

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-125 Notice of Proposed Amendment - Seeds - Labeling - Analysis Fees. No Public Hearing Contemplated. 2278-2282

STATE AUDITOR, Title 6

6-135 Notice of Public Hearing on Proposed Amendment - Registration and Examination of Securities Salespersons, Investment Adviser Representatives, Broker-Dealers, and Investment Advisers. 2283-2286

RULE SECTION

FISH, WILDLIFE, AND PARKS, Department of, Title 12

REP (Fish, Wildlife, and Parks Commission)
AMD Clarifying Procedures of the Bonus Point System. 2287

LABOR AND INDUSTRY, Department of, Title 24

AMD (Board of Professional Engineers and Professional Land Surveyors) Fees. 2288-2290

LABOR AND INDUSTRY, Continued

AMD NEW	(Board of Realty Regulation) Renewal, License Renewal--Late Renewal - Continuing Property Management Education - Continuing Property Management Education Reporting Requirements.	2291-2292
TRANS AMD NEW REP	Building Codes Bureau.	2293-2300
TRANS	Building Codes Bureau.	2301-2304

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

TRANS	Emergency Medical Services.	2305-2307
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INTERPRETATION SECTION

Opinions of the Attorney General.

12	Fires - Cooperative Law Enforcement Agreement with Federal Agency for Fire Response - Public Officers - Eligibility of Public Officer for Compensation from Federal Government Agency - Salaries - Services Provided Outside "Official Duties" of Sheriff - Sheriffs - Compensation Paid to County Employee Under Terms of Cooperative Law Enforcement Agreement with Federal Agency.	2308-2313
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SPECIAL NOTICE AND TABLE SECTION

	Function of Administrative Rule Review Committee.	2314-2315
	How to Use ARM and MAR.	2316
	Accumulative Table.	2317-2328
	Boards and Councils Appointees.	2329-2338
	Vacancies on Boards and Councils.	2339-2350

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.12.3104)	AMENDMENT
and 4.12.3402 relating to)	
seeds)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On December 21, 2001 the Montana Department of Agriculture proposes to amend the above stated rules relating to seeds.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on December 5, 2001 to advise us of the nature of the accommodation that you need. Please contact Gregory Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-7336 or E-mail: agr@state.mt.us.

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

4.12.3104 LABELING FOR SEED KIND AND VARIETY

(1) through (1)(b)(ii) remain the same.

- (iii) clover, crimson~~flax~~;
- (iv) clover, red;
- (v) clover, white;
- (vi) corn, pop;
- (vii) fescue, tall;
- (viii) ~~millet~~ flax;
- (ix) millet, foxtail;
- (x) pea, forage;
- (xi) rye;
- (xii) sorghum;
- (xiii) sorghum-sudan, hybrid;
- (xiv) sudan grass; and
- (xv) trefoil, birdsfoot.

(c) remains the same.

(2) remains the same.

AUTH: 80-5-139, MCA
IMP: 80-5-123, MCA

REASON: Due to an error in the formatting of rules adopted in 2000, the rules contained seed types that were not a valid kind of crop grown in Montana. Clover, crimsonflax is

not a valid seed kind. It should be clover, crimson. Flax is a type of crop grown in Montana and should be listed as a separate kind. Foxtail is a common weed that should not be allowed to propagate in Montana. Foxtail should be listed with Millet to describe a type of millet that is grown in Montana.

4.12.3402 SEED LABORATORY ANALYSIS FEES (1) The Montana seed laboratory, Montana State University, Bozeman, Montana will test samples of seeds submitted for purity, germination and miscellaneous tests. All samples of seed analyzed and tested shall be at the following rates:

FEE SCHEDULE

<u>KIND OF SEED</u>	<u>PURITY ONLY</u>	<u>GERMINATION ONLY</u>	<u>PURITY & GERMINATION</u>
Bentgrasses	\$17.00 <u>21.00</u>	\$14.00 <u>17.00</u>	\$31.00 <u>38.00</u>
Bluegrass	17.00 <u>21.00</u>	14.00 <u>17.00</u>	31.00 <u>38.00</u>
Bluestems	36.00 <u>44.00</u>	20.00 <u>24.00</u>	56.00 <u>68.00</u>
Bromegrass	17.00 <u>21.00</u>	14.00 <u>17.00</u>	31.00 <u>38.00</u>
Canarygrass	14.00 <u>17.00</u>	11.00 <u>14.00</u>	25.00 <u>31.00</u>
Cereals: i.e., barley*, wheat, rye, triticale, corn, oats, spelt, emmer	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
Fescues	17.00 <u>21.00</u>	14.00 <u>17.00</u>	31.00 <u>38.00</u>
Flax	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
<u>Flowers</u>	<u>24.00</u>	<u>24.00</u>	<u>48.00</u>
Foxtails-creeping*	36.00 <u>44.00</u>	20.00 <u>24.00</u>	56.00 <u>68.00</u>
Indian ricegrass*	15.00 <u>18.00</u>	20.00 <u>24.00</u>	35.00 <u>42.00</u>
Legumes, large & small seeded: i.e., alfalfa, cicer milkvetch, clovers, sweetclover, birdsfoot trefoil, beans, peas, lentils, faba, chickpeas, medic, sainfoin	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
Millets	17.00 <u>21.00</u>	14.00 <u>17.00</u>	31.00 <u>38.00</u>
Mustards	14.00 <u>17.00</u>	11.00 <u>14.00</u>	25.00 <u>31.00</u>
<u>Natives (Indigenous)</u>	<u>24.00</u>	<u>24.00</u>	<u>48.00</u>
Needlegrass*	15.00 <u>18.00</u>	20.00 <u>24.00</u>	35.00 <u>42.00</u>
Orchardgrass	17.00 <u>21.00</u>	14.00 <u>17.00</u>	31.00 <u>38.00</u>
Prairie sandreed	36.00 <u>44.00</u>	20.00 <u>24.00</u>	56.00 <u>68.00</u>
Ryegrass	17.00 <u>21.00</u>	14.00 <u>17.00</u>	31.00 <u>38.00</u>
Safflower	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
Saltbushes	15.00 <u>18.00</u>	20.00 <u>24.00</u>	35.00 <u>42.00</u>
Sorghums-grain	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
Sundangrass	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
Sugarbeets	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
Sunflower	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>
Timothy	14.00 <u>17.00</u>	11.00 <u>14.00</u>	25.00 <u>31.00</u>
<u>Tree</u>	<u>24.00</u>	<u>24.00</u>	<u>48.00</u>

<u>KIND OF SEED</u>	<u>PURITY ONLY</u>	<u>GERMINATION ONLY</u>	<u>PURITY & GERMINATION</u>
Wheatgrasses*			
• beardless, bluebunch, crested, intermediate, pubescent, slender, streambank, tall, thickspike	\$17.00 <u>21.00</u>	\$14.00 <u>17.00</u>	\$31.00 <u>38.00</u>
• western	20.00 <u>24.00</u>	20.00 <u>24.00</u>	40.00 <u>48.00</u>
Wildryes	17.00 <u>21.00</u>	14.00 <u>17.00</u>	31.00 <u>38.00</u>
<u>Wild Flowers</u>	<u>24.00</u>	<u>24.00</u>	<u>48.00</u>
Vegetables	10.00 <u>12.00</u>	8.00 <u>10.00</u>	18.00 <u>22.00</u>

MIXTURES:
(See hourly rate)

Tetrazolium Test (TZ): each kind of seed listed above:
\$25.00 30.00

* May contain dormant seed.

(2) Fees for additional services provided by the seed laboratory:

Hourly rate	\$ 18 <u>30.00</u> (for services including testing mixtures, excessively dirty or time consuming samples)
Rush	\$ 25 <u>30.00</u> (expedite sample before routine samples)
Express rush	\$ 100 <u>120.00</u> (expedite sample before all rush samples)
BSMV	\$ 30 <u>36.00</u> (Barley Stripe Mosaic Virus Test)
Seed ID	\$ 5 <u>6.00</u> (per seed identification)
Dormancy	\$ 15 <u>18.00</u> (in addition to germination charges)
Utricle Fill	\$ 15 <u>18.00</u> (in addition to germination charges)
FAX	\$ 2 <u>3.00</u> (to send analysis reports)
Phone	\$ 2 <u>3.00</u> (to send analysis reports)
USA Noxious	\$ 5 <u>6.00</u> (in addition to normal rate)
Canadian ISTA Rules	\$ 5 <u>6.00</u> (samples tested in accordance with Canadian or ISTA rules)
<u>ISTA Rules</u>	<u>\$ 6.00 (samples tested in accordance with ISTA rules)</u>
<u>Ascochyta Test</u>	<u>\$ 36.00</u>
<u>Sodium Hydroxide</u>	<u>\$ 6.00</u>

AUTH: 80-5-139, MCA
IMP: 80-5-126 and 80-5-128, MCA

REASON: The adoption of these amendments to the seed laboratory analysis fees will allow the laboratory to keep up with rising costs and to meet the budget needs including

maintenance of equipment, salaries for lab personnel, and develop new services for changing seed and testing technology that will benefit their users. The proposed fees are comparable with the rates being charged for these services by surrounding states.

The proposed fees will increase lab revenues by approximately \$40,000. The cost of these proposed fee increases to customers will be minimal when all factors are considered. Based upon an average sized seed lot of wheat, and the acreages planted from each seed lot, these proposed fee increases will result in a .5 to 1 cent cost increase per acre of wheat production for the seed testing. These fee increases will affect 1000 customers of the seed lab.

The seed laboratory operates on a self-supporting basis (income = expenses). Equipment updating, replacement and maintenance, computer systems, laboratory supplies and labor are paid for with fees generated by services provided. Over the last five years the lab has experienced a 20% increase in the cost of supplies, germination paper and blotter paper. The university system has also implemented a 5% assessment for all income received by the seed lab. These two factors alone account for an expenditure of approximately one half of the proposed revenue increase per year. The current types of seed technology being developed in the industry have put an increased demand on certification of seed analysts, making for a very competitive job market. In a national survey, Montana analysts are being paid an average of 30% below the wage paid for a certified seed analyst. A portion of this proposed increase will be used to narrow the wage disparity and retain trained analysts, in which the lab has invested two years of training.

Recently, the Wyoming Department of Agriculture closed the Wyoming state seed laboratory. This was done for a variety of reasons. With this closure, there has been an increase in seed samples. While this may seem beneficial, it adds greatly to operating expenses. The lab currently receives 45% of its business from out of state customers.

4. Concerned persons may submit their data, views or arguments concerning this proposed action in writing to Gregory Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336 or E-mail: agr@state.mt.us. Any comments must be received no later than December 19, 2001.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory Ames at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-

0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than December 19, 2001.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 100 persons based on 1000 customers of the seed lab, many of which are licensed seed dealers and labelers in Montana.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture. All department rule making notices and adoptions may be reviewed at the Department of Agriculture's website at www.agr.state.mt.us.

8. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

DEPARTMENT OF AGRICULTURE

By: /s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State November 9, 2001.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 6.10.121) ON PROPOSED AMENDMENT
pertaining to registration)
and examination of securities)
salespersons, investment)
adviser representatives,)
broker-dealers, and investment)
advisers)

TO: All Concerned Persons

1. On December 20, 2001, at 9:30 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment of ARM 6.10.121, pertaining to registration and examination of securities salespersons, investment adviser representatives, broker-dealers, and investment advisers.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m., December 14, 2001, to advise us as to the nature of the accommodation needed. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

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

6.10.121 REGISTRATION AND EXAMINATION - SECURITIES
~~SALESMEN~~ SALESPERSON, INVESTMENT ADVISER REPRESENTATIVES,
BROKER-DEALERS, AND INVESTMENT ADVISERS (1) To become registered in this state as a securities ~~salesman~~ salesperson or an investment adviser representative, the individual applicant shall pass the national association of securities dealers, inc., (NASD) uniform securities agent state law exam or the uniform combined state law examination or an examination designated by the commissioner. The applicant must also complete an application form described in (2). A ~~salesman~~ salesperson applying to register with an issuer does not have to take an examination.

(2) Each application for registration in this state must be made on the most current revised uniform application form as adopted by the North American securities administrators association, ~~inc.,~~ (NASAA), unless the commissioner, by order, designates another form. Broker-dealers shall use NASD form BD, investment adviser representatives shall use NASD form

ADV, and securities salesmen salespersons and investment adviser representatives shall use NASD form U-4.

~~(3)(a) Except as provided in (3)(b) and (3)(c) of this rule, each applicant for registration as a salesman or broker-dealer in this state shall register through the central registration depository, a division of the national association of securities dealers, inc.~~

(3) Except as provided in (3)(a) and (b) of this rule, all applications, amendments, reports, notices, related filings and fees required to be filed with the commissioner shall be filed electronically with and transmitted to the NASD's investment adviser registration depository (IARD) for investment advisers and investment adviser representatives or to the NASD's central registration depository (CRD) for broker-dealers and salespersons:

(a) except as provided in (3)(b) of this rule, salespersons representing issuers, salespersons of non-NASD firms and broker-dealers that are not members of the NASD shall file all applications, amendments, reports, notices, related filings and fees directly with the commissioner;

~~(b) Except as provided in (3)(c) of this rule, each salesman representing an issuer, each salesman representing a broker-dealer that is not a member of the national association of securities dealers, inc., each broker-dealer that is not a member of the national association of securities dealers, inc., and each applicant for registration as an investment adviser or an investment adviser representative in this state shall apply for registration with the commissioner.~~

~~(b)(c) The commissioner, in his discretion, in the commissioner's discretion, the commissioner may by order provide for a manner of filing an application to register or an application to terminate registration different from the procedures provided in (3)(a) and (3)(b) of this rule;~~

(c) notwithstanding (3) of this rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the commissioner.

(4) Each person registered pursuant to 30-10-201, MCA, wishing to terminate registration shall file, ~~with the commissioner,~~ an application to terminate registration. Each application to terminate registration must be made on the most current revised uniform termination form as adopted by the ~~North American securities administrators association, inc., NASAA,~~ unless the commissioner, by order, designates another form. Broker-dealers shall use form BDW, investment advisers shall use form ADV-W, and securities salesmen salespersons and investment adviser representatives shall use form U-5.

~~(5)(a) Except for a salesman representing an issuer or a salesman representing a broker-dealer that is not a member of the national association of securities dealers, inc., and except as provided in (5)(c) of this rule, each individual~~

~~applying for termination or registration as a salesman in this state shall terminate through the central registration depository, a division of the national association of securities dealers, inc.~~

~~(b) Except as provided in (5)(c) of this rule, each applicant for termination of registration as a broker-dealer, investment adviser, or investment adviser representative in this state shall apply for termination of the registration with the commissioner.~~

~~(c) The commissioner, in his discretion, may by order provide for a manner of filing an application to terminate registration different from the procedures provided in (5)(a) and (5)(b) of this rule.~~

~~(6)(5) Each change in the information included in an application for registration or termination must be set forth in an amendment to the application and filed with the commissioner within 30 days after the change occurs.~~

~~(7)(6) Upon the written request of an applicant and for good cause shown, the commissioner may waive any of the requirements of this rule.~~

AUTH: Sec. 30-10-107, MCA

IMP: Sec. 30-10-202, MCA

4. REASONABLE NECESSITY STATEMENT: The reason for amending ARM 6.10.121 is to comply with the recommendation of the North American Securities Administrators Association to mandate the use of the IARD for registration of investment advisers and investment adviser representatives.

5. Concerned 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 Kevin F. Phillips, Attorney, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or be e-mailed to kephillips@state.mt.us, and must be received no later than December 27, 2001.

6. Kevin F. Phillips, Attorney, has been designated to preside over and conduct the hearing.

7. 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, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to kephillips@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ Angela Caruso
Angela Caruso
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on November 9, 2001.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal)	
of ARM 12.3.124 and the)	
amendment of ARM 12.3.135 and)	NOTICE OF REPEAL AND
12.3.155, clarifying)	AMENDMENT
procedures of the bonus point)	
system)	

TO: All Concerned Persons

1. On September 20, 2001, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed repeal of ARM 12.3.124, and the amendment of ARM 12.3.135 and 12.3.155 clarifying procedures of the bonus point system at page 1802 of the 2001 Montana Administrative Register, Issue Number 18.

2. The commission has repealed ARM 12.3.124 as proposed.

3. The commission has amended ARM 12.3.135 and 12.3.155 as proposed.

4. No comments or testimony were received.

/s/ Dan Walker
Dan Walker
Commission Chairman

/s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State November 9, 2001

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.48.1105, pertaining to)
fees)

TO: All Concerned Persons

1. On July 5, 2001, the Board of Professional Engineers and Professional Land Surveyors published a notice of proposed amendment of the above-stated rule at page 1169 of the 2001 Montana Administrative Register, Issue Number 13.

2. A public hearing was held in Helena on July 30, 2001, but no members of the public attended. Written comments, however, were received by the Board prior to the closing of the comment period.

3. After consideration of the comments received, the Board has amended ARM 8.48.1105 exactly as proposed.

4. The Board received comments from four individuals. The comments received and the Board's responses are as follows:

Comment 1: A commenter stated that the increase to a \$90 annual renewal fee is twice what other states require.

Response 1: The \$90 fee is a biennial renewal fee, not an annual fee. The licensing fees from surrounding states were considered by the Board when proposing the fee increases and Montana's proposed fee schedule is similar to surrounding states.

Comment 2: A commenter stated that the purpose of professional licensing is to protect the public from incompetent and/or dishonest practitioners and therefore, General Fund money should be used to help support the Board's operations.

Response 2: The Board, like other professional and occupational licensing boards in Montana, is by statute funded entirely by fees collected from renewals, examinations, and applications. The Board respectfully suggests that the comment should be directed to the Legislature.

Comment 3: A concerned person requested a breakdown of what Board expenditures have been for the last 5 years.

Response 3: An expenditure comparison was provided for the last 5 years and presented to the commentator. (See Table I)

Comment 4: A commenter stated that due to the scope of the

increase of fees proposed by the Board, the Board should include a detailed evaluation of the expenditures. With a 50% increase in renewal fees, there should be a detailed evaluation of all pertinent expenditures and appropriate projections.

Response 4: An evaluation of the expenditures and budgets for the last 5 years has been completed and was used to determine appropriateness of the fee increases. (See Table I) Not only were the fees for renewal increased, but also the fees for examinations were increased because of increasing costs of examination grading by outside organizations. As stated above, the Board is required by law to fund its operations via fee revenue. The Board notes that the expenditure authority for the Board is established by the Legislature as part of state government's biennial budget process.

TABLE I. Five Year Budget Comparison

EXPENDITURES	ACTUAL FY 96	ACTUAL FY 97	ACTUAL FY 98	ACTUAL FY 99	ACTUAL FY 00	PROJECTED FY 01
1000 Personal Services	\$3,907	\$5,164	\$18,348	\$71,274	\$71,907	\$71,193.89
2100 Other Services	\$24,073	\$15,542	\$99,454	\$54,777	\$38,834	\$20,127.77
2200 Supplies & Materials	\$596	\$858	\$14,184	\$4,454	\$3,017	\$2,950.25
2300 Communication	\$8,228	\$10,474	\$12,624	\$7,204	\$14,102	\$9,260.67
2400 Travel	\$7,129	\$10,221	\$10,816	\$18,274	\$11,822	\$15,744.39
2500 Rent	\$549	\$414	\$451	\$396	\$1,241	\$324.27
2700 Repair & Maintenance	\$0	\$0	\$109	\$183	\$2,020	\$0.00
2800 Other Expenses	\$29,171	\$29,210	\$50,311	\$55,887	\$91,283	\$92,265.93
3100 Equipment	\$6,300	\$11,005	\$0	\$1,000	\$0	\$0.00
ACTUAL EXPENSES	\$79,953	\$82,888	\$206,297	\$213,449	\$234,226	\$211,867.17

CASH BALANCE	FY96	FY97	FY98	FY99	FY00	FY01
Beginning Fund Balance	\$255,490	\$334,986	\$328,884	\$290,023	\$169,818	\$165,166.00
Plus Revenue	\$161,795	\$77,431	\$169,085	\$93,033	\$232,510	\$174,427.00
Minus Expenditures	(\$79,953)	(\$82,888)	(\$206,297)	(\$213,449)	(\$234,226)	(\$230,064.00)
Prior Year Adjustments	(\$2,346)	(\$645)	(\$1,649)	\$211	(\$2,936)	
Equals Ending Fund Balance	\$334,986	\$328,884	\$290,023	\$169,818	\$165,166	\$109,529.00

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
STEVE WRIGHT, PRESIDING OFFICER

By: /s/ WENDY J. KEATING
Wendy J. Keating
Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State: November 9, 2001.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.58.426, 8.58.707,) AND ADOPTION
and 8.58.709, pertaining)
to renewal, license renewal--)
late renewal and continuing)
property management education,)
and the adoption of NEW RULE I)
pertaining to continuing)
property management education)
reporting requirements)

TO: All Concerned Persons

1. On August 23, 2001, the Board of Realty Regulation published notice of the proposed amendment of ARM 8.58.301, 8.58.414, 8.58.423, 8.58.426, 8.58.707 and 8.58.709 and the adoption of proposed NEW RULE I, all pertaining to the licensing and regulation of persons involved in the sale or management of real property, at page 1529 of the 2001 Montana Administrative Register, Issue Number 16.

2. On September 22, 2001, the Board of Realty met in Helena, Montana, to consider the proposed amendments and new rule. No written comments were received prior to the closing of the comment period. During the Board's consideration of the proposed amendments and the proposed adoption of NEW RULE I, the Board decided that in order to facilitate electronic licensing and renewal, certain documents previously described as an "affidavit" should be described as a "reporting form".

3. After consideration of the proposed amendments, the Board has amended ARM 8.58.426 and 8.58.709 exactly as proposed, and has decided not to amend ARM 8.58.301, 8.58.414 and 8.58.423 at this time.

4. After consideration of the proposed amendments, the Board has amended ARM 8.58.707 as proposed, but with the following changes (new matter in ALL CAPS, deleted material interlined):

8.58.707 LICENSE RENEWAL--LATE RENEWAL (1) through (3)
Same as proposed.

(4) Licensees cannot renew their license without also completing and submitting the affidavit of education REPORTING FORM at the time of renewal.

(5) Same as proposed.

AUTH: 37-1-131, 37-51-202 and 37-51-203, MCA

IMP: 37-1-101 and 37-51-604, MCA

5. After consideration of the proposed new rule, the
Montana Administrative Register

22-11/21/01

Board has adopted NEW RULE I as proposed, but with the following changes (new matter in ALL CAPS, deleted material interlined):

NEW RULE I (8.58.715) CONTINUING PROPERTY MANAGEMENT EDUCATION REPORTING REQUIREMENTS (1) ~~A sworn affidavit~~ AN EDUCATION REPORTING FORM attesting to the successful completion of the continuing education requirement must be submitted to the board by December 31 of each year. Filing of an affidavit EDUCATION REPORTING FORM after December 31, but on or before February 15 will result in a late filing fee. No affidavit EDUCATION REPORTING FORM will be accepted after February 15.

(2) An incomplete ~~affidavit~~ of education REPORTING FORM will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the December 31 deadline, or late filing fees will be required.

(3) and (4) Same as proposed.

(5) ~~Affidavits~~ EDUCATION REPORTING FORMS will be mailed to all property management licensees at their last address of record. Failure to receive an affidavit EDUCATION REPORTING FORM does not eliminate the reporting requirement. Each licensee is required to annually report continuing education.

AUTH: 37-1-131 and 37-51-203, MCA

IMP: 37-1-101, MCA

BOARD OF REALTY REGULATION
JOHN BEAGLE, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating
Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State: November 9, 2001.

BEFORE THE BUSINESS STANDARDS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the) NOTICE OF TRANSFER AND
transfer and amendment,) AMENDMENT, ADOPTION, AND
adoption, and repeal of) REPEAL
rules pertaining to the)
Building Codes Bureau)

TO: All Concerned Persons

1. On August 23, 2001, the Department of Labor and Industry (Department) published notice of the proposed transfer and amendment, adoption, and repeal of rules pertaining to the Building Codes Bureau at page 1536, 2001 Montana Administrative Register, Issue Number 16.

2. The Department is transferring and amending the following rules exactly as proposed: 8.70.101 (24.301.101), 8.70.214 (24.301.205), 8.70.216 (24.301.207), 8.70.219 (24.301.210), 8.70.220 (24.301.211), 8.70.402 (24.301.411), 8.70.404 (24.301.431), 8.70.407 (24.301.461), 8.70.604 (24.301.613), 8.70.902 (24.301.710), 8.70.906 (24.301.714).

The Department is adopting the following rules exactly as proposed: New Rule I (24.301.102), New Rule II (24.301.103), New Rule III (24.301.104), New Rule IV (24.301.105), New Rule V (24.301.106), New Rule VI (24.301.107) and New Rule VIII (24.301.215).

The Department is repealing the following rules as proposed: 8.70.102, 8.70.103, 8.70.218 and 8.70.602.

The Department is amending or adopting the following rules with modifications (deleted matter interlined, new matter underlined):

~~8.70.203~~ 24.301.202 ADOPTION OF CODES (1) Remains the same as proposed.

(2) An ordinance authorizing the adoption of a building code by administrative action must state, at a minimum:

(a) the type of codes which will be enforced, i.e., plumbing, electrical, building, or mechanical; and

(b) the individual, identified by position title, who has the authority to sign the administrative action; and

~~(c) whether the administrative action authority applies to discretionary provisions such as fee structures or the adoption of optional appendix chapters.~~

(3) Discretionary provisions of a municipal or county building code, i.e., provisions which are not mandated by the department, may not be adopted by administrative action.

(3) Remains the same but will be renumbered (4).

AUTH: 50-60-203, MCA

IMP: 50-60-301, MCA

~~8.70.217~~ 24.301.208 AUDIT (1) A local government with a certified building code enforcement program that had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and/or had building permit revenues in the previous fiscal year of more than \$10,000 shall require its independent auditor, in conjunction with the audit required by 2-7-503, MCA, to perform agreed-upon procedures to determine whether the local government has complied with the financial related statutes and administrative rules relating to local building code enforcement programs. The department may require local governments with a certified building code enforcement program which do not meet the above criteria to provide such an audit on a case-by-case basis so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American institute of certified public accountants. The engagement must include, but is not limited to, procedures necessary to determine all construction-related fees or charges imposed and collected by the local building code enforcement program are used and accounted for as provided in 50-60-106(2)(f), MCA and ARM 24.301.203.

(2) and (3) Remain the same.

AUTH: 50-60-203 and 50-60-302, MCA

IMP: 50-60-302, MCA

~~8.70.601~~ 24.301.601 INCORPORATION BY REFERENCE OF ELEVATOR CODE (1) The department of labor and industry, referred to as department in this and all subsequent rules, adopts and incorporates by reference herein:

(a) Safety Code for Elevators and Escalators, ASME A17.1 ~~2001~~ 2000;

(b) through (5) Remain the same.

AUTH: 50-60-702, MCA

IMP: 50-60-701, MCA

~~8.70.907~~ 24.301.715 BOILERS EXEMPTED (1) Remains the same.

~~(2) A piece of equipment is a boiler, subject to the inspection and operating certificate requirements established in Title 50, chapter 74, MCA, if the manufacturer's listing is a boiler, the ASME code symbol stamp is for a boiler or the criteria for certification as a state special boiler established in ARM 24.301.710(24) and 24.301.719(3) are met. Water heaters that are listed to an appropriate ANSI standard and do not have components with an ASME listing are not boilers and do not require boiler safety inspections or boiler operating certificates.~~

AUTH: 50-74-101, MCA

IMP: 50-74-103, MCA

~~8.70.910~~ 24.301.918 718 BOILER INSPECTIONS (1) The

requirements imposed by 50-74-206 and 50-74-209, MCA, regarding the requirements for boiler inspections, shall be as follows:

(a) and (b) Remain the same.

~~(c) All manually fired boilers and all boilers and banks of boilers rated with a total input of 400,000 Btu an hour or greater are to be inspected at least once in every year. A bank of boilers is a row of similar or matched boilers connected to common header piping. Total input of a bank of boilers is the aggregate input of the individual boilers comprising the bank.~~

(d) Agricultural class boilers, such as those operated during the harvest by mint and honey producers, will be considered for longer inspection intervals on a case-by-case basis.

~~(e) All automatically fired boilers rated with an input of less than 400,000 Btu per hour must be inspected at least once every two (2) years. An automatically fired boiler in a school, daycare center, hospital, rest home, retirement center, or place of assembly with a capacity for more than 100 persons must be inspected once a year regardless of the boiler's Btu per hour input rating.~~

(f) Remains the same but is renumbered (e).

AUTH: 50-74-101, MCA

IMP: 50-60-204, 50-60-206 and 50-74-209, MCA

NEW RULE VII (24.301.108) MODIFICATIONS TO THE UNIFORM BUILDING CODE APPLICABLE TO BOTH DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (15) Remain the same.

(16) The building official may require an applicant for a building permit to obtain, at the applicant's expense, an independent plan review from a plan review firm or agency acceptable to the building official. The independent plan review shall include, but is not limited to, a structural review for compliance with the requirements of the building code. ~~On a case-by-case basis, the~~ The building official ~~may~~ shall modify the plan review fee for projects which were required to obtain the independent plan review to be commensurate with the services provided by the agency in relation to the fee charged the applicant by the independent plan review firm or agency.

(17) through (26) Remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

3. A public hearing was held on September 26, 2001. Oral and written comment was received. Written comment was accepted until 5:00 p.m., September 26, 2001. Not all rule proposals received comment. The Department has thoroughly considered all comments received. Those comments and the Department's responses are as follows:

Comment No. 1: Rule 24.301.202. Comment was received that the intent of the law was to address only those portions of the state building code which were adopted by the Department with full public participation in the state process and that cities

were required to adopt with no ability to modify. The adoption of discretionary provisions of the local building code should be subject to the participation by the local residents.

Response No. 1: The comment is well taken and the proposed rule is modified accordingly.

Comment No. 2: Rule 24.301.207. Comment was received that annual reports were necessary for the Bureau's oversight of the local government building code programs and that other rule-making authority should be relied upon to continue the requirement for annual reports.

Response No. 2: The introduction, passage, and approval of SB138 were completed without the Bureau's knowledge or involvement. The Bureau agrees that the annual report is a key component of the Bureau's oversight of local government programs. However, the intention of the legislation is clear and unambiguous. The language is precise. Mandatory annual reports cannot be required. The proposed rule will not be modified.

Comment No. 3: Rule 24.301.208. Comment was received that the requirement for an independent audit for the smaller jurisdictions was expensive, overly burdensome, and not necessary.

Response No. 3: The comment is well taken and the proposed rule is modified to require independent audits from the larger and more active jurisdictions only. Utilizing preliminary FY 2001 figures, 14 jurisdictions, out of 42 total, would continue with annual independent audits under 24.301.208.

Comment No. 4: Rule 24.301.601(1)(a). It was pointed out that the edition date for the elevator code was incorrect.

Response No. 4: Comment well taken. Correction made.

Comment No. 5: Rule 24.301.601(5). Comment was received that too much time was being allowed for permit review and approval.

Response No. 5: Although standard or duplications of previously reviewed plans would not take 30 days for review, the more innovative and technically complicated designs can take the full 30 days. The proposed rule is not modified.

Comment No. 6: Rule 24.301.715. Comment was received that the proposed amendment was inconsistent with legislative intent and will create excessive problems and costs in the petroleum refining industry.

Response No. 6: The proposed amendment is withdrawn. Further coordination with industry representatives will be sought.

Comment No. 7: Rule 24.301.918. It was pointed out that the new rule number was incorrect. Comment was received that the rule contained unnecessary duplication of statutory language.

Response No. 7: Comments well taken. The proposed rule is modified to correct the rule number and delete repetition of statutory language.

Comment No. 8: New Rule II (24.301.103). Comment was received that the statement of the purpose of the Uniform Building Code was not necessary as the purpose of the state building code was provided in statute.

Response No. 8: This rule is a current and established provision of the state building code and is simply being renumbered. The statement of the purpose of the Uniform Building Code is required by ARM 1.3.208, Attorney General Model Rule 5. Whenever a model code is adopted by reference, the purpose of that code must be stated in rule. The purpose cited in the rule is the purpose as stated in UBC section 101.2. The proposed rule will not be modified.

Comment No. 9: New Rule VI(6) (24.301.107(6)). Comment was received that Montana licensed engineers and architects should not be required for the design of buildings constructed in Montana.

Response No. 9: This rule is a current and established provision of the state building code and is simply being renumbered. The Bureau does not require engineering and architectural design service on all projects, such as simple, standard plans which are designed well within code parameters. However, for more complex structures the Bureau relies upon the skill and knowledge of licensed design professionals to provide code compliant plans. Montana licensure is a legally recognized standard for many professions practicing their profession within the state of Montana. The legislature has specifically provided for the licensing of architects and engineers. For the same basic reason that the state plumbing and electrical codes requires plumbers and electricians to be licensed in Montana, the state building code should require design professionals to be licensed in Montana. The proposed rule will not be modified.

Comment No. 10: New Rule VI(9)(a) (24.301.107(9)(a)). Comment was received that the proposed rule was contrary to statutory provisions that certificates of occupancy must be issued and certify the building conforms to the requirements of the applicable building regulations.

Response No. 10: This rule is a current and established provision of the state building code and is simply being renumbered. Section 50-60-107, MCA, does not require certificates of occupancy but rather describes what a certificate of occupancy, if and when issued, must certify and

the legal significance of such certificate. Group R, Division 3 occupancies (dwellings and lodging houses) and Group U occupancies (private garages, sheds and agricultural buildings) are specifically excluded from the need for certificates of occupancy by Uniform Building Code (UBC) Section 109.1. Certificates of occupancy are not even provided for in the One and Two Family Dwelling Code. Since the mandatory inspections required by UBC Section 108.5 cannot be met by the state's circuit inspection program, a certificate of occupancy certifying conformance with the UBC for other structures cannot be issued by the state. The ability of local government programs to make the mandatory inspections is a significant advantage of local building code enforcement programs. The proposed rule will not be modified.

Comment No. 11: New Rule VII(12) (24.301.108(12)). Comment was received that a private garage should be able to be used as part of a commercial enterprise or business without affecting its exemption from the state building code pursuant to 50-60-102, MCA.

Response No. 11: This rule is a current and established provision of the state building code and is simply being renumbered. A private garage is defined in the UBC §208 as a building or portion of building in which only the motor vehicles used by the tenants of the building are kept or stored. A private garage is a storage building for motor vehicles associated with a residence. A garage which goes beyond keeping and storage of the motor vehicles is not a private garage but rather a repair garage. The hazards associated with a repair garage are significantly different than for a private garage and are addressed in UBC §311.1. The exemption of 50-60-102, MCA, does not apply to repair garages. The proposed rule will not be modified.

Comment No. 12: New Rule VII(16) (24.301.108(16)). Comment was received that if an independent plan review was required and was paid for by the owner or builder, credit should be given for the amount of the independent plan review.

Response No. 12: Although a reduction of the fees is the current practice, 24.302.108(16) will be modified to require a reduction in permit processing for those projects which obtained and paid for independent plan review. The rule is modified accordingly.

Comment No. 13: New Rule VII(18) (24.301.108(18)). Comment was received that it was inappropriate for the attorney for the local jurisdiction to exempt a project from the requirement for plans being signed and sealed by a licensed Montana architect or engineer.

Response 13: This rule is a current and established provision of the state building code and is simply being renumbered. This

rule applies only to buildings owned by a governmental agency. The requirements for plans bearing the seal of a licensed design professional only applies if the governmental project will have a direct bearing on public health and safety. If the Department has concluded a direct bearing on public health and safety exists, sealed plans are required. It is only in those circumstances that the Department has tentatively concluded that sealed plans are not required and that a concurring factual-legal conclusion by the local government attorney is sought. The involvement of the local government attorney for a governmental project is appropriate. The proposed rule will not be modified.

Comment No. 14: New Rule VII(22) (24.301.108(22)). Comment was received that the definition of farm and ranch was too restrictive and did not address back yard barns, leading to a situation in which the house was exempt from building permits but the barn would not be.

Response No. 14: This rule is a current and established provision of the state building code and is simply being renumbered. The back yard barn is exempt from the application of building codes within the state's jurisdiction not because it is a farm or ranch building but rather because it is treated similar to a garage or private storage associated with a residence. A house with a few acres, a barn in the back and a couple of 4H horses does not constitute a Montana farm or ranch. The farm and ranch exemption applies to real farms and ranches. The proposed rule will not be modified.

Comment No. 15: New Rule VII(26) (24.301.108(26)). Comment was received that the new building standards for personal care facilities would result in institutional personal care facilities rather than the home-like setting which most providers strive to provide.

Response No. 15: The proposed rule will have the opposite affect. This rule clarifies that personal care facilities shall be classified as residential occupancies. The proposed rule does eliminate some past misinterpretations which allowed some personal care facilities to be built without any building code standards being applied. The proposed rule will not be modified.

Comment No. 16: New Rule VIII (24.301.215). Comment was received that local governments could not adopt the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings if they were not adopted by the Department.

Response No. 16: The restriction found in 50-60-301, MCA, that a local building code may only include codes adopted by the Department, is limited to building codes. The repeal of the Uniform Housing Code and the Uniform Code for the Abatement of Dangerous Buildings from the state building code was based upon

the conclusion that they were not building codes within the meaning and limitations imposed by the State Building Code in 50-60-103, 50-60-201, 50-60-202 and 50-60-203, MCA. Therefore, local governments are free to adopt these model codes without referring to the Department as they are not building codes. The rule will not be modified.

Comment No. 17: 8.70.218. Comment was received that the reason stated for the repeal of this rule was an inaccurate description of SB242.

Response No. 17: The rule which is being repealed relates to new extended jurisdictions. SB242 did repeal the authority for new extended jurisdictions. A discussion of how SB242 affects existing jurisdictions was not required or necessary for the scope of the rule addressed.

/s/ WILLIAM H. JELLISON
William H. Jellison, Bureau Chief
Building Codes Bureau

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ WENDY KEATING
Wendy Keating, Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: November 9, 2001

BEFORE THE BUSINESS STANDARDS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of rules pertaining to the)
Building Codes Bureau)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Building Codes Bureau is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 301.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.70.104	24.301.160	Incorporation By Reference Of The Model Energy Code
8.70.105	24.301.170	Incorporation By Reference Of Uniform Mechanical Code
8.70.108	24.301.180	Incorporation By Reference Of CABO One & Two Family Dwelling Code
8.70.110	24.301.190	Incorporation By Reference Of The Uniform Code For Building Conservation
8.70.202	24.301.201	Extent Of Local Programs
8.70.208	24.301.203	Funding Of Code Enforcement Program
8.70.209	24.301.204	Factory-Built Buildings
8.70.215	24.301.206	Staff Qualification
8.70.221	24.301.212	Code Interpretations
8.70.222	24.301.213	Code Technical Advisories
8.70.223	24.301.214	Single Family Dwelling Plan Review And Approval Of Model Plans
8.70.302	24.301.301	Incorporation By Reference Of Uniform Plumbing Code
8.70.303	24.301.351	Minimum Required Plumbing Fixtures
8.70.304	24.301.361	Plumbing Permits
8.70.305	24.301.371	Plumbing Inspections
8.70.401	24.301.401	National Electrical Code
8.70.403	24.301.421	Electrical Inspectors
8.70.405	24.301.441	Cover (Rough-In) Inspections
8.70.406	24.301.451	Final Inspection
8.70.408	24.301.471	Temporary Electrical Connections
8.70.409	24.301.481	Carnivals, Fairs, Outdoor Concerts And Similar Amusement Establishments And Other Public Assemblies Of A Temporary Nature
8.70.410	24.301.491	Refunds Or Credits
8.70.502	24.301.501	Applicability Of State Statutes And Adopted Administrative Rules

8.70.503	24.301.511	Definitions
8.70.504	24.301.512	Effective Date Of Requirements Relating To Sales
8.70.505	24.301.513	Use Of Mobile Homes And Recreational Vehicles For Commercial Or Business Occupancy Prohibited--Exception
8.70.511	24.301.514	Enforcement Generally
8.70.512	24.301.515	Bureau Inspectors
8.70.513	24.301.516	Third Party Inspections To Be Monitored
8.70.514	24.301.517	Inspection Of Manufacturer
8.70.515	24.301.518	Inspection Of Dealer
8.70.516	24.301.519	Product Standards
8.70.517	24.301.520	Alternatives
8.70.518	24.301.521	Approval Of Manufacturer
8.70.521	24.301.522	State Building Code Interpretation
8.70.522	24.301.523	Reciprocity
8.70.523	24.301.524	Information Required To Be Submitted Upon Delivery Of Unit To Dealer
8.70.524	24.301.525	Requirements For Data Plate
8.70.531	24.301.532	Application For Typical Structure Design Approval
8.70.532	24.301.533	Application For Electrical, Mechanical And Plumbing System Approval
8.70.533	24.301.534	Application For Custom-Made Factory-Built Building Unit Review
8.70.534	24.301.535	Application For Model Plan Review
8.70.535	24.301.536	Application For In-Plant Quality Control Manual Review
8.70.536	24.301.537	Calculations And Test Procedures
8.70.537	24.301.538	Model Manufactured At More Than One Location
8.70.538	24.301.539	Out-Of-State Applicant
8.70.539	24.301.540	Non-Conforming Application And Plans
8.70.540	24.301.541	Evidence Of Bureau's Review
8.70.541	24.301.542	Plan Review Termination
8.70.542	24.301.543	In-Plant Quality Control
8.70.543	24.301.544	Transmission Of Review Materials To Reciprocal State
8.70.544	24.301.545	Changes To Reviewed Plans
8.70.545	24.301.546	Change Of Ownership
8.70.546	24.301.547	Change Of Name Or Address
8.70.547	24.301.548	Discontinuance Of Manufacture
8.70.548	24.301.549	Unit Identification
8.70.549	24.301.550	Plan Renewal
8.70.556	24.301.557	Insignia--When Required
8.70.557	24.301.558	Application For Insignia Pursuant To Plan Review
8.70.558	24.301.559	Denial Of Insignia
8.70.559	24.301.560	Insignia Removal

8.70.560	24.301.561	Lost Or Damaged Insignia
8.70.561	24.301.562	Alteration Voids Review--Return Or Confiscation Of Insignia
8.70.562	24.301.563	Alteration Or Conversion Of Unit Bearing Insignia
8.70.563	24.301.564	Effect Of Insignia
8.70.566	24.301.565	In-State Plan And System Review Fees For Factory-Built Buildings
8.70.568	24.301.566	Insignia Fees
8.70.569	24.301.567	Miscellaneous Fees
8.70.576	24.301.576	Notice Of Violations
8.70.577	24.301.577	Violation And Hearings
8.70.603	24.301.612	Reinspection
8.70.605	24.301.614	Accidents
8.70.606	24.301.615	Violations, Appeals, And Variances
8.70.611	24.301.621	Certification Of Maintenance And Insurance Companies As Inspectors
8.70.612	24.301.622	Inspections By Certified Maintenance Or Insurance Companies
8.70.901	24.301.701	Score Of Rules
8.70.903	24.301.711	Definitions
8.70.904	24.301.712	Purchaser Of Boiler To Notify The Department
8.70.905	24.301.713	Operating Certificate
8.70.908	24.301.716	Special Boiler Inspector Certification And Identification Card
8.70.909	24.301.717	Insurance Company To Provide Written Notification To The Department Of Change In Boiler Status
8.70.911	24.301.719	Assignment Of State Identification Number
8.70.912	24.301.720	Minimum Construction Standards For Boilers
8.70.913	24.301.721	Boiler Safety Appliances
8.70.914	24.301.722	Boiler Repairs
8.70.915	24.301.723	Boiler Alterations
8.70.916	24.301.724	Traction Engines
8.70.1001	24.301.801	Adoption By Reference Of ARM 16.10.1503--Review Of Plans
8.70.1501	24.301.901	Scope Of Rules
8.70.1502	24.301.902	Disclaimer
8.70.1503	24.301.903	Building Accessibility
8.70.1504	24.301.904	Site Accessibility
8.70.1505	24.301.905	Guidelines For Compliance With Requirements For Exterior Accessible Route And Parking Space

3. The transfer of rules is necessary because the Building Codes Bureau was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

s/ WILLIAM H. JELLISON
William H. Jellison, Bureau Chief
Building Codes Bureau

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ WENDY KEATING
Wendy Keating, Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: November 9, 2001

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM Title 16, Chapter 30,)
subchapters 1 through 4, 6)
and 8 pertaining to emergency)
medical services)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, emergency medical services is transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services, Title 37. The rules will be renumbered as follows:

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.30.102	37.104.101	Definitions
16.30.103	37.104.105	License Types and Levels
16.30.104	37.104.106	License Application Requirements
16.30.105	37.104.107	Waivers
16.30.106	37.104.115	Appeal From Order
16.30.107	37.104.120	Advisory Committee
16.30.211	37.104.208	Sanitation
16.30.212	37.104.201	Communications
16.30.213	37.104.202	Safety--: <u>General Requirements</u>
16.30.214	37.104.203	Equipment
16.30.215	37.104.212	Records and Reports
16.30.216	37.104.213	Personnel Requirements--: General
16.30.217	37.104.218	Medical Control--: General
16.30.218	37.104.219	Medical Control: EMT- Defibrillation
16.30.219	37.104.220	Medical Control: EMT-Intermediate
16.30.220	37.104.221	Medical Control--: Advanced Life Support
16.30.301	37.104.301	Ambulance Permits Display, Revocation and Informal Reconsideration
16.30.302	37.104.305	Ambulance Specifications--: General
16.30.303	37.104.306	Ambulance Specifications--: Ground Ambulances

16.30.304	37.104.307	Ambulance Specifications--: Air Ambulance
16.30.305	37.104.311	Safety--: Ground Ambulance Services
16.30.306	37.104.312	Safety--: Air Ambulance
16.30.307	37.104.316	Personnel: Basic Life Support Ground Ambulance Service
16.30.308	37.104.317	Personnel: EMT-Defibrillation Ground Ambulance Service
16.30.309	37.104.318	Personnel: EMT-Intermediate Ground Ambulance Service
16.30.310	37.104.319	Personnel: Advanced Life Support Ground Ambulance Service
16.30.311	37.104.325	Personnel: Air Ambulance--: General
16.30.312	37.104.326	Personnel: Basic Life Support Air Ambulance Service
16.30.313	37.104.327	Personnel: EMT-Defibrillation Life Support Air Ambulance Service
16.30.314	37.104.328	Personnel: EMT-Intermediate Life Support Air Ambulance Service
16.30.315	37.104.329	Personnel: Advanced Life Support Air Ambulance Service
16.30.316	37.104.335	Other Requirements--: Ambulance Services
16.30.317	37.104.336	Other Requirements--: Air Ambulance Service
16.30.401	37.104.401	Personnel: Basic Life Support Non-Transporting Unit
16.30.402	37.104.402	Personnel: EMT-Defibrillation Life Support Non-Transporting Unit
16.30.403	37.104.403	Personnel: EMT-Intermediate Life Support Non-Transporting Unit
16.30.404	37.104.404	Personnel: Advanced Life Support Non-Transporting Unit
16.30.405	37.104.410	Other Requirements: Non-Transporting Services
16.30.601	37.104.601	Definitions
16.30.604	37.104.604	Written Plan
16.30.605	37.104.605	Written Notice
16.30.606	37.104.606	Reports
16.30.610	37.104.610	Training
16.30.615	37.104.615	Medical Protocol
16.30.616	37.104.616	Performance Requirements of Defibrillators
16.30.801	37.104.801	Transmittable Infectious Diseases
16.30.802	37.104.804	Reportable Exposure
16.30.803	37.104.805	Exposure Form
16.30.804	37.104.810	Recommended Medical Precautions and Treatment

3. The transfer of rules is necessary because this program was transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State November 9, 2001.

VOLUME NO. 49

OPINION NO. 12

FIRES - Cooperative law enforcement agreement with federal agency for fire response;
PUBLIC OFFICERS - Eligibility of public officer for compensation from federal government agency;
SALARIES - Services provided outside "official duties" of sheriff;
SHERIFFS - Compensation paid to county employee under terms of cooperative law enforcement agreement with federal agency;
MONTANA CODE ANNOTATED - Title 2, section 2; sections 2-2-102(8), -104, -104(3)(a), -121(1), 7-4-2511(2), 7-32-2121, 44-11-305;
MONTANA CONSTITUTION - Article VI, sections 1(1), 5;
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 10 (1993), 43 Op. Att'y Gen. No. 43 (1989), 43 Op. Att'y Gen. No. 32 (1989).

HELD: A sheriff may receive compensation from a federal agency under the terms of a cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her "official duties" without violating any of Montana's statutory or constitutional provisions.

October 31, 2001

Mr. George H. Corn
Ravalli County Attorney
Courthouse Box 5008
205 Bedford Street
Hamilton, MT 59840

Dear Mr. Corn:

You have presented the following question for my opinion:

May a sheriff accept compensation from a federal agency under a cooperative law enforcement agreement without violating any statutory or constitutional provisions?

I.

For the purposes of this opinion, I assume the following facts stated in your letter of inquiry. The Ravalli County Commissioners entered into a "Cooperative Law Enforcement Agreement No. 01-03-004" (Agreement) with the Forest Service on May 26, 2000. This Agreement was signed by Perry Johnson, the Ravalli County sheriff, and authorized and approved by the Commissioners of Ravalli County as allowed by Mont. Code Ann. § 44-11-305.

In general, this Agreement authorized the Forest Service to contract with county law enforcement personnel for services provided to the Forest Service, such as patrolling Forest Service campgrounds in exchange for payment. The rate of pay for personnel was equal to their county wage, including hourly wage, workers' compensation, transportation, and administrative costs.

The Agreement also included a "Financial Plan for Fire Emergencies" (Financial Plan). The Financial Plan allowed the Forest Service, during fire emergencies, to engage local law enforcement personnel for work outside their normal duties and hours. The work was to be done on an as-needed basis as determined by the Forest Service. Specifically, the Financial Plan provided that "[w]hen the Forest Service requests regular or reserve deputies to work in positions beyond the normal responsibilities of the Sheriff's Department due to a fire emergency," the Forest Service would pay for such work at the rates provided for in the Financial Plan. The Financial Plan specified the Forest Service employees who were capable of requesting such services. In particular, "[o]nly the Forest Service Fire Dispatcher and the Forest Law Enforcement Officer may request services under the fire agreement."

Reimbursable services under the Financial Plan included: "fire camp security, maintain[ing] roadblocks for fire equipment or fire camp security, equipment security, [and] traffic control requested by Forest Service." Regular deputies were paid at their overtime rate and reserve deputies were paid \$13.60 per hour for the first eight hours worked and \$20.40 for overtime thereafter. Nonreimbursable services included "mass evacuation, normal Sheriff's Department activities, [and] normal traffic control." Additionally, the Financial Plan provided that the Forest Service would pay the county "32.5 cents per mile for officers responding to their assignments, \$44.00 per day flat rate for patrol cars left at the scene and a 22 percent administrative fee to offset administrative costs."

During the fire season of 2000, the Forest Service exercised the Financial Plan, and pursuant to its provisions, local law enforcement personnel, including the Ravalli County sheriff, reported for work at places designated by the Forest Service. In general, the mechanics of payment worked in the following manner: law enforcement personnel reported for work at the designated site; after working, the personnel would turn a time card in to the sheriff's office; the hours worked would then be turned over to county finance personnel, who tabulated the hours and sent a request for payment to the Forest Service; finally, the county paid the personnel and the Forest Service reimbursed the county.

The Financial Plan called for both sworn deputies and reservists to be hired. County figures show that a total of

24 sheriff's department personnel, including the sheriff, worked 7649.96 hours and were paid \$178,830. The sheriff's department was open for business during its normal business hours and personnel continued their work schedule for the county.

II.

You have requested my opinion regarding whether a sheriff can accept compensation from a federal agency under the terms of a cooperative law enforcement agreement without violating any provisions of the Montana Code Annotated or the Montana Constitution.

Mont. Code Ann. § 7-4-2511(2) generally governs compensation of county officials. It states:

No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

In Platz v. Hamilton, 201 Mont. 184, 653 P.2d 144 (1982), the Montana Supreme Court addressed whether a clerk of district court was required to remit to the county treasurer the fees collected by the clerk in the issuance and execution of passports. Citing Mont. Code Ann. § 7-4-2511(2), the Court found to be dispositive the fact that there was no statute imposing an official duty upon the clerk to execute passport applications or to pay over execution fees collected to the county treasurer. Id. The Court held that because the execution of passport applications was not an official duty imposed upon a clerk of district court by state statute, and because the legislature had not enacted a statute with regard to the disposition of execution fees, the clerks had no duty to remit the fees to the general fund. Id. at 190, 653 P.2d at 147.

Thus, in order to respond to your question, I must determine whether assisting the Forest Service in its efforts to respond to fire emergencies during the fire season of 2000 was an official duty of the sheriff of Ravalli County.

The duties of a sheriff are set forth in Mont. Code Ann. § 7-32-2121. Among other duties, the sheriff must preserve the peace, arrest persons committing public offenses, prevent and suppress breaches of the peace, serve process, run a detention center, supervise search and rescue units when they

are called, and serve as humane officer. Section 7-32-2121 imposes no official duty on a county sheriff to aid a federal agency in the performance of the sheriff's official duties. Furthermore, a federal agency cannot unilaterally mandate such aid from a county agency absent enabling state legislation. See generally Printz v. United States, 521 U.S. 898 (1997) (holding that the federal government may not compel the states to implement, by legislation or executive action, federal regulatory programs).

The services rendered by Sheriff Johnson to the Forest Service are analogous to the services performed in Platz in that they are not part of a sheriff's statutorily defined duties. This was recognized by the Financial Plan, which provided payment solely for services beyond the ordinary responsibilities of the sheriff's department. Thus, under the applicable law, it is my opinion that the duties performed by Sheriff Johnson at the behest of the Forest Service were not official services rendered by him for which compensation is prohibited.

Having addressed the substantive law concerning whether the compensation was received for services outside of his official duties, the question as to whether Sheriff Johnson can accept such payment without violating the statutorily imposed standards of conduct found in title 2, chapter 2 must be addressed. Sheriff Johnson is classified as a public officer and subject to the standards of conduct because he is an elected officer of local government. See Mont. Code Ann. § 2-2-102(8). Mont. Code Ann. § 2-2-104(3)(a) provides, "[A] public officer, legislator, or public employee may not receive salaries for two separate public employment positions that overlap for the hours being compensated."

The general reason for salary limitations for public officers is to preserve separation of powers and to prevent public officials from advancing their own interests at the expense of public welfare. 45 Op. Att'y Gen. No. 10 (Mont. 1993) held that a Public Service Commissioner who reactivated his prior employment in order to be eligible to receive a severance payment did not violate the code of ethics for state public officials because the payment received did not appear to constitute a gift within the meaning of the word as used by the standards of conduct. See Mont. Code Ann. § 2-2-104.

Similarly, in this case Sheriff Johnson was paid for rendering a service, which he was not statutorily required to perform, in exchange for pay. The federal agency had control over whether Johnson would be asked to render services. Accordingly, receipt of compensation from the Forest Service does not violate the public policy behind salary restrictions nor does it violate the rules of conduct for public officers embodied in Montana law.

It is also my opinion that the work performed by the sheriff according to the terms of the Financial Plan would not violate

the prohibition found at section 2-2-121(1), which prohibits a public officer from using "public time, facilities, equipment, supplies, personnel or funds for the officer's or employee's private business purposes." While Sheriff Johnson did receive a private financial benefit for performing under the Financial Plan, it does not appear that public time, facilities, equipment, supplies, personnel, or funds were used for which the county was not reimbursed by the Forest Service. The county was compensated for any associated vehicle costs and paid a 22 percent administrative fee to cover other resources used to carry out the terms of the Financial Plan. Under the circumstances involved in this particular situation, it is my opinion that section 2-2-121(1) would not be violated.

Lastly, you raise the issue of whether a constitutional impediment exists that would prohibit Sheriff Johnson from accepting compensation from the Forest Service. Article VI, section 5 of the Montana Constitution provides that officers of the executive branch shall receive salaries as provided by law. Section 5(2) further provides, in relevant part: "During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency." Section 1(1) sets forth the officers within the executive branch. It provides: "The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor."

Although the sheriff of Ravalli County is an elected public official, he is not a member of the executive branch as defined by article VI, section 1(1), and he therefore would not be subject to the compensation limitations outlined in article VI, section 5.

Additionally, even if the constitutional restrictions on salary applied to a county sheriff, in this case they would not prevent Sheriff Johnson from accepting compensation from a federal agency under these circumstances. 43 Op. Att'y Gen. No. 32 (Mont. 1989) held that an elected officer of the executive branch may not receive additional compensation for simultaneous service in the Montana National Guard. However, this holding was later clarified to prohibit only compensation received from the state. 43 Op. Att'y Gen. No. 43 (Mont. 1989). Then-Attorney General Racicot concluded that a public officer who is engaged in rendering services to a federal agency and who is paid by that federal agency may accept such compensation without violating Montana's constitutional provisions governing salary restrictions. Id.

Accordingly, Sheriff Johnson did not violate any statutory or constitutional provisions in accepting compensation from a federal agency under these circumstances. He received compensation for duties performed, which were not official

services, while continuing to perform all manner of public service required by his elected position.

Based on the above analysis, it is my opinion that a sheriff may receive compensation from a federal agency under the terms of a cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her "official duties" without violating any Montana statutory or constitutional provision.

THEREFORE, IT IS MY OPINION:

A sheriff may receive compensation from a federal agency under the terms of a cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her "official duties" without violating any of Montana's statutory or constitutional provisions.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH
Attorney General

mm/as/dm

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and 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, 2001. This table includes those rules adopted during the period July 1, 2001 through September 30, 2001 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, 2001, 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 2000 and 2001 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.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 2130
- 1.2.421 and other rules - Fees for Administrative Rules of Montana and Montana Administrative Register, p. 834, 1185

ADMINISTRATION, Department of, Title 2

- I Montana's Volume Cap Allocation, p. 2196
- I-VII Approved Investments for Montana Banks - Investment Policies, p. 2066
- I-VIII State Vehicle Use, p. 1386, 2013
- 2.4.101 and other rules - Regulation of Travel Expenses, p. 2198
- 2.5.201 and other rules - State Procurement of Supplies and Services, p. 1498, 2009
- 2.21.1803 and other rule - Exempt Compensatory Time Policy, p. 1699, 2133

- (Public Employees' Retirement Board)
- 2.43.302 and other rules - Retirement Systems Administered by the Montana Public Employees' Retirement Board, p. 1222, 1834, 2219

(State Fund)

- 2.55.319 and other rules - Multiple Rating Tiers - Premium Modifiers - Individual Loss Sensitive Dividend Distribution Plan - Premium Rates, p. 2073
- 2.55.320 and other rules - Calculation of Manual Rates - Variable Pricing - Premium Rates and Premium Modifiers - Ratemaking, p. 1, 657

(Office of Consumer Affairs)

- 8.78.101 and other rules - Transfer from the Department of Commerce - Consumer Affairs - Motor Vehicles - Telemarketing, p. 1176

(Banking and Financial Institutions)

- 8.80.101 and other rules - Transfer from the Department of Commerce - Banking and Financial Institutions, p. 1178

(State Banking Board)

- 8.87.101 and other rules - Transfer from the Department of Commerce - State Banking Board, p. 1181

AGRICULTURE, Department of, Title 4

- I-IX Specific Agricultural Chemical Ground Water Management Plan, p. 734, 1086
- 4.12.1427 Shipping Point Inspection Fees, p. 3434, 341
- 4.14.301 and other rule - Loan Qualifications, p. 1231, 1723

STATE AUDITOR, Title 6

- I-XVIII Life Insurance Illustrations, p. 1244, 2234
- 6.6.302 and other rules - Life Insurance and Annuities Replacement, p. 1259, 2221
- 6.6.802 and other rule - Annuity Disclosures - Updating References to the Buyer's Guide Contained in Appendix A, p. 1275, 2239
- 6.6.1901 and other rules - Comprehensive Health Care, p. 14, 343
- 6.6.4202 and other rules - Continuing Education Program for Insurance Producers and Consultants, p. 1161, 1511, 1702, 2134

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - Adoption of New Classifications, p. 812, 1175
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - Adoption of New and Amended Classifications, p. 132, 842

COMMERCE, Department of, Title 8

(Local Government Assistance Division)

- I Administration of the 2001 Treasure State Endowment Program (TSEP), p. 1173, 2019
- I Administration of the 2001 Federal Community Development Block Grant Program, p. 3493, 392
- 8.94.3806 Submission and Review of Applications Under the 2000-2001 Treasure State Endowment Program (TSEP), p. 516, 845

(Board of Research and Commercialization Technology)

- 8.100.104 and other rule - Definitions - Application Procedures, p. 2203

(Board of Housing)

- I Confidentiality and Disclosure of Information in Possession of the Board of Housing, p. 144, 952
- I-XV Affordable Housing Revolving Loan Fund - TANF Housing Assistance Funds, p. 1513

(Travel Promotion and Development Division)

- 8.119.101 Tourism Advisory Council, p. 1278, 1838
- 8.119.101 Tourism Advisory Council, p. 595, 1098

EDUCATION, Title 10

(Office of Public Instruction)

- 10.16.3346 and other rule - Special Education - Aversive Treatment Procedures - Discovery Methods, p. 148, 396
- 10.16.3505 Special Education - Parental Consent, p. 597, 1099
- 10.41.101 and other rules - Vocational Education, p. 1784, 2206

(Board of Public Education)

- 10.54.2501 and other rules - Content and Performance Standards for Career and Vocational/Technical Education - Program Area Standards - Curriculum and Assessment - Standards Review Schedule, p. 214, 953

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- 12.2.501 Declaring Black-tailed and White-tailed Prairie Dogs to be Nongame Wildlife in Need of Management, p. 1806
- 12.6.1602 and other rules - Definition of Department - Clarification of Game Bird Permits - Field Trial Permits - Purchase and Sale of Game Birds, p. 3092, 3298, 345
- 12.9.601 and other rules - Upland Game Bird Release Program, p. 1280, 1725, 2020

(Fish, Wildlife, and Parks Commission)

- I Emergency Adoption - Use of Snowmobiles on Open Water, p. 1639
- I Limiting the Number of Class B-1 Nonresident Upland Game Bird Licenses that May be Sold Each Hunting Season, p. 151, 1321
- 12.3.124 and other rules - Clarifying Procedures of the Bonus Point System, p. 1802
- 12.11.501 and other rules - Creating a No Wake Zone at Hell Creek Marina on Fort Peck Reservoir - Updating the Index Rule - List of Water Bodies, p. 432, 847
- 12.11.3205 Creating No Wake Zones on Hauser Lake near Devil's Elbow Campground, Clark's Bay, and York Bridge Fishing Access Site, p. 601, 1100

ENVIRONMENTAL QUALITY, Department of, Title 17

- I Air Quality - Air Quality Fee Credit for Use of Postconsumer Glass in Recycled Material, p. 1950
- 17.50.801 and other rules - Solid Waste - Licensing - Waste Disposal - Recordkeeping - Inspection for Businesses Pumping Wastes from Septic Tank Systems, Privies, Car Wash Sumps and Grease Traps - Other Similar Wastes, p. 3299, 848
- 17.56.121 and other rules - Underground Storage Tanks - Operating Permits - Operating Tags - Scope of Compliance Inspections - Compliance Plans, p. 2080

(Board of Environmental Review)

- 17.4.501 and other rules - Major Facility Siting - Regulation of Energy Generation or Conversion Facilities and Linear Facilities, p. 1874
- 17.4.501 and other rules - Major Facility Siting - Regulation of Energy Generation or Conversion - Facilities - Linear Facilities, p. 243
- 17.8.101 and other rules - Air Quality - Odors that Create a Public Nuisance, p. 291, 976
- 17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Statutes and Regulations into Air Quality Rules, p. 518
- 17.8.302 and other rule - Air Quality - Emission Guidelines for Existing Small Municipal Waste Combustion Units, p. 931, 2022
- 17.8.323 Air Quality - Sulfur Oxide Emissions from Primary Copper Smelters, p. 3327, 560
- 17.8.505 Air Quality - Air Quality Operation Fees, p. 1391
- 17.8.514 Air Quality - Open Burning Fees, p. 928, 2023
- 17.20.1607 and other rules - Major Facility Siting - Centerline Approval for Linear Facilities, p. 1945
- 17.30.502 and other rules - Water Quality - Surface Water Quality, p. 1920

(Petroleum Tank Release Compensation Board)

- 17.58.332 Insurance Coverage - Third-Party Liability - Investigation - Disclosure - Subrogation - Coordination of Benefits, p. 330, 660
- 17.58.336 Reimbursement of Claims, p. 1396, 2024

TRANSPORTATION, Department of, Title 18

- I & II Collection of Motor Fuel Tax for Diesel Vehicles Found to have Dyed Fuel in the Supply Tank, p. 1704, 2147
- 18.8.101 and other rules - Maximum Allowable Weight - Definitions - Temporary Trip Permits - Special Vehicle Combinations - Insurance - Confiscation of Permits, p. 1522, 2142
- 18.9.101 and other rules - Motor Fuel Definitions - Late File and Pay Penalties when Filing Electronically - Off-highway Vehicle/Equipment - Dyed Special Fuel Allowance, p. 1399, 2143

(Transportation Commission and Department of Transportation)

- 18.3.101 and other rules - Debarment of Contractors Due to Violations of Department Requirements - Determination of Contractor Responsibility, p. 2860, 3330, 3496, 978

(Transportation Commission)

- 18.6.211 Collection of Permit Fees for Outdoor Advertising Signs, p. 2208

CORRECTIONS, Department of, Title 20

- 20.7.101 and other rules - Supervised Release Program - Admission, Program Review, Termination From, and Certification of Completion of Offenders in the Boot Camp Incarceration Program, p. 3498, 671
- 20.9.701 and other rule - Parole and Discharge of Youth, p. 3196, 672

JUSTICE, Department of, Title 23

- 23.5.101 and other rules - Motor Carrier Safety, p. 1023
- 23.14.802 Grounds for Suspension or Revocation of Peace Officers' Standards and Training Certification, p. 334, 673
- 23.15.101 and other rules - Creating the Office of Victims Services, p. 1810
- 23.15.101 and other rules - Emergency Amendment - Creating the Office of Victims Services, p. 1327
- 23.15.103 and other rules - Permitting Proportionate Reductions in Crime Victim Benefits - Affecting Payment of Benefits to Crime Victims, p. 295, 674
- 23.17.311 Montana Law Enforcement Academy Student Academic Requirements for the Basic Course, p. 1027

LABOR AND INDUSTRY, Department of, Title 24

(Alternative Health Care Board)

- 8.4.101 and other rules - Transfer from the Department of Commerce - Alternative Health Care Board, p. 1642
- 8.4.301 and other rules - Fees - Continuing Education for Naturopathic Physicians and Midwives - Licensure of Out-of-State Applicants - Direct-entry Midwife Protocol Standard List Required for Application, p. 815, 1644

(Board of Architects)

- 8.6.405 and other rules - Licensure of Applicants Who Are Registered in Another State - Examinations - Renewals - Fees, p. 1408

(Board of Athletics)

- 8.8.2501 and other rules - Transfer from the Department of Commerce - Board of Athletics Rules, p. 2148
- 8.8.2802 and other rules - Definitions - Licensing Requirements - Contracts and Penalties - Fees - Boxing Contestants - Physical Examination - Promoter-matchmaker and Inspectors - Club Boxing, p. 1009, 2150
- 8.8.2902 and other rules - Female Contestants - Downs - Fouls - Handwraps - Officials, p. 505, 1088

(Board of Barbers)

- 8.10.414 and other rule - Prohibition of Animals in Barbershops - Certain Records of Barber Schools, p. 1953
- 8.10.414 Prohibition of Animals in Barbershops, p. 1018
- 8.10.414 and other rules - General Requirements - Posting Requirements - Toilet Facilities - Inspections, p. 208, 1089

(Board of Clinical Laboratory Science Practitioners)

- 8.13.306 Continuing Education Requirements, p. 914

(Board of Cosmetologists)

- 8.14.401 and other rules - General Requirements - Inspections - School Layouts - Curriculum - Construction of Utensils and Equipment - Cleaning and Sanitizing Tools and Equipment - Storage and Handling of Salon Preparations - Disposal of Waste - Premises - Definitions, p. 3467, 935, 1090
- 8.14.402 and other rules - General Practice of Cosmetology - Schools - Instructors Applications - Examinations - Electrology Schools - Electrolysis - Sanitary Standards for Electrology Salons - Sanitary Rules for Beauty Salons and Cosmetology Schools - Aiding and Abetting Unlicensed Practice - Renewals - Booth Rental License Applications - Walls and Ceilings - Doors and Windows - Ventilation, p. 3437, 536, 1092

(State Electrical Board)

8.18.402 and other rules - Definitions - Licensee Responsibilities - Electrical Contractor Licensing - Licensure by Reciprocity or Endorsement - Renewals - General Responsibilities - Licensure of Out-of-State Applicants, p. 916

(Board of Hearing Aid Dispensers)

8.20.402 and other rules - Fees - Examination - Pass/Fail Point - Minimum Testing and Recording Procedures, p. 819, 1412

8.20.402 and other rules - Fees - Record Retention - Minimum Testing and Recording Procedures - Transactional Document Requirements - Form and Content, p. 3485, 781

(Board of Medical Examiners)

I Occasional Case Exemptions, p. 591, 1475

8.28.101 and other rules - Transfer from the Department of Commerce - Board of Medical Examiners, p. 1471

8.28.416 Examinations, p. 589, 1474

8.28.1705 and other rules - Ankle Surgery Certification - Fees - Failure to Submit Fees, p. 211, 1094

(Board of Funeral Service)

8.30.406 and other rules - Examination - Continuing Education - Sponsors - Renewal, p. 1297

(Board of Nursing)

8.32.302 Nurse-Midwifery Practice - Fees - Nursing Tasks That May Be Delegated - General Nursing Tasks That May Not Be Delegated - Executive Director Qualifications, p. 1414, 2152

(Board of Optometry)

8.36.412 Unprofessional Conduct, p. 3292, 659

8.36.601 Continuing Education Requirements, p. 741

(Board of Outfitters)

8.39.514 and other rules - Licensure - Guide or Professional Guide License - Licensure -- Fees for Outfitter, Operations Plan, Net Client Hunting Use (N.C.H.U.), and Guide or Professional Guide, p. 3295, 843

(Board of Pharmacy)

8.40.401 and other rules - Substantive Pharmacy Rules - Automated Data Processing - Certified Pharmacies - Internship Regulations - Continuing Education for Pharmacists - Dangerous Drug Act - Collaborative Practice Agreement Requirements - Security of Certified Pharmacy - Administration of Vaccines by Pharmacists - Explosive Chemicals - Prescription Copies for Legend Drugs, p. 1422

8.40.406 and other rules - Labeling for Prescriptions - Unprofessional Conduct - Definitions - Preceptor Requirements - Conditions of Registration, p. 136, 783

8.40.1301 and other rules - Pharmacy Technicians - Registration of Pharmacy Technicians - Renewal, p. 1447

(Board of Physical Therapy Examiners)

8.42.402 and other rules - Examinations - Licensure of Out-of-State Applicants - Foreign-trained Physical Therapist Applicants - Continuing Education, p. 3488, 344

(Board of Professional Engineers and Land Surveyors)

8.48.802 and other rules - License Seal - Safety and Welfare of the Public - Performance of Services in Areas of Competence - Conflicts of Interest - Avoidance of Improper Solicitation of Professional Employment - Direct Supervision - Definition of Responsible Charge - Introduction - Issuance of Public Statements, p. 2784, 553

8.48.1105 Fees, p. 1169

(Board of Psychologists)

8.52.602 and other rules - Non-resident Psychological Services - Application Procedures - Required Supervised Experience - Examination - Fees - Parenting Plan Evaluations, p. 744, 1742

8.52.616 Fees, p. 1526, 2154

(Board of Public Accountants)

8.54.410 Fees, p. 1020, 1707, 2240

(Board of Radiologic Technologists)

8.56.402 and other rules - Applications - Fee Schedule - Permit Application Types - Practice Limitations - Permit Examinations - Permit Fees, p. 510

(Board of Real Estate Appraisers)

8.57.101 and other rules - Transfer from the Department of Commerce - Board of Real Estate Appraisers, p. 1331

8.57.409 Qualifying Education Requirements for General Certification, p. 593, 1333

(Board of Realty Regulation)

8.58.301 and other rules - Definitions - Trust Account Requirements - General License Administration Requirements - Renewal - License Renewal - Late Renewal - Continuing Property Management Education - Continuing Property Management Education Reporting Requirements, p. 1529

8.58.301 and other rules - Definitions - Continuing Education - Continuing Education Course Approval - Grounds for

License Discipline - Grounds for Discipline of
Property Management Licensees - Internet
Advertising, p. 319, 785, 951
8.58.705 and other rule - Pre-licensure Course Requirements -
Continuing Property Management Education, p. 327,
789

(Board of Respiratory Care Practitioners)

8.59.402 and other rule - Definitions - Fees, p. 141, 1096

(Board of Social Work Examiners and Professional Counselors)

8.61.401 and other rule - Definitions - Licensure
Requirements, p. 2791, 558

I Unemployment Insurance Matters - Voluntary Layoff,
p. 2090

8.70.101 and other rules - Building Codes Bureau -
Incorporation by Reference of Uniform Building Code
- Certification of Code Enforcement Programs -
Annual Report - Audit - Decertification of Code
Enforcement Programs - Building Codes Education Fund
Assessment - Wiring Standards - Electrical Permit -
Electrical Inspections Fees - Incorporation by
Reference of Elevator Code - Certificates of
Inspection - Incorporation by Reference of Boiler
and Pressure Vessel Code - Fees - Boilers Exempted -
Boiler Inspections, p. 1536

24.11.443 Unemployment Insurance Benefit Claims, p. 822, 1334

24.16.9007 Prevailing Wage Rates - Non-construction Services,
p. 523, 1102

24.16.9007 Prevailing Wage Rates - Fringe Benefits for
Ironworkers and Ironworker Forepersons Only,
p. 3095, 444

24.29.1571 and other rules - Workers' Compensation Fee
Schedules for Chiropractic, Physical Therapy and
Occupational Therapy Services, p. 1290

(Workers' Compensation Judge)

24.5.303 and other rules - Procedural Rules of the Court,
p. 2211

24.5.317 Procedural Rule - Medical Records, p. 153A, 397

(Board of Personnel Appeals)

24.26.630 and other rules - Board of Personnel Appeals
Matters, p. 154, 446

LIVESTOCK, Department of, Title 32

I Ruminant Feeds for Livestock Prohibition, p. 825,
1336

32.2.502 Certification of Specially Qualified Deputy Stock
Inspectors, p. 828, 1335

32.6.712 Food Safety and Inspection Service (Meat and
Poultry), p. 160, 448, 561

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.21.415 and other rule - Fees - Tests for Yield and Drawdown, p. 3504, 562, 1645

(Board of Oil and Gas Conservation)

36.22.1242 Privilege and License Tax Rates on Oil and Gas, p. 1576, 2243

(Board of Land Commissioners and Department of Natural Resources and Conservation)

I Biodiversity and Old-growth Management, p. 831, 1337

36.25.110 Minimum Rental Rate for Grazing Leases under the Jurisdiction of the State Board of Land Commissioners, p. 756, 2030

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Licensure of Minimum Standards for Critical Access Hospital (CAH), p. 1956

I Child Support Enforcement Reasonable Cost of Health Insurance, p. 1047, 1646

I-XII Quality Assurance for Managed Care Plans, p. 381, 1342

16.4.101 and other rules - Distribution of Funds for Local Health Services, p. 1580, 2244

16.22.101 and other rules - Fluoridation of Public Water Supplies, p. 1578, 2245

16.24.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Children's Special Health Services Program - Infant Screening Tests and Eye Treatment Program - Block Grant Funds Program - Documentation and Studies of Abortions - Family Planning Program Deficiencies, p. 398

16.24.901 and other rules - State Plans for Maternal and Child Health (MCH) - Lab Services - Montana Health Care Authority, p. 379, 981

16.26.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Women, Infants and Children (WIC), p. 982

16.32.302 Health Care Licensure, p. 1959

16.32.302 Health Care Licensure, p. 772, 1105

16.32.302 Health Care Licensure, p. 163, 675

16.32.601 and other rules - Minimum Standards for Mental Health Centers, p. 1962

16.38.290 and other rules - Transfer from the Department of Health and Environmental Sciences - Approval of Laboratories - Laboratory Fees - Prenatal and Premarital Test Requirements, p. 2246

37.5.307 and other rules - Fair Hearings and Contested Case Proceedings, p. 622, 1107

37.40.302 and other rules - Nursing Facilities, p. 642, 1108

37.40.905 and other rules - Medicare and Medicaid Cross-over Pricing, p. 1709, 2156

- 37.40.905 and other rules - Medicaid Cross-over Pricing, p. 1029, 1476
- 37.40.905 and other rules - Medicaid Cross-over Pricing, p. 526
- 37.50.901 Interstate Compact on the Placement of Children, p. 337, 676
- 37.70.304 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1453, 2037
- 37.70.601 Low Income Energy Assistance Program (LIEAP), p. 3118, 401
- 37.85.212 Resource Based Relative Value Scale (RBRVS) Reimbursement, p. 612, 984
- 37.86.105 and other rules - Mental Health Services, p. 2889, 27, 417, 564
- 37.86.1001 and other rules - Dental Services - Eyeglasses Reimbursement, p. 617, 1117
- 37.86.1802 and other rules - Medicaid Fees and Reimbursement Requirements for Prosthetic Devices, Durable Medical Equipment (DME) and Medical Supplies, p. 604, 986
- 37.86.2207 Medicaid Mental Health Services, p. 1044, 2041
- 37.86.2207 and other rules - Emergency Amendment - Medicaid Mental Health Services, p. 791
- 37.86.2207 and other rules - Mental Health Services, p. 436, 989
- 37.86.2401 and other rules - Medicaid Transportation and Ambulance Services, p. 759, 1183, 2247
- 37.86.2605 Medicaid Hospital Reimbursement, p. 626, 1119
- 37.86.2801 and other rules - Emergency Amendment - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services, p. 403, 677
- 37.86.4401 and other rules - Rural Health Clinics (RHC) - Federally Qualified Health Centers (FQHC), p. 1301, 2043
- 37.89.114 Mental Health Services Plan, Covered Services, p. 1040, 1747
- 37.89.114 Emergency Amendment - Mental Health Services Plan, Covered Services, p. 413

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Consumer Requested Privacy Regarding Telephone Numbers, p. 1585
- I Electronic Filings, p. 1582
- I Unauthorized Change of a Telecommunications Provider, p. 775, 1648
- 38.5.2202 and other rule - Pipeline Safety, p. 2093

REVENUE, Department of, Title 42

- I & II Purchase of Tax Sale Certificates, p. 1996
- I & II In-state Breweries, p. 778
- 42.11.201 and other rules - Liquor Licensing, p. 2614, 449
- 42.11.301 and other rules - Liquor Distribution, p. 3507, 348

- 42.17.101 and other rules - Withholding and Unemployment Insurance Tax Rules, p. 1050, 1650, 1839
- 42.18.124 Clarification of Valuation Periods for Class 4 Property, p. 301, 463
- 42.21.113 and other rules - Trending Schedules for Property Tax Rules, p. 1814, 2249
- 42.23.103 Corporation License Taxes, p. 1600, 2046
- 42.23.413 Carryovers of Net Operating Losses for Corporation License Taxes, p. 2127
- 42.24.102 and other rules - Special Provisions Applicable to Corporation License Taxes, p. 1615, 2047
- 42.25.1809 and other rule - Tax Rates and Distribution of Oil and Gas Proceeds, p. 1588, 2048
- 42.26.101 and other rules - Corporation Taxes, p. 2096
- 42.29.101 and other rules - Universal System Benefits Credits, p. 2216

SECRETARY OF STATE, Title 44

- I-XII Fees for Records Management Microfilming, Imaging and Storage Services, p. 837, 1186, 1748, 2161
- 1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 2130
- 1.2.421 and other rules - Fees for Administrative Rules of Montana and Montana Administrative Register, p. 834, 1185, 2159
- 44.5.101 and other rules - Filing and Copy Fees for Corporations, p. 2000
- 44.6.201 and other rule - Uniform Commercial Code Filings (UCC) - Searches, Amendments and Consumer Liens, p. 1083
- 44.15.102 and other rules - Filing Fees for Notary Public Licensure - Bonding Requirements - Notarial Acts under Federal Authority and Foreign Notarial Acts, p. 1720, 2162

(Commissioner of Political Practices)

- 44.10.101 and other rules - Organizational - Procedural - Campaign Finance and Practices - Ethics Rules, p. 1619, 2049

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 October 2001, appear. Vacancies scheduled to appear from December 1, 2001, through February 28, 2002, 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 November 8, 2001.

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 OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Health Care Board (Labor and Industry) Ms. Dolly Ellen Browder Missoula Qualifications (if required): direct midwife	Governor	reappointed	10/1/2001 9/1/2005
Board of Outfitters (Governor) Mr. Jack Billingsley Glasgow Qualifications (if required): fishing and hunting outfitter	Governor	reappointed	10/1/2001 10/1/2004
Commission on Community Service (Labor and Industry) Mr. Eric Burke Helena Qualifications (if required): representing labor unions	Governor	Gunderson	10/30/2001 7/1/2004
Ms. Erin Butts Bigfork Qualifications (if required): representing youth	Governor	Raths	10/30/2001 7/1/2004
Mr. Michael O'Neill Butte Qualifications (if required): representing business	Governor	Cain	10/30/2001 7/1/2004
Ms. Kelly Raths Lewistown Qualifications (if required): representing human services	Governor	Kalgaard	10/30/2001 7/1/2003
Mr. Bob Simoneau Helena Qualifications (if required): representing the Department of Labor and Industry	Governor	reappointed	10/30/2001 7/1/2004

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services)			
Mr. Jay Korth Helena	Governor	not listed	10/11/2001 9/27/2002
Qualifications (if required): parent representative from Region IV			
Ms. Shelley Korth Helena	Governor	Abraham	10/11/2001 9/27/2002
Qualifications (if required): parent representative from Region IV			
Ms. Novelene Martin Miles City	Governor	not listed	10/11/2001 9/27/2002
Qualifications (if required): DDP Field Services Specialist representative			
Flathead Basin Commission (Governor)			
Mr. Everit A. Sliter Kalispell	Governor	Darrow	10/22/2001 10/1/2005
Qualifications (if required): public member			
Mr. Bruce Tutvedt Kalispell	Governor	reappointed	10/22/2001 10/1/2005
Qualifications (if required): public member			
Mr. Arthur Vail Whitefish	Governor	reappointed	10/22/2001 10/1/2005
Qualifications (if required): public member			
Information Technology Board (Administration)			
Ms. Wendy Keating Helena	Governor	Foster	10/22/2001 7/1/2003
Qualifications (if required): representing a state agency			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Lewis and Clark Bicentennial Commission (Historical Society)			
Ms. Jeanette W. Rasmussen	Governor	Ryan	10/1/2001
Choteau			10/1/2004
Qualifications (if required): public member			
Mr. Hal J. Stearns	Governor	reappointed	10/1/2001
Missoula			10/1/2004
Qualifications (if required): public member			
Mrs. Germaine White	Governor	Youpee	10/1/2001
St. Ignatius			10/1/2004
Qualifications (if required): representative of a Montana Indian tribe			
Mental Disabilities Board of Visitors (Governor)			
Mr. Steve Cahill	Governor	reappointed	10/1/2001
Clancy			7/1/2002
Qualifications (if required): experience with the treatment and welfare of adults with mental illnesses			
Ms. Cindy Dolan	Governor	Sampsel	10/1/2001
Great Falls			7/1/2003
Qualifications (if required): consumer of mental health services and experience with Montana public mental health system			
Ms. Kathleen Driscoll Donovan	Governor	reappointed	10/1/2001
Hamilton			7/1/2003
Qualifications (if required): consumer with experience with the Montana public mental health system			
Ms. Joan-Nell Macfadden	Governor	Visscher	10/1/2001
Great Falls			7/1/2002
Qualifications (if required): experience dealing with treatment and welfare of children with emotional disturbance			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Mental Disabilities Board of Visitors (Governor) cont.			
Ms. Gay Moddrell Kalispell	Governor	not listed	10/1/2001 7/1/2003
Qualifications (if required):	consumer of developmental disabilities services		
Ms. Jennifer Pryor Boulder	Governor	reappointed	10/1/2001 7/1/2002
Qualifications (if required):	experience with the treatment and welfare of adults with developmental disabilities		
Montana Heritage Preservation and Development Commission (Historical Society)			
Mr. Pat Keim Helena	Governor	not listed	10/1/2001 5/23/2004
Qualifications (if required):	public member		
Ms. Judy McNally Billings	Governor	not listed	10/1/2001 5/23/2004
Qualifications (if required):	public member		
Montana Vocational Rehabilitation Council (Public Health and Human Services)			
Mr. David E. Boyd, Sr. Poplar	Director	Davis	10/1/2001 10/1/2003
Qualifications (if required):	federally mandated business industry and labor position		
Ms. Pam Egan Helena	Director	Crater	10/1/2001 10/1/2003
Qualifications (if required):	federally mandated business industry and labor position		
Mr. Mike Hermanson Billings	Director	Lekander	10/1/2001 10/1/2003
Qualifications (if required):	federally mandated advocate position		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Management Advisory Council (Agriculture)			
Ms. Josie Dahlberg Brockton	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): agriculture crop production			
Mr. Jack Eddie Dillon	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): western county representative			
Ms. Ramona Ehnes Great Falls	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): sportsman/wildlife group			
Rep. Bob Gilbert Sidney	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): Montana Weed Control Association			
Mr. Charles M. Jarecki Polson	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): at-large member			
Mr. Bob Marks Clancy	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): consumer group			
Mr. Jerry Marks Missoula	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): biological research and control			
Mr. W. Ralph Peck Helena	Director	not listed	10/12/2001 10/12/2003
Qualifications (if required): Director of Department of Agriculture			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Management Advisory Council (Agriculture) cont. Ms. Carol Sparks Plevna Qualifications (if required): livestock production	Director	not listed	10/12/2001 10/12/2003
Mr. Bob Ullom Billings Qualifications (if required): herbicide dealer and applicator	Director	not listed	10/12/2001 10/12/2003
Mr. Jerry Weber Joliet Qualifications (if required): eastern county representative	Director	not listed	10/12/2001 10/12/2003
Private Land/Public Wildlife Advisory Council (Governor) Mr. Mike Nathe Redstone Qualifications (if required): landowner	Governor	Lord	10/23/2001 6/30/2002
Risk Management Executive Council (Administration) Ms. Teri Juneau Helena Qualifications (if required): representing the Department of Commerce	Governor	Strandberg	10/9/2001 2/21/2003
State Emergency Response Commission (Military Affairs) Ms. Jean Branscum Helena Qualifications (if required): representative of the Governor's Office	Governor	Fox	10/1/2001 10/1/2003
Sen. Barry "Spook" Stang Helena Qualifications (if required): public member	Governor	Galt	10/1/2001 10/1/2003

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Historic Preservation Review Board (Historical Society)			
Ms. Marcella Knedler	Governor	Kallevig	10/11/2001
Geraldine			10/1/2005
Qualifications (if required):	public member		
State Park Futures Committee II (Fish, Wildlife, and Parks)			
Rep. John Brueggeman	Governor	not listed	10/3/2001
Polson			4/3/2003
Qualifications (if required):	public member		
Sen. Jim Elliott	Governor	not listed	10/3/2001
Trout Creek			4/3/2003
Qualifications (if required):	public member		
Mr. Ed Heinrich	Governor	not listed	10/3/2001
Fairmont			4/3/2003
Qualifications (if required):	public member		
Rep. Dave Kasten	Governor	not listed	10/3/2001
Brockway			4/3/2003
Qualifications (if required):	public member		
Rep. Christine Kaufmann	Governor	not listed	10/3/2001
Helena			4/3/2003
Qualifications (if required):	public member		
Sen. Bob Keenan	Governor	not listed	10/3/2001
Bigfork			4/3/2003
Qualifications (if required):	public member		
Ms. Margaret Moddison	Governor	not listed	10/3/2001
Great Falls			4/3/2003
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Park Futures Committee II (Fish, Wildlife, and Parks) cont. Mr. Mike Penfold Billings Qualifications (if required): public member	Governor	not listed	10/3/2001 4/3/2003
Ms. Michele Reese Whitefish Qualifications (if required): public member	Governor	not listed	10/3/2001 4/3/2003
State Records Committee (Historical Society) Ms. Molly Miller Helena Qualifications (if required): none specified	Director	Otto	10/8/2001 0/0/0
Tow Truck Dispute Resolution Advisory Council (Attorney General) Mr. Dennis Eddelmon Helena Qualifications (if required): motor carrier services division	Attorney General	not listed	10/1/2001 10/1/2003
Col. Bert Obert Helena Qualifications (if required): highway patrol	Attorney General	not listed	10/1/2001 10/1/2003
Ms. Maurice W. Quanbeck Bozeman Qualifications (if required): tow truck industry	Attorney General	not listed	10/1/2001 10/1/2003
Water and Wastewater Operators' Advisory Council (Environmental Quality) Mr. Jim Melstad Helena Qualifications (if required): ex-officio representative of the Department of Environmental Quality	Governor	Anderson	10/16/2001 0/0/0

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Water and Wastewater Operators' Advisory Council (Environmental Quality) cont.			
Mr. Steven Ruhd	Governor	reappointed	10/16/2001
Conrad			10/16/2007
Qualifications (if required): water treatment plant operator			

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks) Dr. Duane Douglas, Sidney Qualifications (if required): veterinarian	Governor	1/1/2002
Ms. Elaine Allestad, Big Timber Qualifications (if required): representative of sportspeople	Governor	1/1/2002
Mr. Chuck Taylor, Moore Qualifications (if required): representative of the alternative livestock industry	Governor	1/1/2002
Appellate Defender Commission (Administration) Ms. Randi Hood, Helena Qualifications (if required): public defender and an attorney	Governor	1/1/2002
Mr. Daniel Donovan, Great Falls Qualifications (if required): public defender and an attorney	Governor	1/1/2002
Board of Chiropractors (Commerce) Dr. Patrick Montgomery, Missoula Qualifications (if required): practicing chiropractor	Governor	1/1/2002
Board of Environmental Review (Environmental Quality) Ms. Susan Kirby Brooke, Bozeman Qualifications (if required): public member	Governor	12/31/2001
Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	12/31/2001
Board of Horse Racing (Commerce) Dr. Sheldon John "Skip" Score, Helena Qualifications (if required): representative of District 4	Governor	1/20/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Occupational Therapy Practice (Commerce) Ms. Alice O'Donnell, Anaconda Qualifications (if required): public member	Governor	12/31/2001
Board of Pardons (Corrections) Ms. Maureen Neihart, Billings Qualifications (if required): public member	Governor	1/1/2002
Board of Public Education (Education) Mr. Kirk Miller, Cascade Qualifications (if required): Republican residing in District 3	Governor	2/1/2002
Board of Speech-Language Pathologists and Audiologists (Commerce) Mr. Jeffrey Griffin, Great Falls Qualifications (if required): licensed audiologist	Governor	12/31/2001
Ms. Shiela Skinner, Belgrade Qualifications (if required): licensed speech-language pathologist	Governor	12/31/2001
Ms. Teri Bean, Helena Qualifications (if required): public member who is a consumer	Governor	12/31/2001
Capital Finance Advisory Council (Administration) Mr. Dick Anderson, Helena Qualifications (if required): representing the Board of Investments	Governor	2/11/2002
Mr. Jerry Hoover, Helena Qualifications (if required): representing the Montana Health Facility Authority	Governor	2/11/2002
Sen. Bea McCarthy, Anaconda Qualifications (if required): legislator	Governor	2/11/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont. Sen. Chuck Swysgood, Dillon Qualifications (if required): representing the Budget Office	Governor	2/11/2002
Rep. Royal C. Johnson, Billings Qualifications (if required): legislator	Governor	2/11/2002
Mr. Jim Currie, Helena Qualifications (if required): representing the Director of the Department of Transportation	Governor	2/11/2002
Mr. Bob Thomas, Stevensville Qualifications (if required): member of the Board of Housing	Governor	2/11/2002
Ms. Barbara Ranf, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	2/11/2002
Mr. Mark A. Simonich, Helena Qualifications (if required): Director of the Department of Commerce	Governor	2/11/2002
Mr. W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	2/11/2002
Mr. Bud Clinch, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	2/11/2002
Mr. Mark Semmens, Great Falls Qualifications (if required): representative of the Board of Regents	Governor	2/11/2002
Ms. Jan Sensibaugh, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	2/11/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning Advisory Council (Public Health and Human Services) Ms. Marlene Disburg, Helena Qualifications (if required): representing Vocational Rehabilitation	Governor	1/1/2002
Dr. Allen Hartman, Billings Qualifications (if required): physician	Governor	1/1/2002
Sen. Bea McCarthy, Anaconda Qualifications (if required): legislator	Governor	1/1/2002
Mr. Dan McCarthy, Helena Qualifications (if required): Office of Public Instruction representative	Governor	1/1/2002
Mr. Charlie Rehbein, Helena Qualifications (if required): representative of the Older Americans Act	Governor	1/1/2002
Rep. Bob Lawson, Whitefish Qualifications (if required): legislator	Governor	1/1/2002
Ms. Jannis Conselyea, Helena Qualifications (if required): Department of Public Health and Human Services representative	Governor	1/1/2002
Independent Living Council (Public Health and Human Services) Ms. June Hermanson, Billings Qualifications (if required): none specified	Director	2/15/2002
Judicial Nomination Commission (Justice) Judge Diana G. Barz, Billings Qualifications (if required): none specified	Chief Justice	1/1/2002
Ms. Pam Rein, Big Timber Qualifications (if required): public member	Governor	1/1/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Local Government Records Committee (Secretary of State) Ms. Bonnie Ramey, Boulder Qualifications (if required): none specified	Secretary of State	12/31/2001
Ms. Marcia Porter, Missoula Qualifications (if required): none specified	Director	12/31/2001
Ms. Peggy Bourne, Great Falls Qualifications (if required): none specified	Director	12/31/2001
Ms. Kay Johnson, Chinook Qualifications (if required): none specified	Secretary of State	12/31/2001
Montana Alfalfa Seed Committee (Agriculture) Mr. John Markegard, Laurel Qualifications (if required): alfalfa seed grower and representing alfalfa leaf-cutting beekeepers	Governor	12/21/2001
Mr. Ernest Johnson, Chinook Qualifications (if required): alfalfa seed grower	Governor	12/21/2001
Montana Arts Council (Montana Arts Council) Mr. John B. Dudis, Kalispell Qualifications (if required): public member	Governor	2/1/2002
Ms. Carol Novotne, Fort Harrison Qualifications (if required): public member	Governor	2/1/2002
Mr. Robert Morrison, Billings Qualifications (if required): public member	Governor	2/1/2002
Ms. Connie G. Clarke, Miles City Qualifications (if required): public member	Governor	2/1/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Arts Council (Montana Arts Council) cont. Ms. Carol Brenden, Scobey Qualifications (if required): public member	Governor	2/1/2002
Montana Geographic Information Council (Administration) Ms. Barbara Ranf, Helena Qualifications (if required): Director of the Department of Administration	Governor	1/12/2002
Mr. Jeff Miller, Helena Qualifications (if required): state representative	Governor	1/12/2002
Mr. Ken Jenkins, Missoula Qualifications (if required): President of MARLS	Governor	12/31/2001
Mr. Bill McGill, Billings Qualifications (if required): local government representative	Governor	12/31/2001
Mr. Martin Prather, Missoula Qualifications (if required): federal representative	Governor	12/31/2001
Ms. Mary Bryson, Helena Qualifications (if required): director of a state agency	Governor	1/12/2002
Ms. Karen Strege, Helena Qualifications (if required): State Librarian	Governor	1/12/2002
Mr. Jon Sesso, Butte Qualifications (if required): representative of local government	Governor	1/12/2002
Mr. Harold Blattie, Columbus Qualifications (if required): representative of local government	Governor	1/12/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographic Information Council (Administration) cont. Mr. Steve Hellenthal, Billings Qualifications (if required): representative of local government	Governor	1/12/2002
Mr. Lance Clampitt, Denver, CO Qualifications (if required): federal representative	Governor	1/12/2002
Mr. Daniel T. Mates, Billings Qualifications (if required): federal representative	Governor	1/12/2002
Mr. Stuart Blundell, Helena Qualifications (if required): representative of private business active in land information systems	Governor	1/12/2002
Mr. Richard Aspinall, Bozeman Qualifications (if required): representative of the University System	Governor	1/12/2002
Mr. Chris Smith, Helena Qualifications (if required): designee of a director of a state agency	Governor	1/12/2002
Ms. Pam Case, Missoula Qualifications (if required): federal representative	Governor	1/12/2002
Mr. Steve Shannon, Butte Qualifications (if required): representative of public utilities	Governor	1/12/2002
Ms. CloAnn Villegas, Pablo Qualifications (if required): representative of Native American Tribes	Governor	1/12/2002
Mr. Steven Henry, Lewistown Qualifications (if required): chair of the Montana GIS Interagency Technical Working Group	Governor	1/12/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographic Information Council (Administration) cont. Mr. Rick Breckenridge, Kalispell Qualifications (if required): chair of the Montana Local Government GIS Coalition	Governor	1/12/2002
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Gary Unruh, Chinook Qualifications (if required): grazing district director	Governor	1/1/2002
Mr. Bill Loehding, Ekalaka Qualifications (if required): grazing district preference holder	Governor	1/1/2002
Mr. Phil Hill, Mosby Qualifications (if required): grazing district director	Governor	1/1/2002
Montana High School Association Board (Education) Rep. Jeanette S. McKee, Hamilton Qualifications (if required): public member	Governor	1/1/2002
Peace Officers Standards and Training Advisory Council (Justice) Ms. Anne Kindness, Billings Qualifications (if required): representative of the 9-1-1 service	Governor	2/14/2002
Mayor Laurel Frankenfield, Hamilton Qualifications (if required): representative of the League of Cities and Towns	Governor	2/14/2002
Mr. Chris Miller, Deer Lodge Qualifications (if required): representing Montana Attorney's Association	Governor	2/14/2002
Mr. Greg Noose, Helena Qualifications (if required): representing Montana Law Enforcement Academy	Governor	2/14/2002
Mr. Dennis McCave, Billings Qualifications (if required): representing Montana Detention Officers	Governor	2/14/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council (Justice) cont. Mr. Donald R. Houghton, Bozeman Qualifications (if required): representing Montana Deputy Sheriff's Association	Governor	2/14/2002
Sheriff Lee Edmisten, Virginia City Qualifications (if required): representing Montana Sheriff's Association	Governor	2/14/2002
Dr. Raymond C. Murray, Missoula Qualifications (if required): representing citizens at large	Governor	2/14/2002
Commissioner Gary Fjelstad, Forsyth Qualifications (if required): representing Montana Association of Counties	Governor	2/14/2002
Mr. John Ramsey, Helena Qualifications (if required): representing the Department of Fish, Wildlife, and Parks	Governor	2/14/2002
Captain Bill Dove, Bozeman Qualifications (if required): representing Montana Police Protective Association	Governor	2/14/2002
Col Bert Obert, Helena Qualifications (if required): representing Montana Highway Patrol	Governor	2/14/2002
Dr. James W. Burfeind, Missoula Qualifications (if required): representing criminal justice educators	Governor	2/14/2002
Ms. Winifred M. Ore, Helena Qualifications (if required): representing the Department of Corrections	Governor	2/14/2002
Ms. Shanna Bulik, Great Falls Qualifications (if required): representing juvenile detention administrators	Governor	2/14/2002
Chief Mark Tymrak, Bozeman Qualifications (if required): representing the Police Chiefs Association	Governor	2/14/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council (Justice) cont. Sen. Debbie Shea, Butte Qualifications (if required): representative of the Crime Control Board	Governor	2/14/2002
State Employee Group Benefits Advisory Council (Administration) Mr. William Salisbury, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Dale Taliafero, Helena Qualifications (if required): none specified	Director	1/1/2002
Ms. Nancy Ellery, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Curt Nichols, Helena Qualifications (if required): none specified	Director	1/1/2002
Ms. Cathy Kendall, Helena Qualifications (if required): none specified	Director	1/1/2002
Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Director	1/1/2002
Mr. John W. Northey, Helena Qualifications (if required): none specified	Director	1/1/2002
Ms. Angela McDannel, Helena Qualifications (if required): none specified	Director	1/1/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont. Mr. Todd Lovshin, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Richard Cooley, Helena Qualifications (if required): none specified	Director	1/1/2002
State Lottery Commission (Commerce) Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney	Governor	1/1/2002
Ms. Carol Thomas, Great Falls Qualifications (if required): public member	Governor	1/1/2002
Upper Missouri River Breaks National Monument Task Force (Governor) Rep. Bill Thomas, Hobson Qualifications (if required): legislator	Governor	1/1/2002
Ms. Carol Kienenberger, Dodson Qualifications (if required): representative of Phillips County	Governor	1/1/2002
Rep. Matt McCann, Harlem Qualifications (if required): legislator	Governor	1/1/2002
Sen. Jon Tester, Big Sandy Qualifications (if required): legislator	Governor	1/1/2002
Mr. Joe McConnell, Harlem Qualifications (if required): tribal representative	Governor	1/1/2002
Mr. Arthur Kleinjan, Chinook Qualifications (if required): representative of Blaine County	Governor	1/1/2002

VACANCIES ON BOARDS AND COUNCILS -- December 1, 2001 through February 28, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Missouri River Breaks National Monument Task Force (Governor) cont. Mr. Harvey Worrall, Loma Qualifications (if required): representative of Chouteau County	Governor	1/1/2002
Mr. Carl Seilstad, Roy Qualifications (if required): representative of Fergus County	Governor	1/1/2002
Vocational Rehabilitation Advisory Council (Public Health and Human Services) Mr. Don Judge, Helena Qualifications (if required): representing the State Workforce Investment Board	Director	1/5/2002
Yellowstone River Task Force (Fish, Wildlife, and Parks) Mr. Jim Woodhull, Livingston Qualifications (if required): City of Livingston representative	Governor	1/1/2002