

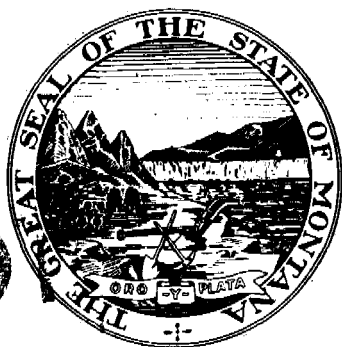
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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 found at the back of each register.

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

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
proposed amendment of rules	)	PROPOSED AMENDMENT, ADOPTION,
6.10.101, 6.10.103,	)	AND REPEAL OF RULES
6.10.111, 6.10.120, and)	
6.10.127, the proposed)	
adoption of new rules I)	
through IX, pertaining to)	
registration, unethical)	
practices, financial)	
requirements, bonding, and)	
books and records)	
requirements in the)	
business of securities, and)	
the proposed repeal of)	
6.10.122 and 6.10.123.)	

TO: All Interested Persons

1. On October 27, 1998, at 10:00 a.m., a public hearing will be held in room 160 of the Mitchell Building, 126 N. Sanders, Helena, Montana, to consider the proposed amendment, adoption and repeal of rules.

2. The proposed amendments provide as follows (new text is underlined; text to be deleted is interlined):

6.10.101 APPLICABILITY OF SUB-CHAPTER (1) Except as provided in ~~subsection~~ (2), this sub-chapter applies to the securities and transactions involving securities, subject to the Securities Act of Montana, Title 30, chapter 10, parts 1 through 3, MCA.

(2) ~~Except as provided in ARM 6.10.124, ARM 6.10.103 does not apply to an exempt securities or exempt transactions, as set forth in 30-10-104 and 30-10-105, MCA. ARM 6.10.122 [Rule VIII]~~ does not apply to securities exempt under 30-10-104(1), MCA.

AUTH: Sec. 30-10-107, MCA

IMP: Sec. 30-10-107, MCA

6.10.103 SALES MATERIALS (1) Except as provided in (3), (4), ~~and (5), and (6)~~ of this rule, sales material to be used in connection with the offer or sale of securities to persons in this state must be filed with the commissioner at least 10 days prior to being used in this state.

(2) and (3) will remain the same.

(4) This rule does not apply to sales material that is used exclusively by a broker-dealer registered pursuant to 30-10-201, MCA, if the sales material conforms to the provisions

of ~~article III, section 35 of the Rules of Fair Practice~~
Section 2210 of the Conduct Rules of the National Association
of Securities Dealers, Inc.

(5) will remain the same.

(6) This rule does not apply to sales material that is
used exclusively in connection with the offer or sale of a
security that is a federal covered security.

(6) will remain the same but is renumbered (7).

AUTH: Sec. 30-10-107, MCA

IMP: Sec. 30-10-107, MCA

6.10.111 WARRANTS AND OPTIONS (1) through (c)(vii) will
remain the same.

~~(2)~~ (2) The commissioner may, upon a showing of good cause,
approve an application even though warrants or options have
been granted that do not meet the conditions specified in
~~subsection (2)~~ (1) of this rule. However, the burden of
justifying issuance rests upon the applicant.

AUTH: Sec. 30-10-107, MCA

IMP: Sec. 30-10-107 and 30-10-207, MCA

6.10.120 MONTANA LIMITED OFFERING EXEMPTION (1) By the
authority delegated to the commissioner in 30-10-105, MCA, an
offer or sale of securities offered or sold in compliance with
Securities Act of 1933, Regulation D, Rules 230.501 through
230.503 and 230.505 ~~and/or 230.506 as made effective in Release~~
~~No. 33-6389 and amended by Release No. 33-6437, Release No. 33-~~
~~6663, and Release No. 33-6758 (17 CFR 230.501, 230.502, 230.503~~
~~and 230.505 (1998))~~, is exempt from the registration
requirements of 30-10-202, MCA.

(2) through (3)(a) will remain the same.

(b) has been convicted within 5 years prior to the filing
of the notice required under this exemption of a felony or
misdemeanor in connection with the offer, purchase, or sale of
a security or a felony involving fraud or deceit, including but
not limited to forgery, embezzlement, obtaining money under
false pretenses, larceny, or conspiracy to defraud;

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

(4) The prohibitions of ~~subsections~~ (3)(a) through (3)(c)
and ~~subsection~~ (3)(e) do not apply if the person subject to the
disqualification is licensed or registered to conduct
securities-related business in the state in which the
administrative order or judgment was entered against the
person, or if the person subject to the disqualification is
registered to conduct securities-related business by the
securities and exchange commission and the order or judgment
was entered against the person by the securities and exchange
commission, or if the broker-dealer employing the person is
registered in this state and the form BD as adopted by the
North American Securities Administrators Association, Inc., and
filed with this state discloses the order, conviction, judgment
or decree relating to the person. A person disqualified under

this rule may not act in a capacity other than that for which the person is registered.

(5) through (7) will remain the same.

(a) the investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to ~~his the purchaser's~~ other securities holdings, ~~and as to his~~ financial situation, and needs. For the purpose of this condition only, it may be presumed that, if the investment does not exceed 10% of the investor's net worth, it is suitable.

(b) the purchaser either alone or with ~~his purchaser the purchaser's~~ representative has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment.

(8) and (9) will remain the same.

(10) In the case of offerings of direct participation programs as defined in ~~Section 34 of Article 3~~ Section 2810 of the National Association of Securities Dealers, Inc.'s Conduct Rules of Fair Practice, each person who offers or sells securities in this state under this rule shall deliver a disclosure document containing the information required by Securities Act of 1933, Regulation D, rule 230.502(b), to individuals covered by Securities Act of 1933, Regulation D, rules 230.502(a)(5), 230.502(a)(6), and 230.502(a)(7).

(11) and (12) will remain the same.

AUTH: Sec. 30-10-105 and 30-10-107, MCA
IMP: Sec. 30-10-104, 30-10-202 AND 30-10-211,
MCA

6.10.127. "UNETHICAL PRACTICES" BY INVESTMENT ADVISERS DEFINED FRAUDULENT, UNETHICAL AND DECEPTIVE PRACTICES PROHIBITED For purposes of 30-10-201(12)(g), MCA, "unethical practices" by an investment adviser means, but is not limited to: (1) A person who is a federal covered adviser is a fiduciary and has a duty to act for the benefit of its clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (PL 104-290). While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser or a federal covered adviser shall not engage in unethical business practices, including the following:

(1) and (2) will remain the same, but are renumbered (a) and (b).

~~(c)(3)~~ inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objective, and character of the account if the adviser can directly or indirectly benefit from the number of securities transactions effected in a client's account;

(4) through (15) will remain the same, but are renumbered (d) - (o).

~~(p)(16)~~ entering into, extending, or renewing an investment advisory contract, other than a contract for impersonal

services, unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of or the manner of calculation of the prepaid fee to be returned in the event of contract termination or nonperformance, and whether the contract grants discretionary power to the investment advisor or its representative and that no assignment of such contract shall be made by the adviser without the consent of the other party;

(17) and (a) will remain the same, but are renumbered (q) and (i).

(iii)(b) a legal or disciplinary action that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to a client; or

(r) failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material non-public information contrary to the provisions of section 204A of the Investment Advisers Act of 1940;

(s) entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision is hereby adopted and incorporated herein, and applies to all advisers registered or required to be registered under the Securities Act of Montana, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940. Section 205 establishes standards for investment advisory contracts entered into by the adviser and may be obtained from the Commissioner of Securities, P.O. Box 4009, Helena, MT 59604;

(t) to indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940, which is hereby adopted and incorporated herein. Section 215 of the Investment Advisers Act of 1940 establishes standards for the validity of advisory contracts, and may be obtained from the Commissioner of Securities, P.O. Box 4009, Helena, MT 59604;

(u) engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940, which is hereby adopted and incorporated herein, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940. Section 206(4) of the Investment Advisers Act of 1940 establishes prohibited practices in the investment advisory business, and may be obtained from the Commissioner of Securities, P.O. Box 4009, Helena, MT 59604;

(v) engaging in conduct or any act, indirectly or through any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Montana or any rule or regulation thereunder; and

(18) will remain the same but is renumbered (w).

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-201 and 10-10-301, MCA

3. The new rules proposed for adoption provide as follows:

NEW RULE I MINIMUM FINANCIAL REQUIREMENTS AND FINANCIAL REPORTING OF BROKER-DEALERS (1) Each broker-dealer registered or required to be registered under this act shall comply with SEC rule 15c3-1 (17 CFR 240.15c3-1 (1998)), 15c3-2 (17 CFR 240.15c3-2 (1998)), and 15c3-3 (17 CFR 240.15c-3 (1998)).

(2) Each broker-dealer registered or required to be registered under this act shall comply with SEC rule 17a-11 (17 CFR 240.17a-11 (1998)) and shall file with the commissioner upon request copies of notices and reports required under SEC rules 17a-5 (17 CFR 240.17a-5 (1998)), 17a-10 (17 CFR 240.17a-10 (1998)), and 17a-11 (17 CFR 240.17a-11 (1998)).

(3) The commissioner hereby adopts and incorporates by reference the rules cited in (1) and (2), which establish net capitalization requirements, customer free credit balance requirements, customer protection reserves, net capital decline reporting requirements, and capitalization reporting requirements. A copy of these rules may be obtained from the Securities Department, P.O. Box 4009, Helena, MT 59604.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-107 and 30-10-201, MCA

NEW RULE II NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS (1) The notice filing for a federal covered adviser pursuant to 30-10-201, MCA, shall be filed with the commissioner or with a central registration depository designated by the commissioner on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 CFR 279.1 (1998)) and shall include:

(a) the consent to service of process required by 30-10-208, MCA, unless incorporated by reference by [RULE VI]; and

(b) the fee required under 30-10-209, MCA.

(2) A federal covered adviser shall file with the commissioner a copy of each amendment to its Form ADV when such amendment is filed with the Securities and Exchange Commission.

(3) The renewal of the notice filing for a federal covered adviser pursuant to 30-10-209(2)(c), MCA, shall be filed upon the first page of an executed Form ADV (Uniform Application for Investment Adviser Registration (17 CFR 279.1 (1998))), and shall contain the fee required under 30-10-209, MCA.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-201, MCA

NEW RULE III MINIMUM FINANCIAL REQUIREMENTS FOR

INVESTMENT ADVISERS (1) Unless an investment adviser posts a bond pursuant to [RULE IV] an investment adviser registered or required to be registered under the Securities Act of Montana who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000. An investment adviser registered or required to be registered under the Securities Act of Montana who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Securities Act of Montana shall by the close of business on the next business day notify the commissioner if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the commissioner of its financial condition, including the following:

(a) a trial balance of all ledger accounts;
(b) a statement of all client funds or securities which are not segregated;

(c) a computation of the aggregate amount of client ledger debit balances; and

(d) a statement of the number of client accounts.

(3) For purposes of this rule, the term "net worth," shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include the following as assets:

(a) prepaid expenses, except as to items properly classified as current assets under generally accepted accounting principles;

(b) deferred charges;

(c) goodwill;

(d) franchise rights;

(e) organizational expenses;

(f) patents;

(g) copyrights;

(h) marketing rights;

(i) unamortized debt discount and expense;

(j) all other assets of intangible nature;

(k) home;

(l) home furnishings;

(m) automobile(s);

(n) personal items not readily marketable in the case of an individual; and

(o) advances or loans to stockholders and officers in the case of a corporation or advances or loans to partners in the case of a partnership.

(4) The commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) An investment adviser that has its principal place

of business in a state other than this state is not required to comply with the requirements of this rule, provided that the investment adviser is licensed in the state and is in compliance with the state's minimum capital requirements, if any.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-107 and 30-10-201, MCA

NEW RULE IV BONDING REQUIREMENTS FOR CERTAIN INVESTMENT ADVISERS (1) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the commissioner based upon the number of clients and the total assets under management of the investment adviser by a bonding company qualified to do business in this state.

(2) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of (1), provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding, if any.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-107, and 30-10-201, MCA

NEW RULE V NOTICE FILINGS FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES (1) A notice filing for a security that is a federal covered security under section 18(b)(2) of the Securities Act of 1933 shall consist of the fees required under 30-10-209, MCA, a Form U-2, Uniform Consent to Service of Process, and either a copy of the issuer's federal registration statement as filed with the Securities and Exchange Commission or an originally executed Form NF, Uniform Notice Filing Form.

(2) A notice filing under (1) is effective for one year following the date of the commissioner's receipt of the filing. A notice filing may be renewed by the filing with the commissioner, prior to the expiration date of the notice filing, payment of fees required under 30-10-209, MCA, together with either a current copy of the issuer's federal registration statement or an originally executed Form NF. A renewed notice filing shall be effective for one year commencing upon the expiration of the notice filing being renewed.

(3) A report detailing the amount of shares sold in this state shall be filed with the commissioner on Form NF within sixty days after the annual expiration of a notice filing.

(4) A notice filing may be amended to increase the amount of shares offered in this state by filing with the commissioner an amended Form NF together with any additional fees required by 30-10-209, MCA.

(5) Except as provided in (6), an investment company that has elected to file a Form NF in lieu of its federal

registration statement is not required to file with the commissioner a copy of any document that is part of a federal registration statement filed with the Securities and Exchange Commission or is part of an amendment to a federal registration statement.

(6) An investment company that has filed a Form NF shall file, upon written request of the commissioner and within the time period set forth in the request, a copy of any document identified in the request that is part of the federal registration statement filed with the Securities and Exchange Commission or part of an amendment to a federal registration statement.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-202 and 30-10-211, MCA

NEW RULE VI INCORPORATION BY REFERENCE CONSENTS TO SERVICE OF PROCESS PREVIOUSLY FILED (1) For purposes of consents to service of process required to be filed pursuant to 30-10-201 and 30-10-211, MCA, or the rules promulgated thereunder, a broker-dealer, agent, federal covered adviser, investment adviser, investment adviser representative, or issuer may incorporate by reference any consent to service of process previously filed with the commissioner by such person or entity.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-201, 30-10-202, 30-10-209 and 30-10-211, MCA

NEW RULE VII NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS (1) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on form D (17 CFR 239.500), a consent to service of process on a form prescribed by the commissioner and pay the fee required by 30-10-209, MCA, no later than fifteen days after the first sale of the security in this state.

(2) For purposes of this rule the SEC "Form D" is defined as the document, as adopted by the Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-202 and 30-10-211, MCA

NEW RULE VIII BROKER-DEALER BOOKS AND RECORDS (1) Unless otherwise provided by order of the commissioner, each registered dealer shall make, maintain and preserve books and records in compliance with the United States Securities and Exchange Commission Rules 17a-3 (17 CFR 240.17a-3 (1998)), 17a-

4 (17 CFR 240.17a-4 (1998)), and 15c2-11 (17 CFR 240.15c2-11 (1998)) which are adopted and incorporated herein by this reference and establish recordkeeping requirements related to the conduct of the business as a securities broker-dealer. Copies of these rules may be obtained from the Commissioner of Securities, P.O. Box 4009, Helena, MT 59604.

(2) To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-201, MCA

NEW RULE IX INVESTMENT ADVISER BOOKS AND RECORDS

(1) Every investment adviser registered or required to be registered under the Securities Act of Montana must make and keep true, accurate, and current the following books, ledgers and records:

(a) those books and records required to be maintained and preserved in compliance with rule 204-2 of the Investment Advisers Act of 1940 (17 CFR 275.204-2 (1998)), hereby adopted and incorporated by reference, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940. Rule 204-2 establishes books and records maintenance requirements pertaining to the conduct of business as an investment adviser;

(b) all trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by [RULE III];

(c) a list or other record of all accounts with respect to the funds, securities, or transactions of any client;

(d) a copy in writing of each agreement entered into by the investment adviser with any client;

(e) a file containing a copy of each record required by rule 204-2(11) of the Investment Advisers Act of 1940 (17 CFR 275.204-2(11) (1998)), including any communication by electronic media that the investment adviser circulates or distributes directly or indirectly to two or more persons, other than persons connected with the investment adviser;

(f) a copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of rule 203(b)(1) of this act and a record of the dates that each written statement, and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client;

(g) for each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by rule 206(4)-3 of the Investment Advisers Act of 1940 (17 CFR 275.206(4)-3 (1998)), which is hereby adopted and incorporated by this reference, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940;

(h) all records required by rule 204-2(16) of the Investment Advisers Act of 1940 including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser);

(i) a file containing a copy of all written communication received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint;

(j) written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client;

(k) written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations; and

(1) a file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives which file should contain, but is not limited to, all applications amendments, renewal filings, and correspondence.

(2) Every investment adviser subject to (1) of this rule shall preserve the following records in the manner prescribed:

(a) books and records required to be made under the provisions of (1)(a) shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser; and

(b) books and records required to be made under (1)(b) through (1)(k) must be maintained and preserved in an easily accessible place for a period of not less than seven years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(3) Notwithstanding other record preservation requirements of this rule, the following records copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory

services:

(a) records required to be preserved under:

(i) sections (a) (3), (a) (7) - (10), (a) (14) - (15), (b) and (c) inclusive, of SEC rule 204-2 of the Investment Advisers Act of 1940 (17 CFR 275.204-2 (1998));

(ii) subsection (1) (i) through (k) of this rule; and

(b) the records or copies required under the provision of (1) (k) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. These records will be maintained for the period described in (2) (b).

(4) To the extent that the Securities and Exchange Commission promulgates changes to the rules of the Investment Advisers Act of 1940 incorporated by reference into these rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(5) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with the state's record keeping requirements.

AUTH: Sec. 30-10-107, MCA
IMP: Sec. 30-10-201, MCA

4. The rules proposed for repeal provide as follows:

6.10.122. BROKER-DEALER BOOKS AND RECORDS found at page 6-2925 of the Administrative Rules of Montana (ARM).

AUTH: 30-10-107, MCA
IMP: 30-10-201, MCA

6.10.123. INVESTMENT ADVISER BOOKS AND RECORDS found at page 6-2926 of the ARM.

AUTH: 30-10-107, MCA
IMP: 30-10-201, MCA

5. REASON: Amendment of Rule 6.10.101 is necessary to reconcile references to repealed rules and new rules, and to eliminate a redundant provision which is included in 6.10.103.

Amendment of 6.10.103 is necessary to recognize revisions

of the National Association of Securities Dealers, Inc.'s Conduct Rules and to include a sales material filing exemption for certain types of securities, as required by the National Securities Markets Improvements Act.

Amendment of 6.10.111 is necessary to revise an error in the earlier adopted version of the rule.

Amendment of 6.10.120 is necessary to conform the administrative rules to the provisions of NSMIA, which defines SEC rule 506 offerings as "federal covered securities" and limits state authority to treat rule 506 offerings as subject to or exempt from state registration requirements. New rule VIII establishes provisions pertaining to notice filing for rule 506 offerings. The amendment is also necessary to recognize revisions to the National Association of Securities Dealers, Inc.'s Conduct Rules.

Amendment of 6.10.127 is necessary to conform the administrative rules to the provisions of NSMIA, which assigns regulatory authority of investment advisers to the states and federal covered investment advisers to the Securities and Exchange Commission. The rule as formerly written would apply only to those advisers registered by the state to conduct business in Montana, whereas SEC registered advisers would not be covered. NSMIA permits states to regulate federal covered advisers to the extent that their conduct is fraudulent or deceptive, whereas state registered advisers may have their registrations revoked for "unethical conduct." The amendment provides guidelines for "unethical" conduct by state registered advisers and also establishes the type of conduct that may be deemed fraudulent or deceptive by the commissioner with respect to federal covered investment advisers. The amendments also include revisions to the model rules as promulgated by the North American Securities Administrators Association in order to promote uniform standards of conduct by investment advisers among the states.

New rule I is necessary to establish net capital requirements which hold non-NASD member broker-dealers to the same capitalization as NASD members. Also, the capitalization reporting and capitalization decline reporting requirements are necessary to protect the investing public by alerting the commissioner to the problems of financially challenged broker-dealers and establishing legal constraints against broker-dealers that operate with inadequate capitalization.

New rule II is necessary to clarify the means by which federal covered advisers may notice file with the state, as NSMIA preempts registration requirements with regard to this class of advisers.

New rules III and IV are necessary to establish standards which are uniform with other states and maintain financial standards for advisers registered with the states. Amendments to the Investment Advisers Supervision and Coordination by NSMIA which limits the application of state law to investment advisers whose principal place of business is in another jurisdiction. A state is precluded from enforcing laws that

require an investment adviser to maintain higher minimum net capital or post any bond in addition to any that is required under the laws of the state in which it maintains its principal place of business. The provisions are limited to state registered investment advisers and seek to apply standards applicable to advisers located in other states and to protect investors from advisers whose capitalization is low or declining.

New rule V is necessary because NSMIA preempted state authority to require registration of investment company securities and establishment of notice filing requirements is necessary to clarify investment company compliance requirements under the Montana Securities Act.

New rule VI is necessary to reconcile redundant filing requirements pertaining to consent to service of process previously filed with the commissioner.

New rule VII is necessary to clarify notice filing obligations for rule 506 offerings in this state. As mentioned above, NSMIA preempts state authority to require registration and notice filing requirements are not specifically addressed in the Securities Act of Montana, thus clarification of specifics requirements is necessary.

New rule VIII is necessary to clarify books and records requirements under the Securities Act of Montana and to conform Montana law to the mandate by the United States Congress that state law may not require different or additional books and records to be kept by broker-dealers than those required under the Securities Exchange Act of 1934.

New rule IX is necessary to clarify and standardize books and records requirements for state registered investment advisers. Jurisdiction of a state over books and records requirements was limited by NSMIA to those investment advisers which maintain their principal place of business in that state. In order to facilitate examination and inspection of state registered advisers, NASAA adopted a uniform standard pertaining to recordkeeping obligations of those advisers. The standard, if adopted in each state will promote uniformity among state registered investment advisers, as well as protect the interests of investors.

Repeal of 6.10.122 is necessary because NSMIA preempts state books and records requirements for broker-dealers which are different from or are in addition to requirements established pursuant to the Securities Exchange Act of 1934. New rule IX incorporates federal books and record requirements into these rules.

Repeal of 6.10.123 is necessary because NSMIA assigned sole jurisdiction over investment advisers to the states, while reserving jurisdiction over federal covered advisers to the SEC. States must adopt comprehensive, uniform records requirements in order to facilitate fair and adequate examination of investment advisers in the states.

6. 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 Elizabeth A. O'Halloran, State Auditor's Office, P.O. Box 4009, Helena, Montana, 59604-4009, and must be received no later than November 6, 1998.

7. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the office no later than 5:00 p.m., October 20, 1998, to advise us as to the nature of the accommodation needed. Please contact Elizabeth A. O'Halloran, telephone 406-444-2040; TDD telephone 406-444-3246; State Auditor's Office, P.O. Box 4009, Helena, Montana, 59604-4009.

8. Mary McCue has been designated to preside over and conduct the hearing.

9. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.


MARK O'KEEFE, State Auditor
and Commissioner of Securities

By:


David L. Hunter

Deputy Securities Commissioner

By:


Russell B. Hill
Rules Reviewer

Certified to the Secretary of State this 14th day of September, 1998.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT,
amendment of rules pertaining	)	REPEAL AND ADOPTION OF RULES
to dentist mandatory CPR,	)	PERTAINING TO THE PRACTICE
screening panel, dental hygiene	)	OF DENTISTRY, DENTAL HYGIENE
mandatory CPR, continuing edu-	)	AND DENTURITRY
cation in anesthesia, require-)	
ments and restrictions,)	
denturist applications,)	
denturist examination,)	
denturist intern, renewal,)	
requirements and restrictions,)	
inspections-sanitary standards,)	
and screening panel; repeal of)	
rules pertaining to out-of-)	
state applicants; and adoption)	
of new rule pertaining to 90-)	
day guarantee)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 24, 1998, the Board of Dentistry proposes to amend rules pertaining to the practice of dentistry, dental hygiene and denturistry.

2. The proposed amendment of ARM 8.16.409, 8.16.411, 8.16.608, 8.16.907, 8.16.1003, 8.17.403, 8.17.404, 8.17.405, 8.17.702, 8.17.706, 8.17.802 and 8.17.812 will read as follows: (new matter underlined, deleted matter interlined)

"8.16.409 DENTIST MANDATORY CPR (1) will remain the same.

(2) A dentist who has a current advanced cardiac life support (ACLS) card may submit proof of such as a valid substitute for a current CPR certificate.

(2) will remain the same, but will be renumbered (3)."

Auth: Sec. 37-1-131, 37-4-205, 37-4-307, MCA; IMP, Sec. 37-4-307, 37-4-511, MCA

REASON: This amendment is being proposed to notify licensees that ACLS may be used for meeting the CPR requirement for an active dentist.

"8.16.411 SCREENING PANEL (1) The board screening panel shall consist of ~~the senior member dentist appointment, one additional dentist three dentists,~~ one dental hygienist, one public member, ~~and one denturist and the non-voting member.~~ The chairman may reappoint screening panel members, or replace

screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-1-307, MCA

REASON: This amendment is being proposed to delete the language that the non-voting member be on the screening panel. This requirement was removed during the 1997 Legislative session.

"8.16.608 DENTAL HYGIENIST MANDATORY CPR (1) will remain the same.

(2) A dental hygienist who has a current advanced cardiac life support (ACLS) card may submit proof of such as a valid substitute for a current CPR certificate."

Auth: Sec. 37-1-131, 37-4-205, 37-4-406, MCA; IMP, Sec. 37-4-406, MCA

REASON: This amendment is being proposed to notify licensees that ACLS may be used for meeting the CPR requirement for an active dental hygienist.

"8.16.907 REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) through (1)(f) will remain the same.

(g) advanced cardiac life support.

(h) basic life support.

(2) Continuing education may include presentation of lectures and/or participation courses related to subject matter(s) listed in ARM 8.16.907(1)(a) through (g).

(a) Three credits for each 60 minutes of initial presentation will be allowed for lecture and/or participation courses.

(b) One credit for each 60 minutes will be allowed for repeat lectures from material previously presented."

Auth: Sec. 37-1-131, 37-4-205, 37-4-511, MCA; IMP, Sec. 37-4-511, MCA

REASON: This amendment is being proposed to provide continuing education credits to licensees for time spent preparing and presenting lectures and participation courses. Licensees were not previously granted continuing education credits for this type of activity and the Board feels credit should be granted for the time spent in preparation and presentation of industry-related courses.

"8.16.1003 REQUIREMENTS AND RESTRICTIONS (1) through (3)(e) will remain the same.

(4) Continuing education may include presentation of lectures and/or participation courses related to subject matter(s) listed in ARM 8.16.1002(1)(a)(i) through (xviii).

(a) Three credits for each 60 minutes of initial presentation will be allowed for lecture and/or participation courses.

(b) One credit for each 60 minutes will be allowed for repeat lectures from material previously presented."

Auth: Sec. 37-1-319, 37-4-205, MCA; IMP, Sec. 37-1-306, 37-4-205, MCA

REASON: This amendment is being proposed to provide continuing education credits to licensees for time spent preparing and presenting lectures and participation courses. Licensees were not previously granted continuing education credits for this type of activity and the Board feels credit should be granted for the time spent in preparation and presentation of industry-related courses.

"8.17.403 DENTURIST APPLICATIONS (1) will remain the same.

(2) The application fee and required documentation must be submitted to the ~~Board of Dentistry, Arcade Building, 111 N. Jackson, Helena, Montana 59620-0513~~ at least 20 days prior to the examination date.

(a) will remain the same."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-303, 37-29-304, 37-29-306, MCA

REASON: The Board feels the address is not needed in the rule because when the Board's address changes, the rule must be changed. The Board's address is provided on the application and is therefore always available.

"8.17.404 DENTURIST EXAMINATION (1) through (4) will remain the same.

(5) The ~~department board~~ shall retain the applicant's examination papers and scores as a part of the permanent record of the applicant.

(6) and (7) will remain the same."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-305, MCA

REASON: This amendment is being proposed to allow the Board to maintain reasonable records on examinations given by Board-approved examination administrators.

"8.17.405 DENTURIST INTERN (1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in 37-29-303(2)-(4)(1), MCA.

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

Auth: Sec. 37-1-131, 37-29-201, 37-29-303, MCA; IMP, Sec. 37-29-303, MCA

REASON: This amendment is being proposed to correct the citation of the statute.

"8.17.702 RENEWAL (1) will remain the same.

(2) A denturist who has a current advanced cardiac life support (ACLS) card may submit proof of such, as a valid substitute for a current CPR certificate.

(2) and (3) will remain the same, but will be renumbered (3) and (4).

~~(4)~~ (5) A license revoked for nonpayment of renewal fee may be reinstated within three five years of revocation if:

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

Auth: Sec. 37-1-141, 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

REASON: This amendment is being proposed to notify denturists that they may use ACLS for meeting the requirements for a current CPR card required by the Board in order to remain on active status. Subsection (5) is being amended so it does not conflict with ARM 8.17.710.

- "8.17.706 REQUIREMENTS AND RESTRICTIONS (1) through (3) (b) will remain the same.
(c) unproven modalities or experimental techniques; and
(d) basic science courses; and
(e) ~~basic life support (CPR).~~

(4) Continuing education may include presentation of lectures and/or participation courses related to subject matter(s) listed in ARM 8.17.705(1) (a) through (x).

(a) Three credits for each 60 minutes of initial presentation will be allowed for lecture and/or participation courses.

(b) One credit for each 60 minutes will be allowed for repeat lectures from material previously presented."

Auth: Sec. 37-1-319, 37-29-201, MCA; IMP, Sec. 37-1-306, 37-29-306, MCA

REASON: This amendment is being proposed to provide continuing education credits to licensees for time spent preparing and presenting lectures and participation courses. Licensees were not previously granted continuing education credits for this type of activity and the Board feels credit should be granted for the time spent in preparation and presentation of industry-related courses.

~~"8.17.802 INSPECTIONS - SANITARY STANDARDS (1) A facility may be inspected by either a designated inspector or one or more members of the board.~~

~~(2) A copy of the inspection form must be signed by the person conducting the inspection and the denturist or his office staff and dated, with a copy to the denturist with original to be placed in the board file.~~

~~(3) New facilities shall be inspected prior to opening for business.~~

~~(4) All violations noted during an inspection must be corrected within 30 days of the inspection date.~~

~~(5) will remain the same, but will be renumbered (1).~~

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-311, 37-29-401, MCA

REASON: This amendment is being proposed to delete the requirement for an initial inspection of a denturist office prior to licensure. The Board no longer feels this requirement is necessary.

"8.17.812 SCREENING PANEL (1) The board screening panel shall consist of the senior member dentist appointment, ~~one additional dentist three dentists~~, one dental hygienist, one public member, and one denturist ~~and the non-voting member~~. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-4-205, MCA; **IMP**, Sec. 37-1-307, MCA

REASON: This amendment is being proposed to delete the language that the non-voting member be on the screening panel. This requirement was removed during the 1997 Legislative session.

3. The Board is proposing to repeal ARM 8.16.402B (Auth: Sec. 37-1-319, 37-4-205, MCA; **IMP**, Sec. 37-4-301, MCA), located at page 8-504, Administrative Rules of Montana, and 8.16.605C (Auth: Sec. 37-4-205, MCA; **IMP**, Sec. 37-1-304, MCA), located at pages 8-512 and 8-512.1, Administrative Rules of Montana. The rules are being repealed because the Board has implemented licensure by credentialing under ARM 8.16.412 and 8.16.605A and these rules are now redundant.

4. The new rule will read as follows:

"I NINETY-DAY GUARANTEE (1) The board interprets 37-29-404(2), MCA, "denturist services" to be new work completed in that office. The 90-day guarantee starts from the day of final insertion."

Auth: Sec. 37-29-201, MCA; **IMP**, Sec. 37-29-404, MCA

REASON: This rule is being proposed because the board desires to clarify when the 90-day guarantee period begins and ends in compliance with 37-29-404, MCA.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoption in writing to the Board of Dentistry, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 22, 1998.

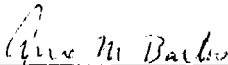
6. If a person who is directly affected by the proposed amendments, repeals and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 22, 1998.

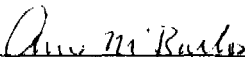
7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 112 based on the 1116 licensees in Montana.

8. Persons who wish to be informed of all Board of Dentistry administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3745.

BOARD OF DENTISTRY
THAD LANGFORD, DDS, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 14, 1998.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC
amendment of ARM 17.56.1001	)	HEARING ON PROPOSED
providing a tank fee schedule	)	AMENDMENT OF RULE AND
and adoption of NEW RULE 1	)	ADOPTION OF NEW RULE 1
providing for upgrading of)	
existing UST systems	)	(Underground Storage
	)	Tanks)

TO: All Interested Persons

1. On October 15, 1998, at 10:30 a.m., the Department will hold a public hearing in the Lewis Conference Room of the Phoenix Building, 2209 Phoenix Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-captioned rules.

The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., October 1, 1998, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. The rule as proposed to be adopted, appears as follows:

RULE 1. ISSUANCE OF COMPLIANCE TAGS AND CERTIFICATES

(1) The department shall issue to an owner or operator of an underground storage tank that meets the requirements of ARM 17.56.201 or ARM 17.56.202(1)(a) or (1)(b) a compliance tag that indicates the owner or operator has satisfied the applicable requirements. The compliance tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if the fill pipe is inaccessible.

(2) Simultaneously with the issuance of the compliance tag, the department shall issue a compliance certificate that lists each underground storage tank that satisfies the requirements of ARM 17.56.201 or ARM 17.56.202(1)(a) or (1)(b). The owner or operator shall post the certificate at the applicable place of business in a place where the certificate can be read by department and implementing agency employees, regulated substance distributors, and employees of the business.

(3) After December 22, 1998, no person may deposit a regulated substance into an underground storage tank unless that tank:

(a) has a compliance tag visibly affixed that was issued by the department pursuant to (1); or

(b) the underground storage tank is listed on a certificate issued by the department pursuant to (2).

(4) The department shall issue a replacement compliance tag or a replacement compliance certificate as necessary to an owner or operator after the submission of satisfactory evidence that the compliance tag or the compliance certificate has been

lost or destroyed.

(5) Compliance tags and compliance certificates are subject to revocation by the department if the department determines that the owner or operator is no longer in compliance with the requirements of ARM 17.56.201 or ARM 17.56.202(1)(a) or (1)(b).

AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA

3. The rule as proposed to be amended appears as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.56.1001 TANK FEE SCHEDULE (1) Owners or operators of underground storage tanks which have not been closed in accordance with ARM 17.56.702 shall annually pay a tank an annual registration fee to the department for each underground storage tank owned or operated by the owner or operator. An owner or operator who has not paid the applicable tank registration fee within 90 days of receipt of the registration fee invoice from the department shall pay to the department, in addition to the applicable registration fee, a late registration fee equal to one half the applicable registration fee. In order to schedule annual renewal dates, the department may prorate the registration fee to cover registration periods not equal to twelve months.

(2) Owners or operators of the following underground storage tanks shall pay the following annual registration fees in accordance with (1) of this rule before the department will issue a tank tag or certificate under (3) or (4) of this rule:

(2) (a) and (b) Remain the same.

(3) Upon receipt of the appropriate registration fee, the department shall issue a tag for the tank for which the fee was paid. The tag shall show that the applicable fee has been paid by the owner or operator. The tag must be attached by the owner or operator to the tank's fill pipe, or to some other part of the tank in plain view if the fill pipe is not accessible.

(4) (3) Upon receipt of the appropriate registration fee, the department shall also issue a facility registration certificate listing each underground storage tank for which the fee was paid. The owner or operator of the tank shall visibly post the certificate at the site of the tank for which the certificate was issued or at the owner's or operator's place of business, if posting at the tank site is physically impossible or if the certificate would not otherwise be readily visible to department or implementing agency employees. Certificates shall be shown to department and implementing agency employees upon request.

(5) After March 31 of each calendar year, no person shall deposit a regulated substance into an underground storage tank for which a fee is required to be paid unless the tag issued for that tank under (3) of this rule is attached to the tank and is visible to the person depositing the regulated substance or unless the registration certificate issued for that tank under

~~(4) of this rule has been read and identified by the person depositing the regulated substance into the tank.~~

~~(6) (4) The department shall issue a replacement tank tag or a replacement registration certificate or both to an owner or operator after submission of satisfactory evidence who proves by evidence considered satisfactory by the department that the tag, certificate or both has been lost or destroyed. If the damaged tag is not available for department inspection, the owner or operator shall provide an affidavit showing proof of payment of the applicable fee and setting forth the facts of loss or destruction.~~

AUTH: 75-11-505, MCA; IMP: 75-11-505, MCA

4. The Department is proposing these amendments and NEW RULE I to implement Sections 75-11-505, MCA, of the Montana Underground Storage Tank Act. Section 75-11-505(3) and (4), MCA, provide that the Department may adopt rules concerning release prevention and standards for design, construction, and installation of underground storage tanks. The proposed NEW RULE I is necessary to provide a mechanism through which the Department can assure that regulated substances are deposited only into underground storage tanks that meet the December 22, 1998, upgrade requirements. The proposed NEW RULE I is reasonable because the Department has no current method to easily restrict the delivery of regulated substances to underground storage tanks that are not in compliance with the December 22, 1998, upgrade requirements. The department believes a visible tag and certificate system will provide the simplest and the least intrusive method to indicate that an underground storage tank meets the relevant upgrade requirements and may therefore remain in operation after the December 22, 1998, federally mandated upgrade deadline.

Section 75-11-505(5), MCA, provides that the Department may develop a schedule of fees to defray state and local costs of implementing an underground storage tank program. The proposed amendment of ARM 17.56.1001 does not change the current fee structure. The amendment eliminates the requirement for issuance of a registration tag as well as the requirement for verification of fee payment before placing product in the tank. The department believes this amendment is reasonable because it will promote one stop licensing of underground storage tanks. The amendment is also reasonable because it will eliminate potential confusion that might exist if two tags were required in order to obtain delivery of product.

The first alternative considered by the Department was to leave the current system of registration tags in place and to not implement a system of compliance tagging. The Department rejected this alternative because the Department currently has no fair and efficient method to ensure that regulated substances are not placed in underground storage tanks that do not comply with the December 22, 1998, upgrade requirements. Failure to

enforce these requirements would be unfair to the substantial population of underground storage tank owners and operators who have complied with the upgrade requirements, would prolong the period during which Montana's resources are at risk for contamination from leaking underground storage tanks, and would place owners and operators who continue to operate tanks not in compliance with the upgrade requirements in jeopardy of losing reimbursement from the Petroleum Tank Release Cleanup Fund.

The second alternative considered by the Department was a double tagging system under which owners and operators of underground storage tanks would have to obtain both registration tags and compliance tags. Under this system, it would be illegal to place regulated substances into an underground storage tank that lacked either a registration tag or a compliance tag. The Department rejected this alternative as overly burdensome and not compatible with the one-stop licensing program, which may be expanded to include underground storage tanks in 1999.

5. Interested persons may submit their data, views or arguments concerning the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Debbie G. Allen, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, no later than October 23, 1998.

6. G. Martin Tuttle has been appointed to preside over and conduct the hearing.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

John F. North
John F. North,
Rule Reviewer

By Mark A. Simonich
MARK A. SIMONICH, Director

Certified to the Secretary of State September 14, 1998.

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

In the matter of the) NOTICE OF PUBLIC HEARING
amendment of 37.70.406,) ON PROPOSED AMENDMENT
37.70.407, 37.70.601 and)
37.70.901 pertaining to low)
income energy assistance)
program)

TO: All Interested Persons

1. On October 22, 1998, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules pertaining to low income energy assistance program.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on October 13, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.406 TABLES OF INCOME STANDARDS (1) The income standards in the table in (2) below are the ~~1997~~ 1998 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 125% of the ~~1997~~ 1998 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1997~~ 1998 poverty level are ineligible for low income energy assistance.

(2) Annual income standards for all households:

Family Size	Poverty Guideline	125 Percent	150 Percent
One	\$ 7,890	\$ 9,863	\$ 11,835
Two	10,610	13,263	15,915
Three	13,330	16,663	19,995

Four	16,050	20,063	24,075
Five	18,770	23,463	28,155
Six	21,490	26,863	32,235
Additional member-add	2,720	3,400	4,080

One	8,050	10,063	12,075
Two	10,850	13,563	16,275
Three	13,650	17,063	20,475
Four	16,450	20,563	24,675
Five	19,250	24,063	28,875
Six	22,050	27,563	33,075
Additional member add	2,800	3,500	4,200

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) through (2) remain the same.

(a) the household's annual gross income is between 125% and 150% of the 1997 1998 U.S. government office of management and budget poverty level for the particular household size;

(2)(b) through (3) remain the same.

(a) the household's annual gross income is between 125% and 150% of the 1997 1998 U.S. government office of management and budget poverty level for the particular household size;

(3)(b) through (3)(x) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD MATRICES (1) through (2)(a) remain the same.

(b) A household whose gross annual income is above 125% of the 1996 1998 poverty level but is eligible for benefits because of dependent care deductions and/or medical and dental deductions provided in ARM 37.70.407(3) and (4) will receive a benefit which is 40% of the maximum benefit.

(2)(c) remains the same.

(d) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

~~(i) SINGLE-FAMILY~~

	NATURAL						
#-BEDROOMS	GAS	ELECTRIC	PROPANE	FUEL-OIL	WOOD	COAL	

ONE	\$279	\$417	\$401	\$321	\$255	\$233
TWO	405	606	582	466	371	339
THREE	552	826	794	635	506	462
FOUR	759	1,137	1,092	874	696	636

~~(ii) MULTI-FAMILY~~

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$236	\$353	\$339	\$341	\$216	\$197
TWO	355	531	510	513	325	297
THREE	521	779	749	753	477	435
FOUR	608	911	875	880	557	509

~~(iii) MOBILE HOME~~

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$235	\$351	\$338	\$203	\$215	\$197
TWO	343	514	494	414	315	287
THREE	455	681	654	549	417	381
FOUR	508	760	730	613	466	425

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$318	\$ 471	\$ 492	\$ 375	\$282	\$257
TWO	463	684	716	546	410	374
THREE	630	933	975	744	558	510
FOUR	867	1,283	1,341	1,023	768	701

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$269	\$ 398	\$ 416	\$ 399	\$238	\$217
TWO	405	600	627	601	358	327
THREE	525	880	920	882	526	480
FOUR	695	1,028	1,075	1,030	614	561

(iii) MOBILE HOME

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$268	\$397	\$415	\$332	\$237	\$217

TWO	392	580	606	485	347	317
THREE	520	769	804	643	460	420
FOUR	580	858	897	717	514	469

(2) (e) remains the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.901. EMERGENCY ASSISTANCE (1) through (2) (b) remain the same.

(3) ~~Amount of assistance and method of payment:~~

~~(a) Emergency assistance payments will may be made on behalf of the eligible household for actual costs necessary to alleviate the emergency up to \$250 per year. However, no emergency assistance payments will be made for costs which are the liability of a third party, unless the household assigns to the department in writing its rights to such third party payments. Emergency assistance payments are limited to a total of \$250 per household in a 12 month period commencing on the first of October immediately preceding the date of the request for emergency assistance, except as follows:~~

~~(a) An eligible household may receive emergency assistance payments which total more than \$250 in a 12 month period if the department determines before the services are rendered that services are necessary to alleviate an emergency and authorizes emergency assistance payments totaling more than \$250 before the services are rendered.~~

~~(b) An eligible household may receive emergency assistance payments which total more than \$250 in a 12 month period without prior authorization as required in (3) (a), if services are necessary to alleviate a life threatening emergency and the department is notified of the type and actual cost of services within 48 hours after the services are rendered.~~

(4) through (5) (b) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-3-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) helps low income individuals pay the cost of heating their homes. It is funded primarily by a federal Department of Health and Human Services (HHS) block grant. The Department's administrative rules governing LIEAP formerly were in ARM Title 46, Chapter 13. They were originally adopted by the Department of Social and Rehabilitation Services which was incorporated into a newly created agency, the Department of Public Health and Human Services (DPHHS), in 1995. The administrative rules of several agencies which were merged into DPHHS are contained in various titles of the ARM but are gradually being transferred to the new DPHHS title, Title 37. As part of this process, the LIEAP rules

were recently transferred to Title 37, Chapter 70.

Eligibility for LIEAP benefits is determined by comparing the household income of applicants to the income standards contained in ARM 37.70.406. The standards in ARM 37.70.406 are based on the poverty levels published annually by the U.S. Office of Management and Budget (OMB).

The amendment of ARM 37.70.406(1) and (2), 37.70.407(2)(a) and (3)(a), and 37.70.601(2)(b) is necessary to provide that the 1998 OMB poverty levels will be used to determine eligibility rather than the 1997 poverty levels.

In ARM 37.70.601, the amendment of figures in the benefit award matrices is necessary to reflect U.S. Department of Energy fuel cost projections for 1998-99 and to ensure that benefit amounts are consistent with the Department's LIEAP budget for 1998-99.

Additionally, ARM 37.70.901 pertaining to LIEAP emergency assistance is being amended to increase the maximum value of payments which can be made to an eligible household in one year and to provide that payments in excess of this maximum can be made if certain conditions are met. ARM 37.70.901(3)(a) currently states that emergency assistance payments are limited to \$250 per household per year. The rule as proposed to be amended will provide that emergency assistance payments in excess of \$250 per year can be made if prior authorized by the Department, or without prior authorization if costs were incurred to correct a life-threatening emergency and the contractor notifies the Department of the situation within 48 hours after the contractor provides services to the eligible household. The Department has chosen the option of making these exceptions to the \$250 maximum payment because the \$250 limit has been in effect for a number of years, and inflation has decreased the purchasing power of \$250 to the point where it is not sufficient to meet some emergency heating problems.

Also, ARM 37.70.901(3) is being amended to specify that in cases where the \$250 per year limit still applies, the Department will use the federal fiscal year which commences October 1 and ends on September 30 to determine total payments per year. The Department has always operated the LIEAP program on the federal fiscal year rather than the calendar year or the state fiscal year which commences on July 1. Therefore the new language specifying that the \$250 limit on payments applies to the twelve-month period commencing on October 1 immediately preceding the date of application for emergency assistance is being added for clarification and does not indicate a change in policy.

4. These rules will be applied effective October 1, 1998, because LIEAP operates on the federal fiscal year which runs

from October 1 through September 30. The early application of the amended rules will benefit LIEAP participants due to increases in the income and benefit levels used to determine eligibility and amount of assistance.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than October 26, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Wm. Plung
Director, Public Health and
Human Services

Certified to the Secretary of State September 14, 1998.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed) NOTICE OF PUBLIC HEARING
Amendment to Rule 38.5.2502)
Pertaining to Responsibility)
for the Expense of Maintaining)
Water Utility Service Pipes.)

TO: All Interested Persons

1. On October 29, 1998, at 9:00 a.m., in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposal to amend Rule 38.5.2502(5) which states in relevant part that a private water utility is responsible for some of the cost of maintaining water service pipelines from the main to the customer property line. This amendment is described in the following paragraphs. Anyone needing accommodations for physical, hearing, or sight impairment in order to attend and participate in the hearing should contact the PSC Secretary at (406) 444-6199 at least one week prior to hearing.

2. The rule proposed to be amended provides as follows:

38.5.2502 APPLICATION FOR WATER SERVICE

(1) through (4) remain the same.

(5) When an application for new water service has been accepted, the utility at its own expense will tap the main and furnish corporation cock, and clamp when necessary, and any other material used or labor furnished in connection with the tapping of the main. All expense of laying and maintaining the service pipes from the mains to the premises of the consumer must be borne by the consumer. ~~The consumer of water service is responsible for the cost of constructing water service pipelines from the main to his premises and for maintaining water service pipelines from his property line to his premises. The private water service provider is responsible for the cost of maintaining water service pipelines from the main to the consumer's property line, except that the consumer shall pay for pipe and other supplies used in maintaining water service lines between the main and his property line. The utility shall assist consumers and/or excavation contractors in locating water service mains and lines prior to the consumer beginning excavation in order to avoid water service interruptions due to broken mains and lines. The service pipe must be laid below street grade, on the premises of the consumer and at a standard depth designated by the utility to prevent freezing. A curb cock and curb box of~~

approved pattern must be installed by the consumer at a point designated by the utility. Whenever a tap is made through which regular service is not immediately desired, the consumer will bear the entire expense of tapping, subject to a refund whenever regular service is begun.

(6) and (7) remain the same.

AUTH: Sec. 69-3-102 and 69-3-103, MCA; IMP: Sec. 69-3-102, MCA.

3. Rationale: The 1997 Montana legislature repealed section 69-4-511, MCA. Sec. 6, Ch. 179, L. 1997. Section 69-4-511, MCA, codified Section 1, Chapter 184, Montana Session Laws 1987. Section 2, Chapter 184, Montana Session Laws 1987, not codified, required a change to 38.5.2502(5) (the underlined and interlined language above), to implement Section 1, Chapter 184, Montana Session Laws 1987. The repeal of section 69-4-511, MCA, repealed Section 2, Chapter 184, Montana Session Laws by operation of law. See section 1-2-208(2), MCA. Therefore, the PSC is no longer required by the legislature to maintain the existing language at ARM 38.5.2502(5). The PSC has decided to delete the language at ARM 38.5.2502(5) that was required by the legislature, and, pending possible further review, to make customers of private water utilities responsible for all expenses of maintaining water service pipes from the main to the premises, as was the case prior to October 1, 1987 (the effective date of Chapter 184, Montana Session Laws 1987).

4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than October 29, 1998. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-98.3.1-RUL.")

5. The Public Service Commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The bill sponsor notification requirements of section 2-4-302, MCA, do not apply.

8. The PSC maintains a list of persons interested in PSC rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the PSC, providing a

name, address, and description of the subject or subjects which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. In addition, persons may be placed on the list by completing a request form at any rules hearing held by the PSC.



Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 14, 1998.



Reviewed by Robin McHugh

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of rules pertaining to)	OF RULES PERTAINING TO THE
outfitter applications and)	OUTFITTING INDUSTRY
renewals, guide or professional)	
guide licenses and qualifica-)	
tions, safety provisions and)	
unprofessional conduct)	

TO: All Interested Persons:

1. On April 16, 1998, the Board of Outfitters published a notice of public hearing on the proposed amendment of rules pertaining to the outfitting industry at page 816, 1998 Montana Administrative Register, issue number 7.

2. The Board is not adopting the proposed amendments to ARM 8.39.508, 8.39.512, 8.39.704 and 8.39.709. The Board has amended ARM 8.39.505, 8.39.515 and 8.39.518 exactly as proposed, and has amended ARM 8.39.514 as proposed, but with the following changes:

"8.39.514. LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE

(1) will remain the same as proposed.

(2) A new, first time applicant who has not previously been licensed with the Montana board of outfitters must submit proof of current basic first aid or cardiopulmonary resuscitation certification no later than 90 days after the date of application.

(3) A new applicant who has previously been licensed with the Montana board of outfitters must submit proof of current basic first aid or cardiopulmonary resuscitation certification with his or her application.

(2) and (3) will remain the same as proposed, but will be renumbered (4) and (5).

(a) through (d) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-301, 37-47-307, MCA

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

8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE

COMMENT NO. 1: One commentor voiced support for the rule but suggested that the rule include an amendment allowing outfitters who employ more than 25 guides to receive five emergency guide licenses. One commentor opposed the rule as it was commentor's belief that such action results in less than adequate service to the clients. Commentor states that outfitters should learn to plan ahead for such contingencies.

RESPONSE: The Board understands both comments regarding

the use of emergency guide licenses, however, the Board believes that all outfitters face the same difficulty acquiring guides and that the difficulty is not compounded simply because an outfitter hires more guides. If an outfitter anticipates needing more emergency guide licenses, perhaps the outfitter should plan ahead for such a contingency. The comment is rejected.

8.39.515 LICENSURE- GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS

COMMENT NO. 2: One commentor supported the amendment and did so based on the rationale that guides should only be expected to possess the skills actually needed for the type of services provided rather than the expectation that guides be knowledgeable in all types of services.

RESPONSE: The Board accepts the comment as it supports the rule as amended.

4. The remaining comments relate to those provisions of the notice which proposed to amend 8.39.508, 8.39.512, 8.39.514, 8.39.704, and 8.39.709 removing the cardiopulmonary resuscitation certification and basic first aid requirements for licensure as a guide, professional guide or outfitter. The Board received the following nine comments:

COMMENT NO. 3: Twelve commentors opposed deletion of the first aid requirement as such an amendment was against the Board's mandate to protect public health, safety, and welfare.

COMMENT NO. 4: One commentor stated that such an amendment demonstrated that the Board had vacated public protection in favor of protecting business self-interests.

COMMENT NO. 5: One commentor stated that the message sent by such a rule is that client welfare is not protected, only income potential.

COMMENT NO. 6: One commentor stated that the primary reason for discussing the amendment removing the first aid requirement in the past was the need to hire guides on an emergency basis and that first aid certification stood in the way of that process. Now that the emergency guide rule is proposed, the first aid requirement is no longer a barrier.

COMMENT NO. 7: Ten commentors stated that the first aid requirement was an essential component of the qualification and licensure standards which the Board is supposed to implement. One commentor went even further to state that basic first aid is not sufficient and that advance training should be required, perhaps in multi-media first aid services.

COMMENT NO. 8: Three commentors supported the amendment stating that it was commentors' belief that most outfitters and guides would voluntarily secure first aid training and,

therefore, public safety would be adequately protected.

COMMENT NO. 9: One commentor suggested proceeding with the amendment, but that the Board should publish a pamphlet containing basic first aid and require the supervising outfitter to review the pamphlet with guides and provide documentation that the review occurred.


COMMENT NO. 10: During the public hearing, Chairman Cunningham made a technical suggestion that a space should be added to the temporary guide license application so the guide may inform the Board that the guide wishes to seek permanent licensure. Cunningham believed this would "shorten the interim period, simplify the board process, and reduce paper work."

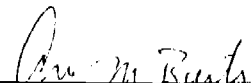
RESPONSE: Based on the comments received, the Board has determined that it is appropriate to revisit the issue of CPR/First Aid requirements and has decided not to proceed with those amendments as proposed. This issue will, however, be reviewed at the next scheduled Board meeting.

COMMENT NO. 11: The Montana Legislative Services division submitted a comment that the statement of necessity for ARM 8.39.514 was not adequate as stated in the notice of proposed rulemaking. Therefore, the Board must publish a new statement in the adoption notice.

RESPONSE: The Board rejects this comment as it feels the statement of reasonable necessity is adequate to support the amendment, but will review the statement in a future rulemaking procedure.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 14, 1998.

BEFORE THE BUILDING CODES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) NOTICE OF AMENDMENT, REPEAL
repeal and adoption of rules) AND ADOPTION OF RULES
pertaining to the Building) PERTAINING TO THE BUILDING
Codes Division) CODES DIVISION

TO: All Interested Persons:

1. On May 28, 1998, the Building Codes Division of the Department of Commerce published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the Building Codes Division, at page 1310, 1998 Montana Administrative Register, issue number 10.

2. The Department has amended 8.70.102, 8.70.103, 8.70.104, 8.70.303, 8.70.409, 8.70.566, 8.70.568, 8.70.569, 8.70.601, 8.70.604, 8.70.612, and 8.70.1503, repealed 8.70.107, 8.70.201, 8.70.204, 8.70.205, 8.70.206, 8.70.207, 8.70.211, 8.70.212, 8.70.213, 8.70.301, 8.70.567 and adopted Rule VI (8.70.219) exactly as proposed. Rules 8.70.101, 8.70.105, 8.70.108, 8.70.110, 8.70.202, 8.70.208, 8.70.302, 8.70.407, and 8.70.1504, Rule I (8.70.214), Rule II (8.70.215), Rule III (8.70.216), Rule IV (8.70.217), and Rule V (8.70.218) are amended and adopted as proposed with the following changes: (authority and implementing sections will remain the same as proposed)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (39) will remain the same as proposed.

(40) The following appendix chapters of the Uniform Building Code ~~will not be enforced by the division, but are adopted for use by a local governments, in part or in whole, if the local government has specifically provided for their adoption. These appendix chapters are not adopted for use by the division.~~

(40)(a) through (43) will remain the same as proposed."

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) will remain the same as proposed.

(1)(a) The fees contained in section 115 and Table 1-A shall be deleted and replaced with the following:

--requested inspection fee - \$45, provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items.

MECHANICAL PERMIT FEES

The mechanical cost shall be the cost to the owner of all labor charges and all mechanical materials and equipment installed as part of the mechanical system. The cost of the

plumbing system, which is covered by the Uniform Plumbing Code, is not to be included.

Cost of Mechanical System	Mechanical Permit Fee
\$0 - \$10,000	\$540 for first \$1,000 plus \$152 for each additional \$1,000 or fraction thereof, to and including \$10,000
\$10,001 - \$50,000	\$18548 for first \$10,000 plus \$7 for each additional \$1,000 or fraction thereof, to and including \$50,000
\$50,001	\$46528 for first \$50,000 plus \$4 for each additional \$1,000 or fraction thereof.

(b) through (7) will remain the same as proposed."

"8.70.108 INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE (1) through (5)(c) will remain the same as proposed.

(d) Exception: An artificial light source is not required at the top and bottom landing, provided an artificial light source is located directly over reach stair section.

(6) through (10) will remain the same as proposed.

(11) The CABO One & Two Family Dwelling Code, adopted by reference in (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for the construction, prefabrication, alteration, repair, use, occupancy and maintenance of detached one or two family dwellings not more than three stories in height, and their accessory structures. A copy of the CABO One and Two Family Dwelling Code may be obtained from the Building Codes Division, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may be also obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601 Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041."

"8.70.110 INCORPORATION BY REFERENCE OF THE UNIFORM CODE FOR BUILDING CONSERVATION (1) will remain the same as proposed.

~~(1)(a) Delete Chapter 4 - Minimum Standards for Existing Buildings; Chapter 5 - Minimum Provisions for Change of Occupancy and Chapter 7 - Requirements for Group R Occupancies; except as Chapters 4, 5 and 7 are referenced by Chapter 6 - Historic Structures.~~

(b) will remain the same as proposed, but will be renumbered (a).

(2) The purpose of the Uniform Code for Building Conservation is to encourage the continued use or reuse of legally existing ~~historic~~ buildings and structures.

(3) will remain the same as proposed."

"8.70.202. EXTENT OF LOCAL PROGRAMS (1) through (3) will remain the same as proposed.

~~(4) In addition to compliance with all other rules and regulations a local government code enforcement program must require applications for all buildings and installations, review plans for all new buildings and major remodeling projects, except as may otherwise not be required by the Uniform Building Code, and issue permits and inspect all buildings and installations over which it has jurisdiction to enforce codes as established by the department."~~

"8.70.208 FUNDING OF CODE ENFORCEMENT PROGRAM (1) will remain the same as proposed.

(2) Permit fees must only be used for those costs related to building code enforcement activities, with building codes being only those codes adopted by the division in subchapters 1, 3, and 4 and 15 of Title 8, chapter 70, Administrative Rules of Montana. It is not intended that permit fees be used to support fire departments, planning, zoning or other activities, except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement services for the building code enforcement program.

(3) and (3)(a) will remain the same as proposed.

(b) a proportionate share of the local government's indirect costs, which are those costs incurred for common or joint purposes that benefit more than one program or activity. These include, but are not necessarily limited to, legislative services, executive services, administrative services, financial services, data processing services, purchasing services, personnel services, legal services and facilities administration. ~~If indirect costs are waived for any local government proprietary fund, those indirect costs must also be waived for the code enforcement program. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government. Indirect costs shall be treated as provided by 50-60-106(2)(f)(i), MCA.~~

(4) and (5) will remain the same as proposed."

"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) through (1)(e) will remain the same as proposed.

~~(f) Subsection 103.1.3 is deleted~~ amended with the addition of the following language: This section shall not be construed to require a plumber license as a prerequisite for obtaining a plumbing permit. The requirements for who must be licensed to perform plumbing work is regulated by Title 37, chapter 69, MCA. The issuance of a plumbing permit does not in any way address the need for licensure by the plumbing permit holder.

(g) through (g)(iv) will remain the same as proposed.

(h) Delete Table No. 1.1 - PLUMBING PERMIT FEES and replace with the following schedule:

--for issuing each permit	\$ 250*
--for each plumbing fixture	67
--water service - domestic or commercial	67
--for each building sewer and each trailer park sewer	121
--storm drains and storm drainage	67
--for each water heater	67
--for each industrial water pre-treatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps	67
--for installation, alteration, or repair of water piping and/or water treatment equipment	67
--for repair or alteration of drainage or vent piping	67
--for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	67
--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	67
--five or more, each	2
--requested plumbing inspection fee provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items.	45
--reinspection (provided the \$30 does not exceed the original permit fee, in which case the original fee will be charged)	30
*except for replacement of water heaters.	

(i) Section 218, Definition of Plumbing System, is amended to read: Includes all potable water supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, plumbing fixtures and traps, drainage and vent pipes and building drains, including their respective joints and connections, devices, receptacles and appurtenances within the property line of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters and vents for the premises.

(i) and (j) will remain the same as proposed, but will be renumbered (j) and (k).

(k) (1) Subsection 603.4.4.1, is amended with the addition of the following language: Heat exchangers, in single family dwellings on their own private well, may be protected with a dual check valve with intermediate atmospheric vent when a nontoxic transfer fluid is utilized in the boiler which utilize a nontoxic transfer fluid, may be of single wall construction.

(l) and (m) will remain the same as proposed, but will be

renumbered (m) and (n).

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

(n) (iii) Asbestos-cement, PB, CPVC, PE, PEX, PEX-AL-PEX or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. These approved outside cold water piping materials ~~except for asbestos-cement~~ may extend to a point within the foundation perimeter of the building provided that the piping is buried a minimum of 12 inches, the piping is contained within a protective sleeve where it passes through concrete construction and the piping does not extend for more than 24 inches out of the ground at such point where it connects to approved interior cold water piping material.

(iv) and (v) will remain the same as proposed.

(n) through (z) will remain the same as proposed, but will be renumbered (o) through (aa).

~~(aa) (ab) Chapter 12, Fuel Piping, is deleted and replaced with Chapter 13, Uniform Mechanical Code (ICBO version), Fuel-Gas Piping.~~

(ab) will remain the same as proposed, but will be renumbered (ac).

(2) will remain the same as proposed."

"8.70.407 ELECTRICAL INSPECTIONS FEES (1) through (1) (o) will remain the same as proposed.

(p) all other installations (commercial, industrial, institutional or for public use):

Cost of Electrical
Installation

Fee

\$ 0 - \$1,000	\$4550 for 1st \$500 plus 6.0% of balance of construction cost
\$ 1,001 - \$10,000	\$8075 for 1st \$1,000 plus 2.0% of balance of construction cost
\$10,001 - \$50,000	\$26055 for 1st \$10,000 plus .5% of balance of construction cost
\$50,001 or more	\$46055 for 1st \$50,000 plus .3% of balance of construction cost

(q) through (3) will remain the same as proposed."

"8.70.1504 SITE ACCESSIBILITY (1) through (2) will remain the same as proposed.

(3) Appendix Chapter 411 of the Uniform Building Code, Site Accessibility is amended as follows:

(3) (a) through (6) will remain the same as proposed."

"I (8.70.214) CERTIFICATION OF CODE ENFORCEMENT PROGRAMS

(1) A county or municipality with a previously approved code enforcement program in existence on June 30, 1998, shall be considered by the department of commerce, building codes division, as certified and in compliance with applicable statutes and department certification rules with the authority to enforce codes within its jurisdictional area, until such time that an initial annual report is filed and the division reviews the report, and makes a determination as to whether or not the county or municipality is in compliance with applicable statutes and rules based upon the information contained in the report and any on-site evaluation. This provision does not prevent the division from identifying an area of noncompliance independently and apart from the initial annual report.

(2) will remain the same as proposed."

"II (8.70.215) STAFF QUALIFICATIONS (1) Local plumbing and electrical inspectors must be either Montana licensed journeymen plumbers, electricians or be plumbing or electrical inspector certified, as may be applicable to the type of the installations being inspected, by any one of the following nationally recognized entities: international conference of building officials (ICBO), international code conference (ICC), international association of plumbing and mechanical officials (IAPMO), international association of electrical inspectors (IAEI) or conference of American building officials (CABO) in the craft being inspected.

(2) Local building and mechanical inspectors must be inspector certified by either ICBO, ICC or CABO.

(3) Plans examiners must be either plans examiner certified by either ICBO, ICC or be inspector certified as allowed in (2) or have an engineering or architecture degree. In lieu of plans examinations by a local jurisdiction's staff, the division may allow a local jurisdiction to contract out plans examinations with a qualified plans examination organization.

(4) Other nationally recognized entities for testing and certification of inspectors not listed above may be approved by the division upon the request of the local government. Certification must be by a nationally recognized entity for testing and certification in the same code and edition date as is adopted by the division. When the division adopts a new code or a new edition of an existing code, local inspectors and examiners shall have six months to update their certification qualifications to meet the new code or edition. In the situation where a new edition has been published but is not yet adopted by the division, certification in the most recent published edition date is acceptable.

(5) Plumbing, electrical, mechanical or building inspector certification may be obtained as part of a combination inspector certification to the extent the individual inspector certifications meet the requirements of (4).

(6) will remain the same as proposed.

(7) ~~Plumbing inspectors and electrical inspectors for a county or municipality with a previously approved code enforcement program in existence on June 30, 1998, must meet the licensing or certification standards listed above by July 1, 1998.~~ Building, mechanical inspectors and plans examiners from a previously approved code enforcement program in existence on June 30, 1998, must meet the certification standards listed above by June 30, 1999.

(8) Newly hired building inspectors, mechanical inspectors and plans examiners who do not meet the certification standards listed above may conduct inspections and review plans if they obtain the necessary certification within ~~twelve~~ six months of the date of hiring, and are supervised in the interim by appropriately certified personnel. If the code enforcement program cannot provide supervision by a certified person, the newly hired non-certified building inspector or plans examiner must have actual practical experience in the construction trade, and must participate in six working days of on-the-job training with the division. Such training shall be at the expense of the county or municipality employing the inspector. There shall be no fee charged by the division. Upon approval by the division, on-the-job training with another code enforcement program may be accepted. Upon approval by the division, four days of classroom training may be substituted for six days of on-the-job training.

(9) Building inspectors, mechanical inspectors and plans examiners from a previously approved code enforcement program in existence on June 30, 1998, who are not qualified and who are not supervised by a qualified individual, shall submit a training plan to the division by January 1, 1999, providing for six days of on-the- training or four days of classroom training and the plan to become certified by June 30, 1999. Acceptable training is the same as discussed in (8) above.

~~(10) An inspector or other qualified individual, though not certified in a required discipline, may make inspections or plans examinations for brief periods resulting from absenteeism of a certified individual for reasons such as vacation, illness, training or similar circumstances."~~

"III (8.70.216) ANNUAL REPORT (1) will remain the same as proposed.

(2) The date of the initial annual report for a local government with a previously approved code enforcement program in existence on June 30, 1998, shall be ~~September 1~~ October 30, 1998.

(3) and (4) will remain the same as proposed.

(4)(a) a map ~~and~~ or legal description of the jurisdictional area;

(b) a list of building related codes, with edition dates being enforced with copies of adopting ordinances if not previously provided as required by ARM 8.70.203;

(c) through (h) will remain the same as proposed."

"IV (8.70.217) AUDIT (1) will remain the same as proposed.

- (1) (a) all construction-related fees or charges imposed and collected by the local building code enforcement program are used ~~only for the building code enforcement program which consists of necessary and reasonable costs directly and specifically identifiable for the administration and enforcement of building, mechanical, plumbing and electrical codes and accounted for as provided in 50-60-106(2)(f), MCA.~~
- (b) ~~indirect costs are charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges;~~
- (c) ~~if indirect costs are waived for any other local government proprietary fund, those indirect costs are waived for the local building code enforcement program;~~
- (d) ~~indirect charges are limited to the charges that are allowed under federal cost accounting principles applicable to a local government;~~
- (e) ~~the collection and expenditure of all fees and charges are fully documented;~~
- (f) ~~fees and charges are not accumulated in excess of the amount necessary to operate the local building code enforcement program for 12 months; and~~
- (g) ~~excess fee and charge accumulations are placed in a reserve account and used only for the local building code enforcement program.~~
- (2) and (3) will remain the same as proposed."

"V (8.70.218) CERTIFICATION OF EXTENDED JURISDICTIONAL AREA

- (1) A municipality with an existing code enforcement program which desires to make an initial request for an extended jurisdictional area or increase the area of its existing extended jurisdictional area shall: submit to the division the written consent of the county as provided by 50-60-101(11)(d), MCA.
- (a) ~~Make such request by providing the department of commerce, building codes division, with the written consent of the board of county commissioners of the county in which the extended jurisdiction lies.~~
- (b) ~~The written consent shall indicate the scope of building codes to be enforced; the type of structures to be subject to the building codes and the schedule of fees to be charged for permits.~~
- (c) (2) The municipality must also provide to the division proof that the persons residing in the area into which the jurisdictional area will be extended received reasonable notice of the proposed extension, and were given an effective opportunity to present evidence and express opinions in support of, or in opposition to, the extension and such evidence and opinions were available to the county commissioners for their consideration prior to issuing the written consent.
- (2) ~~A municipality with a code enforcement program which annexes a new area into its corporate limits shall automatically have authority to enforce building codes in the newly annexed area under the same conditions of the~~

~~municipality's existing code enforcement program. The municipality shall inform the division of the annexation as soon as possible. If necessary, the municipality and the division shall coordinate the transfer of authority for projects existing at the time of the annexation."~~

3. A public hearing was held on July 1, 1998. Oral and written testimony were received. Written comments were also accepted until 5:00 p.m., July 1, 1998. Not all proposals received a comment. However, the Department has thoroughly considered all comments received. Those comments, and the Department's responses thereto, are as follows:

COMMENT NO. 1: Pertaining to rule 8.70.302(1)(f), comments were received in opposition to the proposed deletion of Uniform Plumbing Code (UPC) §103.1.3, with the expressed reasons being: the deletion would allow unlicensed plumbers to "pull" permits; the deletion would allow unlicensed plumbers to perform plumbing work; the deletion would be contrary to statutory requirements to check for licenses during the course of inspections; the deletion would be contrary to 44 Op. Atty. Gen. No. 12 (1991); and insufficient rationale was given for the proposal.

RESPONSE: Section 103.1.3 is a new section in the UPC. The deletion of this new section would have no impact on current licensing law or license verification requirements. Licensing requirements and the requirement to check for licenses are statutory in origin and are not contingent upon any language in the UPC.

The deletion would not be contrary to 44 Op. Atty. Gen. No. 12 (1991). The portion of that Attorney General Opinion relating to the confirmation of license status prior to issuing a permit has been moot since the adoption of the 1991 edition of the UPC as that portion of the Attorney General Opinion was based solely upon language from the 1988 edition of the Uniform Plumbing Code. The language was not included in the 1991, 1994 or 1997 editions.

The rationale given for the deletion is sufficient and accurate. However, due to the widespread opposition to the deletion of this section and the misinterpretation of its significance, the Division will not delete Section 103.1.3 but will add the following amendatory language:

This section shall not be construed to require a plumbing license as a prerequisite for obtaining a plumbing permit. The requirements for who must be licensed to perform plumbing work is regulated by Title 37, chapter 69, MCA. The issuance of a plumbing permit does not in any way address the need for licensure by the plumbing permit holder.

COMMENT NO. 2: Pertaining to rule 8.70.302(1)(aa), comments were received objecting to the deletion of UPC Ch. 12, fuel gas piping, and the substitution of the provision for fuel gas piping found in the Uniform Mechanical Code (UMC). It was

also suggested that both the UPC and the UMC fuel gas piping provisions be adopted so that plumbers who installed fuel gas piping did not need to buy two books.

RESPONSE: The deletion of the chapter pertaining to fuel gas piping is not a new proposal to the State Plumbing Code being currently in place as an amendment to the 1991 UPC. Format changes in the 1997 UPC required a new cross reference.

Fuel gas piping is not part of the statutory definition of plumbing system, found in 37-69-101(7), MCA. The installation of fuel gas piping is not the exclusive domain of licensed plumbers as it requires neither a plumbing permit nor a plumber license. Any reference to fuel gas piping in ARM Title 8, chapter 70, sub-chapter 3, which is limited to plumbing permits and inspections of statutory plumbing systems, is misplaced.

Since the installation of fuel gas piping does require a mechanical permit, the proper place of reference for provisions regulating fuel gas piping is ARM 8.70.105 which adopts the State Mechanical Code. The Division has adopted the UMC, ICBO version, as it is more closely aligned with the Uniform Building Code (UBC) than the UMC, IAPMO version. The provisions regarding fuel gas piping found in the UPC are not consistent with the provisions for fuel gas piping found in the UMC, ICBO version. Adopting both provisions would be confusing and give rise to conflicts.

The rule will be modified to delete the cross reference to the fuel gas piping provisions of the UMC. To clarify the distinction between the plumbing code and the mechanical code, the definition of plumbing systems found in the UPC §218, is amended to remove the reference to fuel gas piping and be consistent with 37-69-101(7), MCA.

COMMENT NO. 3: Pertaining to rule 8.70.302(1)(ab), comments were received objecting to the deletion of UPC Ch. 13, medical gas piping. It was suggested that the Division begin permitting and inspecting medical gas piping.

RESPONSE: Medical gas piping is not included in the statutory definition of a plumbing system, found in 37-69-101(7), MCA. Although the Board of Plumbers provides for a medical gas piping installation endorsement, 37-69-401, MCA, the installation of medical gas piping does not require a plumbing permit. Any reference to medical gas piping in ARM Title 8, chapter 70, sub-chapter 3, which is limited to plumbing permits and inspections of statutory plumbing systems, is misplaced.

The Division lacks the authority to expand into medical gas piping permitting and inspections. Such authority can only be granted by the Legislature. The Division can not adopt standards for the installation of equipment it does not have the authority to regulate.

The Department of Public Health and Human Services has adopted standards for medical gas piping, NFPA 99C, applicable to licensed health care facilities. The Board of Plumbers requires as a prerequisite for the medical gas endorsement, certification based upon NFPA 99C training. If the Division

had the authority to adopt rules for medical gas installations, it would be inappropriate for the Division to adopt standards other than NFPA 99C.

The proposed rule will not be modified in response to this comment. However, to clarify the distinction between the plumbing code and medical gas piping, the definition of plumbing systems found in the UPC §218, is amended to remove the reference to medical gas piping and be consistent with 37-69-101(7), MCA.

COMMENT NO. 4: Pertaining to rule 8.70.302(1)(j) through (y), comments were received regarding various technical amendments to the UPC, listed below by UPC section:

- a) Section 603.3.2: Opposition to the proposed deletion of this section which requires annual testing of backflow prevention assemblies because new Department of Environmental Quality rules require annual testing.
- b) Section 603.4.4.1: The proposed amendments need clarification.
- c) Section 604.1: Opposition to allowing asbestos-cement inside a building. Opposition to the reference that water supply system shall be of "like material" expect where otherwise approved by the administrative authority is too vague and gives too much discretion to local authorities.
- d) Section 908: The proposed amendments allowing horizontal wet venting requires clarification as they appear to be in contradiction with Sec. 1002.

RESPONSE: a) The deletion of 603.3.2 is not a new proposal to the State Plumbing Code being currently in place since 1992 as an amendment to the 1991 UPC. Format changes in the 1997 Uniform Plumbing Code required a new cross reference.

The State Plumbing Code is limited to the inspection of plumbing systems during installation. There is no provision in the state code for continuing inspections of plumbing systems following installation. The referenced Department of Environmental Quality rules regarding the testing of backflow devices are voluntary only and apply to water purveyors not plumbing code enforcement programs. The proposed rule will not be modified in response to this comment.

b) 8.70.302(1)(k) as proposed contained a clerical error. The amended language of 603.4.4.1 should read: "Heat exchangers in single family dwellings on their own private well, which utilize a nontoxic transfer fluid, may be of single wall construction." With this correction, 8.70.302(1)(k) and (l) are not new to the State Plumbing Code, being currently in place as amendments to the 1991 UPC. Format changes in the 1997 UPC required a new cross reference. The proposed rules are amended to correct the clerical error.

c) 8.70.302(1)(m)(iii) does not represent a change from the current regulations but only a clarification. In the current version the cold water distribution pipe material, including asbestos-cement, is allowed to extend to "a point immediately inside a building." The new proposed language clarified "a point immediately inside a building" as "a point

within the foundation perimeter of the building provided the piping is buried a minimum of 12 inches . . . and does not extend for more than 24 inches out of the ground." In order to avoid any potential risks associated with asbestos-cement pipe, the proposed rule will be amended to exclude asbestos-cement pipe from the list of cold water distribution pipe which can extend into a building.

ARM 8.70.302(1)(m)(v) is the original language from the UPC. The proposed rule will not be amended in response to this comment.

d) 8.70.302(1)(x) and (y) are not new proposals to the State Plumbing Code, being currently in place as amendments to the 1991 UPC. Format changes in the 1997 UPC required new cross references. Contrary to the comment received, Section 908, as amended, does not allow a water closet on a wet vented section and does not contradict Section 1002 or Table 10-1, as provided by Sections 225.0, 301.2.1 and 901.0. The proposed rule will not be amended.

COMMENT NO. 5: Pertaining to fee increases there were objections made to the increase in fees. The most common objection related to the amount of the increase in plumbing permit fees. There were also objections to increases in building, mechanical, electrical and factory built building permit fees. It was suggested that the reserve account balance kept by the Division was too much and should be reduced before increasing fees. There were several objections to the reference to the \$140,000 annual appropriation from the Building Codes Division reserve account to fund the Department of Labor Apprenticeship and Training Program as provided by Ch. 357, L. 1997, as a reason for the necessity of a fee increase. There was an objection to the use of alternative building valuation methods to calculate building permit fees. There was an objection to the inclusion of plumbing and electrical systems in the overall building value for the calculation of building permit fees.

RESPONSE: The projected plumbing permit fee increase was approximately 38%. The Division does not believe its operating reserve account is excessive as it barely covers three months operating costs. While the appropriation from the Building Codes Division reserve account to fund the Department of Labor Apprenticeship and Training Program was not the sole reason for the need to increase fees, it contributed to the overall expected reserve account shortfall. Alternative building valuation methods are necessary to avoid inequities in permit fees paid by larger projects. Plumbing and electrical systems are included as part of the overall building valuation formula established by the UBC.

Since the fee proposal projections were first calculated Fiscal Year 98 year end figures have been tabulated. The Division's year end fund balance was higher than earlier projections. As a result, fee increases for mechanical permits, electrical permits and plumbing permits are reduced to a level that will keep program revenues within 2% above

expected program costs. Building permit fees and the fees for factory built buildings will not be amended.

COMMENT NO. 6: Regarding sources for copies of uniform codes a comment was made objecting to the inclusion of addresses where copies of uniform codes could be purchased other than the address of the Division. It was also suggested that if any other address was provided it should be that of the organization which holds the copyright to the particular code.

RESPONSE: Section 2-4-307, MCA, requires when a rule adopts a model code or rule by reference that the rule also state where a copy of the omitted material can be obtained. Since the Division does not always have copies of the referenced model codes in stock the address of the copyright holder of each model code is provided. The proposed rules will not be modified in response to this comment. ARM 8.70.108(11) is amended to reflect the copyright holder of the CABO One and Two Family Dwelling Code.

COMMENT NO. 7: Pertaining to the discretion of the building official, a comment was made objecting to references that certain decisions regarding the applicability of alternative rules or codes were at the discretion of the building official. It was suggested that the rules or codes should not be discretionary as discretion might lead to arbitrary enforcement decisions.

RESPONSE: The Division has analyzed the references to building official discretion and has determined that the amendments proposed all require individual analysis by local building officials in order to be properly applied. Building officials must exercise discretion at that time in order to properly apply building codes. This discretion must be retained. The proposed rules will not be changed in response to this comment.

COMMENT NO. 8: Pertaining to the repetition of statutory language comments were received that there were many unnecessary repetitions of statutory language within the proposed rules, e.g. 8.70.208(3)(b), new Rule IV (8.70.217)(1)(a) through (d) and new Rule V (8.70.218)(1)(a) and (b).

RESPONSE: The referenced rules are amended to delete the repetitious language and replace it with references to the MCA.

COMMENT NO. 9: Pertaining to local government enforcement comments were made that:

- a) 8.70.202(3): implies that the Division could enforce codes on exempt structures.
- b) 8.70.202(4): is poorly worded and unclear.
- c) New Rule I(8.70.214)(1): improperly maintains certification status of local governments that are not in compliance with statutes and regulations.
- d) New Rule II (8.70.215): inspector and examiner certification should be in the version and edition of the code

being enforced.

- e) New Rule II (8.70.215)(1): should clarify the distinction between plumbing and electrical inspections.
- f) New Rule II (8.70.215)(2) and (3): requiring certification of building inspectors, mechanical inspectors and plan reviewers is in excess of statutory mandate and authority.
- g) New Rule II (8.70.215)(4): should not allow other certification programs not specifically listed.
- h) New Rule II (8.70.215)(9): should explain how inspectors can become certified.
- i) New Rule II (8.70.215)(7), (8) and (9): allowing building inspectors, mechanical inspectors and plan reviewers until June 30, 1999, to become certified, or twelve months after date of hire, is too long.
- j) New Rule II (8.70.215)(10): should not allow temporary inspector substitutions.
- k) New Rule III (8.70.216)(4)(a): requirement for both a map and a legal description was excessive.
- l) New Rule III (8.70.216)(4)(b): requirement for a copy of the code adoption ordinance was a duplication of the requirements of 8.70.203.
- m) New Rule V (8.70.218)(1): should require public hearings by both the state and county and establish decision criteria.
- n) New Rule V (8.70.218)(2): reference to annexation is not necessary.
- o) New Rule VI (8.70.219)(1) and (3): should not allow partial decertification.
- p) New Rule VI (8.70.219)(4): county should control decertification for violation of county consent provisions.

RESPONSE: a) Contrary to the comment, 8.70.202(3) does not give the Division any authority to enforce building codes on exempt structures. The purpose of the amendment is to clarify that local governments can opt to enforce building regulations on some structures, such as residential buildings, while leaving the authority to enforce building regulations on other structures such as commercial, institutional and industrial buildings with the Division. The proposed rule will not be modified.

b) 8.70.202(4) is deleted as unnecessary.

c) The legislative changes brought about by HB 388, including the authority to require annual reports and adopt associated rules were not effective until July 1, 1998.

The Division will be relying upon the annual reports, authorized by HB 388, to provide the basic information upon which to analyze whether or not local government programs are in compliance with statutes, regulations and codes. The Division is not aware of any compliance problems which have a direct immediate threat to public health and safety. Clarifying that currently existing local governments' programs have continued authority to enforce their individual building code enforcement programs until such time that the initial annual report is submitted and reviewed is a matter of basic due process, as well as administrative necessity. However, the proposed rule will be amended to clarify that the Division is

not precluded from pursuing issues of noncompliance apart and separate from the initial annual report.

Given the fact that these rules will not be adopted until after the time established in new Rule III (8.70.216)(2) for the initial annual report, new Rule III (8.70.216)(2) will be modified to require the initial annual report to be submitted by October 30, 1998.

d) New Rule II (8.70.215)(1), (2), (3), (4), (5), (8) and (9) are modified to clarify that inspector certification must be in the version and addition of the code adopted by the Division.

e) Proposed new Rule II (8.70.215)(1) is modified to clarify the distinction between the qualifications for and inspection authority of plumbing inspectors and electrical inspectors.

f) Although 50-60-302, MCA, only provides for qualifications for plumbing and electrical inspectors, it also requires the Division to adopt rules that ensure that all code enforcement program functions are being properly performed. The requirement, established by rule, that building inspectors, mechanical inspectors and plan reviewers have minimum qualifications is an appropriate application of this rule making authority. The proposed rules, which establish qualification standards for building inspectors, mechanical inspectors and plan reviewers will not be modified.

g) New Rule II (8.70.215)(4) is modified to clarify that certification must be by a nationally recognized testing and certification entity for the specific version and edition of the code adopted by the Division.

h) The methods by which inspectors can become certified are varied and changing. Candidate bulletins are readily available from the certification entities. Addresses for certification entities can be easily obtained from the Division. The proposed rules will not be modified to include specific information as to how persons can become certified.

i) By the time the rules are finalized establishing the qualification requirements for building inspectors, mechanical inspectors and plan reviewers, i.e. those positions without a statutory July 1, 1998, deadline for certification, local governments will have approximately 10 months to arrange for compliance if they are not already in compliance. Ten months is not excessive. The proposed rules will not be modified to reduce this time. However, new Rule II (8.70.215)(7) will be modified to delete the reference to the July 1, 1998, deadline for electrical and plumbing inspectors as this statutory deadline has already passed. New Rule II (8.70.215)(8) is modified to reduce the time for newly hired staff to become certified from 12 months to 6 months.

j) New Rule II (8.70.215)(10) will be deleted as inconsistent with minimum inspector qualification standards.

k) New Rule III (8.70.216)(4)(a) will be modified to require either a map or a legal description to avoid unnecessary duplication of information.

l) New Rule III (8.70.216)(4)(b) will be modified to

delete the requirement for a copy of the code adoption ordinances as part of the annual report. The ordinance is supplied in response to notice of adoption of new codes by ARM 8.70.203.

m) The Division is responsible for making the decision whether or not to certify a city to operate a building codes enforcement program. The statutes provide sufficient criteria to make this decision. Consent for extended jurisdiction is totally within the discretion of the county government as there are no statutory decision criteria for extended jurisdiction consent. The county government, not the Division, would be in the best position to determine how the public should be involved in this decision making process. New Rule V (8.70.218) will not be modified to require the county to conduct a public hearing or to involve the Division in the county's decision.

n) New Rule V (8.70.218) (2) reference to annexation is not necessary.

o) When there may be circumstances in which a local government's noncompliance affects the entire code enforcement program full decertification would be appropriate. However, when only limited and separable parts of a code enforcement program are in noncompliance, it is the Division's opinion that the public interest would be best served by only decertifying that portion which is in noncompliance. New Rule VI (8.70.219) will not be modified to require total decertification for all compliance violations.

p) The Division is solely responsible for both certifying and decertifying a local government program. County consent to extended jurisdiction is a factor in certification but does not create any authority with the county to control the certification process. New Rule VI (8.70.219) (4) will not be modified.

COMMENT NO. 10: Pertaining to rule 8.70.101(40), a comment was received that the optional adoption language is not clear.

RESPONSE: Rule 8.70.101(40) is amended to make it more clear.

COMMENT NO. 11: Pertaining to rule 8.70.101(41), a comment was received that the proposal is offered to coverup a mistake made by the Division in allowing an explosives magazine to be constructed within 600 feet of a property line. Comment was offered that the use of the Uniform Fire Code table of distances did not safeguard the public to the same extent the Uniform Building Code distance tables would. Comments in support of the proposal were also received urging the adoption of the same nationally recognized standards utilized by the federal government.

RESPONSE: Section 50-3-102(3), MCA, specifically provides: "The department [of justice] shall adopt rules based upon nationally recognized standards necessary for the safeguarding life and property from the hazards associated with

the manufacture, transportation, storage, sale and use of explosive materials." The Department of Justice, through the State Fire Prevention and Investigation Bureau, has responded to this specific legislative mandate to regulate explosives by adopting the Uniform Fire Code (UFC) through the adoption of ARM 23.7.301. Explosive materials are addressed in Article 77 of the UFC. UFC Sec. 7702.1.17 provides: "Types 1, 2, 4 and 5 outdoor magazines shall be located in accordance with nationally recognized standards. See Appendix VI-F."

As the Legislature has granted the Department of Justice specific authority to regulate explosives magazine and the Department of Commerce general authority to regulate buildings, the general authority of the UBC is subject to the specific authority of the UFC. The Division is of the opinion that the UFC tables relative to the location of outdoor explosives magazine, which is also adopted by the Federal Bureau of Alcohol Tobacco and Firearms (BATF) for its licensing of explosives magazine, when coupled with the continuing inspections requirements of BATF licensing, provides for the safe location of explosives magazine. The proposed rule will not be modified.

COMMENT NO. 12: Pertaining to rule 8.70.101(42), a comment was received that the proposed definition of farm and ranch creates restrictions on farm and ranch buildings which were not intended, e.g. a 30 acre ranchette would not qualify as a farm and ranch so that a horse barn would require a permit while the house would not require a permit.

RESPONSE: The 30 acre ranchette has never been considered by the Division to be a "farm or ranch" within the meaning of the terms as found in 50-60-102, MCA. The horse barn in such a situation has always been exempted from the state building code as a "private garage or private storage structure used for the owner's own use" as also found in 50-60-102, MCA. The Division believes that by defining the term farm or ranch in terms of agricultural production or large tracts of land the intent of this otherwise undefined term is met. The definition is also consistent with the definition of "farm or ranch" recently adopted by the Board of Plumbers in ARM 8.44.402. The proposed rule will not be modified.

COMMENT NO. 13: Pertaining to rule 8.70.101(43), a comment was received that the provision for multiple building permits should apply to all owners, not just the State of Montana.

RESPONSE: The proposed rule does apply to all buildings regardless of ownership. The proposed rule will not be modified.

COMMENT NO. 14: Pertaining to rule 8.70.103(2), a comment was received that the reference to "morals" as a basis for dangerous building designation was inappropriate.

RESPONSE: Section 2-4-307(2), MCA, requires a statement of the general subject matter of codes which are being adopted

by reference. The purpose language referenced in this rule is the same language found in the purpose section of the Uniform Code for the Abatement of Dangerous Buildings Section 102. The proposed rule will not be amended.

COMMENT NO. 15: Pertaining to rule 8.70.105(1)(d), a comment was received that the deletion of this provision should not be eliminating any safety device provisions for below grade LPG installations.

RESPONSE: Rule 8.70.105(1)(d) does not represent a change from the current regulations concerning below grade LPG installations. Format changes in the 1997 UMC require new cross references. The UMC prohibits below grade LPG appliances while 50-60-203(4), MCA, requires the Division to adopt rules allowing for below grade LPG appliances. The proposed rule will not be amended in response to this comment.

COMMENT NO. 16: Pertaining to rule 8.70.108, the following proposed amendments to the CABO One and Two Family Dwelling Code were objected to: 8.70.108(3) was objected to for eliminating an important inspection; 8.70.108(5) was objected to as being too vague; and 8.70.108(9) was objected to as vague and not being based upon national standards but rather the Division's opinion.

RESPONSE: The proposed amendments were in response to amendment requests proposed by a joint task force of the Montana Board of Housing and the Montana Building Industry Association offered to reduce the cost of housing. All three amendments are included in either the 1996, 1997 or 1998 amendments to the CABO One and Two Family Dwelling Code and will be included in the 1998 edition of the CABO One and Two Family Dwelling Code. Since the Division intends to adopt the 1998 Edition of CABO One and Two Family Dwelling Code, the immediate adoption of these proposed amendments is appropriate. The proposed rule will not be modified.

COMMENT NO. 17: Pertaining to rule 8.70.604(3), the elimination of temporary elevator permits without an inspection was objected to as slowing down the process of getting a new elevator in use.

RESPONSE: The Division is aware of situations in which passenger elevators have been placed in public service pursuant to a temporary elevator permit when the elevator was not code compliant. The Division believes the public health, safety and welfare is best protected by the inspection of elevators prior to their use by the public. Only non-code compliant elevators will experience delays in being placed into use. The proposed amendment will not be changed.

COMMENT NO. 18: Pertaining to rule 8.70.110, the adoption of the entire 1997 edition of the Uniform Code for Building Conservation (UCBC) for more than just historic structures, by rescinding the deletion of chapters 4, 5 and 7, was encouraged as providing options to the continued use and reuse of all

existing structures, especially in the downtown areas of the larger cities.

RESPONSE: The adoption of the entire UCBC was raised before the Building Codes Advisory Council and was approved. The proposal was not included in the notice due to a clerical error. The UCBC is a alternative code to the UBC which can be followed at the option of the building owner. The proposed rule is amended to adopt the entire UCBC.

COMMENT NO. 19: Several typographical errors were discovered.

RESPONSE: The following corrections are made:
8.70.108(5)(d): "reach" is modified as "each."
8.70.208(2): "Subchapter 15" is included in the list of building codes which need to be adopted by local governments.
8.70.1504(3): "Appendix Chapter 4" is modified as "Appendix Chapter 11."

BUILDING CODES DIVISION

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, September 14, 1998.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the)	
amendment of rules 23.5.101 and)	
23.5.102 to incorporate)	
amendments to federal)	
regulations pertaining to motor	)	NOTICE OF
carrier and commercial motor	)	AMENDMENT
vehicle safety standards)	
previously incorporated by)	
reference in current rules and)	
to make general revisions to)	
clarify scope of rules.)	

TO: All Interested Persons.

1. On August 13, 1998, the Department of Justice published notice of proposed amendments to rules 23.5.101 and 23.5.102 concerning motor carrier and commercial motor vehicle safety standards. The proposed amendments relate to revisions to previously incorporated federal regulations and general revisions to state regulations. The notice was published at pages 2148 to 2156 of the 1998 Montana Administrative Register, issue number 15.

2. The department has amended ARM 23.5.101 and 23.5.102 exactly as proposed.

3. A public hearing on the proposed rules was held on September 3, 1998 at 10:00 a.m., in the conference room of the Attorney General's Office in the Justice Building, 215 North Sanders, Helena, Montana. Four people attended the hearing, two of whom submitted oral testimony in support of the new rules.

Mr. Curt Rissman, chief of the Motor Vehicle Inspection Bureau of the Montana Highway Patrol of the Department of Justice, testified that the proposed adoptions are intended to update the changes in the federal regulations that have previously been incorporated in departmental rules. Mr. Rissman pointed out that under the hazardous material regulation, rule 23.5.101, the proposed amendment allows for the usage of non-specification tanks under 3,500 gallon capacity to operate until the year 2000. The proposed amendments also add some specific definitions that were not present before and that were added for purposes of clarity.

In addition, Mr. Rissman noted that the proposed amendments to rule 23.5.102 establish a year-round planting and harvesting season to accommodate the sugar beet harvest in Montana.

Ms. Ronna Alexander, on behalf of the Montana Petroleum Marketers Association, testified that the Association supports the proposed amendments to the rules and commends the Highway Patrol for its administration of the regulations.

4. In addition to testimony from those present, written comments concerning the proposed amendments were read into the record and duly noted by the presiding hearing officer, Brenda Nordlund.

COMMENT: Mr. Mike Rice, President of Transystems, Inc., a motor carrier based in Great Falls, Montana, wrote that the principal focus of his business is the transportation of sugar beets. Mr. Rice noted that Transystems has transported sugar beets in Montana for thirty years and further that it loads and delivers more sugar beets than any other motor carrier in North America.

Mr. Rice described the sugar beet business as involving the removal of the beets from the ground in the early fall for stockpiling pending transportation to sugar processing plants over a period of several months after harvest. Mr. Rice stated that safe operations can be maintained throughout the beet hauling season, as has been demonstrated by his business's operation for 30 years without a driver fatigue-caused accident. Mr. Rice referenced an earlier administrative rule that he stated allowed for a seasonal exemption running from March 15 to September 11 annually. He stated that this year-round exemption was far preferable.

Under the extended seasonal exemption, Transystems' drivers would be able to add a shift to each of their schedules once every 11 days, thus allowing them to work 31 days out of every six weeks at an average of 5.16 days per week. Allowing for six breaks per shift, drivers would typically be expected to work 10- to 11-hour shifts, but with the short haul distances, drivers could still be expected to return to their individual homes each night.

Mr. Rice stated that the expanded seasonal exemption should accommodate not only the sugar beet hauling season, but also better meet the seasonal realities of spring wheat, bean, and corn harvesting seasons. Mr. Rice expressed his strong belief that the proposed amendments "coincide with the reality of Montana agriculture" without "any impact on overall safety."

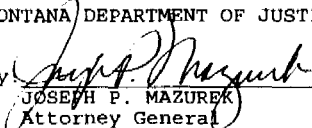
RESPONSE: Mr. Rice's reference to an administrative regulation setting a March 15 to September 11 seasonal exemption appears to be a mistake on his part. The March 15 to September 11 season refers to seasonal CDL operation and is governed not by section § 44-1-1005, MCA, the statute under which these regulations are amended, but rather Title 61, chapter 5. The seasonal CDL rules have not changed.


COMMENT: Darlene K. Jump, upon behalf of John Jump Trucking of Kalispell, wrote that she "objected to the rules [because they] omit farmers, etc., from the Federal Motor Carrier Safety Rules." Mrs. Jump stated that farmers are allowed to drive a truck or vehicle combination as big as those operated by motor carrier, yet they are allowed to haul dangerous chemical and other commodities without regard to the federal safety regulations. Mrs. Jump stated that "[t]his is discrimination of the highest order." She also took issue with the fact that farmers are exempted from licensing requirements for operation of vehicles for which others would be required to hold a special license and that farmers could drive their tractors and other equipment on all roads without having a flag car or other safety precaution. Mrs. Jump stated that farmers should be required to follow the same regulations as any other user of our transportation system.

RESPONSE: The proposed amendments do not purport to establish licensing requirements for operators of commercial motor vehicles, motor carriers, or farmers. In Montana, those requirements are set forth in section 61-5-101, MCA, et seq. Section 44-1-1005, MCA, specifically excludes farm vehicles from safety rules otherwise applied to "motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight." The Department therefore lacks authority to adopt safety rules that would be inconsistent with this statutory provision.

MONTANA DEPARTMENT OF JUSTICE

By


JOSEPH P. MAZUREK
Attorney General


MELANIE A. SYMONS
Rule Reviewer

Certified to the Secretary of State September 14, 1998.

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

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of ARM 24.16.9003,	) PREVAILING WAGE RULES AND
ARM 24.16.9004 and	) ESTABLISHING REVISED RATES
ARM 24.16.9007, related	) FOR BUILDING CONSTRUCTION
to Montana's prevailing wage	) SERVICES
rates)

TO ALL INTERESTED PERSONS:

1. On June 25, 1998, the Department published notice at pages 1581 through 1585 of the Montana Administrative Register, Issue No. 12, to consider the amendment of the above-captioned rules.

2. On July 17, 1998, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of July 24, 1998.

3. The Department has thoroughly considered the comments and testimony received on the proposed prevailing wage rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Lloyd Lockrem, Jr., Administrator, Montana Contractors' Association Health Care and Retirement Trust, stated that a substantial amount of data submitted by the MCA trust was not included in calculation of prevailing wage fringe benefits. He felt that the health and welfare component was grossly overstated based on the information he submitted, which should have been included in the calculation for fringe benefits.

Response 1: The Department determined that a change in the adoption of fringe benefits was necessary so that all survey fringe benefit data could be included in the calculation of fringe benefits. The public comment period was extended until May 15, 1998. The Department determined the need to write new administrative rules for adoption of fringe benefits. Rates were calculated using the new methodology at that time. Changes in fringe benefit rates were extensive so another public hearing was held July 17, 1998.

Comment 2: Mike Foster, Executive Director, Montana Contractors' Association, stated that union representation in the state has changed and that in fairness, data submitted by other parties should be included to calculate prevailing wage fringe benefit rates.

Response 2: The Department determined that a change in the adoption of fringe benefits was necessary so that all survey

fringe benefit data could be included.

Comment 3: Gene Fenderson, Business Manager, Montana District Council of Laborers, suggested a change in 24.16.9003(3)(e)(v) of the proposed rule amendments. Mr. Fenderson proposed that 24.16.9003(3)(e)(v) be amended to include "collective bargaining agreements and other pertinent information."

Response 3: The Department reviewed the proposed rule and determined that collective bargaining agreements are considered earlier in the process of setting prevailing wage rates. It is not necessary to include collective bargaining agreements in 24.16.9003(3)(e)(v).

Comment 4: Mr. Fenderson also stated that he was concerned about survey data including owners or supervisors, that submitting organizations be required to break down hours worked by craft performed and number of hours worked, and that more clear rules need to be set out regarding fringe benefit adoption in the future.

Response 4: The Department determined that a change in the adoption of fringe benefits was necessary so that all survey fringe benefits could be included in the calculation of fringe benefits. The survey specifically states that owners, management, and office personnel should be excluded from the survey. Submitting organizations are required to break down hours worked by craft performed and number of hours worked. Administrative rules have been written to explain how fringe benefits will be calculated.

Comment 5: Mr. Fenderson stated that the training rate for laborers changed earlier this year from \$.15 to \$.25 and felt that rate should prevail.

Response 5: The Department determined that fringe benefit rates should first be set based on survey data. If there was not enough data to determine a district rate, collective bargaining agreements that were in effect during the survey period would be used to set fringe benefit rates. The training rate during the survey period was \$.15. As a result, no change has been made to the training fringe benefit rate.

Comment 6: There were several comments stating that a change in the way fringe benefits are adopted would drive fringe benefit levels down and would be strongly opposed.

Response 6: The Department determined that a change in the adoption of fringe benefits was necessary so that all survey fringe benefit data could be included in the calculation of fringe benefits. The Department concludes that the fringe benefit computation methodology is appropriate given the particular language in 18-2-401(9)(ii), MCA. The Department believes that its methodology fairly implements the statutory

language and is not biased for or against union or nonunion work.

Comment 7: Mr. Ron James, Business Representative, Ironworkers Local 841, commented that the annuity fund was not included in the prevailing wage rates.

Response 7: The Department reviewed previous prevailing wage rates which included the annuity under the vacation fringe benefits. As a result, the annuity amount was added to the vacation fringe benefits.

Comment 8: Mr. James submitted additional data for ironworker in district 8.

Response 8: The Department included data submitted for ironworker in district 8 to calculate a new wage rate. As a result of this data, the wage rate increased.

Comment 9: James F. Lechner, Executive Director, Montana Steel Erectors Association, stated that contractors should be required to report the type of work they are doing. There are several types of work associated with the ironworker classification which should not be included in the calculation of prevailing wage.

Response 9: The Department will clarify the ironworker occupational description for future surveys.

Comment 10: Ron Senger, Business Manager, Sheet Metal Workers Local 103, stated that he opposed wage and fringe benefit rates in districts 2, 3, 4, 5, 6, and 8. He submitted additional data for sheet metal workers for the survey period October 1, 1996, through September 30, 1997.

Response 10: The Department reviewed this data and determined that it was already included in the prevailing wage calculation. As a result, the data was not used and wage rates did not increase. Fringe benefits were recalculated using all survey data submitted and fringe benefits for sheet metal workers in some districts decreased.

Comment 11: Mr. Senger also testified at the July 17, 1998, public hearing. He stated that he opposed wage rates in district 3. He also suggested that the Department include a delegation from the Montana State Building Trades to help with the survey to verify the hours submitted.

Response 11: The Department reviewed data submitted for sheet metal workers in district 3 and determined that the wage and fringe benefit rates were calculated correctly, using a weighted average of all data submitted. As a result, the rates did not increase. The Department appreciates the offer of assistance, but respondents in many cases have a privacy interest such that

the Department believes it would be inappropriate to allow non-agency personnel access to the raw data.

Comment 12: Chuck Cashell, Operating Engineers Local 400, stated that the local's rates are statewide. Many of the fringe benefits listed in the revised preliminary prevailing wage publication were lower than the local's rates. He felt that if there was enough information submitted to prevail on some of the rates that Local 400 rates should prevail across the board because it is a statewide local.

Response 12: The Department reviewed data submitted for operating engineer categories and determined that the wage and fringe benefit rates were calculated correctly, using a weighted average of all data submitted. As a result, the fringe benefit rates did not increase.

Comment 13: Richard Miller, Pacific Northwest District Council of Carpenters Local 1172, stated that prevailing wage and fringe benefit rates for carpenter and carpenter foreperson in district 8 are low.

Response 13: The Department reviewed all data submitted across the state for carpenter and carpenter foreperson. Data submitted for residential work was excluded from rate calculation. As a result, wage and fringe benefits increased in districts 1, 2, 3, 5, 6, and 8.

Comment 14: Mr. Miller also submitted additional data for carpenter in district 8.

Response 14: The Department included data submitted for carpenter in district 8 to calculate a new wage rate. As a result of this data, the wage rate increased.

Comment 15: G. Bruce Morris, Field Representative, Pacific Northwest District Council of Carpenters, submitted additional data for carpenter in district 2.

Response 15: The Department included data submitted for carpenter in district 2 to calculate a new wage rate. As a result of this data, the wage rate increased.

Comment 16: Lars Ericson, Field Organizer, Pacific Northwest District Council of Carpenters, stated that hours reported with no benefit plan or partial benefits should not be used to calculate fringe benefits.

Response 16: The Department calculated weighted average fringe benefit rates using only hours reported for each fringe benefit. At this time, there is no mechanism in the survey process to capture the type of benefit plan provided by each company reporting data.

Comment 17: Mr. Ericson also stated that many hours were being submitted for residential work.

Response 17: The Department reviewed all data submitted across the state for carpenter and carpenter foreperson. Data submitted for residential work was excluded from rate calculation. As a result, wage and fringe benefits increased in districts 1, 2, 3, 5, 6, and 8.

Comment 18: Lloyd Davison, Business Manager, IBEW Local 233, stated that wages and fringe benefits should be adopted if they prevail in an area.

Response 18: The Department is required to set prevailing wage rates based on a weighted average of all data submitted.

Comment 19: Don Herzog, Business Manager, IBEW Local 532, stated that the electrician fringe benefits for health and welfare in districts 7 and 10 are low. He also submitted additional data to be included in rate calculation.

Response 19: The Department reviewed existing data and included the additional data in the calculation of fringe benefits. As a result, the wage rates for districts 7 and 10 increased, and fringe benefit rates increased for district 10.

Comment 20: Mr. Herzog raised a number of questions regarding the specifics of the use, management and operation of a benefit trust fund established by the Montana Contractors' Association.

Response 20: The Department assumes that data contained in survey responses from employers and employee groups is accurate and truthful. Response to the survey is voluntary. The Department does not have resources or the specific authority to audit data submitted by respondents. At the present time there is no statutory requirement that survey responses be verified under penalty of perjury. The Department only accepts surveys with a signed statement of accuracy and does not accept those with no certification. The commenter should direct questions to the Montana Contractors' Association Trust for specifics of its operation.

Comment 21: Lawrence R. Mayo, Field Representative, Carpenters Local 112, stated that district 3 wage and fringe benefit rates are low.

Response 21: The Department reviewed all data submitted across the state for carpenter and carpenter foreperson. Data submitted for residential work was excluded from rate calculation. As a result, the prevailing wage and fringe benefit rates for carpenter in district 3 increased.

Comment 22: Mr. Mayo also stated that it appeared that for classifications other than carpenter, but grouped within that

trade, there was no data submitted, but all the occupations are utilized at some point in time on construction projects.

Response 22: The Department also reviewed data for all carpenter occupations. There was not enough data submitted by specific trade to set rates for the other classifications. As a result, the collective bargaining agreements that were in effect during the survey period were used to set rates for the other carpenter trade occupations.

Comment 23: John Gottula, Business Agent, Bricklayers and Allied Craftsmen Local 10, stated that for bricklayer, bricklayer foreperson, tile setter, and stonemason, fringe benefits for health and welfare and pension had increased in the spring of 1998. He wanted to see these increases reflected in the prevailing wage fringe benefits for these occupations.

Response 23: The Department reviewed collective bargaining agreements for the survey period and determined that the fringe benefits were accurately reflected in the prevailing wage rates. As a result, the fringe benefits did not increase.

Comment 24: Gary Phillips, Business Manager, Heat and Frost Insulators and Asbestos Workers Local 82, submitted additional data for heat and frost insulator. He also stated that he was opposed to a change in the way fringe benefits are adopted.

Response 24: The Department included data submitted for heat and frost insulator in district 6 to calculate a new wage rate. As a result of this data, the wage rate increased.

Comment 25: Mr. Phillips also stated that heat and frost insulators are small in number compared to other crafts. Rarely do they have people in every county of Montana, requiring travel and out of town expenses to man a job. The current wording regarding travel benefits allows out of state employers to avoid paying subsistence/per diem to their out of state workers.

Response 25: The Department has determined that the current wording regarding travel benefits is neutral as to in-state or out-of-state employers. It applies without regard to the location of the employer. Instead it looks at the distance traveled to the job from the appropriate courthouse.

Comment 26: Rony Crawford, Business Manager, Boilermakers Local 11, stated that the boilermaker wage in district 8 was low.

Response 26: The Department reviewed data and determined that a non-union employer responded to the survey which had the effect of decreasing the wage rate.

Comment 27: Mr. Crawford also stated that the training fringe benefit for boilermaker was low in all districts. He provided

information to show the total training fringe benefit.

Response 27: The Department reviewed the information and adjusted the training fringe benefit for boilermaker in all districts. As a result, the training fringe benefit increased.

Comment 28: John Pejko, Business Agent, Plumbers and Pipefitters Local 41, submitted additional data for plumber and pipefitter in district 9.

Response 28: The Department included data submitted for plumber and pipefitter in district 9 to calculate a new wage rate. As a result of this data, the wage rate increased.

Comment 29: Robert L. Papin, Business Manager, Plumbers and Pipefitters Local 30, stated that the plumber and pipefitter rate in district 8 was low.

Response 29: The Department reviewed data submitted. Data submitted for residential work was excluded from rate calculation. As a result, the prevailing wage and fringe benefit rates for plumber and pipefitter in district 8 increased.

Comment 30: Don Halverson, Business Manager, Plumbers and Pipefitters Local 459, requested that the Department review data submitted for plumber and pipefitter in district 1.

Response 30: The Department reviewed data submitted. Data submitted for residential work was excluded from rate calculation. As a result, the prevailing wage and fringe benefit rates for plumber and pipefitter increased.

Comment 31: John T. Forkan, Jr., Business Manager, Plumbers and Pipefitters Local 41, stated concerns about applying fringe benefit data across the board regardless of craft.

Response 31: The Department used data for calculation of fringe benefits on a craft-by-craft basis. Some fringe benefits decreased as a result.

Comment 32: Mr. Forkan also stated that fringe benefits for plumber and pipefitter and plumber and pipefitter foreperson in districts 4 and 9 were low. Districts 4 and 9 should be covered by Local 41.

Response 32: The Department reviewed data submitted. The Department determined that fringe benefit rates should first be set based on survey data. If there was not enough survey data to determine a district fringe benefit rate, collective bargaining agreements that were in effect during the survey period would be used to set fringe benefit rates. Fringe benefits were changed to reflect Local 41's rates in districts 4 and 9. As a result, fringe benefits increased in these

districts.

Comment 33: The Department also received comments supporting the proposed revised preliminary rates.

4. After consideration of the comments received on the proposed amendments, the Department has amended the rules exactly as proposed, and the Department adopts and incorporates by reference the prevailing rates of wages entitled "State of Montana Prevailing Wage Rates-Building Construction" for building construction, dated September 15, 1998. The building construction rates are adopted as proposed, but with changes in the standard prevailing rate of wages and fringe benefits for the following occupations:

Wage and fringe benefit increases due to additional data:

Heat and frost insulator: District 6
Carpenter: Districts 1, 2, 3, 4, 5, 6, 8
Carpenter foreperson: Districts 4, 8
Cement mason: District 1
Electrician: Districts 7, 10
Laborer: Districts 1, 2, 3, 4, 6, 8
Bulldozer operator: District 4

Wage and fringe benefit increases-use correct collective bargaining rate:

Boilermaker foreperson: Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
Boilermaker: Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
Tile setter: District 7
Bricklayer foreperson: District 7
Bricklayer: District 7
Stonemason: District 7
Plumber and pipefitter: Districts 4, 9

Wage and fringe benefit decreases due to additional data:


Carpenter: District 3
Sheet metal worker: District 6

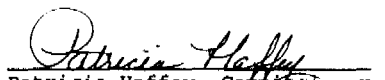
Wage and fringe benefit decreases-use correct collective bargaining rate:

Backhoe operator: District 8

AUTH: 18-2-431 and 2-4-307, MCA;
IMP: 18-2-401 through 18-2-432, MCA.

5. The amendments, including the standard prevailing rate of wages, are effective September 25, 1998, but are applicable to all public works contracts signed on or after September 15, 1998.


Kevin Braun
Rule Reviewer


Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: September 14, 1998.

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

In the matter of the transfer	)	NOTICE OF TRANSFER
of rules 11.14.101 through)	
11.14.519 except for repealed)	
and reserved rules)	
pertaining to the licensure)	
of child care facilities and)	
16.24.406 through 16.24.417)	
pertaining to requirements)	
for child care centers)	

TO: All Interested Persons

1. Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, the licensure of child care facilities is transferred from the Department of Family Services and the requirements for child care centers are transferred from the Department of Health and Environmental Sciences, Maternal and Child Health to the Department of Public Health and Human Services, Title 37. The rules were renumbered as follows:

<u>OLD</u>	<u>NEW</u>	
11.14.101	37.95.101	Child Day Care Services, Purposes and Licensing
11.14.102	37.95.102	Definitions
11.14.103	37.95.106	Day Child Care Facilities, Registration or Licensing
		Application
11.14.104	37.95.107	Persons Affected by Department Records
11.14.105	37.95.108	Day Child Care Facilities, Registration and Licensing
		Procedures
11.14.106	37.95.112	Counting Children in Care
11.14.107	37.95.113	Infant Needs of Non-infants
11.14.109	37.95.116	Family Day Child Care Home and Group Day Child Care Home
		Registration Services Provided
11.14.110	37.95.117	Day Child Care Facilities, Joint Programs
11.14.112	37.95.230	Smoke Free Environment in Day Child Care Facilities
11.14.114	37.95.125	Day Child Care Facility and Block Grant Benefits, Hearing
11.14.201	37.95.601	Day Child Care Centers, Licensing Services Provided
11.14.202	37.95.602	Day Child Care Centers, Program Requirements
11.14.205	37.95.603	Day Child Care Centers, Records


<u>OLD</u>	<u>NEW</u>	
11.14.208	37.95.606	Day Child Care Centers, Discipline
11.14.209	37.95.607	Day Child Care Centers, Scheduling
11.14.211	37.95.610	Day Child Care Centers, Space
11.14.212	37.95.611	Day Child Care Centers, Support Services Space and Equipment
11.14.217	37.95.612	Day Child Care Centers, Transportation
11.14.218	37.95.613	Day Child Care Centers, Materials and Equipment
11.14.221	37.95.618	Day Child Care Centers, After-School Care
11.14.222	37.95.619	Day Child Care Centers, Night Care
11.14.226	37.95.620	Day Child Care Centers, Staffing Requirements
11.14.228	37.95.621	Day Child Care Centers, Parent Information
11.14.229	37.95.630	Day Child Care Centers, Safety Requirements
11.14.301	37.95.701	Group Day Child Care Homes, Provider Responsibilities and Qualifications
11.14.305	37.95.705	Group Day Child Care Homes, Building Requirements
11.14.306	37.95.706	Group Day Child Care Homes, Fire Safety Requirements
11.14.307	37.95.707	Group Day Child Care Homes, Safety Requirements
11.14.310	37.95.708	Group Day Child Care Homes, Other Facility Requirements
11.14.311	37.95.720	Group Day Child Care Homes, Equipment
11.14.312	37.95.715	Group Day Child Care Homes, Program Requirements
11.14.316	37.95.231	Group Day Child Care Homes, Health Care Requirements
11.14.318	37.95.721	Group Day Child Care Homes, Swimming
11.14.319	37.95.232	Group Day Child Care Homes, Nutrition
11.14.320	37.95.722	Group Day Child Care Homes, Transportation
11.14.324	37.95.716	Group Day Child Care Homes, Special Program Requirements
11.14.327	37.95.726	Group Day Child Care Homes, Parent Involvement
11.14.340	37.95.717	Group Day Child Care Homes, Additional Requirements
18-9/24/98		Montana Administrative Register

<u>OLD</u>	<u>NEW</u>	
11.14.401	37.95.901	Family <u>Day Child</u> Care Homes, Provider Responsibilities and Qualifications
11.14.403	37.95.905	Family <u>Day Child</u> Care Homes, Building Requirements
11.14.404	37.95.906	Family <u>Day Child</u> Care Homes, Fire Safety Requirements
11.14.405	37.95.907	Family <u>Day Child</u> Care Homes, Safety Requirements
11.14.407	37.95.910	Family <u>Day Child</u> Care Homes, Other Facility Requirements
11.14.412	37.95.911	Family <u>Day Child</u> Care Homes, Program Requirements
11.14.414	37.95.235	Family <u>Day Child</u> Care Homes, Health Care Requirements
11.14.415	37.95.912	Family <u>Day Child</u> Care Homes, Transportation
11.14.418	37.95.913	Family <u>Day Child</u> Care Homes, Overlap Care
11.14.501	37.95.240	Family and Group <u>Day Child</u> Care Homes Caring for Infants, Documentation of the Absence of Unusual Health Risks
11.14.502	37.95.1001	<u>Day Child</u> Care Facilities Caring for Infants, Diapering and Toilet Training
11.14.503	37.95.1002	<u>Day Child</u> Care Facilities Caring for Infants, Clothing
11.14.506	37.95.1003	<u>Day Child</u> Care Facilities Caring for Infants, Feeding
11.14.507	37.95.1004	<u>Day Child</u> Care Facilities Caring for Infants, Bathing
11.14.508	37.95.1005	<u>Day Child</u> Care Facilities Caring for Infants, Sleeping
11.14.511	37.95.1010	<u>Day Child</u> Care Facilities Caring for Infants, Transportation
11.14.512	37.95.1011	<u>Day Child</u> Care Facilities Caring for Infants, Activities
11.14.513	37.95.1015	<u>Day Child</u> Care Facilities Caring for Infants, Building and Space
11.14.515	37.95.1016	<u>Day Child</u> Care Facilities Caring for Infants, Equipment
11.14.516	37.95.1020	<u>Day Child</u> Care Facilities Caring for Infants, Staff Requirements
11.14.519	37.95.1021	<u>Day Child</u> Care Facilities Caring for Infants, Special Requirements for <u>Day Child</u> Care Centers

OLD	NEW	
16.24.406	37.95.201	Definitions
16.24.407	37.95.205	Solid Waste
16.24.408	37.95.206	Laundry
16.24.409	37.95.207	General Housekeeping
16.24.410	37.95.210	Special Requirements for Children Requiring Cribs or Diapers
16.24.411	37.95.227	Swimming Pools
16.24.412	37.95.214	Food Preparation and Handling
16.24.413	37.95.220	Immunization
16.24.414	37.95.221	Health Supervision and Maintenance
16.24.415	37.95.215	Nutrition
16.24.416	37.95.225	Water Supply System
16.24.417	37.95.226	Sewage System

2. Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, licensure of child care facilities was transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, it is necessary to transfer ARM 11.14.101 through 11.14.519 to the Department of Public Health and Human Services, ARM Title 37, chapter 95.

Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, requirements for child care centers were transferred from Maternal and Child Health, Department of Health and Environmental Sciences to the Department of Public Health and Human Services. In order to implement that legislation, it is necessary to transfer ARM 16.24.406 through 16.24.417 to the Department of Public Health and Human Services, ARM Title 37, chapter 95.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State September 14, 1998.

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

In the matter of the adoption)
and repeal of rules)
pertaining to child support)
enforcement guidelines)

CORRECTED NOTICE OF
ADOPTION AND REPEAL

TO: All Interested Persons

1. On January 29, 1998, the Department of Public Health and Human Services published notice of the proposed adoption and repeal on page 317 of the 1998 Montana Administrative Register, issue number 2, notice of extension of comment period on page 447 of the 1998 Montana Administrative Register, issue number 3, and on July 30, 1998, notice of the adoption and repeal on page 2066 of the 1998 Montana Administrative Register, issue number 14, pertaining to child support enforcement guidelines.

2. This corrected notice is being filed to correct errors in rule VI (37.62.110).

3. Rule VI (37.62.110) is corrected as follows:

Rule VI (37.62.110). ALLOWABLE DEDUCTIONS FROM INCOME

(1) Allowable deductions from income include:

(1)(a) remains as adopted.

~~(b) an amount for needs of a child not of this calculation whom a parent is legally obligated to support. For each child deduct either:~~

~~(i) the amount of a pre-existing support order, or if no order exists, then the amount allowed for a child for whom no support order exists. This amount is calculated by determining one-half of the primary child support allowance as found in [Rule XI] for the number of other children:~~

~~(A) for whom no support order exists, plus;~~

~~(B) the number of other children who reside with the parent; or~~

~~(ii) an amount determined under [Rule XXIII], when modifying a current child support order.~~

~~(b) an amount for the needs of all "other" children as defined in ARM 37.62.103(9), determined as follows:~~

~~(i) When establishing a child support obligation, deduct:~~

~~(A) the total of any pre-existing support orders for the other children; and~~


~~(B) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children for whom no support order exists. These include children who reside with the parent as well as children who do not.~~


~~(ii) When modifying a current child support order, deduct the amount determined under ARM 37.62.146.~~

(1) (c) through (2) remain as adopted.

4. The Department makes this correction for the purpose of clarifying and implementing the intent of the department with respect to "other" children. Section 40-4-204(2)(h), MCA requires that the needs of other persons whom the parent is legally obligated to support must be considered when setting a support obligation. Under the terms of ARM 37.62.110 (1)(b) as adopted, it was unclear whether the needs of "other" children residing in the parent's household should have been included when calculating the allowance. Under the proposed correction the department's intention to include all "other" children, regardless of residence is specifically stated.

5. All other rule changes adopted and repealed within the child support enforcement guidelines notices remain the same.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State September 14, 1998.

VOLUME NO. 47

OPINION NO. 18

CONSOLIDATION - Reduction of county auditor's position to half-time;
COUNTY COMMISSIONERS - Power to reduce county auditor's position to half-time;
COUNTY GOVERNMENT - Reduction of county auditor's position to half-time;
COUNTY OFFICERS AND EMPLOYEES - Reduction of county auditor's position to half-time;
LOCAL GOVERNMENT - Reduction of county auditor's position to half-time;
PUBLIC OFFICERS - Reduction of county auditor's position to half-time;
MONTANA CODE ANNOTATED - Sections 7-1-101, 7-3-401 to -442, 7-3-431, 7-4-2203, -2301, -2303, -2305, -2311, 7-4-2706, 7-6-2401, -2407 to -2412, 20-3-201(4), -213;
MONTANA CONSTITUTION - Article XI, sections 3(2), 4(1)(b), 4(2), 6;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 20 (1987), 40 Op. Att'y Gen. No. 51 (1984), 40 Op. Att'y Gen. No. 17 (1983).

HELD: County commissions with general powers have no authority, express or implied, to reduce the office of county auditor to a half-time position.

September 10, 1998

Mr. Dennis Paxinos
Yellowstone County Attorney
P.O. Box 35025
Billings, MT 59107-5025

Dear Mr. Paxinos:

You have asked my opinion on two related questions which I have rephrased as follows:

1. Does the Yellowstone County Board of Commissioners have the authority to reduce the office of county auditor to a half-time position beginning after the next general election?
2. If the Yellowstone County Board of Commissioners has such authority, may it also reduce the county auditor's salary by half?

Yellowstone County has adopted the commission form of government described in Mont. Code Ann. §§ 7-3-401 to -442. Schuman v. Study Comm'n of Yellowstone County, 176 Mont. 313, 315, 578 P.2d 291, 292 (1978). According to Mont. Code Ann. § 7-3-402, local

governments operating under the commission form of government are limited to the exercise of general government powers, as opposed to self-governing powers. A county's general powers consist of "legislative, administrative and other powers provided or implied by law." Mont. Const. art. XI, § 4(1)(b). These powers are in contrast to those of a self-governing county which may exercise any power not specifically prohibited by the constitution, law or charter. Mont. Const. art. XI, § 6; Mont. Code Ann. § 7-1-101; State ex rel. Swart v. Molitor, 190 Mont. 515, 517-18, 621 P.2d 1100, 1102 (1981).

The "general powers" language found in article XI, section 4 was proposed during the 1972 constitutional convention to "liberalize" a local government's authority, and is in response to decisions of the Montana Supreme Court which denied legislative and "ordinance-making" powers to counties. II 1972 Mont. Const. Conv. *Local Government Comm. Proposal No. XI 792-93* (1979). This provision enables the legislature to grant to counties with general powers any legislative power which the legislature determines appropriate. *Local Government Comm. Proposal No. XI, supra* at 794.

The Local Government Committee is well aware of contentions that counties should not exercise any legislative power because the traditional county structure does not allow for clear separation of the legislative and executive functions and thus does not provide for clear separation of powers. However, the committee believes the legislature can build safeguards into any grant of legislative powers to counties to guard against such alleged abuse of the separation of powers concept. *The language of section 4, subsection 2 clearly hinges the grant of legislative powers to counties on grants from the legislature; no broad grant of power is given directly to counties by this section.*

Local Government Comm. Proposal No. XI, supra (emphasis supplied).

Similar views were voiced when the local government committee brought section 4 of article 9 before the convention body for approval. "Under this section, then, counties will now have legislative powers, provided that the Legislature gives them such powers." II 1972 Mont. Const. Conv. at 2522. Thus, those counties which exercise only general powers are limited to whatever powers the legislature expressly or implicitly grants. 40 Op. Att'y Gen. No. 17 at 66 (1983).

Express powers are powers specifically granted by law. Implied powers are those "necessary for the execution of the powers expressly granted." Billings Firefighters Local 521 v. City of

Billings, 214 Mont. 481, 483, 694 P.2d 1335, 1336 (1985). Even though express and implied powers are to be construed liberally, Mont. Const. art. XI, § 4(2), there must be some constitutional or statutory basis for their existence. Otherwise, "[r]ecognition of 'inherent' powers of general power county governments would effectively obliterate the distinction between general powers and self-government powers, a result which is obviously inconsistent with article XI of the Montana Constitution." 42 Op. Att'y Gen. No. 20 at 74-75 (1987), quoting 40 Op. Att'y Gen. No. 17 at 66 (1983), and citing 40 Op. Att'y Gen. No. 51 at 206, 210-11 (1984).

I have found no express or implied powers authorizing the Yellowstone County Commission to reduce the position of county auditor to half-time. The statutes contemplate a full-time auditor with a full-time salary in every county whose population exceeds 15,000. Mont. Code Ann. §§ 7-6-2401 and 7-4-2203. No existing statute contemplates a reduction of the office of auditor to part-time. The absence of such a statute is in direct contrast to Mont. Code Ann. § 7-4-2706, which permits county commissions of counties with populations under 30,000 to establish the county attorney as a part-time position by resolution and with consent of the county attorney; and Mont. Code Ann. §§ 20-3-201(4) and -213, which permit county commissions to establish the county school superintendent office as half-time, again by resolution and after a public hearing. Had the legislature intended to expressly authorize county commissions to reduce the office of county auditor to half-time, it would have adopted legislation similar to that for county attorneys and county superintendents.

County commissions do have the authority to consolidate two or more county offices, including the auditor's office. Mont. Const. art. XI, § 3(2); Mont. Code Ann. § 7-3-431. In the event a commission determines to consolidate offices, two options exist: (1) consolidation with another intra-county office; or (2) consolidation with a county office in another county. Mont. Code Ann. §§ 7-4-2301, -2303, -2305. Either option requires a resolution and hearing prior to issuance of a consolidation order. See Mont. Code Ann. §§ 7-4-2305 to -2311. Neither option contemplates or involves simply reducing an existing position to part-time.

Implied powers arising from the right of consolidation must be limited to those necessary for implementing the consolidation process itself. Billings Firefighters, 214 Mont. at 483, 694 P.2d at 1336. Reducing a position to half-time is an alternative to consolidation, not a mechanism by which to achieve consolidation.

A county auditor's principal duties include the auditing and investigating of claims against the county (§ 7-6-2407); the examination of county books and accounts (§ 7-6-2409); the maintenance of county records in the auditor's possession

(§ 7-6-2410); and the recording of claims against the county (§ 7-6-2411). County commissions may also require the auditor to perform other duties, provided a reasonable amount of time remains available in which to perform the statutorily mandated duties. Mont. Code Ann. § 7-6-2412.

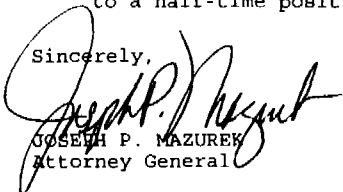
You question whether Mont. Code Ann. § 7-6-2412 can be read to imply that since a commission can determine an auditor has sufficient time to perform additional duties, the commission should also have the alternate option of reducing the number of hours worked by the county auditor. However, the subject of Mont. Code Ann. § 7-6-2412 is the imposition of additional duties, not the reduction of hours worked. The only powers which can be implied from that provision are those required to execute the imposition of additional duties. Billings Firefighters, 214 Mont. at 483, 694 P.2d at 1336. A reduction of hours worked by the auditor is counter to that end, not supportive of it, and requires more explicit direction from the legislature than exists.

Counties with general powers have no authority, either express or implied, to reduce the office of county auditor to half-time. To hold otherwise would grant a county with general powers more power than intended by the legislature, and would obliterate the distinction between counties with general powers and those which are self-governing. As I have determined that the Yellowstone Board of County Commissioners has no authority, express or implied, to reduce the office of county auditor to half-time, there is no reason to address your second question regarding the salary due a half-time county auditor.

THEREFORE, IT IS MY OPINION:

County commissions with general powers have no authority, express or implied, to reduce the office of county auditor to a half-time position.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/mas/dm

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Petition of)
Big Timber Convenience Store and) Docket No. LQ-98-9
Casino (Partnership) d/b/a/ Lucky)
Lil's of Big Timber, Sweet Grass)
County, Montana, regarding Section)
16-4-413, MCA.) DECLARATORY RULING

TO: All Interested Persons

INTRODUCTION

1. The Petitioner, Big Timber Convenience Store and Casino d/b/a Lucky Lil's of Big Timber, hereinafter, Lucky Lil's has filed a petition seeking a declaratory ruling through their attorney, David L. Jackson.

2. Lucky Lil's requests the Department determine whether a proposed new addition intended for the location of a retail beer license, "constitutes [a] premises different than 'those premises' for which the previous transfer application was denied." Petition at pg 6. The petition reveals that Lucky Lil's previously applied for the transfer of ownership and location of a retail on-premises beer license to a specific location in Big Timber, Montana. The Department, after conducting a protest hearing, issued its final agency decision on December 19, 1997, denying the transfer pursuant to 16-4-405, MCA. Lucky Lil's, in its petition, proposes that it will now build a 22 feet by 60 feet addition onto the building that was originally intended as the location for the beer license. It further proposes, according to its petition, that this new addition would be the premises for the new retail liquor license for which it intends to apply.

3. Pursuant to 16-4-413, MCA, the Montana legislature prohibits the Department from considering for five years the issuance of a license at a location for which a license has been denied on the grounds contained in 16-4-405, MCA.

4. Lucky Lil's petition provides that it will seek a wine amendment to the beer license it proposes to be transferred into the new addition. To be eligible for the wine amendment, Lucky Lil's must show that the sale of wine would be supplementary to a restaurant or prepared food business. Section 16-4-105(2), MCA. In this case, the petition provides that the prepared food business will be a Kentucky Fried Chicken franchise. The franchise will be located in the original premises in space adjacent to the proposed addition.

5. The issue is whether 16-4-413, MCA, prohibits the Department from considering an application for issuance of a license to be located in the proposed addition to Lucky Lil's original proposed premises.

6. The resolution of the issue presented in this matter depends upon a determination of the legislative intent of five year moratorium statute. This section provides:

(1) If an application for the issuance of a new license or for the transfer of an existing license has been denied for any reason provided in 16-4-405, the department may not consider an application or issue any retail license, special permit, or special license for those premises for 5 years unless the department, using the criteria described in subsection (3), determines that the proposed use is substantially different from the use that was rejected. The prohibition period commences on the date of the final agency decision or, if judicially reviewed, on the date the judicial decision is final.

(2) If an application is withdrawn after a hearing has been held in which testimony is received regarding any reason for denial provided in 16-4-405, the effect of the withdrawal is the same as if a final decision had been made denying the application for any reason provided in 16-4-405. The 5-year prohibition against considering an application or issuing a license for that vicinity commences on the date of the withdrawal.

(3) The department shall determine whether a proposed use is substantially different by considering:

- (a) the capacity of the proposed use;
- (b) the nature of the establishment;
- (c) the presence and character of any entertainment; and
- (d) the characteristics of the neighborhood.

Section 16-4-413, MCA. (emphasis supplied)

7. If the proposed addition is considered to be a new premises separate and apart from the original premises Lucky Lil's applied for, then the provisions of 16-4-413, MCA, do not apply. Based upon the representations contained in the petition and the applicable law, it is impossible for the Department to grant Lucky Lil's request.

8. The Alcoholic Beverage Code makes it very clear that it is the policy of this state to ensure that the state has complete control over every aspect of the manufacture, distribution, and sale of alcoholic beverages. Section 16-1-

101, MCA. Further, the legislature in 16-1-104, MCA, expresses its intent that all provisions of the code are to be construed to provide "for the protection, health, welfare, and safety of the people of the state." It is within this statutory framework that the Department must make its decision.

9. The Montana Supreme Court has established the test to be used to determine the legislative intent of any particular statute. The test provides that the court construing the statute, or in this case, the Department, determine the legislature's intent from the plain meaning of the words used in the statute. Clover Leaf Dairy v. State, 285 Mont. 380, 389, 948 P.2d 1164, (1997)

10. A review of the plain meaning of 16-4-413, MCA, shows that legislature's intent was to prohibit repeated applications for location of a liquor license at the same location, which had been previously denied. The legislature made it quite clear the only exception to that prohibition was that if the applicant could show a substantial difference between the original use of the premises and the newly proposed use of the premises. In this case, the petitioner attempts to avoid the prohibition of the statute by claiming that it is not applying for issuance of a license at the premises for which the transfer was denied, but it is applying for a new premises. The plain meaning of the words used by the legislature shows that it did not intend such a narrow construction of the statute. In 16-4-413(2), MCA, the legislature makes it clear the five year prohibition applies to the vicinity. The plain meaning of the word vicinity evidences a clear legislative intent that prohibition is to be applied broadly. The labeling of Lucky Lil's proposed premises with a new address does not remove it from the statute's prohibition. Lucky Lil's directs the Department's attention to the case of State v. Perez, 126 Mont. 15, 243 P.2d 309 (1952). This case stands for the proposition that if another business is being operated in conjunction with a licensed premises, the licensed premises to comply with the statutory closing regulations must be completely closed, but the other business may remain open. As a result, the area upon which the licensed activity is conducted must be clearly defined. The case certainly does not stand for the proposition that an applicant for liquor license can avoid the prohibition of 16-4-413, MCA, by changing the configuration of the premises with the addition of more space.

11. In this case, Lucky Lil's proposes to add a little more than 1,000 square feet to the existing building for which the Department has previously denied the issuance of a license. This new addition will then be given a new street address. As a result, Lucky Lil's claims the addition is a new premises. However, it is clear that the acceptance of the construction urged by Lucky Lil's flies directly in the face of the legislature's intent. The legislature made it quite clear that

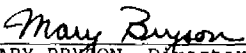
to avoid the statutory prohibition, substantially different uses had to made of the proposed premises. Section 16-4-413(3), MCA. By accepting Lucky Lil's interpretation of any change to the applicant's description of the premises, however slight, would create a new premises. By creating the new premises, the applicant would no longer be subject to the prohibition contained in 16-4-413, MCA. This interpretation effectively renders the statute ineffective.

CONCLUSION

12. The legislative intent to prohibit repeated applications at the same location is based upon sound public policy. The transfer of a liquor license is not an isolated act. By law, the Department is required to give notice of the transfer of a licensee's location. Section 16-4-207, MCA. Thus, allowing the public to participate in licensing decisions. Those members of the public affected by the transfer are then allowed to voice their concerns to the Department regarding the proposed action. Participation by the public is not a simple or easy task. Such participation by the public may require the expenditure by those choosing to participate of large amounts of valuable resources - precious time and money to name only two. Section 16-4-413, MCA, is clearly intended by the legislature to protect the health, welfare, and safety of the public by preventing well-financed applicants from grinding down the opposition by repeated applications for the same location. Therefore, the declaratory ruling is denied and the petition dismissed.

DATED this 14th day of September, 1998.

MONTANA DEPARTMENT OF REVENUE



MARY BRYSON, Director

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 1998, a true and correct copy of the foregoing has been served by placing same in the United States Mail, postage prepaid, addressed as follows:

David L. Jackson
Attorney at Law
203 N Ewing St
Helena, Montana 59601



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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1998. This table includes those rules adopted during the period July 1, 1998 through September 30, 1998 and any proposed rule action that was 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 June 30, 1998, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1996, 1997 and 1998 Montana Administrative Registers.

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

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in August 1998, appear. Vacancies scheduled to appear from October 1, 1998, through December 31, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 2, 1998.

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

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Nursing (Commerce)			
Ms. Lorena Erickson	Governor	Miles	8/18/1998
Corvallis			7/1/2002
Qualifications (if required): public member			
Board of Private Security Patrol Officers and Investigators (Commerce)			
Mr. Gary Gray	Governor	reappointed	8/1/1998
Great Falls			8/1/2001
Qualifications (if required): representative of contract security organizations			
Mr. Michael Ames	Governor	reappointed	8/1/1998
Colstrip			8/1/2001
Qualifications (if required): representative of proprietary security organization			
Board of Regents of Higher Education (Education)			
Ms. Lynn Morrison-Hamilton	Governor	Kaze	8/12/1998
Havre			2/1/1999
Qualifications (if required): representative of District 3 and a Democrat			
Burial Preservation Board (Indian Affairs)			
Mr. Gilbert Horn	Governor	reappointed	8/22/1998
Harlem			8/22/2000
Qualifications (if required): representing the Gros Ventre Tribe			
Mr. Mickey Nelson	Governor	reappointed	8/22/1998
Helena			8/22/2000
Qualifications (if required): representing the Montana Coroner's Association			
Mr. Duncan Standing Rock, Sr. Governor		reappointed	8/22/1998
Box Elder			8/22/2000
Qualifications (if required): representing the Chippewa-Cree Tribe			

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Burial Preservation Board (Indian Affairs) cont.			
Dr. Ken Deaver	Governor	reappointed	8/22/1998
Billings			8/22/2000
Qualifications (if required):	representing the Montana Archaeological Association		
Mr. Burton Pretty On Top	Governor	John Pretty On Top	8/22/1998
Crow Agency			8/22/2000
Qualifications (if required):	representing the Crow Tribe		
Mrs. Germaine White	Governor	reappointed	8/22/1998
St. Ignatius			8/22/2000
Qualifications (if required):	representing the Little Shell Band of Chippewa Indians		
Governor's Council on Disability (Administration)			
Rep. Loren Soft	Governor	not listed	8/18/1998
Billings			8/18/2000
Qualifications (if required):	public member		
Mr. Kirk Astroth	Governor	not listed	8/12/1998
Belgrade			8/12/2000
Qualifications (if required):	public member		
Mr. Peter Leech	Governor	not listed	8/12/1998
Missoula			8/12/2000
Qualifications (if required):	public member		
Mr. James Meldrum	Governor	not listed	8/12/1998
Helena			8/12/2000
Qualifications (if required):	public member		
Ms. Mary Morrison	Governor	not listed	8/12/1998
Missoula			8/12/2000
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Council on Disability (Administration) cont.			
Mr. Michael Regnier	Governor	not listed	8/12/1998
Missoula			8/12/2000
Qualifications (if required):	public member		
Mr. Bill Roberts	Governor	not listed	8/12/1998
Helena			8/12/2000
Qualifications (if required):	public member		
Judge Katherine "Kitty" Curtis	Governor	not listed	8/12/1998
Columbia Falls			8/12/2000
Qualifications (if required):	public member		
Dr. Stephen Duncan	Governor	not listed	8/12/1998
Bozeman			8/12/2000
Qualifications (if required):	public member		
Ms. Bonnie Bowman McGowan	Governor	not listed	8/12/1998
Highwood			8/12/2000
Qualifications (if required):	public member		
Mr. Wade Riden	Governor	not listed	8/18/1998
Chinook			8/18/2000
Qualifications (if required):	public member		
Ms. Kathleen Jensen	Governor	not listed	8/18/1998
Westby			8/18/2000
Qualifications (if required):	public member		
Mr. John Vincent	Governor	not listed	8/18/1998
Gallatin Gateway			8/18/2000
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Council on Disability (Administration) cont.			
Reverend Peter Bruno	Governor	not listed	8/18/1998
Glendive			8/18/2000
Qualifications (if required):	public member		
Mr. Stanley Rathman	Governor	not listed	8/18/1998
Choteau			8/18/2000
Qualifications (if required):	public member		
Mr. Bill Pena	Governor	not listed	8/18/1998
Seeley Lake			8/18/2000
Qualifications (if required):	public member		
Judge Gary Acevedo	Governor	not listed	8/18/1998
Ronan			8/18/2000
Qualifications (if required):	public member		
Ms. Kathy Peoples	Governor	not listed	8/18/1998
Butte			8/18/2000
Qualifications (if required):	public member		
Ms. Kim Visser	Governor	not listed	8/18/1998
Missoula			8/18/2000
Qualifications (if required):	public member		
Mr. William Jones	Governor	not listed	8/12/1998
Great Falls			8/12/2000
Qualifications (if required):	public member		
Ms. Patricia Lockwood	Governor	not listed	8/12/1998
Laurel			8/12/2000
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Council on Disability (Administration) cont.			
Ms. Kathleen Heiser	Governor	not listed	8/12/1998
Billings			8/12/2000
Qualifications (if required):	public member		
Ms. Sarah Casey	Governor	not listed	8/12/1998
Helena			8/12/2000
Qualifications (if required):	public member		
Governor's Council on Families (Public Health and Human Services)			
Mr. Craig Hutchison	Governor	not listed	8/18/1998
Helena			8/18/2000
Qualifications (if required):	public member		
Montana Wheat and Barley Committee (Agriculture)			
Mr. Fred Elling	Governor	reappointed	8/20/1998
Rudyard			8/20/2001
Qualifications (if required):	representative of District II and a Republican		
Ms. Judy Vermulm	Governor	reappointed	8/20/1998
Cut Bank			8/20/2001
Qualifications (if required):	representative of District III and a Democrat		
Risk Management Advisory Council (Administration)			
Mr. Bob Person	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Office of the Legislative Services Division		
Ms. Donna Campbell	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Fish, Wildlife and Parks		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

Appointee	Appointed by	Succeeded	Appointment/End Date
Risk Management Advisory Council (Administration) cont.			
Mr. Gary Managhan	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Secretary of State's Office		
Ms. Barb Charlton	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Commerce		
Mr. Forest Farris	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Environmental Quality		
Ms. Karen Munro	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Justice		
Mr. Bruce Swick	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Natural Resources and Conservation		
Mr. Michael Buckley	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Transportation		
Mr. Tom Gibson	Governor	not listed	8/26/1998
Bozeman			8/26/2000
Qualifications (if required):	representing the University System		
Mr. Patrick A. Chenovick	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Montana Judiciary		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Risk Management Advisory Council (Administration) cont.			
Ms. Laura Calkin	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Public Service Commission		
Ms. Cathy Muri	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Governor's Office		
Ms. GERALYN Driscoll	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Office of Public Instruction		
Mr. Richard A. Crofts	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Office of the Commissioner of Higher Education		
Mr. Mike Krings	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Administration		
Mr. David Scott	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Labor and Industry		
Mr. George Harris	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Livestock		
Ms. Sharon McCabe	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Montana Historical Society		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Risk Management Advisory Council (Administration) cont.			
Ms. Kathy Battrick	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Public Health and Human Services		
Ms. Frieda Houser	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Agriculture		
Ms. Virginia Cameron	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Military Affairs		
Mr. Mike Glass	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the State Compensation Insurance Fund		
Mr. Rodger Nordahl	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Revenue		
Mr. Dave Drynan	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the State Auditor's Office		
Mr. Dave Ohler	Governor	not listed	8/26/1998
Helena			8/26/2000
Qualifications (if required):	representing the Department of Corrections		

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Banking Board (Commerce)			
Mr. Rich Pavlounis	Governor	Gierke	8/26/1998
Great Falls			7/1/2001
Qualifications (if required): public member			
Mr. Jerry Keck	Governor	Morton	8/26/1998
Helena			7/1/2001
Qualifications (if required): officer of a national bank			
Ms. Joy Ott	Governor	Morton	8/26/1998
Billings			7/1/2001
Qualifications (if required): officer of a national bank			

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998		
<u>AIDS Advisory Council (Public Health and Human Services)</u>		
Mr. Frank Gary, Butte	Governor	11/26/1998
Qualifications (if required): public member		
Mr. Steven C. Yeakel, Helena	Governor	11/26/1998
Qualifications (if required): public member		
Mr. David G. Rice, Havre	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Verbena Savior, Poplar	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Pam Carter, Bozeman	Governor	11/26/1998
Qualifications (if required): public member		
Dr. Connie O'Connor, Helena	Governor	11/26/1998
Qualifications (if required): public member		
Mr. David Herrera, Billings	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Rita Munzenrider, Kalispell	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Terri Dunn, Whitefish	Governor	11/26/1998
Qualifications (if required): public member		
Rep. John Bohlinger, Billings	Governor	11/26/1998
Qualifications (if required): legislator		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
AIDS Advisory Council (Public Health and Human Services) cont.	Governor	11/26/1998
Ms. Jeri Snell, Miles City Qualifications (if required): public member		
Ms. Pam Bragg, Helena Qualifications (if required): public member	Governor	11/26/1998
Dr. R.D. Marks, Missoula Qualifications (if required): public member	Governor	11/26/1998
Ms. Kim Kovanda, Columbus Qualifications (if required): student representative	Governor	11/26/1998
Dr. Raymond Geyer, Great Falls Qualifications (if required): public member	Governor	11/26/1998
Mr. Kevin Petersen, Clancy Qualifications (if required): public member	Governor	11/26/1998
Ms. Shelly Johnson, Fairfield Qualifications (if required): public member	Governor	11/26/1998
Alfalfa Seed Committee (Agriculture) Mr. John Markgard, Laurel Qualifications (if required): representing alfalfa seed growers and alfalfa leaf-cutting bee industry	Governor	12/21/1998
Mr. Ernest Johnson, Chinook Qualifications (if required): seed producer	Governor	12/21/1998

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Environmental Review (Environmental Quality) Mr. Daniel Dennehy, Butte Qualifications (if required): public health officer	Governor	12/31/1998
Ms. Kim Lacey, Glasgow Qualifications (if required): public member	Governor	12/31/1998
Board of Occupational Therapy Practice (Commerce) Ms. Lynn Davis, Billings Qualifications (if required): licensed occupational therapist	Governor	12/31/1998
Board of Outfitters (Commerce) Mr. Roy Ereaux, Malta Qualifications (if required): representing District 4	Governor	10/1/1998
Mr. Max Barker, Augusta Qualifications (if required): representing District 3	Governor	10/1/1998
Board of Speech Pathologists and Audiologists (Commerce) Mr. Norman Peters, Townsend Qualifications (if required): public member	Governor	12/31/1998
Department of Public Health and Human Services Advisory Council (Public Health and Human Services) Mr. Jim Adams, Helena Qualifications (if required): none specified	Director	12/1/1998
Ms. Ann Bartel, Great Falls Qualifications (if required): none specified	Director	12/1/1998

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Public Health and Human Services Advisory Council (Public Health and Human Services) cont.		
Ms. Nancy Espy, Broadus	Director	12/1/1998
Qualifications (if required): none specified		
Ms. June Hermanson, Polson	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Sally Johnson, Missoula	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Wendy Keating, Billings	Director	12/1/1998
Qualifications (if required): none specified		
Dr. Michael J. McLaughlin, Great Falls	Director	12/1/1998
Qualifications (if required): none specified		
Dr. Bill Peters, Bozeman	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Alicia Pichette, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Bob Runkel, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Sen. Vivian M. Brooke, Missoula	Director	12/1/1998
Qualifications (if required): none specified		

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998		
Department of Public Health and Human Services, Advisory Council (Public Health and Human Services) cont.		
Rep. Ernest Bergsagel, Malta	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Fern Hart, Missoula	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Ken Caruso, Huson	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Randy Haight, Bozeman	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Joan Miles, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Fred Patton, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Deb Wade, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Sara Hudson, Billings	Director	12/1/1998
Qualifications (if required): none specified		
Governor's Vision 2005 Task Force on Agriculture (Agriculture)		
Mr. Peter Blouke, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Department of Commerce		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont. Rep. Ernest Bergsagel, Malta Qualifications (if required): representative of the state legislature	Governor	12/31/1998
Rep. Linda J. Nelson, Medicine Lake Qualifications (if required): representative of the state legislature	Governor	12/31/1998
Mr. W. Ralph Peck, Helena Qualifications (if required): representative of the Department of Agriculture	Governor	12/31/1998
Mr. David Sagmiller, Ronan Qualifications (if required): representative of the Montana Agricultural Business Association	Governor	12/31/1998
Ms. Esther McDonald, Philipsburg Qualifications (if required): representative of the Montana Cattle Women's Association	Governor	12/31/1998
Mr. Tim Huls, Corvallis Qualifications (if required): representative of the Montana Dairymen's Association	Governor	12/31/1998
Mr. Thad Willis, Big Sandy Qualifications (if required): representative of the Montana Farm Bureau Federation	Governor	12/31/1998
Mr. Ken Maki, Great Falls Qualifications (if required): representative of the Montana Farmers Union	Governor	12/31/1998
Mr. Merlin R. Boxwell, Cut Bank Qualifications (if required): representative of the Montana Grain Growers Association	Governor	12/31/1998

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.		
Mr. Harold Clarke, Columbia Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Mint Growers Association		
Mr. Loren Wolery, Turner	Governor	12/31/1998
Qualifications (if required): representative of the Montana Pork Producers Council		
Ms. Marilyn E. Johnson, Kalispell	Governor	12/31/1998
Qualifications (if required): representative of the Montana State Grange		
Mr. Lynn Cornwell, Glasgow	Governor	12/31/1998
Qualifications (if required): representative of the Montana Stockgrowers Association		
Mr. Ron Devlin, Terry	Governor	12/31/1998
Qualifications (if required): representative of the Montana Wool Growers Association		
Ms. Sharon Kindle, Malta	Governor	12/31/1998
Qualifications (if required): representative of Women Involved in Farm Economics		
Mr. Chris Reiquam, Bozeman	Governor	12/31/1998
Qualifications (if required): representative of the Montana Bankers Association		
Mr. Kenneth M. Walsh, Twin Bridges	Governor	12/31/1998
Qualifications (if required): representative of the Montana Independent Bankers Association		
Ms. Linda Reed, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Governor's Office		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998

Board/current position holder	Appointed by	Term end
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.	Governor	12/31/1998
Dr. Tom McCoy, Bozeman	Governor	12/31/1998
Qualifications (if required): representative of Montana State University		
Mr. Kerry Schaefer, Great Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Chamber of Commerce		
Mr. Bud Leuthold, Billings	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Chuck Merja, Sun River	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Bob Quinn, Fort Benton	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Greg Rauschendorfer, Poplar	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Ron Ueland, Belgrade	Governor	12/31/1998
Qualifications (if required): representative of the public		
Historical Preservation Review Board (Historical Society)	Governor	10/1/1998
Mr. John Robert Horner, Bozeman		
Qualifications (if required): paleontologist		
Ms. Theo Hugs, Fort Smith	Governor	10/1/1998
Qualifications (if required): historian		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1998 through DECEMBER 31, 1998

Board/current position holder	Appointed by	Term end
Lewis and Clark Bicentennial Commission (Historical Society)		
Mr. Hal J. Stearns, Missoula	Governor	10/1/1998
Qualifications (if required): public member		
Mr. Leif Johnson, West Yellowstone	Governor	10/1/1998
Qualifications (if required): public member		
Mr. Curley Youpee, Poplar	Governor	10/1/1998
Qualifications (if required): enrolled member of a Montana Indian Tribe		
Senate District 32 (Senate)		
Sen. George Turman, Missoula	County Commissioners	upon certification
Qualifications (if required): none specified		
Vocational Rehabilitation Divisions Advisory Council (Public Health and Human Services)		
Ms. Jane Tremper, Missoula	Director	12/15/1998
Qualifications (if required): none specified		
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences)		
Mr. James L. Worthington, Laurel	Governor	10/16/1998
Qualifications (if required): representative of municipality		
Mr. Curt Myran, Miles City	Governor	10/16/1998
Qualifications (if required): municipality representative		