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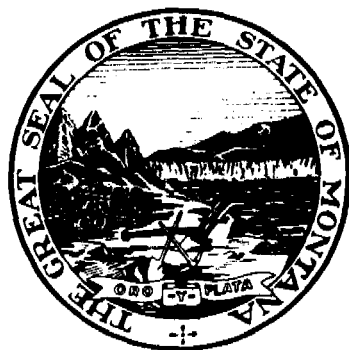
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**OF MONTANA**

**MONTANA  
ADMINISTRATIVE  
REGISTER**

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PAGES 105-173



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## MONTANA ADMINISTRATIVE REGISTER OF MONTANA

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of new rules pertain- ) PROPOSED ADOPTION OF NEW RULES  
ing to alternative health care ) PERTAINING TO ALTERNATIVE  
HEALTH CARE

TO: All Interested Persons:

1. On February 21, 1992, at 10 o'clock a.m., at the downstairs conference room, Department of Commerce Building, 1424 9th Ave., Helena, Montana, a public hearing will be held to consider the proposed adoption of rules pertaining to the practice of alternative health care.

2. The proposed new rules will read as follows:

"I. BOARD ORGANIZATION (1) The board of alternative health care hereby adopts and incorporates by reference the organizational rules of the department of commerce as listed in chapter 1 of this title."

Auth: Sec. 37-26-201, 37-27-105, MCA; IMP, Sec. 2-4-201, MCA

"II. PROCEDURAL RULES (1) The board of alternative health care hereby adopts and incorporates by reference the procedural rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-26-201, 37-27-105, MCA; IMP, Sec. 2-4-201, MCA

"III. PUBLIC PARTICIPATION (1) The board of alternative health care hereby adopts and incorporates by reference the public participation rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-26-201, 37-27-105, MCA; IMP, Sec. 2-3-103, MCA

"IV. MINIMUM NATUROPATHIC MEDICAL EDUCATION STANDARDS

(1) The board may approve a naturopathic medical college degree if it is obtained from a naturopathic medical program which meets the following minimum naturopathic medicine educational standards:

(a) The naturopathic medical college is or was incorporated in the United States under the laws of the state of its residence as a non-profit, non-proprietary institution exempt from taxation by the IRS, due to its devotion to educational purposes. Foreign country naturopathic medical colleges must possess equivalent qualifications to those required of U.S. naturopathic medical colleges.

(b) The naturopathic medical college has or had formal authority from the appropriate state or provincial governmental agency to grant an N.D. or N.M.D. degree, and has as its major mission the education of naturopathic doctors and their preparation for licensing.

(c) The naturopathic medical college's objective shall be clearly stated and should address the preparation of naturopathic physicians to provide patient care and for licensing by state or provincial authorities. The curriculum shall encompass a minimum of four academic years of a full-time resident program of academic and clinical study of naturopathic medicine.

(d) Educational standards shall include instruction in a core program which requires each student to demonstrate competence in each of the following substantive content areas:

(i) The basic sciences program must include in-depth study and courses on human anatomy, physiology, biochemistry, pathology, pharmacology and pharmacognosy. A basic sciences program may also include, without limitation, courses in public health and naturopathic philosophy. Total hours in basic sciences must be a minimum of 1000 clock hours, with 12 clock hours equal to one quarter credit, or equivalent semester credit.

(ii) The clinical sciences program must include preparation of the student to diagnose the causes of human ailments and effective treatment of them using naturopathic medications and methods. A clinical sciences program may also include, without limitation, courses in acupuncture and office management. Total hours in clinical sciences must be a minimum of 1200 clock hours with 12 clock hours equal to one quarter credit, or equivalent semester credit. The clinical sciences program must include:

(A) diagnostic courses, which shall include physical, clinical, laboratory and radiological,

(B) therapeutic courses, which shall include materia medica (botanical medicine, homeopathy, emergency drugs), nutrition, physical medicine (including but not limited to naturopathic manipulative therapy and hydrotherapy), and psychological counselling,

(C) specialty courses, which shall include organ systems (cardiology, dermatology, endocrinology, EENT, gastroenterology, orthopedics, neurology), human development (gynecology, natural childbirth, obstetrics, pediatrics, geriatrics), jurisprudence, medical emergencies, and minor surgery.

(iii) The clinical practicum program shall give the student experience in a clinical setting, under licensed supervision, in all aspects of naturopathic practice. The student shall, at a minimum, have primary care responsibility in the institution's teaching clinic and preceptorships in one or more practicing physician's offices. Total hours in clinical practicum must be a minimum of 1000 clock hours, with 12 clock hours equal to one quarter credit, or equivalent semester credit.

(e) The naturopathic medical college must have an identifiable faculty. The faculty must have advanced or professional degrees in either the subject being taught or in related areas. The faculty should be involved in continuing education and provisions should exist in teaching loads to encourage academic excellence through research, publication, attendance at conventions and educational symposia.

(f) The board reserves the right to evaluate individual applications as to their compliance with equivalent naturopathic medical educational standards, on a case-by-case basis, in the sole discretion of the board."

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-201, MCA

"V LICENSING BY EXAMINATION (1) Applicants for naturopathic physician licensure by examination shall submit a completed application with the proper fees and supporting documents to the board office. Supporting documents shall include:

(a) written documentation of good moral character consisting of three letters of reference, at least one of which must be from a licensed naturopathic physician;

(b) a copy of a certified transcript sent directly from an approved naturopathic medical college, which prepares candidates for licensure as a naturopathic physician, showing evidence the applicant has graduated and received a degree from the college;

(c) any other documents, affidavits and certificates required by sections 37-26-402 and 37-26-403, MCA, and this chapter.

(2) All applicants must take the Naturopathic Physicians Licensing Examination (NPLEX) as endorsed by the board, or any other examination to be prescribed or endorsed by the board, and have their scores reported to the board office by the proper NPLEX interstate reporting service, or its equivalent.

(a) It is the responsibility of each applicant to take the NPLEX examination wherever and whenever possible. Montana will not administer the NPLEX examination unless deemed necessary by the board.

(b) An applicant must achieve a passing score of 75 or better on the examination in order to obtain a license to practice naturopathic medicine in this state."

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-402, 37-26-403, MCA

"VI LICENSING BY ENDORSEMENT (1) A license to practice as a naturopathic physician in the state of Montana may be issued without examination at the discretion of the board, provided the applicant meets all of the following requirements:

(a) verification, in the form of a certified transcript sent directly from the college, that the candidate has graduated and holds a degree/diploma from an approved naturopathic medical college that prepares candidates for licensure as a naturopathic physician, provided that such program, at the time of the candidate's graduation, is equivalent to or exceeds the minimum naturopathic medical educational standards required by the board's laws and rules;

(b) the candidate holds, or has previously held, a valid license to practice as a naturopathic physician in another state or jurisdiction. Official written verification of such licensure status must be received by the board from the other state or jurisdiction;

(c) the candidate has completed and filed with the board a notarized application for licensure by endorsement, and the required application fee;

(d) the candidate has successfully passed a naturopathic physician licensure examination in another state or jurisdiction. Written official verification of successful completion of the licensure examination and of licensure in good standing must be requested of the state or jurisdiction by the candidate, and must be received by the board directly from the state or jurisdiction; except:

(i) NPLEX exam scores must be verified by proper NPLEX score reporting agencies and procedures;

(ii) Endorsement candidates who have taken the NPLEX examination must have successfully passed, at minimum, sections on basic sciences, clinical science with minor surgery, and homeopathic add-ons.

(e) The candidate must be of good moral character as evidenced by written documentation to be provided by the candidate, consisting of three letters of reference, at least one of which must be from a licensed naturopathic physician;

(f) The candidate holding an inactive or otherwise non-current license must meet the above requirements, plus all other requirements of section 37-26-404(1)(b), MCA, and this chapter, including the requirements that:

(i) the applicant's inactive or non-current license has not been disciplined;

(ii) his inactive or non-current license has not been suspended or revoked for malpractice;

(iii) the applicant has been actively engaged in the practice of naturopathic medicine for at least one year prior to applying for a Montana naturopathic license, in a state or territory of the U.S., the District of Columbia, or a foreign country, that does not license naturopathic physicians."

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-404, MCA

"VII. CERTIFICATION FOR SPECIALTY PRACTICE OF NATUROPATHIC CHILDBIRTH ATTENDANCE

(1) A naturopathic physician licensed in Montana, or an applicant for a Montana naturopathic physician license, who wishes to practice natural childbirth must apply to and receive from the board, a certificate of specialty practice in naturopathic childbirth attendance. To receive and maintain a certificate, the applicant must fulfill the following requirements:

(a) All applications for certificate of specialty practice shall be made on printed forms prescribed and furnished by the board, and no applications made otherwise will be accepted. Applications shall be subscribed and sworn to before a notary public or other person qualified to administer oaths. Applications shall be accompanied by proper fees and the applicant's current Montana naturopathic physician license number, or documentation of applicant's concurrent application for a Montana naturopathic physician's license.

(b) Applicants must complete at least 100 clock hours (where 12 clock hours equal one quarter credit or equivalent semester credit) of coursework, internship or preceptorship at an approved naturopathic medical college or hospital in



obstetrics or with an approved licensed physician and furnish a signed log showing evidence that subsections (i) and (ii) below have been completed under the direct supervision of a licensed naturopathic, medical, or osteopathic physician with specialty training in obstetrics and/or natural childbirth.

(i) applicant has taken part in the care of 50 women in both the prenatal and postnatal periods;

(ii) applicant has observed and assisted in the intrapartum care and delivery of 50 natural childbirths in a hospital or alternative birth setting, including 25 births that document the applicant as the primary birth attendant.

(c) Documentation of 100 clock hours of coursework, internship or preceptorship shall consist of an official transcript from an approved naturopathic medical college or hospital, or a signed supervisor document detailing hours of internship or preceptorship.

(d) A signed log of natural childbirth care in accordance with subsections (i) and (ii) above shall consist of evidence the applicant has observed and assisted in the deliveries of 50 natural childbirths since 1980, including 25 as the primary birth attendant. Evidence shall be in the form of baby's name, date of birth, county and state of birth, and the name(s) of the primary birth attendants.

(e) Applicants must pass a specialty examination in obstetrics given by or approved by the board, or the ACNO obstetrics specialty examination, or the NPLEX obstetrics specialty examination.

(f) Certificates of specialty practice shall expire concurrently with the licensee's naturopathic physician's license, and shall be renewed, as outlined in the general naturopathic physician's license renewal section, upon receipt of the renewal fee set by the board and submission of 12 hours of board-approved continuing education credits in obstetrics."

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-304, MCA

**"VIII FEES** (1) Fees shall be transmitted by check payable to the board of alternative health care. The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.

(2) The fees shall be as follows:

(a) naturopathic application	\$300.00
(b) naturopathic original license	200.00
(c) naturopathic renewal	350.00
(d) naturopathic specialty certificate	100.00
(e) naturopathic specialty certificate renewal	25.00
(f) midwife application	\$250.00
(g) midwife original license	50.00
(h) midwife examination	300.00
(i) midwife renewal	300.00
(j) midwife provisional	200.00
(k) midwife apprentice	200.00
(l) administrative/copying requests"	20.00

Auth: 37-26-201, 37-27-105, MCA; IMP, Sec. 37-26-201, 37-27-205, 37-27-210, MCA

"IX. RENEWALS" (1) All naturopathic physician licenses, naturopathic specialty certificates, and direct entry midwife licenses will expire on April 30 of each year, commencing in the year 1993, unless otherwise provided by statute. A renewal notice will be sent by the board to each license/certificate holder to the last address in the board's files. Failure to receive such notice shall not relieve the license/certificate holder of his/her obligation to pay renewal fees in such a manner that they are received by the department on or before the renewal date. All licensees must submit the proper renewal fee, proper documentation of completion of appropriate continuing education hours as required by statute or rule, and any other forms or documents required by the board.

(2) A renewed license shall be valid for one year following the expiration date of the previously held license/certificate.

(3) The fee for any licensee who fails to renew or submit a renewal fee prior to the expiration date shall be increased by 50% of his renewal fee. Renewals may not be processed until all fees are paid.

(4) Any person failing to make restoration of a license within six months of the expiration date will be considered to have forfeited the license. The licensee will then be required to reapply to the board in order to be relicensed to practice naturopathic medicine or direct entry midwifery in this state.

Auth: Sec. 37-26-201, 37-27-105, MCA; IMP, 37-26-201, 37-27-105, MCA

REASON: These rules are being proposed to implement Chapter 26 and Chapter 27 of Title 37 mandated by the 1991 Montana Legislature.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Alternative Health Care, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, 59620-0407, no later than February 27, 1992.

4. Carol Grell, attorney, has been designated to preside over and conduct the hearing.

BOARD OF ALTERNATIVE HEALTH CARE  
DR. MICHAEL BERGKAMP, CHAIRMAN

BY:

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

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State January 17, 1992.

2-1/30/92

MAR Notice No. 8-4-1

BEFORE THE BUILDING CODES BUREAU  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of rules pertaining ) THE PROPOSED AMENDMENT OF  
to incorporation by reference ) 8.70.101, 8.70.102, 8.70.  
of codes, and standards. ) 103, 8.70.104, 8.70.105,  
 ) 8.70.110, 8.70.302, 8.70.  
 ) 601, PERTAINING TO BUILDING  
 ) CODES

TO: All Interested Persons:

1. On February 24, 1992, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Building Code, ~~1988~~ 1991 Edition, together with the Appendix Chapter 7 (Aviation Control Towers), Appendix Chapter 10 (Detention and Correctional Facilities), Appendix Chapter 12 (Division I - Requirements for Group R, Division 3 Occupancies), Appendix Chapter 23 (Division I - Snow Load Design), Appendix Chapter 32 (Re-Roofing), Appendix Chapter 49 (Patio Covers), Appendix Chapter 53 (Energy Conservation in New Building Construction), as amended by ARM 8.70.104, Appendix Chapter 55 (Membrane Structures), and Appendix Chapter 57 (Regulations Governing Fallout Shelters), with the following amendments thereto:

(a) through (e) will remain the same.

(2) through (6) will remain the same.

(7) The Uniform Building Code, ~~1988~~ 1991 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for building construction. A copy of the Uniform Building Code, ~~1988~~ 1991 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(8) through (11) will remain the same."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-203, MCA

REASON: The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Building Code.

"8.70.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Housing Code, ~~1988~~ 1991 Edition, with the following amendments thereto:

(a) and (b) will remain the same.

(2) will remain the same.

(3) The Uniform Housing Code, ~~1988~~ 1991 Edition, is a nationally recognized model code setting forth minimum standards and requirements for maintenance of residential buildings. A copy of the Uniform Housing Code, ~~1988~~ 1991 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, at a cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-203, MCA

**REASON:** The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Housing Code.

"8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Code for the Abatement of Dangerous Buildings, ~~1988~~ 1991 Edition, with the following amendments thereto:

(a) and (b) will remain the same.

(2) will remain the same.

(3) The Uniform Code for the Abatement of Dangerous Buildings, ~~1988~~ 1991 Edition, is a nationally recognized model code setting forth minimum standards and requirements for dangerous buildings. A copy of the Uniform Code for the Abatement of Dangerous Buildings, ~~1988~~ 1991 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-203, MCA

**REASON:** The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Code for the Abatement of Dangerous Buildings.

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Model Energy Code, ~~1986~~ 1989 Edition with the following amendments thereto:

(a) through (c) will remain the same.

(2) will remain the same.

(3) The Model Energy Code, 1986 1989 Edition, is a nationally recognized model code for energy efficient construction of buildings. A copy of the Model Energy Code, 1986 1989 Edition can be obtained from the Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing to CABO, 5203 Leesburg Pike, Falls Church, Virginia 22041."

Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-201, 50-60-203, MCA

**REASON:** The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Model Energy Code, which is also adopted by reference in Appendix Chapter 53 of the 1991 UBC.

**"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE** (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Mechanical Code, 1988 1991 Edition, as amended, with the following amendments thereto:

(a) through (c) will remain the same.

(d) The following will be added to section 504(f) LPG Appliances. LPG Appliances may be installed in single family dwellings not withstanding the prohibition on the installation of such appliances by the UMC and the UPC provided:

(i) All LPG piping is pressure tested to insure it is gas tight and not installed in concealed locations. Concealed LPG piping means all piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping. Piping may be installed in an attic, under floor area, including basement or crawl space, provided this area is adequately ventilated from at least two exposed sides of the building. Each ventilation opening shall be a minimum of 36 square inches.

(ii) The appliance is a vented-type, approved by a nationally recognized testing organization, and installed in accordance with the manufacturer's recommendations.

(iii) Automatically controlled LPG appliances shall be of the complete shut off type. Complete (100%) shut off means the gas to both the pilot light and the main gas burner(s) will shut off in the event of pilot outage.

(iv) A readily accessible and identified shut off valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection to the service piping or supply connection of the LPG tank. The container service valve may be used for this purpose.

(v) The installer shall promptly report any accident/incident where LPG may have been a factor, or could become a contributing factor, to the building codes bureau by phone. If death or serious personal injury occurs or if property damage in excess of \$500.00 results from any such accident/incident, a written report shall be prepared by the installer and presented to the bureau within 15 days of the accident/incident.

(vi) A LPG detection/shut-off valve system shall be installed that sounds an alarm and shuts off the main gas supply in the event of the detection of LPG. The valve shall be a solenoid type shut-off valve, held open when powered, and shall be located outside the building foundation.

(d) will remain the same but will be renumbered (e).

(i) and (ii) will remain the same.

(e) will remain the same but will be renumbered (f).

(i) Add to definition of LIQUIFIED PETROLEUM GAS FACILITIES: Gas piping shall be considered a portion of liquified petroleum gas facilities. Refer to section 8.70.105(d) for installations in single family dwellings.

(f) will remain the same but will be renumbered (g).

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

(5) The Uniform Mechanical Code, ~~1988~~ 1991 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the Uniform Mechanical Code, ~~1988~~ 1991 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 20001 South Walnut Drive, Walnut, California 91789, or the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: Sec. 50-60-104, 50-60-203, 50-60-508, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-203, MCA

REASON: The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Mechanical Code and provides for below grade use of LPG appliances in single family dwellings as directed by House Bill 655, passed by the 52nd Legislature.

"8.70.110 INCORPORATION BY REFERENCE OF THE UNIFORM CODE FOR BUILDING CONSERVATION (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Code for Building Conservation, ~~copyrighted 1987~~ 1991 Edition, with the following amendments thereto:

(a) and (b) will remain the same.

(2) will remain the same.

(3) The Uniform Code for Building Conservation, ~~copyrighted-1987~~ 1991 Edition, is a nationally recognized model code setting forth minimum standards and requirements for conversation of existing building. A copy of the Uniform Code for Building Conservation, ~~copyrighted-1987~~ 1991 Edition, may be obtained from the Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: Sec. 50-60-203, 50-60-301, MCA; IMP, Sec. 50-60-203, 50-60-301, MCA

**REASON:** The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of Uniform Code for Building Conservation.

**"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE** (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Plumbing Code, 1988 1991 Edition, as amended by this rule. The Uniform Plumbing Code, 1988 1991 Edition, is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform Plumbing Code, 1988 1991 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 20001 South Walnut Drive, Walnut, California 91789. The Uniform Plumbing Code, 1988 1991 Edition, adopted herein by reference, is amended as follows:

(a) will remain the same.

(b) The following amendments are listed according to section and page number of the Uniform Plumbing Code:

~~(i) Sec. 20.3, Violation and Penalties. This entire section is to be deleted and replaced by the violation and penalty procedure contained in 50-60-110 and 50-60-515, MCA.~~

~~(ii) Sec. 20.5, Work not requiring a Permit. This section is to be deleted and replaced with the following wording:~~

~~(i) Delete sections 20.3, 30.1, 30.2, 30.3, 30.4, 30.5 and 30.6. These sections are replaced with provisions of Title 50, chapter 60, MCA. "No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 50-60-503 or 50-60-506, MCA. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this action. Factory-built buildings covered by an insignia issued by the building standards section need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on site work, as provided for in these rules.~~

~~(iii) Sec. 20.7, Cost of Permit, page 4a. Delete the Schedule of Fees and replace with the following schedule:~~

~~(ii) Delete Table No. 3-A - PLUMBING PERMIT FEES and replace with the following schedule:~~

--for issuing each permit	\$ 15.00*
--for each plumbing fixture	6.00
--water service - domestic or commercial	6.00
--for each building sewer and each trailer park sewer	10.00
--storm drains and storm drainage	6.00
--for each water heater	6.00
--for each gas piping system of one to four	

outlets	6.00
--for each gas piping system of five or more per outlet	2.00
--for each industrial water pre-treatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps	7.00
--for installation, alteration, or repair of water piping and/or water treatment equipment	6.00
--for repair or alteration of drainage or vent piping	6.00
--for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	6.00
--for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping--one to four	6.00
--five or more, each	2.00
--requested plumbing inspection fee provided that such service is not in excess of 1 hour in duration, and then \$25.00 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items	45.00
--reinspection (provided the \$30 does not exceed the original permit fee, in which case the original fee will be charged)	30.00
*except for replacement of water heaters	
<del>(iv) Sec. 20-14 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. The bureau and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of Sec. 20-14.</del>	
(v) through (x) will remain the same but will be renumbered (iii) through (viii).	
<u>(ix) Sec. 506(f). Frost or Snow Closure. Change diameter from "two (2) inches" to "three (3) inches" and change termination height from "ten (10) inches" to "twelve (12) inches."</u>	
<u>(x) Sec. 1003. Cross-Connection Control - General Requirements. Delete subsection (b).</u>	
(xi) Sec. 1004(a). Materials, amend to read as follows: "Sec. 1004 - Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials. Asbestos-cement, CPVC, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building; provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. CPVC and PB water pipe and tubing may be used for hot and cold	



water distribution systems within a building. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority.

(xii) through (xiv) will remain the same.

(xv) Add the following to Sec. 1215(e): LPG Appliances may be installed in single family dwellings not withstanding the prohibition on the installation of such appliances by the UMC and the UPC provided:

(A) All LPG piping is pressure tested to insure it is gas tight and not installed in concealed locations. Concealed LPG piping means all piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping. Piping may be installed in an attic, under floor area, including basement or crawl space, provided this area is adequately ventilated from at least two exposed sides of the building. Each ventilation opening shall be a minimum of 36 square inches.

(B) The appliance is a vented-type, approved by a nationally recognized testing organization, and installed in accordance with the manufacturer's recommendations.

(C) Automatically controlled LPG appliances shall be of the complete shut off type. Complete (100%) shut off means the gas to both the pilot light and the main gas burner(s) will shut off in the event of pilot outage.

(D) A readily accessible and identified shut off valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection to the service piping or supply connection of the LPG tank. The container service valve may be used for this purpose.

(E) The installer shall promptly report any accident/incident where LPG may have been a factor, or could become a contributing factor, to the building codes bureau by phone. If death or serious personal injury occurs or if property damage in excess of \$500.00 results from any such accident/incident, a written report shall be prepared by the installer and presented to the bureau within 15 days of the accident/incident.

(F) A LPG detection/shut-off valve system shall be installed that sounds an alarm and shuts off the main gas supply in the event of the detection of LPG. The valve shall be a solenoid type shut-off valve, held open when powered, and shall be located outside the building foundation.

(xvi) Add the following to Sec. 1215(f): Refer to 1215(e) for installations in single family dwellings.

(xv) through (xvii) will remain the same but will be renumbered (xvii) through (xix).

(2) will remain the same."

Auth: Sec. 50-60-203, 50-60-504, 50-60-508, MCA; IMP,  
Sec. 50-60-203, 50-06-504, 50-60-508, MCA

**REASON:** The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Plumbing Code and provides for below grade use of LPG appliances in single family

dwellings as directed by House Bill 655, passed by the 52nd Legislature.

"8.70.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS, ANSI/ASME A17.1 - 1984 1990 and ANSI/ASME A17.1a - 1985, A17.1b - 1985, A17.1c - 1986, A17.1d - 1986 and A17.1e - 1987 SUPPLEMENTS TO SAFETY CODE FOR ELEVATORS AND ESCALATORS, RESPECTIVELY (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Safety Code for Elevators and Escalators, ANSI/ASME A17.1 - 1984 1990 Edition, along with ANSI/ASME A17.1a - 1985, A17.1b - 1985, A17.1c - 1986, A17.1d - 1986 and A17.1e - 1987, respectively, Supplements to Safety Code for Elevators and Escalators. A copy of the Safety Code for Elevators and Escalators ANSI/ASME A17.1 - 1984 1990 and supplements can be obtained from The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.

(2) through (5) will remain the same."

Auth: Sec. 50-60-203, 50-60-702, MCA; IMP, Sec. 50-60-203, 50-60-702, MCA

**REASON:** The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Safety Code for Elevators and Escalators.

3. Interested persons may submit their data, views and arguments, either orally or in writing, at the hearing. Written data, views and arguments may also be submitted to the Building Codes Bureau, Capitol Station, Helena, Montana 59620, no later than

4. An attorney designated by the Department of Commerce will preside over and conduct the hearing.

BUILDING CODES BUREAU  
JAMES F. BROWN, BUREAU CHIEF

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

Certified to the Secretary of State, January 17, 1992.



affected has been determined to be more than 25 persons based on the number of applications received by the Alliance for consideration.

MONTANA BOARD OF SCIENCE AND  
TECHNOLOGY DEVELOPMENT  
RAY TILMAN, CHAIRMAN

BY:

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

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 17, 1992.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING  
rule 16.24.410 setting day care ) ON PROPOSED AMENDMENT  
center requirements for care of ) OF RULE 16.24.410  
children under age two )  
(Day Care Centers)

To: All Interested Persons

1. On February 24, 1992, at 10:00 a.m., the department will hold a public hearing in Room C209, side 2, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rule.

2. The proposed amendments would allow non-disposable diapers to be used in day care centers and set standards governing their handling.

3. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

16.24.410 SPECIAL REQUIREMENTS WHEN CARING FOR CHILD UNDER TWO If a day care center cares for children under two years of age, it must:

(1)-(2) remains the same.

(3) have facilities to bathe such children when necessary.

~~(3)(4)~~ handle all diapers in the following manner:

(a) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas.

(b) store soiled diapers in easily cleanable or lined receptacles with tight-fitting lids in an area inaccessible to children; and empty, and clean, and wash them the receptacles at least daily.

(c) refrain from dipping soiled diapers in a toilet, although fecal contents of diapers may be shaken into a toilet.

(d) ensure that each staff member who diapers a child washes his/her hands immediately thereafter with soap and running water.

~~(4)(5)~~ request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use.

~~(5)(6) use only disposable diapers unless parents present medical documentation that non-disposable diapers should be used, in which case they must be subjected, after each use, to a germicidal process approved by the department or local health authority, or returned to the parent for laundering at the end of each day. allow the use of non-disposable diapers. If non-disposable diapers are used, they must be handled in accordance with the following, in addition to the requirements of~~

subsection (4):

(a) Soiled diapers for each child must be placed in a plastic sack designated for that child, which in turn must be placed in a non-permeable, covered container and either picked up by a diaper service or commercial laundry or sent home the same day with the parent in the plastic sack;

(b) Soiled diapers must either be laundered by a commercial laundry or diaper service, or at another site removed from the daycare facility;

(c) If a diaper service or commercial laundry is used, soiled diapers must be picked up by the service or laundry at least twice weekly; and

(d) Soiled cloth diapers may not be rinsed on-site.

~~(e) have facilities to bathe such children when necessary.~~

AUTH: 52-2-735, MCA; IMP: 52-2-735, MCA

4. The department is proposing these amendments to rule 16.24.410 in order to add sanitary measures for handling of non-disposable diapers that are necessary to protect the health of children and adults in a day care center, and to freely allow use of non-disposable diapers in day care centers, as mandated by Senate Bill 168, passed by the 1991 Legislature. Additional non-substantive amendments were made to clarify the meaning of the rule.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Todd Damrow, State Epidemiologist, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received no later than 5:00 p.m., February 28, 1992.

  
DENNIS IVERSON, Director

Certified to the Secretary of State January 17, 1992.

Reviewed by:

  
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)  
of ARM 42.20.423; 42.20.444; )  
and 42.20.468 relating to the )  
Sales Assessment Ratio Study )  
Rules for 1992 )  
)

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT of ARM  
42.20.423; 42.20.444; and  
42.20.468 relating to the  
Sales Assessment Ratio  
Study Rules for 1992

TO: All Interested Persons:

1. On February 20, 1992, at 1:00 p.m., a public hearing will be held in Room 209 of the Law and Justice Center, 615 South 16th, Bozeman, Montana, to consider the Amendments of ARM 42.20.423; 42.20.444; and 42.20.468, relating to the Sales Assessment Ratio Study for 1992.

2. The proposed amendments are as follows:

42.20.423 DATA USED TO ESTIMATE SALES ASSESSMENT RATIOS

(1) For purposes of conducting the sales assessment ratio studies for commercial properties required under 15-7-111 MCA, the department will use valid, arm's length sales recorded during the three years preceding the tax year for which the results are to apply. For residential properties, the department will use valid, arm's length sales from the preceding 12 month period of November to November except if: ~~there are insufficient sales. in cases of insufficient sales, the department will use the following:~~

~~(a) Twelve months sales, if the results for the 12 month period are less than 5 percentage points different than the results for the 3 year period; or~~

~~(b) Three years sales using the procedure described in ARM 42.20.426, if the results for the 12-month period are greater than 5 percentage points different than the results for the 3 year period.~~

~~(a) The number of sales is less than 30;~~

~~(b) Either the coefficient of variation of the assessment mean or coefficient of variation of the sales mean is greater than 10%; or~~

~~(c) The coefficient of dispersion is 20% (rounded to the nearest percentage) or greater.~~

~~(2) In the case of one or more conditions a, b, and c above occurring, the department shall use three years of sales.~~

~~(2) (3) Sales of properties with sales assessment ratios of less than 50% or greater than 200%; or which have undergone reconstruction, have been remodeled or are newly constructed during the period between the appraisal and sales dates are not considered to be valid sales for purposes of estimating the sales assessment ratios.~~

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.20.444 DESIGNATED AREAS - COMMERCIAL For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, sales assessment areas for commercial properties are:

(1) through (5)(m) remain the same.

(n) Madison County - the exterior borders of Madison County.

(6) Area 600:

(a) Gallatin County - the exterior borders of Gallatin County.

(b) ~~Madison County - the exterior borders of Madison County.~~

(7) and (8) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

42.20.468 PERCENTAGE ADJUSTMENTS FOR THE ~~1991~~ 1992 TAX

YEAR

(1) The following table reflects the sales assessment ratios and the adjustment multipliers (percentage adjustments converted to decimal form) as calculated in conformance with the provisions of 15-7-111, MCA, for each of the areas specified in ARM 42.20.438 Designated Areas - Residential.

(a) Residential area results for tax year ~~1991~~ 1992:

	Sales Assessment Ratio	Adjustment Multipliers
Area No. 1.0 Carbon County	.9336	1.02
Area No. 2.0 Rural Cascade County	.9351	1.02
Area No. 2.1 Downtown Great Falls	*	*
Area No. 2.2 Great Falls East	*	*
Area No. 2.3 Great Falls South	.9260	1.04
Area No. 2.4 Great Falls Southwest	.9221	1.03
Area No. 2.5 Great Falls West	.9354	1.02
Area No. 2.6 Great Falls Northwest	.9406	1.01
Area No. 3.0 Remainder of Gallatin	.8990	1.06
Area No. 3.1 Bozeman Fringe and Canyon	.9161	1.04
Area No. 3.2 West & East rural Gallatin	.9291	1.03
Area No. 3.3 Bozeman	.8867	1.08
Area No. 3.4 Big Sky Area	.8478	1.13
Area No. 4.0 Jefferson County	1.1168	0.95
Area No. 5.0 Rural Lewis and Clark	.9168	1.04
Area No. 5.1 Urban Helena	.9138	1.04
Area No. 6.0 Lincoln County	1.0173	1.00
Area No. 7.0 Northwest Madison County	.9940	1.00
Area No. 7.1 Southeast Madison County	1.0666	0.99
Area No. 8.0 Rural Missoula County	.8785	1.09
Area No. 8.1 Eastern Urban Missoula	.8911	1.07
Area No. 8.2 Central Urban Missoula	.9378	1.02
Area No. 8.3 Western Urban Missoula	.8871	1.08



Area No. 9.0	Remainder of Silver	.9302	1.03
	Bow County		
Area No. 9.1	Butte Flats and Westside	.9414	1.01
Area No. 10.0	Stillwater County	.9561	1.00
Area No. 11.0	Rural Yellowstone County	1.0147	1.00
Area No. 11.1	Billings Lockwood	1.0130	1.00
Area No. 11.2	Billings South Side	.9598	1.00
Area No. 11.3	Billings South West Side	.9916	1.00
Area No. 11.4	Billings West Side	1.0167	1.00
Area No. 11.5	Billings Heights	1.0094	1.00
Area No. 11.6	Laurel	1.0351	1.00
Area No. 12.0	Mineral and Sanders	.9422	1.01
Area No. 13.0	Rural Flathead County	.0547	1.12
Area No. 13.1	Kalispell Area	.0091	1.07
Area No. 13.2	Columbia Falls	.9110	1.05
Area No. 14.0	Pergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Treasure and Wheatland	1.0151	1.00
Area No. 15.0	Beaverhead, Broadwater, Deer Lodge, Granite, Meagher, Park and Powell	.9553	1.00
Area No. 16.0	Blaine, Glacier, Phillips and Roosevelt	1.0476	1.00
Area No. 17.0	Big Horn and Rosebud	1.0164	1.00
Area No. 18.0	Dawson, Fallon, Powder River, Richland and Wibaux	1.0665	0.99
Area No. 19.0	Chouteau, rural Hill, Liberty, Pondera, Teton and Toole	.9807	1.00
Area No. 19.1	Greater Havre	.9677	1.00
Area No. 20.0	Carter, rural Custer, Daniels, Garfield, McCone, Prairie, Sheridan and Valley	1.0804	0.90
Area No. 20.1	Miles City	1.0052	0.97
Area No. 21.0	Lake County	.9150	1.04
Area No. 22.0	Ravalli County	.9694	1.00
Area No. 1.0	Carbon County	*	*
Area No. 2.0	Rural Cascade County	.9299	1.03
Area No. 2.1	Downtown Great Falls	1.0104	1.00
Area No. 2.2	Great Falls East	.9782	1.00
Area No. 2.3	Great Falls South	1.0029	1.00
Area No. 2.4	Great Falls Southwest	.9525	1.00
Area No. 2.5	Great Falls West	.9291	1.03
Area No. 2.6	Great Falls Northwest	.9445	1.01
Area No. 3.0	Remainder of Gallatin	.9365	1.02
Area No. 3.1	Bozeman Fringe and Canyon	.9097	1.05
Area No. 3.2	West & East rural Gallatin	.8867	1.08
Area No. 3.3	Bozeman	.8830	1.08

Area No. 3.4	Big Sky Area	.8973	1.06
Area No. 4.0	Jefferson County	1.0328	1.00
Area No. 5.0	Rural Lewis and Clark	1.0258	1.00
Area No. 5.1	Urban Helena	.9521	1.00
Area No. 6.0	Lincoln County	.9834	1.00
Area No. 7.0	Northwest Madison County	.9346	1.02
Area No. 7.1	Southeast Madison County	.9850	1.00
Area No. 8.0	Rural Missoula County	.9909	1.00
Area No. 8.1	Eastern Urban Missoula	.9128	1.05
Area No. 8.2	Central Urban Missoula	.8936	1.07
Area No. 8.3	Western Urban Missoula	.9311	1.02
Area No. 9.0	Remainder of Silver Bow County	.9708	1.00
Area No. 9.1	Butte Flats and Westside	.9991	1.00
Area No. 10.0	Stillwater County	.9590	1.00
Area No. 11.0	Rural Yellowstone County	.9718	1.00
Area No. 11.1	Billings Lockwood	.9428	1.01
Area No. 11.2	Billings South Side	.9693	1.00
Area No. 11.3	Billings South West Side	.9720	1.00
Area No. 11.4	Billings West Side	.9643	1.00
Area No. 11.5	Billings Heights	.9955	1.00
Area No. 11.6	Laurel	.9615	1.00
Area No. 12.0	Mineral and Sanders	.9597	1.00
Area No. 13.0	Rural Flathead County	.9376	1.02
Area No. 13.1	Kalispell Area	.9594	1.00
Area No. 13.2	Columbia Falls	.9612	1.00
Area No. 14.0	Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Treasure and Wheatland	.9646	1.00
Area No. 15.0	Beaverhead, Broadwater, Deer Lodge, Granite, Meagher, Park and Powell and Roosevelt	.9733	1.00
Area No. 16.0	Blaine, Glacier, Phillips and Roosevelt	1.0302	1.00
Area No. 17.0	Big Horn and Rosebud	.9597	1.00
Area No. 18.0	Dawson, Fallon, Powder River, Richland and Wibaux	1.0291	1.00
Area No. 19.0	Chouteau, rural Hill, Liberty, Pondera, Teton and Toole	.9606	1.00
Area No. 19.1	Greater Havre	.9446	1.01
Area No. 20.0	Carter, rural Custer, Daniels, Garfield, McCone, Prairie, Sheridan and Valley	1.0423	1.00
Area No. 20.1	Miles City	.9548	1.00
Area No. 21.0	Lake County	.9481	1.00
Area No. 22.0	Ravalli County	.9519	1.00

\* A selective reappraisals will determine the value of

residential property in Area No. ~~2.1~~ and ~~2.2~~ 1.0 for tax year ~~1991~~ 1992.

(b) Commercial area results for tax year ~~1991~~ 1992:

		Sales Assessment Ratio	Adjustment Multipliers
Area No. 100	Silver Bow, and Lewis and Clark Counties	.9717	1.00
Area No. 200	Cascade County	1.0500	1.00
Area No. 300	Yellowstone County	1.0152	1.00
Area No. 400	Missoula County	.9546	1.00
Area No. 500	Beaverhead, Broadwater, Deer Lodge, Granite, Jefferson, Lake, Lincoln, Meagher, Mineral, Park, Powell, Ravalli and Sanders	.9613	1.00
Area No. 600	Gallatin	.9506	1.00
Area No. 700	Flathead County	1.0190	1.00
Area No. 800	All other counties	1.0912	0.97
Area No. 100	Silver Bow, and Lewis and Clark Counties	.9912	1.00
Area No. 200	Cascade County	1.0347	1.00
Area No. 300	Yellowstone County	1.0251	1.00
Area No. 400	Missoula County	.9550	1.00
Area No. 500	Beaverhead, Broadwater, Deer Lodge, Granite, Jefferson, Lake, Lincoln, Madison, Meagher, Mineral, Park, Powell, Ravalli and Sanders	.9584	1.00
Area No. 600	Gallatin	.9538	1.00
Area No. 700	Flathead County	.9841	1.00
Area No. 800	All other counties	1.0700	.98

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA.

3. The Department is proposing the amendments because the annual sales ratio study law requires that each year the Department determine the percentage adjustments to be applied to commercial and residential properties in each sales area in the state. The criteria for using three years of sales has been changed. The new language improves the criteria by including stronger, statistically technical tests. Including these tests gives the analysis stronger statistical footing and follows the intent of 15-7-111, MCA. Madison County was inadvertently included in area 600 and has now been correctly included in commercial area 500.

4. Interested parties 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:

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than February 28, 1992.

6. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

  
CLEO ANDERSON  
Rule Reviewer

  
DENIS ADAMS  
Director of Revenue

Certified to Secretary of State January 17, 1992.

BEFORE THE TEACHERS' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption rules )	NOTICE OF THE
relating to Senate Bill 226 adopted )	ADOPTION OF ARM
by the 52nd legislature relating to )	2.44.520 AND
the Teachers' Retirement System )	2.44.521 (RULES I
)	AND II)
)	

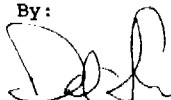
TO: All Interested Persons.

1. On November 27, 1991, at page 2238 through 2239 of the 1991 Montana Administrative Register, issue number 22, the Teachers' Retirement Board published notice of proposed adoption of Rules I and II, concerning calculating the adjustment rate to be paid under Senate Bill 226 and for a process for certifying eligibility for annual retirement adjustment.

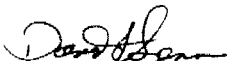
2. Rules I and II are adopted as proposed, and shall be codified at ARM 2.44.520 and 2.44.521.

3. The authority of the Board to make the proposed rules is based on section 19-4-201, MCA. and the rules implement 19-15-102 and 19-15-102, MCA.

By:



Dal Smilie, Chief Legal Counsel  
Rule Reviewer



David L. Senn, Administrator  
Teachers' Retirement System

Certified to the Secretary of State January 13, 1992.

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF ADOPTION AND  
adoption of rules ) AMENDMENT OF RULES  
pertaining to ) GOVERNING CROP INSURANCE  
crop insurance )

TO: All Interested Persons.

1. On September 26, 1991, the State Auditor and Commissioner of Insurance, Montana Insurance Department (department), published notice of the proposed repeal of ARM 6.6.1501 through ARM 6.6.1505, and the proposed adoption of ARM 6.6.1506 through ARM 6.6.1517 (RULE I through RULE XII), regarding the regulation of crop insurance, at page 1775 of the 1991 Montana Administrative Register, issue number 18.

2. Oral comment was taken at a public hearing on October 17, 1991, at 9:00 a.m., at the State Capital Building, Helena, Montana. Written comments were received through October 25, 1991. Comments to the proposed rules are summarized below.

3. The Montana insurance department has adopted the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

6.6.1501 CROP HAIL INSURANCE RATES shall be retained in its entirety.

6.6.1502 CROP HAIL INSURANCE RATE FILINGS (1) Any crop hail insurer proposing to use rates or advisory final average loss costs other than those filed by the ~~crop/hail/insurance department/~~ national crop insurance services shall first file the proposed rates or advisory final average loss costs with the commissioner of insurance for his approval.

(2) shall be retained in its entirety.

6.6.1503 CROP HAIL INSURANCE RATE DEVIATION FILINGS (1) A crop hail insurer proposing to use rates or advisory final average loss costs, based upon the rates or advisory final average loss costs filed by the ~~crop/hail/insurance department/~~ national crop insurance services but which deviate from those rates or advisory final average loss costs in any aspect, shall first file the proposed rates or advisory final average loss costs with the commissioner of insurance for his approval.

6.6.1504 CROP HAIL INSURANCE RATE MODIFICATIONS OR CHANGES--MULTIPLE PERIL COVERAGE (1) A filing or submission, pertaining to multiple peril coverage for which rate changes or modifications are proposed, will be accepted only if notice of the proposed changes or modifications is provided to the commissioner of insurance not less than 30 days before the closing date established by the ~~crop/hail/insurance department/~~

~~association~~ national crop insurance services for spring and fall sown crops.

6.6.1505 CROP HAIL INSURERS--EXPERIENCE REPORTING (1) Each insurer writing crop hail insurance in Montana shall annually report its crop hail experience to the ~~crop/hail~~ ~~insurance/department/association~~ national crop insurance services.

RULE I PURPOSE AND SCOPE Not adopted

RULE II CROP HAIL AND COMPANION HAIL INSURANCE STATISTICS AND ADVISORY PRICING COMPONENTS Not adopted

RULE III CROP HAIL FILING REQUIREMENTS Not adopted

RULE IV COMPANION HAIL INSURANCE Not adopted

RULE V POLICY FORMS Not adopted

RULE VI POLICIES WHICH ARE INTENDED TO SUPPLEMENT MULTI-PERIL CROP INSURANCE POLICIES Not adopted

6.6.1506 (RULE VII) PREMIUM DEFERRAL AND CASH DISCOUNTS/ PREMIUM/STIPENDIUM (1) ~~rates/and/or/any/pricing/components/ applicable/to/crop/insurance/shall/represent/the/premium payable/at/the/policy/expiration/date//No/Discounts~~ based on the time or date of premium payment shall be permitted. Cash discounts based on full payment of premium will be permitted, with a maximum discount not to exceed 6% of the premium. The premium payment must accompany the application and the discount percentage amount must be shown on the declarations page of the policy. Insurers must include supporting data with filings that justify the discount.

(2) If full premium is not paid to the insurer at the time of policy inception, and if any ~~additional/costs/~~ interest charges to the insured are associated with the deferral of premium payment, a written premium finance agreement must be incorporated into the policy by explicit reference on the policy declarations page. ~~Finance/charges/expense/charges/and/ interest/charges/try/whatever/name/may/be/assigned/subject/to compliance/with/22-14-101/et/seq./MCA/~~

(3) Any plan an insurer intends to offer for the deferral of premiums or cash discounts must be included in the insurer's filing ~~/whether/it/is/and/each/proposed/plan/imposes/additional costs/on/the/insured.~~

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.1507 (RULE VIII) EFFECTIVE DATE OF CROP INSURANCE POLICIES (1) No crop insurance policy issued in Montana shall be effective prior to ~~seven/day/~~ 12:01 a.m. of the day following the day that the application is bound by the producer

or insurer after the mailing of hand-delivery of the insurance application to the insurer.

(2) If the application for coverage is mailed to the insurer the postmark date on the envelope shall constitute evidence of the date mailed. The insurer shall retain the envelope, including the postmark date, in the file of the insured.

(3) If the application for coverage is hand-delivered, the insurer shall immediately stamp the date of receipt on the application for coverage and the date-stamped application must be retained in the insurer's file of the insured. A copy of such date-stamped application must be provided to the insurance producer and an additional copy must be provided to the policyholder.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

RULE IX POLICYHOLDER DIVIDENDS Not adopted

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

RULE X MARKETING OF CROP INSURANCE Not adopted

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

6.6.1508 (RULE XI) INSURER GROUPS AND MANAGING GENERAL AGENTS (1) Differing crop hail or ~~compensation~~ ~~rate~~ insurance rates or rating plans for affiliated insurance companies within a group or for different companies under the control of the same managing general agency shall not be permitted.

(2) No exposure to loss under any crop insurance policy shall be retained by any entity other than the insurer and its reinsurer. No managing general agency shall assume any exposure to loss under any crop insurance policy.

AUTH: 33-1-313, 33-16-202, MCA IMP: 33-16-201, 33-16-203, MCA

4. At the public hearing which was held October 17, 1991, twelve persons testified concerning the proposed adoption of these rules. Five of these persons also provided written comments prior to the October 25, 1991, deadline. Twenty eight additional persons provided written comments prior to the October 25, 1991, deadline. The department has considered all testimony and responds as follows:

.



The majority of persons providing comment were in opposition to the proposed rules and were concerned with the overall deletion of the existing rules. Comments were made that the proposed rules are too complex and will not serve either the industry, consumers, or enforcement. Other comments were to the effect that current Montana insurance law already pertains to many of the problems the proposed rules were designed to correct. The existing rules are therefore not repealed but are rather amended to allow for advisory final average loss costs information and to substitute the National Crop Insurance Services (NCIS) for the now defunct Crop Hail Insurance Actuarial Association (chiaa).

Proposed Rules I through VI and IX, X and XII are deleted in their entirety. Proposed Rules VII, VIII and XI are amended and now appear as 6.6.1506, 6.6.1507 and 6.6.1508. Proposed Rule I is deleted because the department retains the existing rules. The substance of proposed Rule II is covered in existing rules so it is also deleted. Existing rules are amended to reflect the replacement of chiaa by the ncis. Proposed Rule III is covered in existing rules and is therefore deleted. The majority of comments indicated that proposed Rule III was too complex and too restrictive. However, the ncis began filing advisory final average loss cost information rather than full rate advisory information which was contemplated by the existing rules. Comment was received by the ncis explaining this change in filing information and general support for the department's attempt to include advisory final average loss cost information in its proposed rules. This filing information has been added to existing rules 6.6.1502 and 6.6.1503. Proposed Rule IV was deleted in response to comments that the current flexibility in marketing is advantageous to consumers. Rules should not so limit consumer choice. Proposed Rule V on policy forms is covered in current law and is therefore deleted as unnecessary. The rule was also opposed because it required two different deadlines for filing of rates and forms and those deadlines should be the same. The deadlines will remain the same as they are in existing law. Rates will continue to be filed by March 15 of each year. Proposed Rule VI is deleted in its entirety. Comment was received that the rule limits consumer choice in meeting individual or unique insurance needs. Furthermore, insurers may not wish to market that product in its state of domicile. Proposed Rule VII has been revised to reflect the current practice of allowing cash discounts. Other comments suggested that uniform premium finance agreements should be mandated but this would conflict with provisions of the Montana insurance code and it is therefore deleted. Several comments were received to the effect that the current cash discount methodologies have worked well, and are comparable to other products. These cash discounts have been a past benefit of the hail policy. Why eliminate this "consumer choice?" Cash discounts should be permissible since they provide an incentive for the policyholder to pay early. There should, however, be

parameters on cash discounts. Comments were received that cash discounts should be permitted, but that date limitations should be imposed. The rule has been amended to allow cash discounts with parameters. Provisions in the Montana insurance code clearly authorize premium financing in insurance. The rule is amended to require a written premium finance agreement and compliance if the insurer charges interest. It will be the department's expectation that an insurer justify service charges or finance charges in its filing, in sufficient detail to demonstrate that such charges include no provision which reflects the time value of money. Proposed Rule VIII received extensive opposition to the seven-day waiting period. No other comments were received on any other part of this rule. Comments related to the adverse affect on farmers. Farmer shouldn't be without coverage for those seven days. Much business is written on impulse. Farmers are "creatures of habit," and buy spontaneously. During hail season, farmers are very busy. Value of crop changes daily. Waiting seven days for coverage after decision to insure is made doesn't make sense. Current practice is ingrained; would be difficult transition. Because these comments were so numerous, amendments to the proposed rule are clearly in order. Several persons commented that there is sufficient authority for the insurance department to investigate abuses and back-dating. Some of these persons suggested that abuses be handled on a case-by-case basis, and that stiff penalties be levied on the perpetrators. Others suggested that such abuses should be handled between the producer and insurer. Several persons suggested alternatives to the proposed seven day proposal. The rule is amended to allow coverage to begin at 12:01 a.m. of the day following the day that the application for insurance is bound by the producer or the insurer. "Binding" is where the insurance producer is given authority by the insurer to make a commitment on behalf of the insurer that the insurer will provide the requested insurance coverage. Such coverage may then be effective, without the insurer performing individual underwriting of that applicant, and prior to the actual issuance of a policy. The producer may still bind coverage (if the insurer has given that producer the authority to do so), and coverage may still take effect prior to the actual issuance of a policy by the insurer. Coverage can then be effective the following day. Proposed Rule IX is deleted because the subject is already addressed in chapter 18 of Title 33. Proposed Rule X is deleted. One person commented that the insurance department is overstepping its authority. Proposed Rule XI is amended and appears as 6.6.1508. Comments were received that there is intent to limit consumer choice. There is no intent to limit consumer choice. The intent is to eliminate the criticism of a managing general agency that farmer A got a lower rate than farmer B for the same product in the same area through the managing general agent. The rule is adopted with changes. Persons requested clarification of the retention of risk between an insurer and its reinsurer(s). The proposed rule appears to prohibit reinsurance of crop insurance exposures. The rule is amended to clear this up. Comments in support and in opposition were received to Proposed Rule XII.

Comments were to the effect that producers should be able to represent any insurer. The requirement, if applied to producers, would force each to "pick sides" between farm mutuals and other insurers. No insurer wants 100% of a producer's business; the requirement would inhibit the spread of risk. This rule is deleted.

John R. Bandy

John R. Bandy  
Deputy Commissioner of  
Insurance

Susan C. Witte

Susan C. Witte  
Rules Reviewer

Certified to the Secretary of State this 17<sup>th</sup> day of  
January, 1992.

BEFORE THE BOARD OF MORTICIANS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to inspec-	)	8.30.408 INSPECTIONS AND
tions and sanitary standards -	)	8.30.601 SANITARY STANDARDS
- preparation room	)	- PREPARATION ROOM

TO: All Interested Persons:

1. On November 14, 1991, the Board of Morticians published a notice of proposed amendment of the above-stated rules at page 2184, 1991 Montana Administrative Register, issue number 21.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF MORTICIANS  
J. PATRICK HOFFMAN, CHAIRMAN

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

Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 17, 1992.

BEFORE THE FINANCIAL DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rules pertaining to consumer ) 8.80.301 CONSUMER LOAN  
loan licensees - advertising ) LICENSEES - ADVERTISING

TO: All Interested Persons:

1. On November 14, 1991, the Financial Division published a notice of public hearing on the proposed amendment of the above-stated rule, at page 2186, 1991 Montana Administrative Register, issue number 21.

2. The Division has amended the rule exactly as proposed.

3. The Division has thoroughly considered all comments and testimony received. Those comments and the Division's responses thereto are as follows:

COMMENT: Five individuals spoke in favor of the proposed amendment.

RESPONSE: The Division acknowledged receipt of the comments.

FINANCIAL DIVISION

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 17, 1992.

BEFORE THE MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

IN THE MATTER OF THE ADOPTION	)	NOTICE OF ADOPTION OF
OF EMERGENCY RULES TO LIST	)	EMERGENCY RULES TO LIST
WILDLIFE SPECIES PROHIBITED	)	WILDLIFE SPECIES PROHIBITED
FROM IMPORTATION AND TO REQUIRE	)	FROM IMPORTATION AND REQUIRE
GENETIC TESTING OF ELK	)	GENETIC TESTING OF ELK
	)	IMPORTS

TO: All interested persons

1. **BACKGROUND:** Companion emergency rules adopted by the Montana Department of Fish, Wildlife and Parks and the Montana Fish, Wildlife and Parks Commission on September 13, 1991 provided for a 120 day moratorium on importation of a number of native and exotic species and their hybrids. In addition to other requirements of law concerning importation of animals into Montana, the emergency rules also required that all elk (Cervus elaphus) be tested for evidence of red deer hybridization prior to importation to Montana and that only animals testing negative for red deer hybridization be cleared for importation into Montana. During the 120 days that these rules were in effect, the DFWP has laid the groundwork for formulation and adoption of new permanent game farm rules including: compilation of technical information obtained from wildlife and animal health experts in Montana and other states and provinces; coordination with the Department of Livestock in discussing and evaluating game farm issues affecting the state's wildlife populations and agricultural industry; and facilitation of issues scoping, discussion and input from representatives of the game farming industry.

**RISK ASSESSMENT:** Risks posed to Montana's wildlife resources as a result of enactment of more stringent rules governing operation of game farms in nearby states and provinces and subsequent movement of game farm animals (both legal and illegal) from and between states and provinces include:

**BIOLOGICAL**

- potential transmission of disease and parasite infections between commercially raised game animals
- potential transmission of disease and parasites from commercially raised animals to wildlife populations
- potential of genetic alteration (extinction by degree, at its extreme) of native wildlife populations as a result of hybridization with escaped game farm animals
- habitat degradation and habitat competition between escaped game farm animals (most accentuated in the case of certain exotic species) and native wildlife populations.

#### ESCAPE POTENTIAL/DIFFICULTY OF CONTROLLING ESCAPEES

- Some exotic species are notoriously difficult to contain in any type of enclosure. Tahr and Ibex, for example, are noted for their ability to jump fences 8 to 12 feet high. Mule deer and pronghorn antelope are also adept at getting over (or through) fences.
- Several exotic species readily become feral and are difficult or impossible to control or eradicate once they have escaped into the wild. Examples of this problem include feral red deer and Barbary sheep (aoudad) in Colorado and Wyoming and feral wild boars in California.

#### ECONOMICS

- potential financial liability that the state of Montana could incur for costly control/eradication programs to address escaped game farm animals.
- potential financial liability that the state of Montana could incur for costly indemnity programs to reimburse game farm operators for diseased, hybrid and undesirable exotic species, if and when it may be decided that they be permanently banned from the state.

#### RATIONALE FOR IMPLEMENTATION OF EMERGENCY RULES:

##### Time required to develop and implement new game farm rules:

Under provisions of HB 556 (effective 1 October, 1991), DFWP and the Department of Livestock have embarked on a rule-making process to revise and update rules governing operation of game farms in the state of Montana. Proposed rules must be founded on scientific fact and be applicable to both current and anticipated problems, necessitating that the formal rule-making process be preceded by a fact-finding process (currently in progress) and scoping sessions with representatives of the affected industry (also in progress). With the necessary groundwork completed, DFWP and the Department of Livestock are prepared to proceed with formal rule-making as provided by HB 556.

##### Implications to Public Health and Safety

- minimize the potential for transmission of disease among commercially raised captive animals.
- minimize the potential for transmission of disease between infected game farm animals and native wildlife populations.
- minimize the potential for transmission of disease between infected game farm animals and domestic livestock.

Implications to Public Welfare:

- importation of commercially raised animals infected with disease or parasites would pose a risk to existing game farms, the livestock industry and the health of native wildlife populations.
- importation of hybrid and certain exotic species would jeopardize the genetic integrity of the state's wildlife populations due to the potential for hybridization between escaped commercial game farm animals and native wildlife populations.
- importation of certain exotic species would jeopardize the welfare of native wildlife species due to the potential for habitat damage caused by feral animal populations and habitat competition between feral animal populations and native wildlife populations.
- any financial liability incurred on the part of the state of Montana for future control or eradication measures and indemnity programs would necessitate redirection of funds from existing agency budgets, resulting in negative impacts to the state's existing wildlife management program and the public benefits and services provided by that program.

Therefore, the Department of Fish, Wildlife and Parks finds, based on scientific investigation and the experience of other states and provinces, that the species listed below, because of behavioral traits or other biological considerations, would not be readily subject to control by man while in captivity or that if released into natural habitat would pose a substantial threat to native wildlife and plants or agricultural production. The Department further finds that an imminent peril to public health, safety and welfare exists on account of the foregoing and has adopted the following emergency rules, which as adopted will be mailed to appropriate locations, including delivery to a state wire service and any other news media the agency deems appropriate. The Department intends to initiate rulemaking procedures to make the following rules permanent. Removal of any species from the species list covered by this rule is contingent on compelling new scientific information indicating that risks posed by these species to native wildlife populations can be eliminated or managed effectively through application of diagnostic or management technologies.

2. The emergency rules read as follows:

RULE 1 PROHIBITED WILDLIFE SPECIES (1) The Department of Fish, Wildlife and Parks finds, based on scientific investigation and the experience of other states and provinces, that the following species, because of behavioral traits or other biological considerations, would not be readily subject to control by man while in captivity or that if released into



natural habitat would pose a substantial threat to native wildlife and plants or agricultural production through nonspecific genetic dilution, parasites or disease and are therefore prohibited, along with viable gametes (eggs and sperm), from importation into the state of Montana for any purpose for 120 days.

- a) In the family Bovidae, all members of the following genera and hybrids thereof:

Subfamily Caprinae

- Rudicapra (chamois)
- Hemitragus (tahr)
- Capra (goats, ibexes - except for domestic goat, Capra hircus)
- Ammotragus (Barbary sheep or Acoudad)
- Ovis (only the mouflon species, Ovis musimon)

Subfamily Hippotraginae

- Oryx (oryx and gemsbok)
- Addax (addax)

Subfamily Reduncinae

- Redunca (reedbucks)

Subfamily Alcelaphinae

- Connochaetes (wildebeests)
- Alcelaphus (hartebeests)
- Damaliscus (sassabies: blesbok, bontebok, topi)

- b) In the family Cervidae, all of the following species and hybrids thereof:

- white-tailed deer (Odocoileus virginianus)
- moose (Alces alces)
- all red deer (Cervus elaphus elaphus), and all hybrids with North American elk (C. elaphus canadensis, roosevelti, manitobensis, nannodes, and nelsoni).
- axis deer (Axis axis)
- rusa deer (Cervus timorensis)
- sambar deer (Cervus unicolor)
- sika deer (Cervus nippon)
- fallow deer (Dama dama)
- caribou (reindeer) (Rangifer sp.)

- c) All wild species in the family Suidae (Russian boar, European boar) and hybrids thereof.

- d) In the family Tayassuidae, the collared peccary (javelina) (Tayassu tajacu) and hybrids thereof.

AUTH: 87-4-422, MCA

IMP: 87-4-424, MCA

RULE II. GENETIC CERTIFICATION OF IMPORTS (1) In addition to any other requirements of law concerning the importation of animals into the state of Montana, all elk (Cervus elaphus) must be tested for evidence of red deer hybridization by an accredited veterinarian prior to importation into Montana. Any animal testing positive for red deer hybridization shall not be imported into Montana. Any health certificate required by Title 81, Chapter 2, MCA, to accompany an importation of elk tested negative for red deer hybridization shall include a certification by an accredited veterinarian that all of the animals in the shipment have tested negative for red deer hybridization.

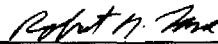
AUTH: 87-4-422, MCA

IMP: 87-4-424, MCA

3. The rationale for the proposed rules is set forth in the statement of reasons for emergency in paragraph 1.

4. Interested persons who are affected may comment in writing to Heidi Youmans, Wildlife Division, Montana Department of Fish, Wildlife and Parks, 1420 East Sixth Ave., Helena, Montana 59620.

  
K.L. Cool, Director  
Montana Department of Fish,  
Wildlife and Parks

  
Robert N. Lane, Rule Reviewer

Certified to the Secretary of State January 10, 1992.

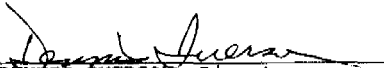
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the amendment of )	NOTICE OF
ARM 16.6.116 concerning fees for )	AMENDMENT OF
copies of vital statistics records )	ARM 16.6.116
and research )	

(Records and Statistics)

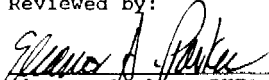
To: All Interested Persons

1. On December 12, 1991, the department published notice at page 2385 of the Montana Administrative Register, Issue No. 23, to consider the amendment of ARM 16.6.116.
2. The department has adopted the amendment as proposed.
3. No comments were received.

  
DENNIS IVERSON, Director

Certified to the Secretary of State January 17, 1992 .

Reviewed by:

  
Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the amendment of )	NOTICE OF
rules 16.8.807 and 16.8.809 and )	AMENDMENT
the repeal of 16.8.810 which )	OF RULES
update the incorporations by )	
reference of the Montana Quality )	
Assurance Manual.	

(Air Quality Bureau)

To: All Interested Persons

1. On September 12, 1991, the board published notice of hearing at page 1638 of the Montana Administrative Register, Issue No. 17, and on September 26, 1991 the board published notice of date change of hearing at page 1825 of the Montana Administrative Register, Issue No. 18, to consider the amendment of the above-captioned rules.

2. The board has amended the rules as proposed.
3. The board has repealed 16.8.810 as proposed.
4. No comments were received.

DAVID W. SIMPSON, Chairman  
BOARD OF HEALTH AND  
ENVIRONMENTAL SCIENCES

by   
DENNIS IVERSON, Director

Certified to the Secretary of State January 17, 1992.

Reviewed by:

  
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of RULE I (42.15.316) relating)	RULE I (42.15.316) relating
to Extensions and Late Pay )	to Extensions and Late Pay
Penalty )	Penalty

TO: All Interested Persons:

1. On November 14, 1991, the Department published notice of the proposed adoption of Rule I (42.15.316) relating to Extensions and Late Pay Penalty at pages 2205 of the 1991 Montana Administrative Register, issue no. 21.

2. Written comments were received and are summarized along with the response of the Department as follows:

COMMENT: The CPA firm of Junkermier, Clark, Campanella and Stevens, P.C., provided written comments to the Department suggesting that the Department should consider adding a line which indicates that a payment with the extension would be considered an estimated tax payment.

RESPONSE: The Department concurs with this suggestion and has amended the rule accordingly.

COMMENT: They also suggested, if in a prior year a taxpayer has zero liability, either because of lack of taxable income or use of credits, other than the refundable Elderly Homeowner Credit, then no payment would be required under the 100% rule in order to obtain a valid extension.

RESPONSE: The Department concurs with this suggestion and has amended the rule accordingly. Also, in light of these suggestions, the Department has identified another area that should be clarified. This area is the clarification of the definition of tax liability.

3. The Department has amended the rule as follows:

RULE I (42.15.316) EXTENSIONS - LATE PAY PENALTY

(1)(a) remains as proposed.

(b) At the time of making the application, the taxpayer has paid either through withholding, estimated tax payments, payments with the extension request, or a combination of both all three, either of the following:

(i) 95% of their current year's income tax liability; or  
(ii) 100% of their prior year's income tax liability.

(2) For this purpose, a taxpayer's tax liability is defined as the tax less any income tax credits (excluding the refundable elderly homeowner credit, withholding, and estimated tax payments).

(3) through (9) remain as proposed.

(10) Taxpayers who are either first time filers, are

required to pay 95% of their current year's tax or have a zero or negative taxable income for the previous year, are considered to have paid 100% of the previous year's tax for purposes of meeting the requirements in subsection (1)(b).

AUTH: 15-30-305 MCA

IMP: 15-30-144 MCA

4. Therefore, the Department adopts the rule with the amendments listed above.



CLEO ANDERSON  
Rule Reviewer



DENIS ADAMS  
Director of Revenue

Certified to Secretary of State January 17, 1992.

VOLUME NO. 44

OPINION NO. 23

COMMERCE, DEPARTMENT OF - Authority to administer federal Section 8 housing programs in areas served by municipal housing authority;  
HOUSING - Authority of state to administer federal Section 8 housing programs in areas served by municipal housing authority;  
LOCAL GOVERNMENT - Municipal housing authority;  
MUNICIPAL GOVERNMENT - Municipal housing authority;  
CODE OF FEDERAL REGULATIONS - 24 C.F.R. §§ 882.101, 882.102, 882.301, 882.401, 882.701, 882.801, 883.101, 887.1, 887.7;  
MONTANA CODE ANNOTATED - Title 7, chapter 15, part 44; sections 7-15-2111, 7-15-4402(1), 7-15-4414(2), 17-3-105, 90-1-106;  
OPINIONS OF THE ATTORNEY GENERAL 39 Op. Att'y Gen. No. 4 (1981);  
UNITED STATES CODE - 42 U.S.C. §§ 1437f, 1437f(a).

HELD: The State of Montana, through its Department of Commerce, may administer federal Section 8 certificate and voucher programs and may do so in an area which is served by an existing municipal housing authority.

January 16, 1992

David N. Hull  
Helena City Attorney  
316 North Park  
Helena MT 59623

Dear Mr. Hull:

You have requested my opinion concerning the following question:

Does the State of Montana, through its agent, the Department of Commerce, have authority to operate federal Section 8 certificate and voucher programs and, if so, to administer those programs in an area which is served by an existing municipal housing authority, specifically the Helena Housing Authority?

Section 8 certificate and voucher programs are part of the United States Housing Act of 1937 as amended (42 U.S.C. § 1437f). Such programs provide assistance to low and moderate income persons in the payment of rent in privately owned existing housing. 42 U.S.C. § 1437f(a); 24 C.F.R. §§ 882.101, 882.102, 882.301, 882.401, 882.701, 882.801, 883.101, 887.1.

You indicate that the Helena Housing Authority, hereinafter HHA, was created in accordance with the provisions of Title 7, chapter 15, part 44, MCA. As a municipal housing authority, HHA may participate in and administer federal Section 8 housing

Montana Administrative Register

2-1/30/92

programs. 39 Op. Att'y Gen. No. 4 at 20 (1981). Accordingly, HAA has contracted with the United States Department of Housing and Urban Development (HUD) to serve as a public housing agency (PHA) in the administration of Section 8 certificate and voucher programs in the Helena area. HUD regulations define a PHA as "[a]ny State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income Families." 24 C.F.R. § 882.102.

As you point out, HHA is not the exclusive PHA that has contracted with HUD to administer Section 8 housing programs in the Helena area. The Montana Department of Commerce (Department) also serves as a PHA and performs the identical function of applying for and receiving federal funding and administering section 8 certificate and voucher programs on a statewide basis, including within the municipality of Helena. Some of these programs are administered independently by the Department, while others are administered in conjunction with HHA pursuant to contract whereby the Department pays HHA a percentage of its federal funding for administrative costs. You suggest not only that the Department has no authority to administer Section 8 certificate and voucher programs, but also that the Department is without authority to administer such programs in an area which is already served by a municipal housing authority such as HHA.

The Montana Department of Commerce has several functions with respect to housing which are spelled out in section 90-1-106, MCA. The authority to apply for and receive federal funding to administer housing programs is not specifically described in that statute. However, consistent with the general functions of the Department as outlined in section 90-1-106, MCA, former Governor Ted Schwinden issued Executive Order No. 27-81 on November 2, 1981, which authorized and directed the Department "to administer the Housing Assistance Payments Program; to apply for and receive any and all grants of federal funds for which the Department may be eligible under the Housing Assistance Payments Program; to execute all necessary applications, agreements, and documents; and to take all steps necessary and appropriate for the successful operation of the Housing Assistance Payments Program." Section 17-3-105, MCA, authorizes the Governor to "accept on behalf of the state any federal assistance funds made available by act of congress for programs that are consistent with the needs and goals of the state and its citizens." This statute further authorizes the Governor to designate the state agency to administer the accepted federal assistance program, in this case the Montana Department of Commerce. Because the Legislature has statutorily entrusted its legislative function to the executive branch of government, Governor Schwinden's order has the force and effect of law. State ex rel. Bennett v. Bonner, 123 Mont. 414, 423, 214 P.2d 747, 752 (1950).



The Department is therefore authorized under state law to administer HUD's Housing Assistance Payments Program (24 C.F.R., parts 882 and 883) under Section 8, which includes the certificate and voucher programs you specifically mention in your letter. Consequently, the Department fits the definition of a PHA under HUD regulations (24 C.F.R. § 882.102) and, just like HHA, may contract with HUD to perform PHA functions.

Your next question is whether the Department is restricted from operating as a PHA in an area already served by HHA. The only HUD regulation addressing this point is 24 C.F.R. § 887.7 under the housing voucher program, which defines PHA jurisdiction as "the area in which the PHA is not legally barred from entering into housing voucher contracts." I find no statutory provision which precludes concurrent jurisdiction over Section 8 housing program administration between the Department and HHA. Unlike the restriction contained in section 7-15-2111, MCA, which precludes operation of a county housing authority in a city without first obtaining the city's consent, there are no similar provisions pursuant to which HHA can exclude the Department from operating in the Helena area.

You cite section 7-15-4414(2), MCA, as the relevant statute barring concurrent jurisdiction over federal housing programs where a municipal housing authority is already in place:

Problems arising from existence of several overlapping authorities. ...

(2) No housing authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

However, the statutory definition of "housing authority" precludes application of this geographic restriction to the Department of Commerce. Section 7-15-4402(1), MCA, defines "authority" or "housing authority" as

a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

The Department is not organized under the provisions relating to municipal housing authorities, as is HHA. The restriction in section 7-15-4414(2), MCA, applies only to municipal housing authorities operating in the same geographic location. It does not restrict the operation of a state agency which is authorized by statute and executive order to administer federal Section 8 housing programs.

The lack of an explicit statutory restriction leads me to conclude that the Department may administer Section 8 certificate and voucher programs despite the fact that HHA currently operates in the same geographic area. I realize that this result is contrary to that reached by the Connecticut Superior Court of Hartford-New Britain in the unpublished opinion of Housing Authority of the Town of East Hartford v. Papandrea, No. CV 90-7007028 (Nov. 2, 1990), which you have cited. That case, however, is readily distinguishable. Although it involved an action by the local housing authority to enjoin the state commissioner of housing from operating any Section 8 housing programs in the town of East Hartford, the injunction issued in that case because the legislation creating the state housing agency specifically barred it, except in limited circumstances, from initiating a housing program in a municipality where a local housing authority already existed. Conn. Gen. Stat. Ann. § 8-120. No similar restrictions are present in Montana's statutes.

THEREFORE, IT IS MY OPINION:

The State of Montana, through its Department of Commerce, may administer federal Section 8 certificate and voucher programs and may do so in an area which is served by an existing municipal housing authority.

Sincerely,



MARC RACICOT  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

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The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1991. This table includes those rules adopted during the period October 1, 1991 through December 31, 1991 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1991, this table and the table of contents of this issue of the MAR.

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### **BOARD APPOINTEES AND VACANCIES**

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in December, 1991, are published. Vacancies scheduled to appear from February 1, 1992, through April 30, 1992, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

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

#### **IMPORTANT**

Membership on boards and commissions changes constantly. The following lists are current as of January 3, 1992.

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

BOARD AND COUNCIL APPOINTEES: DECEMBER, 1991

Appointee	Appointed by	Succeeds	Appointment/End Date
Air Pollution Control Advisory Council (Health and Environmental Sciences)			
Mr. Ronald E. Burnam	Governor	reappointed	12/6/1991
Billings			11/8/1993
Qualifications (if required): practicing physician			
Mr. Clifford Cox	Governor	Kilgore	12/6/1991
Winston			11/8/1993
Qualifications (if required): agricultural representative			
Mr. Ed Handl	Governor	reappointed	12/6/1991
Butte			11/8/1993
Qualifications (if required): chemical engineer			
Mr. Rodney A. James	Governor	reappointed	12/6/1991
Butte			11/8/1993
Qualifications (if required): practicing registered prof. chemical or environment engineer			
Mr. Terry Konkright	Governor	reappointed	12/6/1991
Superior			11/8/1993
Qualifications (if required): manufacturing industry			
Mr. Stephen L'Heureux	Governor	reappointed	12/6/1991
Great Falls			11/8/1993
Qualifications (if required): urban planning consultant			
Mr. Joe Nelson	Governor	reappointed	12/6/1991
Walkerville			11/8/1993
Qualifications (if required): labor representative			
Mr. Martin Perga	Governor	reappointed	12/6/1991
Laurel			11/8/1993
Qualifications (if required): representative of fuel industry			

BOARD AND COUNCIL APPOINTEES: DECEMBER, 1991

Appointee	Appointed by	Succeeds	Appointment/End Date
Air Pollution Control Advisory Council (Health and Environmental Sciences) cont.			
Dr. Earl Pruyne	Governor	reappointed	12/6/1991
Missoula			11/8/1993
Qualifications (if required): practicing veterinarian			
Mr. Paul Sawyer	Governor	reappointed	12/6/1991
Butte			11/8/1993
Qualifications (if required): conservationist			
Alfalfa Seed Committee (Agriculture)			
Mr. Thomas W. Matchett	Governor	reappointed	12/21/1991
Chinook			12/21/1994
Qualifications (if required): member for Alfalfa Seed Association			
Mr. Gayle Patrick	Governor	reappointed	12/21/1991
Malta			12/21/1994
Qualifications (if required): member from Alfalfa Seed Association			
Capitol Restoration Commission (Administration)			
Ms. Jeanne Ansberry	Governor	new position	12/3/1991
Helena			12/3/1995
Qualifications (if required): public member			
Ms. Jeanne Michael	Lieutenant Governor	new position	12/3/1991
Billings			12/3/1995
Qualifications (if required): member appointed by Lieutenant Governor			

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1992 through April 30, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Architects (Commerce)</b> Mr. Robert Utzinger, Bozeman Qualifications (if required): 1 reg. architect on MSU School of Architecture staff	Governor	3/27/1992
<b>Board of Athletics (Commerce)</b> Mr. Harry Atchison, Havre Qualifications (if required): none specified	Governor	4/25/1992
Dr. John R. Halseth, Great Falls Qualifications (if required): none specified	Governor	4/25/1992
Dr. Leonard Andrew Vandolah, Conrad Qualifications (if required): none specified	Governor	4/25/1992
<b>Board of Dentistry (Commerce)</b> Ms. Elsie Fox, Miles City Qualifications (if required): public member	Governor	3/29/1992
Mr. Ronald L. Olson, Billings Qualifications (if required): denturist	Governor	3/29/1992
<b>Board of Mail Insurance (Agriculture)</b> Mr. Louis Beirwagen, Big Sandy Qualifications (if required): none specified	Governor	4/18/1992
<b>Board of Optometrists (Commerce)</b> Mr. Larry J. Bonderud, Shelby Qualifications (if required): registered optometrist	Governor	4/3/1992

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1992 through April 30, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Professional Engineers and Land Surveyors</b> (Commerce) Mr. Robert T. Hafferman, Kalispell Qualifications (if required): none specified	Governor	4/23/1992
Dr. Fred E. Walter, Butte Qualifications (if required): mechanical engineer	Governor	4/23/1992
<b>Board of Public Education</b> (Education) Mr. Alan D. Nicholson, Helena Qualifications (if required): affiliated with Democratic Party	Governor	2/1/1992
<b>Board of Regents of Higher Education</b> (Education) Mr. James M. Kaze, Havre Qualifications (if required): none specified	Governor	2/1/1992
<b>Building Codes Advisory Council</b> (Commerce) Mr. Dick Anderson, Helena Qualifications (if required): not specified	Director	3/31/1992
Mr. Ray Blehm Jr., Helena Qualifications (if required): not specified	Director	3/31/1992
Ms. Linda Cockhill, Helena Qualifications (if required): not specified	Director	3/31/1992
Mr. Phil Green, Billings Qualifications (if required): not specified	Director	3/31/1992
Mr. Reginald McMurdo, Missoula Qualifications (if required): not specified	Director	3/31/1992
Mr. Pete Mion, Missoula Qualifications (if required): not specified	Director	3/31/1992

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1992 through April 30, 1992

Board/current position holder	Appointed by	Term end
Building Codes Advisory Council (Commerce) cont.		
Mr. William Novak, Billings	Director	3/31/1992
Qualifications (if required): not specified		
Mr. John Palmquist, Helena	Director	3/31/1992
Qualifications (if required): not specified		
Mr. Robert Ross, Kalispell	Director	3/31/1992
Qualifications (if required): not specified		
Ms. Mitzi Schwab, Helena	Director	3/31/1992
Qualifications (if required): not specified		
Ms. Kastor Simensen, Wolf Point	Director	3/31/1992
Qualifications (if required): not specified		
<b>Employment of People with Disabilities Advisory Council (Administration)</b>		
Mr. Lowell L. Bartels, Helena	Governor	2/9/1992
Qualifications (if required): private sector employer member		
Mr. Mark Boulds, Helena	Governor	2/9/1992
Qualifications (if required): ex-officio member		
Mr. H. P. Brown, Great Falls	Governor	2/9/1992
Qualifications (if required): disabled advocacy and advisory organization members		
Mr. William Comp, Fort Harrison	Governor	2/9/1992
Qualifications (if required): disabled advocacy and advisory organization members		
Ms. Linda Currey, Helena	Governor	2/9/1992
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1992 through April 30, 1992

Board/current position holder	Appointed by	Term and
Employment of People with Disabilities Advisory Council (Administration) cont.		
Mr. Fred Fisher, Helena	Governor	2/9/1992
Qualifications (if required): disabled advocacy and advisory organization members		
Mr. Ron Garbarino, Butte	Governor	2/9/1992
Qualifications (if required): member at large		
Mr. Gary Garlock, Billings	Governor	2/9/1992
Qualifications (if required): public sector employer member		
Mr. Pat Goodover, Great Falls	Governor	2/9/1992
Qualifications (if required): private sector employer member		
Ms. Judy Harris, Helena	Governor	2/9/1992
Qualifications (if required): member at large		
Mr. William F. Heinecke, Belgrade	Governor	2/9/1992
Qualifications (if required): member at large		
Mr. Richard James, Bozeman	Governor	2/9/1992
Qualifications (if required): representative of Visual Services Advisory Council		
Mr. Wade Johnston, Missoula	Governor	2/9/1992
Qualifications (if required): private sector employer member		
Mr. Bob Lemieux, Great Falls	Governor	2/9/1992
Qualifications (if required): disabled advocacy and advisory organization member		
Mr. Ronald W. McDonald, Helena	Governor	2/9/1992
Qualifications (if required): private sector employer member		
Ms. Julia Robinson, Helena	Governor	2/9/1992
Qualifications (if required): public sector employer member		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1992 through April 30, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Employment of People with Disabilities Advisory Council</b> (Administration) cont.		
Ms. Linda Valentine, Billings	Governor	2/9/1992
Qualifications (if required): member at large		
Mr. James Whealon, Helena	Governor	2/9/1992
Qualifications (if required): ex-officio member		
<b>Executive Board of Eastern Montana College</b> (Education)		
Mr. Bill Tierney, Billings	Governor	4/20/1992
Qualifications (if required): none specified		
<b>Executive Board of Western Montana College</b> (Education)		
Ms. Pat Blade, Dillon	Governor	4/16/1992
Qualifications (if required): none specified		
<b>Montana Arts Council</b> (Education)		
Ms. Kitty Belle Deernose, Crow Agency	Governor	2/1/1992
Qualifications (if required): none specified		
Mr. James M. Haughey, Billings	Governor	2/1/1992
Qualifications (if required): geographic requirement and has interest in arts		
Ms. Helen Guthrie Miller, Butte	Governor	2/1/1992
Qualifications (if required): keen interest in one or more of the arts		
Ms. Carol Novotne, Fort Harrison	Governor	2/1/1992
Qualifications (if required): public member		
Mr. Charles F. Tooley, Billings	Governor	2/1/1992
Qualifications (if required): none specified		



VACANCIES ON BOARDS AND COMMISSIONS -- February 1, 1992 through April 30, 1992

Board/current position holder	Appointed by	Term and
Public Employees Retirement Board (Administration) Mr. Robert L. Batista, Great Falls Qualifications (if required): none specified	Governor	4/1/1992
State Employee Sick Leave Advisory Council (Governor) Mr. Bob Robinson, Helena Qualifications (if required): office of elected official	Governor	3/1/1992
State Library Commission (Education) Ms. Joanne V. Lerud, Butte Qualifications (if required): none specified	Commissioner	4/1/1992