.502 licensure)	
by examination, 24.114.2301)	
unprofessional conduct, 24.114.2402)	
screening panel, the adoption of)	
NEW RULES I through VII, and the)	
repeal of 24.114.404 architect)	
partnerships, and 24.153.101 through)	
24.153.2301 pertaining to landscape)	
architect licensure)	

TO: All Concerned Persons

1. On December 11, 2008, the Board of Architects and Landscape Architects (board) published MAR Notice No. 24-114-29 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2545 of the 2008 Montana Administrative Register, issue no. 23.

2. On January 6, 2009, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.114.101, 24.114.201, 24.114.301, 24.114.401, 24.114.402, 24.114.403, 24.114.407, 24.114.501, 24.114.502, 24.114.2301, and 24.114.2402 exactly as proposed.

4. The board has adopted NEW RULE I (24.114.515), NEW RULE II (24.114.1402), NEW RULE III (24.114.1410), NEW RULE IV (24.114.1401), NEW RULE VI (24.114.2103), and NEW RULE VII (24.114.1404) exactly as proposed.

5. In taking final action on NEW RULE V, the board decided to add clarifying language to this new rule regarding landscape architect examination prerequisites to reduce questions and confusion among applicants.

6. The board has adopted NEW RULE V (24.114.1403), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE V (24.114.1403) LANDSCAPE ARCHITECT EXAMINATIONS

(1) All candidates must sit for the landscape architect registration examination (LARE) to be held at such time and place as the board may designate. Applications for examination must be received in the board office 90 days prior to the next scheduled examination. The applicant will be notified in writing approximately 30 days prior to the examination date of whether the applicant may sit for the examination. The board has established no education or experiential prerequisites to examination, but applicants for licensure must meet the requirements of ARM 24.114.1402 prior to licensure.

(2) through (6) remain as proposed.

7. The board has repealed ARM 24.114.404, 24.153.101, 24.153.201, 24.153.202, 24.153.401, 24.153.402, 24.153.403, 24.153.501, 24.153.502, 24.153.503, 24.153.2101, and 24.153.2301 exactly as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, ARCHITECT, PRESIDENT

/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 April 6, 2009

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.156.2719 expired license)

TO: All Concerned Persons

1. On October 23, 2008, the Board of Medical Examiners (board) published MAR Notice No. 24-156-70 regarding the proposed amendment of the above-stated rule, at page 2235 of the 2008 Montana Administrative Register, issue no. 20.

2. No comments or testimony were received.

3. The board has amended ARM 24.156.2719 exactly as proposed.

BOARD OF MEDICAL EXAMINERS
JAMES UPCHURCH, M.D., PRESIDENT

/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 April 6, 2009

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I medical direction)

TO: All Concerned Persons

1. On October 23, 2008, the Board of Medical Examiners (board) published MAR Notice No. 24-156-71 regarding the public hearing on the proposed adoption of the above-stated rule, at page 2238 of the 2008 Montana Administrative Register, issue no. 20.
2. On November 13, 2008, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments or testimony were received.
3. The board has adopted NEW RULE I (24.156.2732) exactly as proposed.

BOARD OF MEDICAL EXAMINERS
JAMES UPCHURCH, M.D., PRESIDENT

/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 April 6, 2009

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.52.210 pertaining to)
adjustment of subsidy payment)

TO: All Concerned Persons

1. On February 12, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-464 pertaining to the proposed amendment of the above-stated rule at page 132 of the 2009 Montana Administrative Register, Issue Number 3.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Bernie Jacobs
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State April 6, 2009.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.87.1223 pertaining to)
Psychiatric Residential Treatment)
Facility (PRTF) services,)
reimbursement)

TO: All Concerned Persons

1. On February 26, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-465 pertaining to the proposed amendment of the above-stated rule at page 261 of the 2009 Montana Administrative Register, Issue Number 4.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State April 6, 2009.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.4.2501 relating to Biodiesel)
and Biolubricant Tax Credit)

TO: All Concerned Persons

1. On February 12, 2009, the department published MAR Notice No. 42-2-805 regarding the proposed amendment of the above-stated rule at page 135 of the 2009 Montana Administrative Register, issue no. 3.

2. No comments were received.

3. Therefore, the department amends ARM 42.4.2501 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State April 6, 2009

CITIES AND TOWNS - Authority to incorporate a municipality within the boundary of an existing resort area;

MUNICIPAL GOVERNMENT - Authority to incorporate a municipality within the boundary of an existing resort area;

RESORT AREA DISTRICT - Impact of municipal incorporation on existing resort area;

MONTANA CODE ANNOTATED - Title 7, chapter 2, part 41; Title 2, chapter 6, part 15; sections 1-2-101, 2-15-501, 7-2-4101, -4101 to -4111, -4103(2), -4901 to -4920, 7-6-1501, (4), (a), (b), (c), (d), (5), (a), (b), (c), (d), -1502, -1502 to -1509, -1504, -1508, -1532, -1532 to -1540, -1542, -1543, -1548 to -1550.

- HELD:
1. A municipality may be organized within the boundaries of a resort area or resort area district.
 2. The incorporation of a municipality within the boundaries of a resort area does not alter the boundaries of the area, exclude property that is within the boundaries of the newly created municipality from the application of the resort tax, or preclude the expenditure of the area's resort tax revenue for expenses or projects within the municipality's boundaries as provided by law.

April 7, 2009

Mr. Marty Lambert
Gallatin County Attorney
1709 West College
Bozeman, MT 59715

Dear Mr. Lambert:

You have requested my opinion on the following question:

What effect would municipal incorporation of a portion of the property of a resort district area have upon the boundaries and/or administration of the resort area district?

Your question is prompted by a proposal of local residents to incorporate a new Town of Big Sky under the authority of Mont. Code Ann. § 7-2-4101 through 7-2-4111. The boundary of the proposed town lies within the existing Big Sky Resort Area District (resort area district), which was first approved by the voters in 1992. Creation of the resort area allows imposition of a resort tax on various goods and services sold within its boundaries. Mont. Code Ann. § 7-6-1508. Electors have further approved the area as a resort area district, which means it is governed by a

board of directors rather than the county commissioners. Mont. Code Ann. § 7-6-1543. The board is authorized to appropriate and expend revenue from the resort tax in accordance with Mont. Code Ann. § 7-6-1542.

The proposal to create a new town within the boundary of the existing resort area district has prompted concerns that incorporation may somehow affect the status of the resort area district, or its resort taxing authority. Your letter indicates that approximately 70 percent of the electorate living in the resort area resides within the boundaries of the proposed town. It further appears that the proposal for a new town of Big Sky is quite controversial, evidenced by an article in the Bozeman Daily Chronicle in November 2007. See Bozeman Daily Chronicle, [Talk of a Big Sky Town Looking to Incorporate](#), Nov. 11, 2007.

The statutes addressing the organization and incorporation of new municipalities are set forth in Title 7, chapter 2, part 41. The only boundary restriction is set forth in Mont. Code Ann. § 7-2-4103(2), which requires that "the boundary of the proposed territory to be incorporated is more than 3 miles from the boundary, measured from the nearest point between the two, of any presently incorporated city or town[.]" Nothing in the law prohibits incorporation of a city or town where the area to be incorporated lies within the boundaries of an existing resort area district. I conclude that the residents within the proposed municipality may petition to organize a Town of Big Sky under Mont. Code Ann. § 7-2-4101, irrespective of the fact that the municipality will lie within the existing Big Sky resort area district.

The next consideration is whether incorporation of a new city or town would affect the boundary or administration of the existing resort area district. Section 7-6-1501 defines two entities with resort tax authority: (1) a resort area, which is unincorporated, and (2) a resort community, which is incorporated:

- (4) A "resort area" means an area that:
 - (a) is an unincorporated area and is a defined contiguous geographic area;
 - (b) has a population of less than 2,500 according to the most recent federal census or federal estimate;
 - (c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and
 - (d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-1508.
- (5) A "resort community" means a community that:
 - (a) is an incorporated municipality;
 - (b) has a population of less than 5,000 according to the most recent federal census or federal estimate;

- (c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and
- (d) has been designated by the department of commerce as a resort community.

The statutes describe how each entity is created and how the resort tax is to be administered, Mont. Code Ann. §§ 7-6-1502 through -1509, but they are silent on the question of whether an existing resort entity is affected by any subsequent change within its boundaries, such as a change of population or incorporated status.

The statutes are also silent as to whether a resort community or resort area, once created, may be dissolved. There are specific statutory procedures for dissolving an established resort area district, Mont. Code Ann. §§ 7-6-1548 through -1550, but no indication that dissolution of the district affects the status or boundary of the resort area, other than to change its governing body. Similarly, there is no process whereby a resort taxing entity, once approved by the voters and designated by the department of commerce, is reevaluated for compliance with the definitions that allowed it to become a resort taxing entity in the first place.

The Legislature's silence is revealing, as it suggests that a resort taxing entity continues in existence until dissolved (if allowed by statute), and maintains its status irrespective of subsequent changes within the district. When the Big Sky resort area was first established in 1992, it qualified for that status precisely because it was an unincorporated area with fewer than 2,500 residents. Based on those qualifications and designation, and with the approval of 15 percent of the electors in the area, the Big Sky resort area obtained its resort taxing authority pursuant to Mont. Code Ann. § 7-6-1508. The administration and expenditure of the resort tax passed to the board of the resort area district once the district was created in accordance with Mont. Code Ann. §§ 7-6-1532 through -1540.

Even if the resort area district is dissolved under Mont. Code Ann. §§ 7-6-1548 through -1550, the resort area as originally established continues to exist, and there is no process for its dissolution. The electorate of the resort area or resort community may amend or repeal a resort tax in accordance with Mont. Code Ann. § 7-6-1504, but that vote does not affect the status of the resort area or resort community itself. In short, the resort tax statutes contemplate a one-time drawing of resort area boundaries based on population and status of incorporation, subject to voter approval, which, once established, remains a resort area with resort tax authority that is unaffected by subsequent changes within the area. It follows that all of the territory within the boundaries of a resort area must remain part of the area and subject to the rules that govern the manner in which the property is taxed and the purposes for which the tax revenue may be spent. This would necessarily include territory that might subsequently become incorporated as a municipality.

If the Legislature had contemplated changes to resort area boundaries or subsequent limitations on the area's taxing authority, it could have so provided. For example, the statutes governing municipalities outline a process whereby the municipality can be disincorporated, either automatically or by election. Mont. Code Ann. §§ 7-2-4901 to -4920. No similar process is provided for a resort area. When construing statutes, I am not at liberty to insert what has been omitted, or omit what has been inserted. Mont. Code Ann. § 1-2-101. Absent some indication that the Legislature contemplated after-the-fact adjustment of resort area boundaries and taxing authority, I am not free to impose those requirements on an existing resort area. The resort area district and its corresponding taxing authority will continue to exist at least until 2032, as in 2006 the voters in the district approved its operation and extension through that date.

In addition to the question posed, several interested parties have asked whether the town, once incorporated, could administer its own resort tax as a resort community under Title 7, chapter 6, part 15, Montana Code Annotated, and how that would affect the resort tax currently administered by the board of the resort area district. These questions are purely hypothetical, as they are dependent in the first instance upon voter approval of the new municipality, and second, upon voter approval of a community resort tax (Mont. Code Ann. § 7-6-1502). They are also complex, as the Legislature did not contemplate overlapping resort taxing authorities, and there is no statutory guidance on the administration of resort taxes when one of the taxing authorities may also levy and collect property taxes within the city or town. Given these complexities and the possibility that the proposed incorporators intend to generate revenue through property taxes and not through resort taxes, I decline to address the additional questions posed. The scope of this opinion is therefore limited to a discussion of how an existing resort area district and its taxing authority is affected by incorporation of a city or town within the boundaries of the district. It does not address the broader question of how the respective resort taxes are administered if the city or town is created, the department of commerce designates that town as a resort community, and the electors of the resort community authorize their municipality to impose a resort tax within the corporate boundary.

THEREFORE IT IS MY OPINION:

1. A municipality may be organized within the boundaries of a resort area or resort area district.
2. The incorporation of a municipality within the boundaries of a resort area does not alter the boundaries of the area, exclude property that is within the boundaries of the newly created municipality from the application of the resort tax, or preclude the expenditure of the area's resort tax revenue for expenses or projects within the municipality's boundaries as provided by law.

Very truly yours,

/s/ Steve Bullock
STEVE BULLOCK
Attorney General

sb/jma/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 P.O. 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 December 31, 2008. This table includes those rules adopted during the period January 1, 2009, through March 31, 2009, 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 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 December 31, 2008, 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 2008 and 2009 Montana Administrative Register.

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

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- 2.59.1711 Continuing Education, p. 159

- (Public Employees' Retirement Board)
- 2.43.203 and other rules - Operation of the Retirement Systems and Plans Administered by the Montana Public Employees' Retirement Board, p. 1852, 2467, 78
- 2.43.427 Reinstatement Credit for Lost Time, p. 1946, 2474

- 2.43.1001 Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document, January 1, 2008, Edition, p. 2396, 82
- 2.43.1801 Adoption by Reference of the State of Montana Public Employee Deferred Compensation Plan Document, January 1, 2008, Edition, p. 2393, 81

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- 2.44.301A and other rules - Administration of the Teachers' Retirement System of the State of Montana, p. 2313, 2619, 3

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- 2.55.320 and other rule - Classifications of Employments - Construction Industry Premium Credit Program, p. 2399, 140

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- 6.2.124 and other rules - Judicial Review - Securities Regulation - Senior Specific Certifications and Designations - Filing Requirements for Transactional Exemptions, p. 1635, 2046
- 6.6.2101 and other rules - Discrimination, p. 2403, 83
- 6.6.3504 and other rules - Annual Audited Reports - Establishing Accounting Practices and Procedures to be Used in Annual Statements - Actuarial Opinion - Annual Audit - Required Opinions - Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis - Additional Considerations for Analysis, p. 2201, 2622

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- I Administration of the 2009-2010 Federal Community Development Block Grant (CDBG) Program, p. 2408
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