



Montana Legislative Services Division
Legal Services Office

July 9, 2013

TO: State Administration and Veterans' Affairs Interim Committee Members

FROM: K. Virginia Aldrich, Staff Attorney

RE: Overview of Rulemaking and Administrative Rule Activity

Rulemaking and Powers of Rule Review Committees and Individual Members

1. General concepts:

- a. What is a rule? The Montana Administrative Procedure Act defines it as an agency regulation, standard, or statement that implements, interprets, or prescribes law or policy. Most agency rules have the force and effect of law.
- b. Where are Montana's rules located? The Administrative Rules of Montana (ARMs) are the administrative rules in their entirety. They are updated by the Montana Administrative Register (MAR), which is a twice-monthly publication containing all proposed new, transferred, amended, and repealed rules as well as adopted rule changes. The ARMs are also published to the Internet at <http://www.mtrules.org/>.
- c. Why are rules adopted?
 - (1) To "fill in gaps" left by legislation and provide the public with certainty as to what is required.
 - (2) To allow the public input into what the rules will be.

2. Citations to statutes concerning rulemaking:

- a. Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, MCA.
- b. Section 5-5-215, MCA -- interim committee powers generally.
- c. Section 5-5-228, MCA -- specific rulemaking review authority of State Administration and Veterans' Affairs Interim Committee.
- d. Section 5-11-107, MCA -- interim committee investigatory powers generally.
- e. Section 2-4-102, MCA -- "rule" is adoption of an entire rule, an amendment to a rule, or repeal of a rule.

3. Rulemaking generally:

- a. Rule adoption system -- governs procedure only; generally, MAPA is not authority to adopt rules (2-4-301, MCA).
- b. MAPA is the procedure most used by agencies to adopt rules. Some agencies are exempted completely from MAPA; a few agencies have a different statutory system for rule adoption.
- c. Authority to adopt most rules must be express and not implied authority (2-4-305, MCA).
- d. Two notices must be published in the Montana Administrative Register (MAR): proposal notice and adoption notice. The notice format is specified by Secretary of State's rules (2-4-306, MCA).
- e. Hearing on rule proposal required in some instances, but an agency can voluntarily hold a hearing (2-4-302, MCA):
 - (1) matter of significant interest to public.
 - (2) request by a rule review committee.
 - (3) request by minimum of 25 or 10% of those affected by proposed rule.
 - (4) request by association.
 - (5) request by agency or governmental subdivision.
- f. Time periods (2-4-302, MCA):
 - (1) minimum 30 days' notice before agency action.
 - (2) minimum 20 days' notice of public hearing (if held).
 - (3) minimum 28 days to submit comments.
 - (4) total minimum time for rule adoption is 30 days' notice, plus approx. 2 weeks to publish adoption notice. This includes:
 - a. time period for hearing and written comments; or
 - b. time for written comment alone if no hearing.
 - (5) 6-month maximum for adoption and publication (2-4-302 and 2-4-305, MCA).
 - (6) emergency rules exception (2-4-303, MCA).
- g. Minimum requirements for content of notice of proposed rulemaking (2-4-305, MCA):
 - (1) agency must have and cite in the proposal notice express statutory authority for rules (usually not in MAPA, per above).
 - (2) agency must have and cite statute being implemented by proposed rule, which sometimes is the same as authority, though frequently different.
 - (3) agency must state rationale or statement of "reasonable necessity" for proposed rule.
 - (4) foregoing three requirements are where most agency errors occur in the rulemaking process.

- h. Committee work starts with committee staff review, on committee's behalf, for items in (3)(g)(1) - (3) above. Committee review is mandatory in accordance with 2-4-402(1), MCA.
 - (1) Problems with a proposed rule will be brought to committee for resolution only if staff can't resolve the issue with the agency.
 - (2) All proposals and adoptions will be brought to committee's attention at every meeting and sometimes by e-mail between meetings if the situation warrants.
- i. After rule is adopted through publication in the MAR, the rule is published in the Administrative Rules of Montana.

4. Committee powers:

- a. Mostly in MAPA - some in other statutes (5-5-215 and 5-11-107, MCA, mentioned earlier).
- b. Committee powers
 - (1) request and obtain agency rulemaking record for review (2-4-402, MCA).
 - (2) recommend to the appropriate agency adoption, amendment, rejection, or repeal of any rule (2-4-402, 2-4-411, and 2-4-412, MCA).
 - (3) request rulemaking hearing be held (2-4-402, MCA).
 - (4) bring or participate in litigation involving MAPA (2-4-402, MCA).
 - (5) review "incidence and conduct" of proceedings under MAPA (2-4-402, MCA).
 - (6) object to proposed rules in order to delay adoption of the rule by an agency (2-4-305(9), MCA).
 - (7) submit oral or written comments to agency rulemaking record (2-4-402, MCA).
 - (8) conduct poll of Legislature to see if rules follow legislative intent:
 - a. discretionary poll or mandatory poll (2-4-403, MCA).
 - b. effect of poll (2-4-404, MCA).
 - c. publication of results of poll (2-4-306, MCA).
 - (9) request or have prepared an economic impact statement regarding a proposed rule (2-4-405, MCA).
 - (10) object to a proposed rule for purposes of shifting the burden of showing legality of adoption (2-4-306 and 2-4-406, MCA.)
 - (11) hold hearings and conduct investigations involving agency compliance with MAPA and other statutes (5-11-107, MCA).
 - (12) recommend amendments to MAPA or other state laws (2-4-411, MCA).
 - (13) request publication of material adopted by reference in a rule (2-4-307, MCA).
 - (14) request publication of statement on adjective or interpretive rules (2-4-308, MCA).
 - (15) request and receive copies of documents in litigation involving judicial construction of rule or MAPA (2-4-410, MCA).
 - (16) monitor operations of agency within committee's jurisdiction (5-5-215, MCA).

5. Powers of individual members of committee or Legislature:

- a. As member of Legislature, petition for adoption, amendment, or repeal of a rule (2-4-315, MCA).
- b. As primary sponsor, receive notice from agency, before it writes a rule, of its intent to write the rule. The manner and date of notice to the primary sponsor must be stated in the notice of proposed rulemaking (2-4-302, MCA).
- c. Request agency form informal conference or committee to develop proposed rule before agency publishes notice (2-4-304, MCA).
- d. Join agency's list of interested persons for purposes of rulemaking (2-4-302, MCA).
- e. Contribute to agency rulemaking record by (2-4-302 and 2-4-305, MCA):
 - (1) writing or e-mailing agency, as provided in the agency's proposal notice, before the rulemaking record closes.
 - (2) testifying at any agency rulemaking hearing.
- f. Object to committee presiding officer regarding proposed rule in order to potentially delay adoption of rule so committee can review proposed rule (2-4-305(9), MCA). If a majority of the committee notifies the presiding officer of the objection, then the committee notifies the agency in writing of the objection and the agency must delay adoption of the proposal notice.
- g. Request, by motion, that interim committee take any of those actions authorized by law for committee to take (see 4b above).

6. Legislative Action During the 2013 Session Regarding MAPA:

- a. Senate Bill No. 139 was enacted as Chapter 318, Laws of 2013, becomes effective July 1, 2013, and is set to terminate on July 1, 2015. Senate Bill No. 139 requires a small business impact analysis to be conducted in certain instances. A small business is defined as a "business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees". Section 1 of the bill provides as follows:

Small business impact analysis -- assistance. (1) Prior to the adoption of a proposed rule, the agency that has proposed the rule shall determine if the rule will significantly and directly impact small businesses. If the agency determines that the proposed rule will impact small businesses, the determination must be published in the register when the proposed rule is published. If the agency determines that the proposed rule may have a significant and direct impact on small businesses and if subsection (4) does not apply,

the agency shall prepare a small business impact analysis that, at a minimum, must:

(a) identify by class or group the small businesses probably affected by the proposed rule;

(b) include a statement of the probable significant and direct effects of the proposed rule on the small businesses identified in subsection (1)(a); and

(c) include a description of any alternative methods that may be reasonably implemented to minimize or eliminate any potential adverse effects of adopting the proposed rule, while still achieving the purpose of the proposed rule.

(2) The agency shall provide documentation for the estimates, statements, and descriptions required under subsection (1).

(3) The office of economic development, established in 2-15-218, shall advise and assist agencies in complying with this section.

(4) An agency is not required to prepare a separate small business impact analysis under this section if the agency pursuant to 2-4-405 is preparing or has prepared an economic impact statement regarding adoption, amendment, or repeal of a rule.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a small business impact analysis required under this section.

With respect to the following rule summaries, there are additional changes not discussed that may be of interest to legislators and the public. If you are interested in the full text of the proposed or adopted rules, please note that the Montana Administrative Rules may be accessed online at <http://www.mtrules.org/> by MAR number (accompanying each summary).

Department of Administration*

Proposal and Adoption Notices are available on the Internet at:
<http://doa.mt.gov/administrativerules.mcp>

*SAVA reviews rules for the Department of Administration except for 1) the State Compensation Insurance Fund provided for in 39-71-2313; 2) the Office of the State Public Defender; and 3) the Division of Banking and Financial Institutions. Oversight for those entities is statutory delegated to other Interim Committees.

Adopted Rules:

Confidentiality Requirements -- Initiating an External Complaint. MAR 2-21-474. Amendments adopted January 22, 2013. A public hearing was held on December 21, 2012. No one appeared at the hearing to testify, and no written comments were received. The Department amended two rules. The first rule previously prohibited certain employees from discussing complaint investigations under the EEO, nondiscrimination, and harassment prevention rules with anyone who doesn't have an official need to know. To comport with a recent National Labor Relations Board decision, the Department amended the rule to prohibit employees from discussing this type of complaint or investigation only if agency managers conducted an individualized assessment and demonstrated one of several factors listed in the rule. The second rule specified timelines for filing complaints with the Human Rights Bureau of the EEOC, and the amendment clarified the deadlines for complaints under different scenarios.

Voluntary Employees Beneficiary Association (VEBA) Objectives -- Definitions -- Health Reimbursement Account (HRA) Administration -- Fees -- Elections -- Participation -- Contributions -- Death Benefits -- Short Title. MAR 2-21-473. Amendments adopted June 10, 2013. A public hearing was held on April 9, 2013. Nine comments were received. The Department amended five rules and repealed one rule as proposed; the Department also amended four proposed amendments for clarity and in response to public comments. The amendments revise definitions related to the Voluntary Employees Beneficiary Association (VEBA) and VEBA Health Reimbursement Account (HRA). They strike outdated language, remove redundancy, and align the rules with recent federal rulings and regulations. In addition, to maintain tax-free plan status, the rules clarified that HRAs may be used for the medical expenses of the employee, employee's spouse, or qualified dependents; any other "beneficiaries" would not be eligible. The rules were amended to state that a group must have five members, rather than two members, to qualify for VEBA participation. Additionally, the rules clarified that while the Department had suspended assessing a monthly fee (in addition to a percentage fee of HRA funds) for administrative purposes, the Department had the authority to reinstate the monthly fee. The rules were amended to specify which employees could be excluded from participation and

what occurs to employee choice to opt in or out once a VEBA group is formed. The rules provided that employers must notify employees of an impending vote to create a VEBA group 15 days prior to the vote, contribution sources must be agreed upon by a majority of members before the vote, and if a formation vote is successful, dissenting members could not opt out of the program. The rules specified that members could make investment changes on a monthly basis, revised provisions with respect to annual and sick leave contributions to a member's account, and detailed the disposition of a VEBA account when the employee dies. The Department also repealed a rule providing a short title.

Procedural Rules -- Scope -- Definitions -- Petition to Add Tribe -- Claims for Repatriation -- Lineal Descent / Cultural Affiliation Determinations -- Delay of Repatriation for Scientific Study -- Transfer of Rules. MAR 2-65-480. Amendments adopted April 29, 2013. A public hearing was held on April 4, 2013. Two comments were received. The Burial Preservation Board adopted five rules as proposed, amended two proposed amendments in response to public comments, and transferred seven rules to reorganize them into a logical format. The Board adopted model Attorney General and Secretary of State rules by reference for procedural purposes. The Board adopted rules to define when repatriation rules implementing the Montana Repatriation Act applied and when the federal Native American Graves Protection and Repatriation Act (NAGPRA) would apply. Both acts encompass exclusive areas of jurisdiction, and both also overlap regarding jurisdiction of funerary objects possessed or controlled by museums with both state and federal funding. To avoid conflict between the state and federal acts, under New Rule II, the Board specified that Native American human remains and funerary objects possessed or controlled by museums or state agencies that receive federal funding either alone or in conjunction with state funding would be handled exclusively under NAGPRA. Under the state and federal act, several conflicting provisions could be interpreted as undermining the federal statute, subjecting it to potential supremacy clause challenges under Article VI, clause 2 of the U.S. Constitution. In addition, NAGPRA does not contain a provision enabling states to adopt more stringent measures. The Board's approach precludes such conflicts by exclusively applying NAGPRA in all cases where federal funds are involved. In its notice, the Board included a 6-page discussion of its decision to exclusively subject repatriation cases involving museums or state agencies receiving mixed federal and state funds and examples of potential areas of conflict. The Board also adopted rules to provide definitions, provide a method to add a tribe to the list of tribal groups, specify procedures for repatriation claims, determine lineal descent and cultural affiliation, and allow a hearing examiner to order a reasonable delay in repatriation up to 12 months if the possessing entity provides evidence supporting a good faith effort regarding scientific study.

Commissioner of Political Practices

The Commissioner of Political Practices does not maintain an administrative rules website, but notices can be found on the Secretary of State's website at <http://www.mtrules.org/>. Under the search "By Department, Chapter, and Rules Table of Contents" heading, click "Go." Click on "44" (Secretary of State), then see 44.10 (Commissioner of Political Practices) and 44.12 (Commissioner of Political Practices -- Lobbyist Disclosure).

Adopted Rules:

Payment Threshold -- Inflation Adjustment. MAR 44-2-185. Amendment adopted January 22, 2013. No public hearing was held. No written comments were received. The Commissioner amended one rule -- the lobbying payment threshold -- for calendar years 2013 and 2014 for inflation as directed in statute from \$2,400 to \$2,450.

Department of Military Affairs

The Department of Military Affairs does not maintain an administrative rules website, but notices can be found on the Secretary of State's website at <http://www.mtrules.org/>. Under the search "By Department, Chapter, and Rules Table of Contents" heading, click "Go." Click on "34" (Military Affairs).

No Proposed Rules or Amended Rules

Montana Public Employees' Retirement System

Proposal and Adoption Notices are available on the Internet at:

<http://mpera.mt.gov/Rules.shtml>

Proposed Rules:

Required Employer Reports -- Return to Covered Employment by PERS, SRS, or FURS Retiree - Report. MAR 2-43-483. A public hearing is not contemplated. The public comment period ends on July 29, 2013. The Public Employees' Retirement Board proposes to amend two rules. The rules expand employer reports and employer certifications to include reports by employers on working retirees pursuant to Chapter 239, L. 2013, and working retirees who return as independent contractors pursuant to Chapter 178, L. 2013.

Adopted Rules:

Definitions -- Required Employer Reports -- Payment of Estimated Benefits -- Return to Covered Employment by PERS, SRS, or FURS Retiree - Report -- Death Payments, Survivor Benefits, and Optional Retirement Benefits. MAR 2-43-477. Amendments adopted May 23, 2013. A public hearing was not held, but the Public Employees' Retirement Board received two comments. The Board amended five rules. One rule amended the definition of "filed" to specify that an e-mailed document is delivered to the Board when it is received as long as a signed original is received in hard copy form within 5 days. Another amended rule specified that both

member and nonmember reports are required from employers. An amended rule specified that payments will be issued for benefits at the end of the month for which those benefits were earned. The rules also fix penalty fees for delinquent employer reports as authorized by statute. Lastly, a rule was amended to specify that any missed death benefit payments would be paid when the death certificate is filed to encourage timely filing of death certificates with MPERA.

Application of Actuarial Assumptions for Testing Purposes -- Application of Actuarial Assumptions for Determining GABA, Actuarial Equivalent Factors, and the Amount of Coal Severance Tax and Interest Income Statutorily Appropriated to the PERS Defined Benefit Plan Trust Fund. MAR 2-43-478. MPERA adopted four emergency rules to implement certain provisions of Chapter 390, L. 2013, and to provide direction to the actuary regarding assumptions for determining accurate valuations. Specifically, to determine the PERS funding level percentage in 19-3-1605(5), MCA, MPERA adopted Rule I to instruct the actuary to assume a GABA rate of 1.5% for future years, assume the actuarial value (rather than market value) of assets, and set the funding percentage rounded to the nearest whole number. For purposes of determining the amortization period, the actuary was instructed to assume a GABA percentage rate of 1.5% for future years and assume the actuarial value of assets. Adopted Rule II is applicable when the PERS amortization period is under 40 years, and it reduces the 1.5% GABA in 19-3-1605 by 0.1% for each full 2 percentage points the funded percentage is below 90% (rather than proportionately). In addition Rule II establishes a GABA expressed in tenths of a percent and adjusts a 1.5% GABA each year based on that year's PERS funding percentage. Rule III gives direction to the actuary regarding factors for calculating actuarially-equivalent benefits for optional benefit determinations, early retirement factors, money purchase benefit calculations, and service purchases to assume a 1.5% GABA rate for future years and establishes new actuarial equivalent factors effective January 1. Any service purchases, optional benefit determinations, early retirement factor reductions, and money purchase benefit calculation prior to July 1, 2013 are not affected. Lastly, Rule IV relies on Office of Budget and Program Planning reports to determine the annual amount of coal severance tax and interest income that will be statutorily appropriated.

In a letter dated June 12, 2013, the Legislative Finance Committee (LFC) requested that the Board withdraw these emergency rules because the LFC does not believe the rules are an "imminent peril to the public health, safety, or welfare" required for emergency rules under section 2-4-303, MCA. Because the annual valuation projects amortization levels and funding level percentages, the Board felt that the repercussions were extensive enough to warrant emergency rulemaking. The LFC also does not believe that the actuary should be instructed to take into account the effects of Chapter 390 for purposes of the valuation before Chapter 390 takes effect on July 1, 2013. Under the LFC's proposal, the valuation would likely result in a larger GABA reduction for retirees and the additional 1% employer/employee contributions would not terminate January 1, 2014. The Board has not yet taken action on these requests. The State Administration and Veterans' Affairs Interim Committee has statutory oversight of the Board's rulemaking authority; however the Board also has constitutional authority to administer the system, "including actuarial determinations," under Article VIII, section 15, of the Montana Constitution. Emergency rules terminate 120 days after adoption, but the Board has stated it will

commence the process to adopt permanent rules duplicative of these emergency rules.

Allocation of Additional Employer Contributions on Behalf of Montana University System Employees in the Optional Retirement Program. MAR 2-43-482. MPERA adopted one emergency rule and one emergency amendment to implement certain provisions of Chapter 390, L. 2013 regarding the Montana University System (MUS). Chapter 390, L. 2013 required new employer contributions but did not allocate contributions for MUS employees in PERS-covered positions who elect to participate in the University System Retirement Program rather than the PERS defined benefit program. The statute that directs ORP contributions does not specify how to provide for the new employer contributions, but section 19-3-2121, MCA, provides that employer contribution allocations are subject to adjustment by the Board if they are consistent with other code sections. The new rule provides that of the 1.27% additional employer contributions provided for in 19-3-316(3), MPERA will allocate 1% of the additional MUS PERS employer contributions to the PERS defined benefit plan trust fund and allocating the remaining .27% to the PERS defined benefit retirement plan's plan choice rate. The addition 0.1% starting July 1, 2014, will be directed to the PERS defined benefit plan trust fund unless an increase in the plan choice rate is required to actuarially fund the PERS defined contribution retirement plan's share of the PERS defined benefit plan unfunded liability, in which case the 0.1% additional employer contribution will be directed to the PERS defined contribution retirement plan's plan choice rate. The Board has stated that it will ask the 2015 Legislature to amend section 19-21-214, MCA, to address the allocation of the additional employer contribution on behalf of MUS employees in PERS-covered positions who elect to participate in the ORP. Lastly, the adopted amendment to existing rule 2.43.2114 provides that MUS shall transmit the additional 1.0% employer contributions to MPERA starting July 1, 2013, and that starting July 1, 2014, MUS shall transmit the additional 0.1% employer contribution to MPERA.

Office of the Secretary of State

Proposal and Adoption Notices are available on the Internet at:

<http://sos.mt.gov/ARM/notices/index.asp>

Notice of Proposed Rules:

Ballot Form and Uniformity -- Schedule of Fees for Statewide Voter Registration Lists and Extracts -- Voter Registration Application and Information Requirements -- Maintenance of Active and Inactive Voter Registration Lists for Elections -- Late Registration Procedures -- Procedures for Determining the Sufficiency of Identification and Eligibility to Vote at Polling Various Election Procedures Relating to Voter Registration and Voting. MAR 44-2-181. A public hearing will be held on July 11, 2013, at 9:30 a.m. in the Secretary of State's Conference Room, State Capital Building, Helena. The public comment period ends on July 18, 2013. The Secretary of State proposes to amend, amend and transfer, and transfer 16 rules regarding voter registration and voting. The Legislature has directed that the Secretary of State adopt rules to prescribe state ballot forms, and the statute specifies minimum standards that the rules must address. Section 13-12-202, MCA. Under separate authority, the Secretary is authorized to

prescribe "the design of any election form required by law." Section 13-1-202, MCA. Proposed New Rule I replaces a rule that was mistakenly repealed in 2012, and it states that guidelines for ballot forms will be found in the election judge handbook and other forms provided to election administrators. MAPA allows some rule-making by reference; however, MAPA requires certain provisions such as a citation to the exact material adopted by reference and a statement of where the public can obtain it. *See* 2-3-307, MCA. The Secretary of State contends that the content of the state ballot forms are not subject to MAPA rule content requirements because the forms are authorized under separate authority.

The Secretary of State has also proposed amendments to rule 44.3.2005 that clarify that an individual who does not provide information sufficient to register the individual either as a regularly registered elector or as a provisionally registered elector is not registered but may be entered into the statewide election database under a "pending--incomplete" status. Proposed amended rules 44.3.2110 and 44.3.2111 strike rule references to a voter registration "transfer form". The term "transfer form" is defined in statute as "a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county." The Secretary's office now prescribes one form that is used for new registrations and for updates and transfers of registration. A discussion with Secretary of State staff revealed that the transfer form was not used consistently, and to ensure uniformity in the registration process the form to transfer registration was combined with the prescribed form to register and to update registration information. The proposed amendments also update terminology concerning the statewide voter registration system and registration applications changed by Chapters 139 and 336, L. 2013, delete unnecessarily repetitive statutory language or outdated language, strike rule language that now conflicts with statutory language from the 2013 session, reorder rules for clarity, and make minor clarifications.

Rulemaking, Proposal Notice. MAR 44-2-188. A public hearing will be held on July 10, 2013, at 9:30 a.m. in the Secretary of State's Conference Room, State Capitol, Helena. The public comment period ends on July 18, 2013. The Secretary of State proposes to amend one rule regarding required information in a rulemaking notice. The proposed rule amends existing standards for rulemaking proposal notices to include a small business impact statement pursuant to SB 139 and makes other minor clarifications.

Limited Liability Company Fees. MAR 44-2-189. A public hearing will be held on July 10, 2013, at 9:30 a.m. in the Secretary of State's Conference Room, State Capital Building, Helena. The public comment period ends on July 18, 2013. The Secretary of State proposes to amend one rule concerning limited liability company fees. Chapter 183, L. 2013, authorized a series of members within a limited liability company, and the rule establishes filing fees for these types of limited liability companies by assessing a \$50 fee for each series member named in the LLC. A fee estimate was inadvertently omitted and will be included in a later notice.

Determining a Valid Vote on a Federal Write-in Absentee Ballot -- Covered Voters -- Electronic Transmission of Voting Materials -- Repeal of Rules (Facsimile Machine Access -- Handling of Facsimile Ballots -- Ballot Transmission -- Receiving Ballots -- Ballot Log -- Elector Affirmation -- Ballot Acceptance -- Transcription of Ballots -- Election Judges and Ballot Secrecy). MAR 44-2-187. A public hearing will be held on July 11, 2013, at 9:30 a.m. in the Secretary of State's Conference Room, State Capitol, Helena. The public comment period ends on July 18, 2013. The Secretary of State proposes to amend three rules to update current rule language for consistency with Chapter 139, L. 2013. The Secretary of State also proposes to repeal nine rules concerning facsimile ballots because the information now falls under proposed rule 44.3.2511 (contained in the same notice), which includes all electronic transmission of voting materials.

Adopted Rules:

Delegated Authority for the Disposal of Public Records. MAR 44-2-183. Amendment adopted March 4, 2013. A public hearing was held on February 7, 2013. No testimony or written comments were received. The Secretary of State adopted one rule that allows the Secretary of State and the State Records Committee to approve a delegation agreement for a state agency to independently dispose of public records if its records management program meets records retention, disposition, and archiving criteria. The delegation agreement is an annual agreement, and renewal is subject to review by the Secretary of State and the State Records Committee. Although the face of the rule does not clearly state that the State Records Committee has unanimously agreed to any documents to be disposed of under a delegation agreement pursuant to section 2-6-212, MCA, the Committee is a party to any delegation agreement. Staff is working with the Secretary of State's office to clarify whether the adopted process has a mechanism to implement the unanimity requirements of 2-6-212.

Fees Charged by the Business Services Division and the Output Relating to the Farm Bill Master List. MAR 44-2-186. Amendment adopted June 20, 2013. A public hearing was held on May 2, 2013. No comments or testimony were received. The Secretary of State amended three rules to accommodate a new online, web-based database. The amendments revise definitions, update publishing dates and filing deadlines, allow credit and debit card payments, increase fees for electronic and hard copy access to the farm bill master list, and eliminate access on CD-ROM and microfiche.

Teachers' Retirement System of the State of Montana

Proposal and Adoption Notices are available on the Internet at:

<http://www.trs.mt.gov/Publications/Rules.asp>

No Proposed Rules or Amended Rules

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