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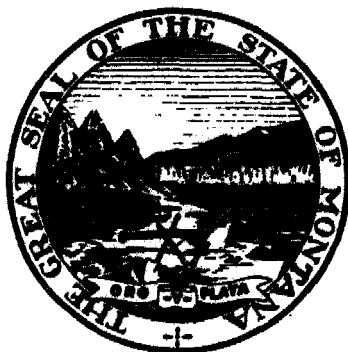
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OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
repeal of ARM 2.21.8001 through) THE PROPOSED REPEAL OF ARM
2.21.8009 and the adoption of) 2.21.8001 THROUGH 2.21.8009
new rules relating to grievances) AND THE ADOPTION OF NEW RULES
) RELATING TO GRIEVANCES

TO: All Interested Persons.

1. On November 3, 1988, at 12:15 p.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the repeal of ARM 2.21.8001 through 2.21.8009 and the adoption of new rules relating to grievances.

2. The rules proposed to be repealed are on pages 2-1709 through 2-1713 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This subchapter may be cited as the grievance policy.
(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that employees who have attained permanent status may file a grievance as provided in these rules, unless the employee is covered by a grievance procedure provided under a collective bargaining agreement or a statutory grievance procedure.

(2) It is the objective of this policy to provide minimum standards for the procedure to be used to adjust grievances filed by eligible employees.

(3) The department of administration delegates the authority to each executive branch agency to adopt an internal grievance procedure in accordance with ARM 2.21.1203, and with the general authority of an agency head to adopt internal management policy found at 2-15-112 and 2-4-102 (10), MCA. An internal grievance procedure shall be consistent with the provisions of this policy and at a minimum include all steps contained in Rule V. Additional steps may be added, forms may be included, and timeframes may be modified at the agency's discretion.

(4) An employee shall file a grievance under a procedure adopted by the agency, if available. If the agency has not adopted a procedure, the employee shall proceed under this policy.

(5) Incidents of sexual harassment shall be reported using the procedure in the sexual harassment prevention policy, found at ARM 2.21.1305 (also found at policy 3-0620, Montana operations manual, volume III).

(6) Nothing in this policy precludes an employee who is alleging unlawful discrimination from concurrently exercising

any statutorily-protected right to timely file a complaint with a civil rights enforcement agency.

(7) A job classification appeal shall be resolved through the procedure adopted by the board of personnel appeals at ARM 24.26.501 et seq., and shall not be filed under any other grievance procedure.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE III DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Employee" means any state employee except:

(a) those excepted under 2-18-103 and 2-18-104 from the statewide classification system;

(b) when an employee is covered by a procedure provided in a collective bargaining agreement, or is covered by a statutory grievance procedure;

(c) when an employee has not completed a probationary period or a probationary period is extended and the employee has not attained permanent status;

(d) when an employee is hired into a temporary position or an employee is temporarily hired into a permanent position for less than 9 months and is not eligible to attain permanent status; and

(e) when persons are contracted as independent contractors or perform their duties under the terms of a personal services contract.

(2) "Grievance" means a complaint or dispute initiated by an employee regarding the application or interpretation of written laws, rules, personnel policies or procedures which adversely affects the employee.

(3) "Grievant" means an employee who has filed a formal grievance.

(4) "Management" means those individuals, beginning with the employee's immediate supervisor, and including other managers in the direct line of authority above the supervisor, who can resolve a grievance.

(5) "Permanent position" means, as provided in 2-18-101 (10), MCA, "a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, [MCA], and approved as such in the biennium budget." For purposes of this policy, the term permanent position includes seasonal positions.

(6) "Permanent status" means, as provided in 2-18-101 (11), MCA, "the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position."

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE IV EMPLOYEE GRIEVANCE (1) An employee may file a grievance based on the application or interpretation of laws, written rules, personnel policies and procedures which adversely affects the employee, unless specifically prohibited from doing so by statute or rule.

(2) A grievant shall not use paid working time to prepare and pursue a grievance. A grievant may request to use other appropriate paid leave, accrued compensatory time or leave of absence without pay to prepare a grievance. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. Time spent by the grievant attending a hearing is paid working time.

(3) An employee other than the grievant may, at the agency's discretion, be given working time off to participate in an investigation or hearing. This time may be paid working time, if the employee's participation is at the agency's request. Other employees may request to use appropriate paid leave, leave of absence without pay, or accrued compensatory time to attend a hearing. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE V GRIEVANCE PROCEDURE

(1) Step 1 is the informal resolution. The employee has 10 working days from the occurrence of the grievable event to informally resolve the grievance with the immediate supervisor. Both the employee and supervisor are encouraged to resolve the grievance informally whenever possible before proceeding to step 2, formal grievance.

(2) Step 2 is the formal grievance.

(a) A formal grievance shall be filed in writing within 15 working days from the occurrence of the grievable event. The formal grievance shall be filed with the grievant's immediate supervisor, or the next level above the immediate supervisor. A standard form for filing grievances may be required by an agency.

(b) A formal grievance shall state specifically the law, written rule, policy, and/or procedure violated; when the action occurred, and the remedy desired by the grievant. It shall be signed and dated by the grievant.

(c) Management shall respond in writing to a formal grievance within 10 working days from the date it is filed.

(d) The grievance is resolved at step 2 if the grievant accepts management's response, or if the grievant fails to advance the grievance to step 3 within 10 working days of the receipt of management's response.

(3) Step 3 is review by agency head.

(a) If a grievant wishes to advance the grievance to step 3, he shall notify a management representative designated by the agency head. The grievant shall notify the management representative in writing within 10 working days of receipt of management's response at step 2.

(b) If the subject of the grievance is suspension without pay for more than 10 working days, disciplinary demotion, or discharge, the designated management representative shall order

a hearing, as provided in Rule VI. All other grievances shall advance to final review by the agency head.

(c) The agency head shall review the grievance and shall issue the final administrative decision on the grievance either:

(i) within 20 days of the grievant's request for final review;

(ii) within 10 working days of receipt of the hearings summary as provided in rule VI; or

(iii) the agency head shall notify the grievant and management concerning any additional actions ordered which will delay the decision.

(d) At the discretion of the agency head, the final review may include review of the grievance form, review of management's response, and review of the record of any investigation or hearing, or the agency head may authorize an additional investigation, may conduct a discussion with the grievant or may order a hearing.

(e) The agency head's final decision shall be issued in writing. This is the final step of this grievance procedure.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VI HEARING (1) A hearing shall be conducted at step 3, if the grievance is filed as the result of a suspension without pay for more than 10 working days, a disciplinary demotion, or a discharge.

(2) Within 10 working days of advancement of the grievance to step 3, the designated management representative shall request either:

(a) a hearings examiner assigned by the office of the attorney general;

(b) a list of three to five potential hearings examiners from the board of personnel appeals. An examiner shall be selected in one of the following manners:

(i) management and the grievant shall agree on one of the hearings examiners; or

(ii) each shall alternately strike names from the list and the remaining person shall serve as hearings examiner. The grievant shall strike the first name.

(3) The hearings examiner shall set the time and place for the hearing. The parties shall receive notice of the hearing either personally or by certified mail not less than 5 working days before the hearing.

(4) Both parties shall have:

(a) the right to introduce evidence;

(b) the right to cross examine;

(c) the right to be represented; and

(d) the right to a recommendation for resolution based on the recorded evidence and matters officially noticed.

(5) Within 30 working days of the selection of the hearings examiner, the hearings process shall be completed, and the hearings examiner shall submit a written summary of findings and shall make a non-binding recommendation for resolution to the agency head.

- (6) The agency shall pay all costs of:
 - (a) a hearings examiner;
 - (b) physical arrangements for a hearing; and
 - (c) management's witnesses and evidence.
- (7) The grievant shall pay all costs of:
 - (a) the grievant's representative; and
 - (b) the grievant's witnesses and evidence, unless the witness also is a management witness.
- (8) A recording shall be made of the hearing. Either party may request a transcript of a hearing. The party requesting the transcript shall bear the cost. If both parties request a transcript, they will share the cost.
- (9) The agency head shall issue the final administrative decision within 10 days of receipt of the hearing summary.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VII FAILURE TO ACT (1) If the employee fails to respond within the timeframes established for a step, the grievance is considered resolved in favor of the last response given by management. The employee may not refile the grievance.

(2) If management fails to respond within the timeframes established for a step, the grievant may proceed to the next appropriate step of the procedure.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VIII WAIVERS (1) Any step of the procedure and timeframes in the procedure may be waived upon written agreement of both parties.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE IX GRIEVANCE RESOLVED (1) A grievance is resolved when:

- (a) the grievant requests in writing that the grievance be withdrawn or signs a waiver that a resolution has been achieved;
- (b) the grievant leaves state employment, unless discharged;
- (c) the grievant dies, unless the grievance involves pay or fringe benefits;
- (d) the grievant fails to advance the grievance in the required timeframes;
- (e) the final steps of the grievance procedures are completed.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE X CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

4. The current grievance policy, ARM 2.21.8001, et. seq., is not an effective procedure for adjusting grievances, according to state agencies which must administer the policy. They report that portions of the current rules are not clear and the

process is generally too cumbersome. It is necessary to repeal the rules and adopt new rules to alleviate problems with the current policy identified by the agencies, which have asked the Department of Administration to change the current rules.

Specific problems with the current policy cited by state agencies include: the need to delegate authority to each agency to adopt a grievance procedure which could be tailored to its specific needs and to require employees of the agency to use that policy; the need to be more specific in defining a grievance and the types of issues grievable under this policy; the need to clearly identify those employees who would be eligible to file a grievance under this policy and those who are not eligible; the need for clear timeframes for completing or advancing the steps of the procedure; the need to establish a consistent practice on the use of paid working time to adjust a grievance by the grievant and other employees; the need to eliminate the three-member hearing panel provided in the current rule in favor of the use of a single, neutral hearings examiner, and the need to limit issues which may be taken to a hearing, due to the time and expense involved.

5. The new rules which are proposed address these problems cited by the agencies.

Rule II, Policy and Objectives, would delegate authority to agencies to adopt grievance procedures tailored to individual needs and to require employees to follow that procedure. It would also exclude filing reports of sexual harassment and classification appeals from this policy, because other procedures have been developed to deal with these issues.

Rule III, Definitions, would specifically define which state employees are covered by this policy and which are not. It would also create a clear definition of a grievance.

Rule IV, Employee Grievance, would generally describe the issues on which an eligible employee could file a grievance. It also would establish a consistent procedure on use of paid working time.

Rule V, Grievance Procedure, would establish the minimum standards for the procedure to be used.

Rule VI, Hearing, would define the issues which may be taken to a hearing, the method of selecting a hearings examiner, and the minimum standards for a hearings procedure.

Rule VII, Failure to Act, would establish the outcome if the employee failed to advance the grievance in the appropriate timeframes or if management failed to respond.

Rule VIII, Waivers, would allow waiver of steps or timeframes on agreement of both parties.

Rule IX, Grievance Resolved, would establish the circumstances under which a grievance would be considered resolved.

Adoption of these rules would address the problems cited to the department by state agencies and would result in a procedure which is clear and understandable by both employees and managers.

6. Interested parties may submit their data, views, or arguments concerning the proposed repeal of rules and the adoption of new rules in writing to:

Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than November 12, 1988.

7. Gale Kuglin, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed repeal of rules and adoption of new rules is based on 2-18-102, MCA, and the proposed rule actions implement 2-18-102, MCA.



Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State October 3, 1988.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of rules relating) AMENDMENT OF 4.12.3501
to the grading of certified) OF 4.12.3503, 4.12.3504,
seed potatoes) AND 4.12.3505

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 12, 1988, the Department of Agriculture proposes to amend certain rules as above stated relating to the grading of certified seed potatoes.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined) (full text of the rules are located at page 4-525, through 4-527, Administrative Rules of Montana)

4.12.3501 GENERAL REQUIREMENTS (1) through (4) no changes.

(5) Official tags and seals shall be issued by MSU Extension Potato Certification Program officials to the applicant or a designated agent. No mutilation of official tags by writing or marking over, or otherwise altering original information printed thereon, shall be permitted unless requested in writing by the grower and approved by the Department of Agriculture.

(6) The grower, to whom the official tags were issued, shall be responsible for the proper tagging-and-sealing-of containers completion of the tags.

(7) through (10) no change.

AUTH: 80-3-104, 80-3-110 IMP: 80-3-104, 80-3-105
REASON: The references to seals in this rule and in 4.12.3505 have been removed. Sealing of the carriers of seed potatoes no longer has the validity it once had because many units are open bulk units and are unsealable. Growers may continue to use seals if they so desire.

4.12.3503 BLUE TAGS (1).....

(a) through (e) no change

(f) Stem-end discoloration -- ~~not more than 4% (by weight) of the potatoes shall have~~ serious discoloration extending beyond a depth of 1/2 inch, shall be scored unless verified by a department approved pathologist as not being a disease symptom.

(g) through (j) no change.

AUTH: 80-3-104, 80-3-110 IMP: 80-3-104, 80-3-105
REASON: This change will allow potatoes which have been discolored from the stem end due to quick dying from freezing or defoliating chemicals. Discoloration of these types, as determined by a pathologist, would have no effect on the seed performance. However some diseases symptoms may have this appearance and should be scored if more than 1/2 inch into the tuber.

4.12.3504 RED TAGS (1)

(a) through (b) no change

(c) ~~Surface or russet scab shall not be scored. Cuts and bruises shall be scored when removal causes loss of more than 15% of the total weight of a tuber.~~

(e) (d) Cuts and bruises shall be scored when removal causes loss of more than 15% of the total weight of a tuber.

(d) (e) Second growth shall not be deliberately removed.

(e) (f) The following blue tag exceptions shall also apply to red tags: air cracks, sunburn (greening), stem-end discoloration, immaturity, sprouts, oversize, undersize, and hollow heart, and freezing injury.

AUTH: 80-3-104, 80-3-110 IMP: 80-3-104, 80-3-105

REASON: This change will allow potatoes with the less serious types of scab, surface or russet, to be shipped in the Red Tag Grade. Some scab of these less serious types has appeared as new fields are used in the rotations for planting certified seed. This scab is not a problem for those purchasing the seed because of different conditions such as soil type and pH.

4.12.3505 BULK SHIPMENTS (1) Potatoes shipped in bulk shall meet all official grade and MSU Extension Potato Certification Program requirements. All carriers shall be tagged and sealed in an appropriate manner.

(2) Official tags carrying information described in this section shall be used and, in addition, the following information must be filled out on the official bulk tag: at the time of sealing the carriers

(a) -- Seal number

(b) (a) Inspection certification number;

(e) (b) Date inspected;

(d) (c) Buyer's name;

(e) (d) Date and time loaded;

(f) (e) Trucking firm's name and driver's initials;

(g) (f) Carrier license or car number;

(h) (g) Approximate weight (100 lbs. occupies about 2.4 cubic feet, or .42 x cu.ft. = number of CWT's).

AUTH: 80-3-104, 80-3-110 IMP: 80-3-104, 80-3-105

3. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to the Department of Agriculture, Agriculture/Livestock Building, 6th and Roberts, Helena, Montana 59620-0201, no later than November 10, 1988.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Department of Agriculture, Agriculture/Livestock Building, 6th and Roberts, Helena, Montana 59620-0201, no later than November 10, 1988.

5. If the Department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.



Keith Kelly, Director

Certified to the Secretary of State October 4, 1988

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of rules pertaining to	)	ON PROPOSED ADOPTION OF
unethical practices by investment	)	RULES PERTAINING TO
advisers and broker-dealers	)	UNETHICAL PRACTICES

TO: All Interested Persons.

1. On November 2, 1988, at 9:00 a.m., a public hearing will be held in Room 270, Mitchell Building, Helena, Montana, to consider the adoption of rules pertaining to unethical practices by investment advisers and broker-dealers.

2. The rules as proposed to be adopted provide as follows:

RULE 1 "UNETHICAL PRACTICES" BY BROKER-DEALERS AND SALESMEN DEFINED (1) For purposes of 30-10-201(12)(g), MCA, "unethical practices" by a broker-dealer means, but is not limited to:

- (a) engaging in a pattern of unreasonable and unjustifiable delays in either or both the:
 - (i) delivery of securities purchased by a customer;
 - (ii) payment upon request of free credit balances reflecting completed transactions of a customer;
- (b) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (c) recommending to a customer the purchase, sale, or exchange of a security without grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;
- (d) executing a transaction on behalf of a customer without authorization to do so;
- (e) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders or to both time and price for the execution of orders;
- (f) executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;
- (g) failing to segregate a customer's fully paid securities or securities held in safekeeping;
- (h) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;
- (i) entering into a transaction with or for a customer at a price not reasonably related to the current market price of

the security or receiving an unreasonable commission or profit;

(j) failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and any additional documents, which together include all information set forth in the final prospectus;

(k) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest; exchange or transfer of securities; appraisals, safekeeping, or custody of securities; and other services related to its securities business;

(l) offering to buy from or sell to a person a security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions stated at the time of the offer to buy or sell;

(m) representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created, or controlled by the broker-dealer, or by a person for whom he is acting or with whom he is associated in the distribution, or by a person controlled by, controlling, or under common control with the broker-dealer;

(n) effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include but is not limited to:

(i) effecting a transaction in a security which involves no change in the beneficial ownership thereof;

(ii) entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. A broker-dealer may, however, enter a bona fide agency cross transaction for its customers.

(iii) effecting, alone or with one or more other person, a series of transaction in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others.

(o) guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer with or for the customer;

(p) publishing or circulating, or causing to be published or circulated, a notice, circular, sales material, newspaper article, investment service, or communication of any kind which purports to:

(i) report a transaction as a purchase or sale of a security unless the broker-dealer believes that the transaction

was a bona fide purchase or sale of the security; or

(ii) quote the bid price or asked price for a security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

(q) using sales material or sales presentations in a deceptive or misleading fashion.

(r) failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with, the issuer of a security before entering into a contract with or for a customer. If the disclosure is not made in writing, it must be supplemented by giving or sending a written disclosure at or before the completion of the transaction.

(s) failing to make a bona fide public offering of each security allotted to a broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(t) failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

(u) requiring, after January 1, 1989, that a customer, other than a customer that is an institutional investor or financial institution specified in 30-10-105, MCA, execute either a mandatory pre-dispute arbitration contract or a customer agreement containing a mandatory pre-dispute arbitration clause that is a non-negotiable precondition to effecting a transaction in securities for the account of the customer or opening a securities cash account or margin account by the customer with the broker-dealer;

(v) requesting, after January 1, 1989, that a customer execute either a mandatory pre-dispute arbitration contract or a customer account agreement containing a pre-dispute arbitration clause where the contract or agreement fails to disclose conspicuously that the execution of the contract or agreement cannot be made a non-negotiable precondition to the opening by the customer of a securities account with the broker-dealer;

(w) requesting, after January 1, 1989, that a customer execute either a mandatory pre-dispute arbitration contract or a customer account agreement containing a pre-dispute arbitration clause without fully disclosing to the customer in writing the legal effects of the pre-dispute arbitration contract or clause; or

(x) engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices.

(2) For purposes of 30-10-201(12)(g), MCA, "unethical practices" by a salesman means, but is not limited to:

(a) engaging in the practice of lending or borrowing money or securities from a customer; or acting as a custodian for money, securities, or an executed stock power of a customer;

(b) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent

represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(c) establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(d) sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents;

(e) dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of a security with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(f) engaging in conduct specified in subsections (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(i), (1)(j), (1)(n), (1)(o), (1)(p), or (1)(q); or

(g) engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices.

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

RULE II "UNETHICAL PRACTICES" BY INVESTMENT ADVISERS
DEFINED For purposes of 30-10-201(12)(g), MCA, "unethical practices" by an investment adviser means, but is not limited to:

(1) recommending to a client the purchase, sale, or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(2) exercising any discretionary power in placing an order for the purchase or sale of a security for a client without first obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(3) inducing trading in a client's account that is excessive in size or frequency in view of the financial resources and character of the account;

(4) placing an order to purchase or sell a security for the account of a client without authority to do so;

(5) placing an order to purchase or sell a security for the account of a client upon instructions of a third party without first having obtained written third party trading authorization from the client;

(6) borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of

loaning funds;

(7) loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(8) misrepresenting to a client or prospective client the qualifications of the investment adviser or an employee of the investment adviser; misrepresenting the nature of the advisory services being offered or fees to be charged for the investment advisory service; or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading;

(9) providing a report or recommendation to a client prepared by someone other than the investment adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser uses a published research report or statistical analysis to render advice or where an investment adviser orders such a report in the normal course of providing service.

(10) charging a client an unreasonable advisory fee;

(11) failing to disclose to a client in writing before any advice is rendered a material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) compensation arrangements connected with advisory services to a client which are in addition to compensation from the client for the services; and

(b) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser or its employees;

(12) guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

(13) publishing, circulating or distributing sales material which does not comply with rule 206(4)-1 under the Investment Advisers Act of 1940;

(14) disclosing the identity, affairs, or investment of a client unless:

(a) required by law to do so; or

(b) consented to by the client;

(15) taking action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, if the investment adviser has custody or possession of the securities or funds when the investment adviser's action is subject to and does not comply with the requirements of rule 206(4)-2 under the Investment Advisers Act of 1940;

(16) entering into, extending, or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, and whether the contract grants discretionary power to the investment adviser;

(17) failing to disclose to a client or prospective client each material fact with respect to:

(a) the financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to a client, if the investment adviser has express or implied discretionary authority or custody over the client's funds or securities or requires prepayment of advisory fees of more than \$500 from the client, 6 months or more in advance; or

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

(18) engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices.


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

3. "The commissioner may by order deny, suspend, or revoke registration of a broker-dealer, salesman, [or] investment adviser . . . if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director . . . has engaged in dishonest or unethical practices in the securities business" 30-10-201(12)(g), MCA. The commissioner has had difficulty determining which acts of a broker-dealer, salesman, or investment adviser constitute "unethical practices" as used in 30-10-201(12)(g), MCA. Likewise, broker-dealers, salesmen, and investment advisers do not know, under current securities law, which of their practices might be considered unethical by the commissioner. The proposed changes are reasonably necessary to define "unethical practices" as used in 30-10-201(12)(g), MCA. The proposed changes are based on guidelines adopted by the North American Securities Administrators Association, Inc.

4. Interested persons may present oral or written comments at the hearing. Written comments may also be submitted to Kathy M. Irigoien, State Auditor's Office, P.O. Box 4009, Helena, Montana, 59604, before November 10, 1988.

5. Kathy M. Irigoien has been designated to preside over and conduct the hearing.

6. The commissioner's authority to amend, repeal, and adopt the rules is 30-10-107, MCA, and the rules implement 30-10-201, MCA.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State this 30th day of September, 1988.

19-10/13/88

MAR Notice No. 6-22

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 of	)	OF ARM 6.10.121
securities salesmen and broker-)	
dealers)	

TO: All Interested Persons.

1. On November 2, 1988, at 11:00 a.m., a public hearing will be held in Room 270, Mitchell Building, Helena, Montana, to consider the amendment of ARM 6.10.121.
2. The rule as proposed to be amended provides as follows:

6.10.121 REGISTRATION AND EXAMINATION--SECURITIES
SALESMEN, INVESTMENT ADVISER REPRESENTATIVES, BROKER-DEALERS,
AND INVESTMENT ADVISERS (1) through (2) remain the same.

(3)(a) Except ~~for a salesman/broker-dealer that is not a member of the National Association of Securities Dealers, Inc.~~ as provided in subsections (3)(b) and (3)(c) of this rule, each ~~individual applying~~ 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.

(b) Except as provided in subsection (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 ~~a broker-dealer~~ an investment adviser or an investment adviser representative in this state shall apply for registration with the commissioner.

(c) remains the same.

(4) through (8) remain the same.

AUTH: 30-10-107 MCA


IMP: 30-10-201 MCA

3. Since May 20, 1983, the commissioner has registered securities salesmen through the Central Registration Depository (CRD). Effective November 1, 1988, the commissioner will have the ability to register broker-dealers through the CRD as well. The proposed changes to ARM 6.10.121 reflect this change in registration procedure for broker-dealers wishing to register in Montana. In addition, the changes clarify that a salesman representing an issuer or a broker-dealer that is not a member of the National Association of Securities Dealers, Inc. (NASD) and a broker-dealer that is not a member of NASD apply for registration with the commissioner. The changes are reasonably necessary to clarify Montana's registration procedures.

4. Interested persons may present oral or written comments at the hearing. Written comments may also be submitted to Kathy M. Irigoin, State Auditor's Office, P.O. Box 4009, Helena, Montana, 59604, before November 10, 1988.

5. Kathy M. Irigoin has been designated to preside over and conduct the hearing.

6. The commissioner's authority to amend the rules is 30-10-107, MCA, and the rules implement 30-10-201, MCA.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State this 30th day of September, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.50.437 FEE SCHEDULE
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 12, 1988, the Board of Private Security Patrolmen and Investigators proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1383 and 8-1384, Administrative Rules of Montana)

"8.50.437 FEE SCHEDULE (1)(a) through (e) will remain the same.

(f) License renewals 100.00 50.00

One-half price on renewals only
for each additional license for
dual or multiple licenses

(g) will remain the same.

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

(d) Renewals 50.00 25.00

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

(e) Renewals for unarmed contract 20.00 10.00

and proprietary security employees

(f) Renewals for unarmed private 20.00 10.00

investigator employee

(g) Renewals for unarmed alarm installer 20.00 10.00

employee

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

(7) Request for refunds:

(a) No refunds will be made on any fees contained in this fee schedule except for new applicant fees.

(b) Request for refund must be in writing, postmarked within 15 calendar days of the request of the application.

(c) The board may refund any portion of the fees left after first subtracting any costs incurred in processing the application."

Auth: 37-60-202, MCA Imp: 37-60-312, MCA

3. REASON: The Board was contacted by the legislative auditors office and was requested to write a rule for refunds. The Department directed the board to lower fees to make them commensurate with program area costs.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Private Security Patrolmen and Investigators, 1424 -

9th Avenue, Helena, Montana 59620-0407, no later than November 10, 1988.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Private Security Patrolmen and Investigators, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than November 10, 1988.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 58 based on the 580 licensees in Montana.

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS
CLAYTON BAIN, CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 3, 1988.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
adoption of rules concerning)	ON PROPOSED ADOPTION OF
traffic education)	RULES CONCERNING TRAFFIC
)	EDUCATION

TO: ALL INTERESTED PERSONS.

1. On November 10, 1988 at 10:00 a.m. a public hearing will be held in the conference room at 1300 11th Avenue, Office of Public Instruction, in Helena, Montana to consider the adoption of rules concerning traffic education.

2. The rules as proposed to be adopted provide as follows:

RULE I PROGRAM REQUIREMENTS

(1) An approved traffic education program for student drivers must:

(a) be provided only by school districts operating a junior high school or high school.

(b) be for students who are 15 years old or older, or who will reach their 15th birthday within six months of course completion.

(c) be taught by a teacher(s) of traffic education approved by the superintendent of public instruction.

(d) be based on a curriculum guide, or guides, readily available for perusal from the superintendent of public instruction or traffic education staff. A student must meet the minimum performance objectives identified by the local school district in order to be considered as having successfully completed the program.

(e) be scheduled so that a sufficient number of courses are provided to allow every eligible youth within the school jurisdiction an opportunity to enroll.

(f) consist of at least 60 hours of structured learning experiences scheduled over no less than 20 days. These learning experiences must include at least six hours of behind-the-wheel, in-traffic driving instruction. Twelve hours of simulation may be substituted for two hours of behind-the-wheel instruction for those schools having traffic simulator equipment.

(g) provide behind-the-wheel instruction only to students who are currently participating in classroom instruction. All program phases must be conducted concurrently.

(h) use only dual-control vehicles that are equipped according to standards established by the superintendent of public instruction.

(i) have property and liability insurance sufficient to protect the school, teachers, students, the public, the vehicle(s), and its owner.

(j) use the form entitled "School/Dealer Vehicle Use Agreement" or its equivalent when a traffic education loan

vehicle is procured from a vehicle dealer.

(2) Schools wishing to depart from any of the above requirements must submit clear and complete explanation to the traffic education specialist, office of public instruction, along with the school district application forms. Approval of a departure request must be granted before the program begins.

Auth: 20-7-502, MCA

Auth: 20-7-503, MCA

RULE II APPLICATION PROCEDURES

(1) A school district must apply for and receive approval from the superintendent of public instruction for the district's traffic education program for student drivers before the program begins to be eligible for state reimbursement.

(2) To obtain approval for a traffic education program a school district must submit a "School District Application for Approval of a Traffic Education Program(s) for Student Drivers." This application form can be obtained from the superintendent of public instruction's traffic education specialist. Following action by the superintendent of public instruction, one copy of the application will be returned to the school district showing the approval status. All necessary forms and materials will be forwarded at this time.

(3) The traffic education teacher(s) teaching the program must have approval issued by the superintendent of public instruction on or before the beginning date of the program in order for the school district to be eligible for state reimbursement.

Auth: 20-7-502, MCA

Auth: 20-7-503, MCA

RULE III REIMBURSEMENT PROCEDURES

(1) The administrative official of the school district or county high school must submit a "Traffic Education Program Reimbursement Request" (a certified list of pupils who have completed a state-approved traffic education program) on or before July 10 for all students who completed the program during the preceding fiscal year.

(2) Reimbursement per student is based on course completion and minimum age requirements. Reimbursement per student is paid whether the student passed or failed the course.

(3) On or before August 31 of each year, the superintendent of public instruction will disburse to the school districts and county high schools the amount of traffic education reimbursement money to which they are entitled based on the number of students listed on the reimbursement forms and on the money available for reimbursement in the state traffic education account.

Auth: 20-7-502, MCA

Auth: 20-7-503, MCA

RULE IV TRAFFIC EDUCATION TEACHERS

(1) All teachers of traffic education must have:

(a) a valid Montana teaching certificate.

(b) approval as a teacher of traffic education issued by the superintendent of public instruction with each renewal of the teacher's teaching certificate.

(c) a minimum of 12 quarter hours of credit course work in traffic safety education. This 12-hour block must include a basic and advanced traffic education course. For each succeeding renewal of the teacher's teaching certificate, after initial approval, the teacher must accumulate six quarter hours of credit course work in traffic safety education, until such time as an endorsable minor, or its equivalent (30 credits), has been completed.

(d) a valid Montana driver license.

(e) a (local, state and national) driving record free from repeated collision experiences and traffic law violations within the previous two years.

Auth: 20-7-502, MCA

Imp: 20-7-503, MCA

RULE V TRAFFIC EDUCATION VEHICLES

(1) Vehicles used for the behind-the-wheel driving phase of traffic education may be procured through a loan, lease, or purchase arrangement. Regardless of the method, it is essential that a sufficient number of vehicles be available for instructional use.

(2) Each traffic education vehicle must be equipped, maintained, repaired, identified, insured, stored, and used according to the following:

(a) Required equipment

(i) dual-control brake

(ii) all current federal vehicle safety standards

(iii) two exterior mirrors and/or an instructor's rear-view mirror

(iv) first aid kit

(v) flares or reflector warning devices

(vi) fire extinguisher located in the passenger compartment

(vii) accident report forms

(b) Recommended equipment

(i) power steering and power brakes

(ii) split or bucket type front seat

(iii) four-door sedan

(iv) air conditioning

(v) tow cable

(vi) shovel, ax and bucket

(vii) flashlight

(viii) rear window defogger

(ix) ignition cut-off switch

(c) Maintenance and repair practices should be in conformance with manufacturer's recommendations and with the policy established by the school district and participating dealer.

(d) All vehicles used in the traffic education program are to be identified by either an overhead sign, a rear sign, or both. When the rear sign is used, it must not be so large as to obstruct a driver's rear vision. Decals provided by the dealers are used only in conjunction with one

or both types of signs.

(e) Vehicles provided by dealers on a loan basis shall be used for traffic education purposes only unless the dealer(s) gives written authorization to use the vehicle(s) for other purposes.

(f) "Exempt" license plates shall be obtained for a traffic education vehicle. "Dealer" license plates are not to be used on these vehicles. Responsibility for securing an exempt license rests with the school district. The school must obtain the appropriate application from the county treasurer. In the space provided for registered owner, type the name of the dealer providing the vehicle.

(g) Each practice driving vehicle (including motorcycles) must be covered by an amount of insurance that meets or exceeds minimum requirements of local and state financial responsibility statutes.

(h) The most common method for procuring practice-driving vehicles is a school/dealer use agreement between the school or school district and a cooperative automobile dealer or dealer group. Each school district must use the form entitled "School/Dealer Vehicle Use Agreement" or its equivalent. This agreement form is self-explanatory and can be obtained by writing to traffic education programs, office of public instruction, state capitol, Helena, MT 59620.

If several dealers express a desire to provide practice-driving vehicles on a loan basis, the school district should either accept an equal number of vehicles from each dealer or should apply an annual rotation plan worked out with the dealer group or the local vehicle dealers association.

(i) Vehicles assigned for use in the traffic education program must be readily available for this use. Use of vehicles for other purposes must not conflict with the traffic education instructional program. If a traffic education vehicle is being used for purposes other than driving instruction, all identification as a traffic education vehicle must be removed.

Auth: 20-7-502, MCA

Imp: 20-7-503, MCA

RULE VI STUDENT ENROLLMENT

(1) The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course for pupils enrolled in the secondary schools in the districts or county high schools, provided that students enrolled in the course will have reached their 15th birthday within six months of course completion.

Auth: 20-7-502, MCA

Imp: 20-7-503, MCA

RULE VII LEARNER LICENSE

(1) All students enrolled in the traffic education program must have in their immediate possession a valid Montana traffic education permit, a valid Montana traffic education learner license, a valid Montana instruction permit or a valid Montana driver license.

(a) A traffic education permit is valid from the date of issue until course completion as indicated by the expira-

tion date, provided that the student is accompanied by an approved traffic education instructor. These permits are issued to the school district by the local driver examiner when presented official office of public instruction approval for the current year.

(b) A traffic education learner license allows a student to legally practice drive only with a licensed parent or guardian or a qualified traffic education instructor. It does not allow the student to practice drive with any other licensed driver. This license can only be obtained while the student is successfully participating in, or has successfully completed, a state-approved traffic education program. It is valid for only six months from the date of purchase of receipt and is issued directly by the Montana highway patrol division providing:

(i) the respective school district personnel authorizes the student to apply for the license by placing his/her name on the gold form entitled "Traffic Education Notice of Successful Participation" and transmits the original and duplicate to the county treasurer.

(ii) the student has paid the necessary fee and obtained the driver license receipt and application form.

(iii) the student presents the completed, notarized application and receipts with proof of identity, date of birth, and social security number (optional) to the examiner.

(iv) the student is at least fourteen and one-half years of age.

(v) the student is successfully participating in or has successfully completed a state-approved traffic education program.


(vi) the student successfully completes all parts of the driver license examination other than the driving test.

Auth: 20-7-502, MCA

Imp: 20-7-503, MCA

3. The Office of Public Instruction is proposing these rule adoptions because rules for traffic education have never been formally adopted into the Administrative Rules of Montana.

4. Interested parties may submit their data, views or arguments, either orally or in writing, at the public hearing. Written data, views or arguments also may be submitted to Rick Bartos, Staff Attorney, Office of Public Instruction, State Capitol, Room 106, Helena, Montana 59620 no later than November 16, 1988. Rick Bartos has been designated to preside over and conduct the public hearing.



Ed Argebright
State Superintendent of
Public Instruction

Certified to the Secretary of State October 3, 1988.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the Matter of the Proposed)	NOTICE OF PUBLIC HEARING ON
Adoption of Rules for the)	NEW RULES I THROUGH CLXXXVI
Montana Accreditation)	FOR THE MONTANA ACCREDITATION
Standards and Proposed Repeal)	STANDARDS AND PROPOSED REPEAL
of ARM 10.55.101 Through)	OF ARM 10.55.101 THROUGH
ARM 10.55.504, Standards of)	ARM 10.55.504, STANDARDS OF
Accreditation)	ACCREDITATION

TO: All Interested Persons

1. On November 2, 1988, from 2:00 to 5:00 p.m. and 7:00 p.m. until completion, or as soon thereafter as it may be heard, a public hearing will be held in the Billings Skyview High School Auditorium, 1775 High Sierra Blvd., Billings, Montana, in the matter of the proposed adoption of Rules I through CLXXXVI, Montana accreditation standards and the proposed repeal of ARM 10.55.101 through ARM 10.55.504, Standards of Accreditation.

2. On November 3, 1988, from 2:00 to 5:00 p.m. and 7:00 p.m. until completion, or as soon thereafter as it may be heard, a public hearing will be held in the Montana Department of Highways Auditorium, 2701 Prospect Avenue, Helena, Montana, in the matter of the proposed adoption of Rules I through CLXXXVI, Montana accreditation standards and the proposed repeal of ARM 10.55.101 through ARM 10.55.504, Standards of Accreditation.

3. The rules proposed to be repealed can be found on pages 10-767 through 10-786 ARM.

4. The rules as proposed to be adopted are as follows:

RULE I ACCREDITATION STANDARDS: PROCEDURES (1) The board of public education adopts standards of accreditation on the recommendation of the state superintendent of public instruction.

(2) The board and the office of public instruction establish procedures and schedules for reviewing the accreditation status of each school annually. (Eff. 7/1/89)

(3) For school year 1989-90, accreditation will be based on the school's submission of the fall report and a preliminary plan for meeting the new standards. The fall report shall reflect the required standards the school is currently meeting, and the preliminary plan will explain how the school will meet those standards which become effective in subsequent years. The preliminary plan will be submitted to the office of public instruction by December 1, 1989. An assessment of the plan will be included in the office of public instruction's recommendation of accreditation status to the board of public education. (Eff. 7/1/89; Repeal 7/1/90)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE II. DEFINITIONS (1) For the purposes of this chapter, the following terms apply:

(a) "At risk" means children and youth whose present status, or whose predictable status, would indicate that they might fail to make successful transitions in school and/or to a productive adulthood.

(b) "Building administrator" means a person who is a part of the school's administrative or supervisory staff and who holds a class 3 certificate and is appropriately endorsed.

(c) "Combined school district" means an elementary district and a high school district which are combined for district administration purposes. Most town school districts in Montana would fit this category, i.e. Helena, Hamilton, Whitehall.

(d) "Deviation" means a citation of noncompliance with any given standard.

(e) "Distance learning" means instruction which takes place when the learner is distant from the instructor and/or instructional materials.

(f) "Effective schooling practices" refers to that body of knowledge known as "Effective Schooling Practices" and generally means schooling practices which include a clearly defined curriculum; focused classroom instruction and management; firm, consistent discipline; close monitoring of student performance and strong instructional leadership.

(g) "Facilitator" means a person, either certified or noncertified, who assists students in receiving distance learning instruction.

(h) "Independent elementary school district" means a district organized for the purpose of providing public education for all or any combination of grades kindergarten through 8. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE III. CURRICULUM DEVELOPMENT AND ASSESSMENT

(1) Local school districts are responsible for defining and organizing the program area learner goals of the accreditation standards into specific curricula and for extending them to help students meet the challenges of the future. Student assessment shall be used to examine the program and ensure its effectiveness.

(2) In all program areas and at all levels, the school district shall:

(a) establish curriculum development and evaluation processes as a cooperative effort of personnel certified in the program area and trustees, administrators, teachers, students, specialists, parents, community and, when appropriate, state resource people;

(b) develop, in accordance with the schedule in subsection (3), written sequential curricula for each subject area. The curricula shall address learner goals from the standards and district educational goals;

(c) construct curriculum with equal emphasis on the three

parts of education: content, skills and thinking;

(d) review curricula annually and modify as needed to meet educational goals;

(e) establish a curriculum cycle and timelines for curriculum development and evaluations; and

(f) select materials and resources that are consistent with the goals of the education program. These materials shall be reviewed at least every five years.

(3) Beginning the school year 1991-1992, schools shall have at least one program in conformance with the curriculum development process and continue to align at least one program a year until the school year 1999-2000, when all programs must be in alignment with the above curriculum development process.

(4) In all program areas and at all levels, the school district shall:

(a) assess, in accordance with the schedule in subsection

(5), student progress toward achieving learner goals including:

(i) the content and data;

(ii) the accomplishment of appropriate skills; and

(iii) the development of critical thinking and reasoning in equal weight;

(b) use assessment results to improve the educational program;

(c) use effective and appropriate tools for assessing student progress. This may include but is not limited to:

(i) standardized tests;

(ii) criterion-referenced tests;

(iii) teacher-made tests;

(iv) ongoing classroom evaluation;

(v) actual communication assessments such as writing, speaking, and listening assessments;

(vi) samples of student work and/or narrative reports passed from grade to grade;

(vii) samples of students' creative and/or performance work;

(viii) surveys of carryover skills to other program areas and outside of school.

(5) Beginning the school year 1992-1993, schools shall have at least one program in conformance with the assessment process and continue to align at least one program a year until the school year 2000-2001, when all programs must be in alignment with the above assessment process. (Eff. 7/1/89)

(6) Beginning 7/1/92 schools shall conduct follow-up studies of graduates and students no longer in attendance. The study results shall be incorporated into curriculum development and shared with staff and school consultants. (Eff. 7/1/92)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE IV ALTERNATIVE STANDARD (1) Any school may apply to the board of public education through the office of public instruction for permission to use an alternative to any standard, section of standards, or the entire set of

standards, excluding required learner-goal standards or standards pertaining to law or certification requirements. To do so, the school shall provide the office of public instruction evidence that the opportunity to meet the accreditation standards' learner goals are at the core of its curricula--that is, that the school has put in place curriculum and assessment procedures which give students opportunities to meet the stated goals and which have been the results of the curriculum development process as outlined in the standards. The board of public education may withdraw its permission of the alternative program at any time if experience shows it no longer provides an educationally sound alternative.

(2) Permission to use an approved alternative shall be granted for one year and is renewable for up to an additional five years without special approval, if both the school and the board of public education find the one-year pilot to be workable and educationally sound.

(3) The school shall include an update on its alternative program(s) in its annual report to the office of public instruction.

(4) Approval of an alternative standard shall be done by the board of public education in open meeting, which provides opportunity for public comment on each school's application for use of the alternative standard. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE V CATEGORIES OF ACCREDITATION (1) Project Excellence accreditation: The school shows an outstanding dedication to education. Staff are certified, appropriately assigned, and utilized to the fullest extent possible. Specialists, support personnel, and resources are used to enrich the basic program. The school uses "effective schooling practices." There is cogent professional development. The school trustees, staff, parents, and community work together to provide a quality education. The community is involved in designing an effective program, providing resources for enrichment of the program, and generally encouraging a stimulating and positive learning environment.

(2) Regular accreditation: The school meets the requirements for regular accreditation. Its program reflects the standard's learner goals. The staff is certified, appropriately assigned, and fully utilized. The school program and resources are adequate. Facilities meet appropriate standards. The school trustees, staff, parents, and community work together to provide a quality education. Regular accreditation is for one year.

(3) Regular accreditation with note of minor deviations: The school meets most of the regular accreditation standards, but there are deviations from the standards that are of a minor nature. Regular accreditation with note of minor deviations will be for one year. If

deviations are not corrected, the school may be moved to advice status.

(4) Accreditation with advice status: The school exhibits serious and/or numerous deviations from the standards. The school must submit an improvement plan developed by trustees, administrators, teachers, parents, and the community, to the office of public instruction. If a school is on advice status for two years and continues to have serious and/or numerous deviations, it will move to deficiency status.

(5) Accreditation with deficiency status: The fifth level is for schools that have been on advice status for two years and continue to have serious and/or numerous deviations, or have substantially increased the seriousness of deviations over the previous year. A school that employs a noncertified teacher, that has a facility that creates an unhealthy environment with safety and health hazards, or that provides an inadequate learning environment will be placed on deficiency status. The school administrator and the chair of the board of trustees must come before the board of public education with an improvement plan and a systematic procedure for correcting the deviations noted.

(6) Nonaccredited status: If a school is on deficiency status and fails to document improvements, its accreditation may be rescinded. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE VI. BOARD OF TRUSTEES (1) The board of trustees shall ensure that the school district complies with all local, state, and federal laws and regulations. (Eff. 7/1/89)

(2) The board of trustees will review the state accreditation standards annually and provide in each school building at least one copy of the standards for staff and public review. (Eff. 7/1/89)

(3) Each school district shall have in writing and available to the public:

(a) clearly articulated policies that cover all aspects of operations; (Eff. 7/1/91)

(b) a comprehensive philosophy of education which reflects the specific learning needs of students; (Eff. 7/1/89)

(c) goals which reflect the district's philosophy of education; (Eff. 7/1/89)

(d) sequential curricula for each program area which address the accreditation standards' learner goals and the district's educational goals; (Eff. 7/1/2000)

(e) policies establishing student assessment procedures which ensure evaluation of the school's curricula. These procedures shall specify how and when data are to be collected, analyzed, and reported; (Eff. 7/1/91)

(f) policies which delineate the responsibilities of the board, superintendent, and personnel employed by the school district. The trustees shall review these policies annually

and make them available to employees and the public; (Eff. 7/1/89)

(g) a policy on student, parent, and school employee due process rights; (Eff. 7/1/89)

(h) an equity policy; (Eff. 7/1/89)

(i) a transfer policy for determining the appropriate placement of incoming students; (Eff. 7/1/91)

(j) a materials selection policy, including a challenge procedure, for all curricular and support materials; (Eff. 7/1/91)

(k) a copyright policy; (Eff. 7/1/91) and

(l) a policy that defines the use of school facilities and resources. (Eff. 7/1/91)

(4) The board of trustees shall evaluate the above policies on a regular basis. (Eff. 7/1/91)

(5) The board of trustees shall have valid, written contracts with all regularly employed certified administrative, supervisory, and teaching personnel. (Eff. 7/1/89)

(6) The board of trustees shall have written policies and procedures for regular and periodic evaluation of all school personnel. The individual evaluated shall have a written copy of the evaluation, the opportunity to respond in writing to the evaluation, and access to his/her files. Personnel files shall be confidential. (Eff. 7/1/89)

(7) The board of trustees shall use its best efforts to establish conditions that contribute to a positive school climate and morale by encouraging cooperative and harmonious relationships among staff members, students, parents, and community. (Eff. 7/1/91)

(8) To enhance a positive learning environment, the board of trustees shall use its best efforts to:

(a) establish a system to keep parents/guardians up to date on students' progress;

(b) use technology and equipment to facilitate management and instruction; and

(c) guarantee that interscholastic and intramural activities and associated youth programs are used to enhance but not supplant instruction. (Eff. 7/1/91)

(9) To ensure continuous education improvement, the district shall conduct a district self-evaluation program every five years. (Eff. 7/1/91)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE VII CERTIFICATION AND DUTIES OF DISTRICT SUPERINTENDENT

(1) The district superintendent shall:

(a) be certified in accordance with state statutes and board of public education rules;

(b) be responsible for selecting and assigning all school employees and for the administration and supervision of the educational program, subject to the approval of the board of trustees;

(c) propose district goals and priorities for

improvement, subject to the approval of the board of trustees;
(d) oversee curriculum planning and ensure district continuity in implementation; and
(e) collect and summarize district-wide information, including student performance data. (Eff. 7/1/89)
AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE VIII CERTIFICATION AND DUTIES OF BUILDING LEVEL ADMINISTRATOR: PRINCIPAL (1) The building administrator shall:

- (a) be certified in accordance with state statutes and board of public education rules;
- (b) have at least three years teaching experience at the level (K-8, 5-12) assigned as administrator;
- (c) use his/her best efforts to:
 - (i) provide instructional leadership;
 - (ii) exercise vision in defining and accomplishing the school's mission;
 - (iii) ensure that teachers have high expectations for student achievement; and
 - (iv) stress the importance of parents' and students' roles in academic success.
- (d) involve staff and others in decision making and in setting, accomplishing, and assessing educational goals;
- (e) carry out the district's policies and procedures; and
- (f) be responsible for the effective day-to-day operation of the school, including the management of finances, materials, and human resources. (Eff. 7/1/89)
AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE IX ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) For assignment of district superintendents prior to 7/1/92 see Rule X(1). (Eff. 7/1/89; Repeal 7/1/92).

(2) Beginning 7/1/92 a combined elementary-high school district with fewer than 4 FTE certified staff shall employ a district superintendent on a full- or part-time basis. An independent elementary district with fewer than 4 FTE certified staff may employ a district superintendent on a full- or part-time basis or they shall use the county superintendent.

(3) An independent elementary district with 4-11 FTE certified staff shall use the county superintendent or employ a half-time district superintendent in addition to the building administrator. If properly certified, one full-time individual may fulfill the position of district superintendent and building principal.

(4) A combined elementary-high school district or a county high school district with 4-11 FTE certified staff shall employ a half-time district superintendent in addition to the building administrator. If properly certified, one full-time individual may fulfill the position of district

superintendent and building principal.

(5) A combined elementary-high school district or a county high school district or an independent elementary district with 12-29 FTE certified staff shall employ a half-time district superintendent in addition to the required building administrator.

(6) A combined elementary-high school district or a county high school district or an independent elementary district with 30 or more FTE certified staff, or 551 or more students, shall employ a full-time district superintendent.

(7) A combined elementary-high school district or a county high school district or an independent elementary district with 100 or more certified FTE shall employ a full-time curriculum coordinator to supervise the educational program.

(8) Any district may seek alternatives to the above requirements including sharing a district superintendent (see "Alternative Standard," Rule IV). Where a district superintendent is shared, one superintendent may serve all the cooperating districts. (Eff. 7/1/92)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE X ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF BUILDING ADMINISTRATORS (1) Prior to 7/1/92 requirements for the services of principals are determined by enrollments of schools or school districts.

(a) Any school with an enrollment of fewer than 150 students and not under the supervision of a district superintendent shall provide for supervision at the minimum average of two days per teacher per year through the office of the county superintendent.

(b) In any school district with a combined elementary and secondary enrollment of more than 50 but less than 150 students and where the superintendent serves as both elementary and secondary principal, the superintendent shall devote half time in each school to administration and supervision.

(c) In any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, the superintendent may serve as half time elementary or high school principal. The district must employ a half time elementary or high school principal for the other unit in the district. The superintendent shall devote half time as principal of the assigned school. Or, in any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, and where the superintendent serves as both elementary and secondary principal, the district must employ a half time administrative assistant. The administrative assistant shall be defined as a person who holds a bachelor's degree and presents evidence of working toward the administrator's certificate on a planned program. If an administrative assistant is employed in lieu of a principal, the assistant must have already completed at least

15 credits in an approved administrative program leading to the principal endorsement. The district must ensure that the administrative assistant (intern) shows continued progress in that role within a three year period.

(d) Any elementary or secondary school with an enrollment of 150 to 300 shall employ a principal (in addition to the superintendent) who shall devote half time to supervision and administration.

(e) Any school with an enrollment exceeding 300 shall employ a principal (in addition to the superintendent) who shall devote full time to supervision and administration.

(f) Any junior or senior high school with an enrollment of over 500 students shall employ an assistant principal who shall devote at least one half of each school day to supervision and administration.

(g) Any elementary school with an enrollment of over 650 students shall employ an assistant principal who shall devote at least one half of each school day to supervision and administration. (Eff. 7/1/89; Repeal 7/1/92)

(2) Beginning 7/1/92 schools shall employ appropriately endorsed building administrators as follows:

(a) a supervising teacher/county superintendent for schools with less than 4 FTE certified staff;

(b) .5 FTE for schools with 4-11 FTE certified staff;

(c) 1 FTE for schools with 12-29 FTE certified staff or 250-550 students;

(d) 2 FTE for schools with 551-1050 students;

(e) 3 FTE for schools with 1051-1550 students;

(f) 4 FTE for schools with 1551-2050 students; and

(g) 5 FTE for schools with 2051 or more students. (Eff. 7/1/92)

(3) Beginning 7/1/92, in schools with more than one building administrator, the first administrator shall be appropriately endorsed as a principal. The additional administrators may have other administrative endorsements at the appropriate level that accurately reflect their supervisory responsibilities. For example, a school may assign properly certified and endorsed curriculum coordinators to supervise the appropriate instructional programs. (Eff. 7/1/92)

(4) Beginning 7/1/92, in schools with at least three FTE building administrators who are administratively endorsed, release time of department coordinators or chairpersons may be counted toward additional building administration. Department coordinators or chairpersons counted toward building administration shall not supervise or evaluate classroom instruction. (Eff. 7/1/92)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XI TEACHER INVOLVEMENT (1) Teachers shall be involved in curriculum development and student assessment and in the promotion of a school climate that enhances student

learning, achievement, and well-being. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XII CERTIFICATION (1) All teachers shall hold valid Montana teaching certificates. Administrators who teach also shall hold teaching certificates. All supervisory personnel shall hold appropriate certificates.

(2) An emergency authorization of employment is not a valid certificate; it is granted to a district which, under emergency conditions, cannot secure the services of a certified teacher.

(3) All school psychologists must be certified with a class 6 specialist certificate.

(4) Study hall supervisors and teacher aides need not be certified. However, an instructional aide assigned to a classroom shall be under the direct supervision of that classroom's teacher. Direct supervision means that the aide must be responsible to a certified teacher who has the legal authority to give grades, etc., for a group of students. The legal teacher must be present at school while the aide is fulfilling his/her responsibilities and must not be simultaneously assigned to another teaching duty.

(5) In accordance with state law, salary shall be withheld from teachers who have not registered their certificates in the office of the county superintendent within 60 calendar days after their term of service begins. County superintendents shall receive from the schools a list of district professional staff and their assignments and shall advise school districts of professional staff who do not have current registered certificates.

(6) All teachers shall file official transcripts of all college work in the office of their chief school administrator. If there is no district superintendent or principal, the county superintendent is the chief school administrator.

(7) All personnel whose qualifications are not outlined in the certification standards must have a license issued by the appropriate state or federal licensing agent if required by the existing rules and regulations.

(8) All teachers holding a provisional (class 5) certificate will file in the office of the chief administrator the plan of intent from the college where they are completing their program. The district will ensure a yearly reduction of the deficiencies from each teacher's plan. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XIII TEACHING ASSIGNMENTS (1) Teachers shall be assigned at the levels and in the subjects for which their certificates are endorsed. Exceptions are:

(a) individuals serving in internship positions approved by the board of public education;

(b) teachers assigned in grade 5 or 6 in the

departmentalized classroom or middle school, who hold a 5-12 secondary certificate, must be endorsed in the subjects they are teaching. A 5-12 certificate will not cover a grade 5 or 6 assignment in a self-contained classroom; and

(c) for a clarification of teaching assignments in departmentalized and secondary settings, see "Montana School Accreditation and Procedures Manual", published March 1987 or the latest edition by the office of public instruction, which is incorporated in this rule by reference. A copy of the manual may be obtained from the Office of Public Instruction, State Capitol, Helena, Montana 59620.

(2) Certification at the elementary level based on a bachelor's degree entitles the holder to teach in grades K through 8. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XIV LIBRARY/MEDIA SERVICES. K-12 (1) Prior to 7/1/94, in high schools, junior high schools, middle schools and 7th and 8th grades funded at high school rates, the full time or part time librarian shall have a teaching certificate with a library endorsement and the library shall be housed in a central location.

(a) In schools of 100 or fewer students, the librarian shall devote a minimum of 1 1/2 hours or 2 periods per day in the library.

(b) In schools of 101 to 300 students, the librarian shall spend a minimum of 3 hours or 3 periods per day in the library.

(c) In junior and senior high schools of 301 to 500 students, the librarian shall spend full time in the library. One library aide shall be employed for each librarian, or the services of a student librarian or volunteer aide shall be available.

(d) Junior and senior high schools of 501 students shall have a full time librarian and additional librarians at the following ratio:

Enrollment	Librarian
501 to 1,000.....	1.5
1,001 to 1,500.....	2
1,501 to 2,000.....	2.5
2,001 to 2,500.....	3

One library aide shall be employed for each librarian, or the services of a student librarian or a volunteer aide shall be available.

(e) Elementary schools with four or more teachers must assign a teacher with a minimum of nine credit hours in professional library training at a ratio of one full time librarian to 800 students or a minimum of one hour per day, whichever is greater. In school districts employing a certified teacher with a library endorsement, a trained para-professional under the direct supervision of this librarian may be employed to meet this requirement. (Eff. 7/1/89; Repeal 7/1/94)

(2) Beginning 7/1/94 each school shall have a full-time or part-time certified school library/media specialist with a K-12 library/media endorsement at the ratio as follows:

- (a) .5 FTE for schools with 126-250 students;
- (b) 1 FTE for schools with 251-500 students;
- (c) 1.5 FTE for schools with 501-1000 students;
- (d) 2 FTE for schools with 1001-1500 students;
- (e) 2.5 FTE for schools with 1501-2000 students; and
- (f) 3 FTE for schools with 2001 or more students. (Eff. 7/1/94)

(3) Beginning 7/1/94, schools and/or districts of fewer than 125 students shall employ or contract with a certified, endorsed school library/media specialist, or they shall seek alternative ways to provide library/media services, using certified personnel. For example, they may contract for services or receive services from a regional, certified library/media specialist provided through joint efforts of adjacent districts and/or counties.

(a) Alternative services shall include:

- (i) instruction in library/media skills;
- (ii) administration of a library/media program that meets the district's instructional goals;
- (iii) collection development and management;
- (iv) reader assistance;
- (v) library/media collection management; and
- (vi) inservice in the use of new materials and equipment.

(b) When a school district uses alternatives to meet this standard, it shall submit a description of the alternatives to the office of public instruction and seek approval from the board of public education.

(Eff. 7/1/94)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XV ASSIGNMENT OF GUIDANCE STAFF (1) Prior to 7/1/94, guidance and counseling staff and/or services shall be provided for elementary students. (Eff. 7/1/89; Repeal 7/1/94)

(2) Beginning 7/1/94, a minimum equivalent of one full-time counselor for each 400 elementary (K-8) students shall be provided. The counselor/student ratio shall be prorated. (Eff. 7/1/94)

(3) A minimum equivalent of one full-time counselor for each 400 high school students (including grades 7 and 8 if high school funding is received) shall be provided. The counselor/student ratio shall be prorated. (Eff. 7/1/89)

(4) Schools and/or districts with fewer than 125 students shall employ or contract with a certified, endorsed school guidance specialist; or they shall seek alternative ways to provide guidance services and meet the required guidance program goals, using certified personnel. For example, they may contract for services or receive services from a regional, certified guidance specialist provided through joint efforts of adjacent districts and/or counties.

(a) When a school district uses alternatives to meet this

standard, it shall submit a description of the alternatives to the office of public instruction and seek approval from the board of public education. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XVI GENERAL: CLASS SIZE AND TEACHER LOAD (1) These standards do not require a minimum class size at any grade level or for any subject offered. One pupil may be considered a class.

(2) Schools wishing to vary class sizes and/or teacher loads shall seek the approval of the board of public education. In determining those variations the following will be considered:

(a) to allow students to progress at their own rate, schools may consider using nongraded classrooms;

(b) teacher aides are mandatory when class size or teacher load exceed the standards, unless the teaching methods and the quality of instruction can be shown to nullify the effect of larger class size on student performance; and

(c) a school may augment the classroom teacher with certified personnel who are endorsed in specialized K-12 areas to exceed the maximum class size in the elementary grades. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XVII CLASS SIZE: ELEMENTARY (1) In single-grade rooms, the maximum class size shall be:

(a) no more than 24 (Eff. 7/1/89); 20 (Eff. 7/1/92) students in kindergarten;

(b) no more than 26 (Eff. 7/1/89); 20 (Eff. 7/1/92) students in grade 1;

(c) no more than 26 (Eff. 7/1/89); 20 (Eff. 7/1/92) students in grade 2;

(d) no more than 28 (Eff. 7/1/89); 26 (Eff. 7/1/92) students in grades 3 and 4; and

(e) no more than 30 (Eff. 7/1/89); 28 (Eff. 7/1/92) students in grades 5 through 8.

(2) In multigrade classrooms, the maximum class size shall be:

(a) no more than 20 students in grades K, 1, 2, and 3;

(b) no more than 24 students in 4, 5, and 6; and

(c) no more than 26 students in grades 7 and 8. (Eff. 7/1/89)

(3) Multigrade classrooms that cross grade level boundaries (e.g., 3-4, 6-7) shall use the maximum of the lower grade. (Eff. 7/1/89)

(4) In one-teacher schools, the maximum class size shall be 18 students. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XVIII TEACHER LOAD AND CLASS SIZE: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL, AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES

(1) In addition to the school administrator, the school shall employ a sufficient number of certified FTEs to allow for departmentalization. Each program offered shall have properly endorsed FTE(s). (Eff. 7/1/89)

(2) Individual class size shall not exceed 30 students. (Eff. 7/1/89)

(a) Health enhancement and typing classes shall have no more than 45 (Eff. 7/1/89); 30 (Eff. 7/1/92) students.

(b) Laboratory class size shall be limited for safety purposes. The number of students shall be determined through consultation with the teacher, considering the number, size and use of laboratory stations. (Eff. 7/1/92)

(c) Class size limits do not apply to instrumental music or choral groups. (Eff. 7/1/89)

(3) The number of students assigned a teacher per day shall not exceed 160 (Eff. 7/1/89); 150 (Eff. 7/1/92).

(a) Teachers with a significant writing program shall have a maximum load of 100 students. (Eff. 7/1/92)

(b) Study hall, regardless of size, shall be counted at 15 students. (Eff. 7/1/89)

(c) Student limits do not apply to instrumental music or choral groups. (Eff. 7/1/89)

(d) Library, guidance, and study hall duties are assigned student responsibilities. However, in cases where a teacher is assigned full time in these areas, the assignment may be for the entire day. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XIX PROFESSIONAL DEVELOPMENT (1) As part of a continuous program for instructional and administrative improvement, each school district shall provide a minimum of three days of professional development annually for each certified employee. A day of professional development is defined as six hours of actual contact time. Professional development time may be divided into no less than two hour increments to facilitate delivery of professional development programs.

(2) By April 15 of each year, the school district shall formulate a professional development plan which includes:

(a) goals and objectives appropriate to the professional development needs of teachers, administrators, school trustees, and all other school personnel;

(b) acceptable activities; and

(c) evaluation methods required for each activity in the plan.

(3) The board of trustees shall establish an advisory committee to develop and evaluate the plan. The committee shall include but not be limited to teachers, administrative personnel, and trustees. A majority of the committee shall be teachers.

(4) The plan shall be on file in the school's

administrative office or with the county superintendent. It shall be available to employees and the public. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XX SCHOOL CLIMATE (Beginning 7/1/91) (1) The board of trustees shall use its best efforts to:

(a) encourage cooperative and harmonious relationships among staff, students, parents, trustees, and community;

(b) determine whether or not its staff turnover is excessive and, if it is, the reasons why;

(c) create teaching and learning conditions that meet the district's educational goals and attract and maintain a quality staff;

(d) develop policies, procedures, and rules that respect the rights of all learners and promote an awareness of and concern for the well-being of others;

(e) offer programs and services which, in content and presentation, are free of bias and stereotyping in terms of age, sex, religion, race, national origin, or handicapping condition;

(f) provide programs and services that meet the needs of students which the school has identified as at-risk;

(g) inform students of its expectations and of students' rights and responsibilities;

(h) encourage students to take responsibility for their education, including preparing for and participating in class and school activities, taking full advantage of learning services provided, helping design their educational goals, and conducting themselves respectfully and appropriately;

(i) encourage the active involvement of parents in their children's education and in their school; and

(j) provide opportunities for parents, educators, and members of the community to take active roles in developing and reviewing educational goals.

(2) In the area of technology, the board of trustees shall use its best efforts to:

(a) provide access to current materials and resources in all program areas and at all levels, including a wide range of up-to-date print and nonprint materials and technical resources which support the curriculum and help students meet the challenges of an information-based society;

(b) integrate current and appropriate technology into each curricular area as a supplemental tool for instruction and for delivering and accessing information. "Technology" includes but is not limited to computer systems, databases, electronic and other media resources, and telecommunications;

(c) keep up to date about computer and other appropriate technology and examine technology in terms of how it can help with educational delivery, while recognizing that computer and other appropriate technology is an assistant to rather than the primary deliverer of education;

(d) encourage teachers to experiment with new computer and other appropriate technology to help make their teaching

more effective and efficient; and

(e) whenever possible, work closely with business and government to keep informed concerning the latest technology. (Eff. 7/1/91)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXI OPPORTUNITY AND EDUCATIONAL EQUITY (1) The school district shall not discriminate against any student on the basis of sex, race, marital status, national origin, or handicapping condition in any area of accreditation. This includes programs, facilities, textbooks, curriculum, counseling, library services, and extracurricular activities. It is the purpose of the accreditation standards to guarantee equality of educational opportunity to each person regardless of sex, race, marital status, national origin, or handicapping condition.

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXII LEARNER ACCESS (1) Equal opportunity to learn is a primary consideration of all program areas, at all levels. In order to integrate this concept throughout the education program, the board of trustees shall:

(a) develop and implement processes for assessing students' educational needs. This assessment shall include but not be limited to students the school identifies as gifted and talented, at-risk, in need of special services, ethnic minorities, bilingual, and the educationally disadvantaged.

(2) In developing curricula in all program areas, the board of trustees shall:

(a) provide learning experiences matched to students' interests, readiness, and learning style;

(b) take into account individual and cultural diversity and differences among learners. Cultural and language differences should be viewed as valuable and enriching resources;

(c) nurture an understanding of the values and contributions of Montana's Native Americans and the unique needs of Native American students and other minority groups;

(d) provide learning resources that are universally available, free of bias, culturally inclusive, and current;

(e) provide opportunities for individual self-direction and decision making;

(f) provide equal access to learning resources, including technology; and

(g) provide instructional materials which are sequential and compatible with previous and future offerings. (Eff. 7/1/91)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXIII GIFTED AND TALENTED (Beginning 7/1/92) (1) The school shall make an identifiable effort to provide

educational services to gifted and talented students, which are commensurate with their needs and foster a positive self-image.

(2) Such services shall be outlined in a comprehensive district plan which includes:

- (a) identification of talent areas and student selection criteria according to a written program philosophy;
- (b) a curriculum which reflects student needs;
- (c) teacher preparation;
- (d) criteria for formative and summative evaluation;
- (e) supportive services; and
- (f) parent involvement.

(Eff. 7/1/92)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXIV SPECIAL EDUCATION (1) Each school shall comply with all federal and state laws and regulations addressing special education.

(2) Each school shall use the Montana Special Education Reference Manual as guidance for administering special education programs.

(3) Each school shall provide structured support and assistance to regular education teachers in identifying and meeting diverse student needs, and shall provide a framework for considering a full range of alternatives for addressing student needs.

(4) Each school shall be responsible for the following:

(a) handicapped students shall be given opportunities to become confident, dignified, and self-sufficient members of society;

(b) to the maximum extent possible, and when appropriate, handicapped students are educated with nonhandicapped in the district in which they live;

(c) a student shall receive special education only when documentation shows that the student cannot be appropriately educated in the regular program; and

(d) a current individualized education program is prepared for each student receiving special education.

(5) Each school district with middle, junior high, 7th and 8th grade budgeted at high school rates or high school(s) shall require the development and use of processes to waive specific learner goals based on individual student needs, performance levels, age, maturity, and assessment of ability. Goals which are viewed as the result of this process must be identified on a student's transcript.

(6) A student who has successfully completed the goals identified on an individualized education program shall be awarded a diploma. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXV BASIC EDUCATION PROGRAM: ELEMENTARY (1) An elementary school shall have an education program that gives

students the opportunity to meet the goals set forth in the program area standards at the appropriate levels. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXVI BASIC EDUCATION PROGRAM: MIDDLE SCHOOL (1) A middle school, as defined in ARM 10.13.201, differs from a junior high school because middle school philosophy specifically addresses the unique nature of middle school children by focusing on their intellectual, social, emotional, and physical development. To put such philosophy into practice, a middle school must have flexibility to approach instruction and teaching in a variety of ways, to undertake interdisciplinary work, and to plan blocks of course work deriving from the intellectual, social, emotional, and physical needs of middle school students. (Eff. 7/1/89)

(2) A middle school shall have an education program that gives students the opportunity to meet the goals set forth in the program area standards at the appropriate levels. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

(3) A middle school minimum curriculum shall include the subjects below and maintain them in balance. Critical and creative thinking, career awareness, lifelong learning, and safety will be incorporated in the school program. (Eff. 7/1/89)

(4) Schools using this standard to incorporate flexibility in quest of a quality program shall document the program with curriculum guides, class schedules, and other means to maintain balance among and within the disciplines outlined below. Such documentation shall be reviewed by the office of public instruction and approved by the board of public education. The middle school curriculum must fall within the continuum of skills that are part of the K-12 program in all disciplines. (Eff. 7/1/89)

(5) If the middle school program for grades 7 and 8 is funded at high school rates, it shall include:

(a) visual arts: art history, art criticism, aesthetic perception, and production;

(b) English language arts such as literature, language study, reading, writing, listening, speaking, and thinking;

(c) health enhancement;

(d) social studies;

(e) mathematics: written and mental computation and problem solving;

(f) music: general, instrumental, and vocal (emphasizing comprehensive music elements, music history, criticism, aesthetic perception, and musical production);

(g) physical and life sciences;

(h) vocational/practical arts such as agriculture, business education, home economics, industrial arts, and marketing;

(i) exploratory courses such as creative writing, dance, drama, photography; (Eff. 7/1/89) and

(j) beginning 7/1/94, in addition, students shall have the opportunity to take a second language. (Eff. 7/1/94)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXVII BASIC EDUCATION PROGRAM: JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) The basic education program for junior high school and grades 7 and 8 budgeted at high school rates shall have an education program that gives students the opportunity to meet the goals set forth in the program area standards at the appropriate levels. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

(2) Study areas identified as meeting the learner goals include:

(a) English language arts: 1 unit each year in junior high and grades 7-8;

(b) social studies: 1 unit each year in junior high and grades 7-8;

(c) mathematics: 1 unit each year in junior high and grades 7-8;

(d) science: 1 unit each year in junior high and grades 7-8;

(e) health enhancement: 1/2 unit each year in junior high and grades 7-8;

(f) visual arts: 1/2 unit each year in junior high and grades 7-8;

(g) music: 1/2 unit each year in junior high and grades 7-8;

(h) vocational/practical arts: 1/2 unit each year in junior high and grades 7-8; (Eff. 7/1/89) and

(i) beginning 7/1/94, in addition, students shall have the opportunity to take: second language, 1/2 unit each year in junior high and grades 7-8. (Eff. 7/1/94)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXVIII BASIC EDUCATION PROGRAM OFFERINGS: HIGH SCHOOL (1) The basic education program for each high school shall be at least 16 (Eff. 7/1/89); 20 (Eff. 7/1/92) units of course work that give students the opportunity to meet the goals set forth in the program area standards. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

(2) Study areas shall include at least the following:

(a) 4 units of English language arts; (Eff. 7/1/89)

(b) 2 (Eff. 7/1/89); 3 (Eff. 7/1/92) units of mathematics;

(c) 2 (Eff. 7/1/89); 3 (Eff. 7/1/92) units of science;

(d) 2 (Eff. 7/1/89); 3 (Eff. 7/1/92) units of social studies;

(e) 2 units of vocational/practical arts; (Eff. 7/1/89)

(f) 1 (Eff. 7/1/89); 2 (Eff. 7/1/92) units of fine arts;

(g) 2 units of second language; (Eff. 7/1/92)

(h) 1 unit of health enhancement; (Eff. 7/1/89) and

(i) 2 units of electives. (Eff. 7/1/89; Repeal 7/1/92)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXIX GRADUATION REQUIREMENTS (1) As a minimum, a school district's requirements for graduation shall include a total of 20 units of study that meet the required learner goals. (Eff. 7/1/89)

(2) In order to meet the learner goals set forth in the accreditation standards, the following 9 1/2 (Eff. 7/1/89); 12 (Eff. 7/1/92) units shall be part of the 20 units required for all students to graduate:

(a) 4 (Eff. 7/1/89); 3 (Eff. 7/1/92) units of English language arts;

(b) 2 units of mathematics; (Eff. 7/1/89)

(c) 1 1/2 (Eff. 7/1/89) 2 (Eff. 7/1/92) units of social studies;

(d) 1 (Eff. 7/1/89); 2 (Eff. 7/1/92) units of science;

(e) 1 unit of health enhancement; (Eff. 7/1/89)

(f) 1 unit of fine arts; (Eff. 7/1/92) and

(g) 1 unit of vocational/practical arts. (Eff. 7/1/92)

(3) Units of credit earned in any Montana high school accredited by the board of public education shall be accepted by all Montana high schools. (Eff. 7/1/89)

(4) In accordance with the policies of the local board of trustees, students may be graduated from high school with less than four years enrollment. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXX CREDIT: HIGH SCHOOL, JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) General credits:

(a) A high school shall require a minimum of 20 units of credit for graduation, including ninth grade units. A unit of credit shall be given for satisfactory completion of a full-unit course.

(b) A unit of credit is defined as the equivalent of at least 225 minutes per week for one year.

(c) Passage of time between classes may be counted toward the standard school day but shall not be counted toward class time.

(2) Fractional credit may be given to:

(a) a student who is unable to attend class for the required amount of time for partial completion of a course, with the local administrator's permission.

(3) Alternative credit may be given:

(a) with the permission of the school district trustees, to a student provided that the course meets the district's curriculum and assessment requirements, which are aligned with the learner goals stated in the education program.

(4) Any Montana high school shall accept such units of credit taken with the approval of the accredited Montana high

school in which the student was then enrolled and which appear on the student's official transcript. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXI DISTANCE LEARNING (1) The board of trustees shall not use distance learning as an alternative to on site classroom instruction when a certified teacher, appropriately endorsed, may be hired for the purpose.

(2) Distance learning may be used as part of the instructional program. To use distance learning programs local school districts shall apply for an alternative to the standard by:

(a) demonstrating in writing a need for the course;

(b) outlining how the course instruction will be delivered and will meet learner goals;

(c) showing that the distance learning classroom environment meets health and safety standards and provides effective access of students to instruction;

(d) validating that the teachers of distance learning are certified and appropriately endorsed and have background in distance learning;

(e) verifying that local facilitators, who assist students in receiving the instruction on site, have adequate pre-service training and local supervision; and

(f) showing how the effectiveness of the course, teacher and facilitator will be assessed and recorded.

(Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXII DEFINITION (1) Learner goals are the knowledge and concepts, skills and attitudes, which students are given the opportunity to acquire during their K-12 schooling.

(2) The standards are presented as general educational goals, followed by learner goals to be developed progressively through three checkpoints:

(a) completion of the primary level (typically, at the end of grade 3);

(b) completion of the intermediate level (typically, at the end of grade 8); and

(c) upon graduation (typically, the completion of grade 12). (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXIII DISTRICT'S RESPONSIBILITIES FOR PROGRAM AREA STANDARDS (1) It is the school district's task to:

(a) incorporate all required learner goals into its curriculum; and

(b) introduce the learner goals when appropriate, implement them sequentially and developmentally, and build upon previous goals. (At least one component a year,

beginning 7/1/91; Eff. 7/1/99)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXIV CROSS-CONTENT AND THINKING SKILLS

(1) Recognizing that the interdependence of skills and content is essential to an effective education program, the school district shall develop curricula that integrate program area skills across curricular content and that give students opportunities to use these skills in meaningful contexts that relate to the world around them.

(2) The school district shall develop curricula at all grade levels and in all program areas that encourage students to understand and apply thinking and problem solving skills. The curricula shall allow students to:

- (a) identify and define a problem;
- (b) learn methods of gathering, analyzing, and presenting information;
- (c) practice logical, creative, and innovative thinking and problem solving skills in a variety of situations; and
- (d) Apply the skills of decision making and reasoning.

(At least one component a year, beginning 7/1/91; Eff. 7/1/99.)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXV COMMUNICATION ARTS PROGRAM (In accordance with Rules III and XXXIII) (1) In general, a school's communication arts program shall:

(a) be literature-based and include a wide variety of fiction and nonfiction, representing diverse cultures of Montana, the United States, and the world;

(b) create a "whole language" environment that integrates communication skills in all subject areas and that gives students extensive opportunities to use these skills in meaningful contexts;

(c) encourage reading as a search for information, meaning, and pleasure. The program will provide literature of high quality, which is enriching for every age and ability level;

(d) include a writing program that emphasizes process and focuses on the communication of ideas;

(e) include an oral language program that involves students in a variety of speaking, listening, and viewing activities;

(f) give students opportunities to pursue their special gifts and interests through co-curricular offerings such as drama, speech, debate, journalism, literary publications, and humanities;

(g) provide programs that enable students to use their communication arts skills in the community and in the world;

(h) take advantage of the offerings of special groups in education, business, and industry;

(i) be accomplished by activities such as creative drama, cooperative learning, small-group discussion, whole-language

experience, and cross-content projects; and

(j) use the language of students with limited English proficiency to develop more diverse English language skills.
(Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXVI GENERAL COMMUNICATION ARTS LEARNER GOALS (In accordance with Rules III and XXXIII) (1) In the study of languages, students shall be given the opportunity to:

(a) learn how languages function, evolve, and reflect cultures;

(b) learn how context--topic, purpose, audience--influences the structure and use of language; and

(c) have the opportunity to develop second-language proficiency.

(2) In the study of literature, students shall be given the opportunity to:

(a) read, listen to, view, and study a variety of classical, contemporary, and multicultural literature, at all grade levels. Literature shall include poetry, fiction and nonfiction, and drama;

(b) respond to literature through writing, speaking, and through media and the fine arts;

(c) gain insights from literature, recognizing it as a mirror of human experience;

(d) learn about their own and other cultures and recognize that literature is a reflection of culture; and

(e) experience literature as a way to appreciate the rhythms and beauty of language.

(3) In the study of communication skills, five interwoven strands: listening, speaking, reading, writing, and using media, students shall be given the opportunity to:

(a) understand and practice the process of listening: perceiving, discriminating, attending, assigning meaning, evaluating, responding, and remembering;

(b) speak effectively, formally and informally, in all five basic communication functions: expressing feelings, utilizing social conventions, imagining, informing, and controlling;

(c) read for both pleasure and information and approach reading as a search for meaning;

(d) write clearly and effectively to express themselves and to communicate with others; and

(e) students will use, view, and understand print and electronic media and be aware of the impact of technology and the media on communication.

(4) In the study of thinking, students shall be given the opportunity to:

(a) think creatively, exploring unique insights, points of view, and relationships;

(b) think logically, testing the validity of arguments and detecting fallacies in reasoning; and

(c) think critically, asking questions, making judgments,

and evaluating messages. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXVII COMMUNICATION ARTS ACROSS THE CURRICULUM (In accordance with Rules III and XXXIII) (1) The basic education program in communication arts recognizes that communication skills and concepts should not be taught in isolation. Programs shall integrate all of these skills and concepts in cross-content experiences that truly engage students. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXVIII ENGLISH LANGUAGE LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to recognize that:

(a) people label objects and ideas with words and that words and their meanings change over time and through usage;

(b) groups of people use different pronunciations and word choices to refer to the same objects and ideas; and

(c) language changes to accommodate subject, audience, and purpose. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XXXIX ENGLISH LANGUAGE LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) understand that words are arbitrary, culturally-based symbols for objects and ideas that change over time and through usage;

(b) recognize that people gain identity through their language, including pronunciation, word choice, and nonverbal communication; and

(c) analyze the ways that language changes to accommodate subject, audience, and purpose. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XL ENGLISH LANGUAGE LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) understand that words have denotative and connotative meanings and that oral, written, and nonverbal languages incorporate nuances of meaning;

(b) know the history of the English language as well as the principles of linguistic changes; and

(c) refine his/her analysis of the ways languages change to accommodate topic, audience, and purpose and evaluate the effectiveness of such changes. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLI SECOND LANGUAGE LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) experience rhymes, stories, songs, and dramatic activities that promote enjoyment in learning a second language;

(b) recognize some cultural traditions from the second language culture;

(c) reproduce and understand sounds, words, and sentences using pronunciation, stress, rhythm, and intonation; and

(d) speak and understand a second language in informal conversations, using simple vocabulary. (Eff. 7/1/99)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLII SECOND LANGUAGE LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) An intermediate program in second language shall give the student the opportunity to:

(a) experience oral and literary traditions of the second language culture;

(b) expand cross-cultural understanding;

(c) speak and understand more complex ideas and information in directed activities, both formal and informal; and

(d) use reading and writing skills in the second language in a variety of meaningful activities. (Eff. 7/1/94)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLIII SECOND LANGUAGE LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) read, listen to, and view literary works in the second language;

(b) refine his/her understanding of world cultures;

(c) speak and understand the second language by adapting speaking and listening skills to a variety of audiences or situations;

(d) use knowledge of linguistic structures to speak and write more fluently in the second language; and

(e) increase his/her understanding of English language and literature through comparison with the second language. (Eff. 7/1/92)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLIV LITERATURE LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) experience a variety of classical, contemporary, and multicultural works of literature, including poetry, fiction and nonfiction, and drama;

(b) respond to a literary work by recapturing the meaning

of plot in words, dramatic presentations, or pictures;

(c) recognize and make associations with the people, places, and problems in her/his reading;

(d) begin to understand culture through literature;

(e) recognize and appreciate rhythm, rhyme, and repetition and other qualities of language in literature;

(f) begin to evaluate the major components of literary works, including characters, setting, and action; and

(g) create and share original pieces of literature that use characters, setting, and action. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLV LITERATURE LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) expand experiences with classical, contemporary, and multicultural literature;

(b) respond to literature on the basis of his/her own insights and respect the different responses of others;

(c) recognize and understand the interrelationships among the elements in a literary work;

(d) begin to recognize how culture influences literary works and to compare and contrast that culture with his/her own experiences;

(e) appreciate and understand how language enhances meaning in literature and how meaning is enhanced by sensory and figurative language, by literary devices such as metric patterns and imagery (e.g., simile, metaphor), and by an author's semantic and connotative qualities;

(f) analyze and evaluate elements of literary works, including characters, setting, plot, theme, and imagery; and

(g) create and share original pieces of literature in a variety of genres that use characters, setting, plot, theme, and imagery. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLVI LITERATURE LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation, a student shall have had the opportunity to:

(a) read a broad selection of classical, contemporary, and multicultural literature, including poetry, novels, essays, short stories, and drama;

(b) be able to analyze his/her own and others' responses to literature;

(c) understand and analyze literature's significance to his/her own life;

(d) understand how cultural and historical setting and the literary tradition influence literature;

(e) appreciate and analyze how language enhances meaning in literature through the use of elements such as stylistic, sensory, figurative, semantic, and logical attributes;

(f) analyze and evaluate elements of literary works, including characters, setting, plot, theme, imagery, mood, figurative language, and genre; and

(g) create and share original pieces of literature in a variety of genres that use characters, setting, plot, theme, imagery, mood, and figurative language. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLVII LISTENING LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) discriminate between significant and insignificant sounds and words;

(b) develop a "listening set": anticipate meaning, ignore distraction, and visualize what is heard;

(c) assign a basic meaning to what is heard by recognizing the main idea and supporting details;

(d) distinguish new from familiar material, significant from insignificant, and fantasy from reality;

(e) respond to what is heard by asking questions, following directions, and giving feedback; and

(f) remember important aspects of the message. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLVIII LISTENING LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) discriminate between emotional and unemotional speaking and between spontaneous and scripted speaking and acting;

(b) increase attentiveness by expanding attention span, predicting and rehearsing ideas, and being aware of factors that affect attention;

(c) recognize a variety of speaking purposes and patterns of organization;

(d) distinguish fact from opinion, information from persuasion, and logic from emotion;

(e) respond to what is heard by controlling emotions, asking questions, and giving appropriate feedback; and

(f) expand memory through note-taking and relating new material to old. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XLIX LISTENING LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) "listen" with the eyes as well as the ears by perceiving verbal and nonverbal clues;

(b) choose and use a listening strategy best suited to

the purpose in a listening situation;

(c) recognize nuances of meaning in similar words, situations, and nonverbal clues;

(d) evaluate oral messages for accuracy, effectiveness, significance, and propriety;

(e) give supportive feedback to a speaker by eliciting the best that the speaker has to offer; and

(f) demonstrate long- and short-term memory by taking notes and searching memory. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE I. SPEAKING LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) show an awareness of oral expression features such as pronunciation, volume, and rate of speaking;

(b) begin to adapt speech to audience and context in order to communicate ideas clearly;

(c) begin to establish a relationship with the audience through eye contact and attending to audience reaction; and

(d) develop confidence as a speaker through experience with the five functions of speaking: expressing feelings, utilizing social conventions, imagining, informing, and controlling. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LI SPEAKING LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) use words, figures of speech, and nonverbal factors to enhance oral presentation;

(b) organize and expand oral and nonverbal skills to suit the level of communication (interpersonal, intrapersonal, group, public, and mass);

(c) become increasingly aware of audience feedback during the speech; and

(d) increase confidence and effectiveness as a speaker in all five functions of speaking. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LII SPEAKING LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) use oral and nonverbal language to communicate effectively;

(b) use invention, organization, style, and delivery to enhance messages;

(c) use audience analysis to prepare and present speeches; and

(d) have experience and confidence in a variety of formal

and informal speaking situations. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LIII READING LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) associate the written form with the spoken word;
- (b) recognize basic word and sentence structures which are essential to comprehending written material;
- (c) understand how punctuation affects meaning;
- (d) read a variety of material and begin to use study skills to find answers and information; and
- (e) enjoy and appreciate reading. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LIV READING LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) Use appropriate strategies to identify words and their meanings.

(2) Refine his/her use of word attack and context clues which aid comprehension within a word, sentence, paragraph, or an entire work.

(3) Adapt fluency, rate, and style of reading to the purpose of the material.

(4) Read for information and continue to develop study skills.

(5) Read as a leisure activity. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LV READING LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) comprehend ideas and meaning in material which requires increasingly complex structures;

(b) refine general and technical vocabularies, recognize multiple meanings and connotations, and comprehend longer, more complex passages;

(c) reflect on ideas presented at the literal, interpretive, and critical/creative levels;

(d) apply study skill strategies for immediate recall and long-term retention; and

(e) read to satisfy, extend, and expand personal interests. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LVI WRITING LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) write frequently, using varied formats, for a variety of purposes and audiences;

(b) recognize how spelling, punctuation, capitalization,

and handwriting contribute to meaning in writing;

(c) understand how to generate and organize ideas and how to create a clear written message; and

(d) respond to, revise, and edit his/her own and others' writing. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LVII WRITING LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) write frequently, using varied formats, for a variety of purposes and audiences;

(b) understand and use spelling, punctuation, capitalization, handwriting, and usage as part of total effectiveness in writing;

(c) select a topic, generate and organize ideas, and choose appropriate language for his/her writing purpose; and

(d) respond to, revise, and edit his/her own and others' writing. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LVIII WRITING LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) write frequently, using varied formats, for a variety of purposes and audiences;

(b) use spelling, punctuation, capitalization, handwriting, and usage effectively and purposefully;

(c) focus the purpose of writing, visualize the audience, and refine the language of his/her writing; and

(d) respond to, revise, edit, and evaluate his/her own and others' writing. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LIX MEDIA USE LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) develop a "viewing" set and adopt appropriate behavior for appreciating a media performance or presentation;

(b) recognize, use, and operate a variety of media equipment;

(c) understand the basic components and characteristics of media; and

(d) use print and nonprint media in the classroom, library, and other settings as sources of information and entertainment. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LX MEDIA USE LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) understand and respond to media performances and presentations;
- (b) incorporate media in oral and written presentations;
- (c) understand that media convey messages; and
- (d) use a wide variety of print and nonprint media in leisure time, classroom, and library for information and entertainment. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXI MEDIA USE LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

- (a) develop a discriminating appreciation of media;
- (b) demonstrate flexibility and familiarity in the use of electronic media and media centers;
- (c) evaluate the effectiveness of a particular medium as it conveys a message;
- (d) locate and use a variety of print and nonprint media in the home, classroom, and library; and
- (e) understand the legal responsibilities involved in media use. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXII THINKING SKILLS LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) begin to demonstrate thinking skills such as comparing, contrasting, inferring, and evaluating in both verbal and nonverbal communication;
- (b) respond to an experience by creating an action (a pantomime, picture, poem, or story) to express understanding; and

(c) express associative thinking as well as creativity and inventiveness. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXIII THINKING SKILLS LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) respond to and evaluate intentions and messages of speakers, writers, presenters, and media;
- (b) differentiate between fact and opinion, recognize logical/illogical sequences, create a hypothesis, and predict outcomes; and
- (c) expand creativity, inventiveness, and logical/

critical thinking. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXIV THINKING SKILLS LEARNER GOALS: UPON GRADUATION

(In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) respond to, interpret, and evaluate intentions and messages of speakers, writers, presenters, and media;

(b) evaluate the validity of assertions and detect fallacies in reasoning and in emotional appeals; differentiate between subjective and objective viewpoints; and

(c) use higher-level thinking processes to solve problems in the everyday world. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXV COMMUNICATION ARTS PROGRAM DEVELOPMENT (In

accordance with Rules III and XXXIII) (1) The communication arts curriculum shall be developed and evaluated according to the standards for all program areas.

(2) Library/media specialists will be viewed as a part of the instructional team by helping other instructors select appropriate materials and by teaching and guiding students in their search for information and worthwhile reading.

(3) Learning assistance centers and fine arts facilities shall be available to enhance the communication arts curriculum with access for dramatic, cultural, and media presentations. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXVI FINE ARTS PROGRAM (In accordance with Rules

III and XXXIII) (1) A basic program in fine arts includes:

(a) visual arts (drawing, painting, printmaking, photography, film, electronic media, sculpture, two- and three-dimensional construction, applied design, and kinetic and performance art);

(b) performing arts, including music (choral music, instrumental music, and music appreciation); theater (drama, play production); and creative movement;

(c) literary arts (poetry, prose, drama); and

(d) instruction that incorporates fine arts' history, criticism, production, performance, and aesthetics. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXVII FINE ARTS: GENERAL GOALS (In accordance with

Rules III and XXXIII) (1) A basic program in fine arts gives the student the opportunity to:

(a) understand the principal sensory, formal, technical, and expressive qualities of each of the fine arts;

(b) identify processes, materials, tools, and disciplines

required to produce the visual, performing, and literary arts;

(c) apply their knowledge of concepts, elements, principles, theories, and processes in the fine arts;

(d) develop their intuitive and creative thought processes as a balance to learning in the cognitive and psychomotor domains;

(e) make informed judgments about the fine arts and about their relationships to the history, culture, and environments of the world's people;

(f) understand the relevance of their education in the fine arts to the range of fine arts professions and to a lifetime of aesthetic pleasure; and

(g) use materials, tools, and equipment safely. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXVIII VISUAL ARTS LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have been given the opportunity to:

(a) begin to recognize different works of art and identify artists, placing them in a historical time and place;

(b) be familiar with and appreciate the various sources of art in the community (museums, galleries, studios, public places);

(c) begin to recognize universal emotions and experiences expressed in selected visual images;

(d) identify and use the elements of art and principles of art in organizing for personal expression;

(e) learn to appropriately select and to care for a variety of art materials, media and tools;

(f) use appropriate vocabulary to describe the expressive qualities of a variety of works of art and evaluate art experiences;

(g) experience a sense of accomplishment and pleasure from the creative act; and

(h) enjoy and appreciate a variety of art works. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXIX VISUAL ARTS LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have been given the opportunity to:

(a) observe the sensory and formal applications used by artists;

(b) identify art processes, forms, and materials from many cultures and historical periods;

(c) appreciate art in a variety of settings (home, community, classroom, and studio);

(d) identify materials, tools, and techniques used by artists for expressive purposes;

- (e) understand the elements and principles of art used by the artist to express creative ideas, moods, and feelings;
- (f) know the vocabulary required to describe the sensory, formal, technical, and expressive qualities of art;
- (g) understand the role of galleries and museums in preserving and transmitting art heritage and contemporary culture;
- (h) identify different art works from distinct cultures and historical and stylistic periods;
- (i) discover and discriminate among the methods of expressing imagination, interpreting experience, and selecting materials and techniques;
- (j) demonstrate the ability to solve visual and technical problems in art;
- (k) analyze, compare, contrast, and distinguish art work from a variety of styles and periods using formal viewing criteria; and
- (l) experience a sense of accomplishment and pleasure from experimentation, innovation, and skill development. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXX VISUAL ARTS LEARNER GOALS: SECONDARY LEVEL (In accordance with Rules III and XXXIII) (1) If offered at the secondary level, a course of study in visual arts shall give the student the opportunity to:

- (a) recognize the processes, forms, and materials used to produce a variety of art;
- (b) use principles of visual discrimination in assessing the aesthetic properties of natural and artificial objects and environments;
- (c) apply the vocabulary required to describe the sensory, formal, technical, and expressive qualities of art;
- (d) understand the value of original works of art by experiencing them in a variety of settings;
- (e) recognize factors that influence artists' choices of form, style, content, and artistic intent;
- (f) understand the importance of preserving and transmitting art heritage, and the accompanying responsibility of museums, galleries, and scholars;
- (g) understand the significance of major art works in embodying the spirit of a culture or a historical period;
- (h) understand the processes, equipment, and materials needed for various visual arts;
- (i) exercise self-direction in independent problem solving (visual, conceptual, technical) to produce art works with complex content;
- (j) create art, demonstrating the creative and innovative use of equipment, materials, and techniques;
- (k) experience a sense of accomplishment and satisfaction with his/her ability to conceive, execute, evaluate, and present a finished creative work;
- (l) develop aesthetic criteria based on elements and

principles of art and analyze the effectiveness of the components of works of art in achieving the artist's intent;

(m) develop criteria for judging the cultural and historical significance of works of art; and

(n) appreciate and enjoy art works from a wide range of cultures and historical and stylistic periods. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXI DRAMA LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have been given the opportunity to:

(a) understand how movement, sound, and setting convey emotions and meaning in short dramatic performances (live or recorded);

(b) recount emotional and sensory responses to a dramatic activity as a listener and viewer;

(c) identify body, voice, costume, and make-up as elements of characterization;

(d) understand the daily-life sources of dramatic art: story, character, and conflict;

(e) express original interpretations of ideas and objects through the use of dramatic elements in a solo or group performance;

(f) use pantomime, puppets, or other dramatic devices to express individual interpretations of ideas, concepts, objects, or familiar stories; and

(g) enjoy and appreciate a variety of dramatic selections and experiences. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXII DRAMA LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) If offered at the intermediate level, a course of study in drama shall give the student the opportunity to:

(a) identify historical, cultural, and environmental elements in a variety of dramatic works;

(b) apply knowledge of dramatic principles and techniques to enhance enjoyment of reading and viewing dramatic works;

(c) understand plot, character, setting, and theme;

(d) recognize the expressive and technical qualities of dramatic work through study, interpretation, and enactment in planned and improvised solo or group presentations; and

(e) evaluate a variety of dramatic works. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXIII DRAMA LEARNER GOALS: SECONDARY LEVEL (In accordance with Rules III and XXXIII) (1) If offered at the secondary level, a course of study in drama shall give the student the opportunity to:

(a) identify artistic choices made in a variety of theatrical forms in order to produce specific effects;

(b) appreciate a variety of written drama and theatrical productions, including live and recorded performances;

(c) apply knowledge of dramatic concepts, elements, principles, theories, and processes to the viewing, performing, and critiquing of dramatic presentations;

(d) demonstrate knowledge of the principles of drama by participating in a variety of theater productions; and

(e) understand the social, cultural, educational, and historical functions of drama. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXIV MUSIC LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) realize the importance of music in everyday life;

(b) respect musical performance and composition;

(c) begin to recognize universal emotions and experiences expressed in music of various cultures and periods;

(d) enjoy participating in music and use music as a means of personal expression;

(e) sing with free vocal production a repertoire of folk and composed songs;

(f) use body movements and/or hand motions to show differences in music;

(g) use voice and instruments to create melodic and rhythmic patterns to accompany songs;

(h) recognize band and orchestra instruments and identify the major instrument groups;

(i) understand basic elements of music: fast and slow tempos, long and short sounds, patterns of simple forms; and

(j) create short pieces, using nontraditional sounds available in the classroom, such as tapping fingers or striking various objects. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXV MUSIC LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) be increasingly aware of music as an important part of everyday life; enjoy music through listening, singing, and playing instruments;

(b) sing with free vocal production, becoming more accurate in pitch;

(c) add to the repertoire of songs learned at the primary level;

(d) participate in vocal and/or instrumental ensembles;

(e) understand basic music notation and terminology;

(f) refine his/her understanding of the basic elements of music theory;

(g) recognize and evaluate various types of music and music of various periods and styles, using recorded and live

examples:

- (h) experiment with variations in tempos, timbres, and phrasing for expressive purposes with voice or instruments; and
- (i) discuss personal responses to music. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXVI MUSIC LEARNER GOALS: SECONDARY LEVEL (In accordance with Rules III and XXXIII) (1) If offered, a secondary course of study in music shall give the student the opportunity to:

- (a) enjoy participating in choral and/or instrumental music;

- (b) develop a commitment to singing or playing well and a respect for quality music and skilled performance;

- (c) develop sensitivity to interaction and blending of instruments and/or voice through participation in music ensembles;

- (d) demonstrate how skill, technique, and sound production affect musical performance;

- (e) analyze music from various cultures and historical periods, using knowledge of musical concepts;

- (f) develop a further understanding of the concepts of music theory;

- (g) perform music from various musical periods in solo and ensemble form;

- (h) critique musical performance for technical skill, quality of sound, lyric qualities, and effectiveness of artistic intent; and

- (i) improvise or compose music in solo or ensemble form. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXVII CREATIVE MOVEMENT LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) be aware of feelings evoked by dance performance and/or creative movement;

- (b) develop body awareness through creative movement.

- (c) respond spontaneously in movement to various material, conceptual, and sensory stimuli;

- (d) reproduce simple dance forms of other cultures, ethnic backgrounds, and historical periods;

- (e) enjoy simple rhythmic patterns in a movement sequence;

- (f) improvise creative movement around a tool, material, dance element, or sensory stimulus;

- (g) communicate personal feelings and ideas by using movement; and

- (h) determine preferences for specific dance forms. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXVIII CREATIVE MOVEMENT LEARNER GOALS:
INTERMEDIATE (In accordance with Rules III and XXXIII) (1) If offered at the intermediate level, a course of study in creative movement shall give the student the opportunity to:

- (a) be aware of the thoughts and images evoked by major dance forms;
- (b) develop efficient movements and body awareness needed for dance and creative movement;
- (c) enjoy freedom of creative and uninhibited movement in a variety of dance experiences;
- (d) participate in various dance forms of other cultures and historical periods;
- (e) use appropriate vocabulary to show understanding of basic dance concepts;
- (f) improvise a short study around a mood, message, tool, or material, using dance and creative movement;
- (g) develop criteria for forming opinions about dance performances; and
- (h) evaluate the mood or message conveyed by a dance performance. (Eff. 7/1/89)

AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE LXXIX CREATIVE MOVEMENT LEARNER GOALS: SECONDARY LEVEL (In accordance with Rules III and XXXIII) (1) If offered at the secondary level, a course of study in creative movement shall give the student the opportunity to:

- (a) be aware of the interaction of dance elements, tools, materials, and techniques of a dance performance;
- (b) develop strength, balance, and coordination needed to refine body awareness in creative movement and/or dance;
- (c) perform individual or group dances (e.g., tap, modern, ballet, jazz, folk, social) from various cultures and historical periods;
- (d) enjoy freedom of creative and uninhibited movement in a variety of dance experiences;
- (e) understand how movement elements, materials, and mood enhance the expressive qualities of dance;
- (f) design an individual or group dance around a mood or message, integrating technique, skill, and materials;
- (g) observe professional dance (live or recorded) or participate in community dance performances;
- (h) critique dance or creative movement performances; and
- (i) analyze social, cultural, and ritual elements of contemporary performances. (Eff. 7/1/89)

AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE LXXX FINE ARTS PROGRAM DEVELOPMENT (In accordance with Rules III and XXXIII) (1) The fine arts curriculum shall be developed and evaluated according to the standards for all program areas.

(2) At all levels, the school district shall encourage the sharing of arts programs with parents and the public. For

example, elementary drama study may culminate in special programs for parents, during or after school. Middle and high school students may perform for parents and the public or participate in drama festivals, forensics, plays, and civic programs. Gifted student writers and artists shall be encouraged to present their work to the public.

(3) At least once in a school year, the school district shall give students the opportunity to view a live drama, music, or dance performance.

(4) The school district shall take advantage of local resources, such as museums, galleries, theaters, cultural outreach programs, performance groups, professional writers and publishers, higher education services, the Montana arts council programs, and other expertise to supplement and enhance the arts program.

(5) Work and performance areas (e.g., middle and high school theaters and studios) shall meet all health and safety regulations and shall include adequate space for the storage of materials and equipment. The school shall ensure that stage and auditorium facilities are adequately managed and that students using them are supervised. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXI HEALTH ENHANCEMENT PROGRAM (In accordance with Rules III and XXXIII) (1) In general, a basic health enhancement program shall:

(a) integrate lifestyle management throughout the curriculum;

(b) focus on the total self and the development of responsibility, values, attitudes, and behaviors;

(c) give students decision making tools for personal health; and

(d) address intellectual, social, emotional, and physical dimensions of healthy lifestyles. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXII HEALTH ENHANCEMENT PARTICIPATION (In accordance with Rules III and XXXIII) (1) Each student shall participate in a health enhancement program which is based on age, ability, and aptitude. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXIII HEALTH ENHANCEMENT LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) demonstrate a variety of perceptual, motor, and rhythm skills, including but not limited to throwing, catching, kicking, striking; balancing; creative movement and folk dance; and skills related to lead-up games;

(b) demonstrate an appropriate level of physical fitness

in cardiorespiratory function, body composition, and musculoskeletal performance; and

(c) develop positive interpersonal relationships and self-concepts.

(2) By the end of the primary level, the student shall have had the opportunity to identify:

(a) components of wellness and describe how decision making affects personal health practices;

(b) roles, responsibilities, contributions, and life cycles in a family structure;

(c) the difference between use and abuse of drugs and their effects on an individual's total development;

(d) safety hazards, causes of accidents, and preventive measures for disease control;

(e) human body parts and systems, emphasizing individual uniqueness;

(f) ways in which advertising influences personal health choices;

(g) food combinations that provide a healthy and balanced diet;

(h) potential sources of pollution and pollution's harmful effects; and

(i) resources which help promote and maintain community health. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXIV HEALTH ENHANCEMENT LEARNER GOALS:
INTERMEDIATE (In accordance with Rules III and XXXIII) (1)

By the end of the intermediate level the student shall have had the opportunity to demonstrate:

(a) a variety of physical skills that influence individual physical development, including but not limited to skills practice and lead-up games; rhythms and dance; and individual, dual, or team sports;

(b) an appropriate level of physical fitness in cardiorespiratory function, body composition, and musculoskeletal function;

(c) positive interpersonal relationships and self-concept;

(d) an understanding of the importance of regular and sustained physical activity throughout life; and

(e) an ability to identify roles, responsibilities, contributions, and life cycles in a family structure.

(2) By the end of the intermediate level the student shall have had the opportunity to understand:

(a) substance use and abuse and their effects on the individual and society;

(b) health problems, including diseases and their etiology; the identification of symptoms of a variety of health problems; and prevention of health problems and injuries;

(c) the functions and maintenance of body systems, including knowledge of the reproductive system;

(d) the need for and use of consumer health services and

products;

- (e) basic nutrition and its application;
- (f) cultural, environmental, social, and ethical issues which affect healthy lifestyles; and
- (g) interrelationships between physical health and mental well-being. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXV HEALTH ENHANCEMENT LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) demonstrate a variety of physical skills used in physical activity, including but not limited to dance; individual, dual, or team sports; and lifetime leisure and recreational activities;

(b) demonstrate an appropriate level of physical fitness in cardiorespiratory function, body composition, and musculoskeletal function;

(c) understand the importance of a positive self-concept and interpersonal relationships for total health;

(d) understand the role of lifelong physical activity and the principles of safe and effective exercise; be able to plan a personal fitness program;

(e) understand roles, responsibilities, contributions, and life cycles in family structures;

(f) understand the risks of using drugs, alcohol, and tobacco;

(g) understand attitudes and behaviors for preventing and controlling disease and accidents;

(h) understand human reproduction and the emotional and ethical components of human sexuality;

(i) be able to evaluate and select health services, practices, and products;

(j) understand the relationship of sound nutrition to total health;

(k) understand the consequences of personal and community decisions that affect the economy and the cost, availability, and quality of health care;

(l) understand the relationship of sound mental health practices to total health; and

(m) identify careers in health and physical activity and their roles and responsibilities. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXVI HEALTH ENHANCEMENT PROGRAM DEVELOPMENT (In accordance with Rules III and XXXIII) (1) The health enhancement curriculum shall be developed and evaluated according to the standards for all program areas.

(2) Areas of the health enhancement curriculum integrated into other subject areas are ancillary to the main health enhancement program, which shall be provided by a health enhancement specialist (K-12) or by a classroom teacher in the

elementary grades.

(3) Interscholastic sports and intramural programs shall not be used as a substitute for a health enhancement course.

(4) Recess shall not be used to fulfill health enhancement requirements.

(5) When required as part of the basic education program, all students shall have daily health enhancement activity.

(6) The school district shall encourage its teaching staff to exemplify healthy lifestyles.

(7) A telephone or communication device and basic first aid materials shall be located in close proximity to the instructional physical activity area. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXVII MATHEMATICS PROGRAM (In accordance with Rules III and XXXIII) (1) In a basic mathematics program, students:

- (a) become mathematical problem solvers;
- (b) learn to communicate mathematically;
- (c) learn to reason mathematically;
- (d) learn to value mathematics;
- (e) become confident in their ability to do mathematics;

and

(f) select and use appropriate technology to solve problems and acquire new knowledge. - (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXVIII MATHEMATICS LEARNER GOALS: PROBLEM SOLVING: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) solve problems from many contexts using strategies such as guess and check, make a table, looking for a pattern and simplify the problem;
- (b) discuss alternate solution strategies and relationships among problems; and
- (c) use calculators as a problem solving tool. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE LXXXIX MATHEMATICS LEARNER GOALS: PROBLEM SOLVING: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) recognize, formulate, and solve problems in mathematical and real life situations;
- (b) apply a variety of strategies to solve one-step, multi-step, and nonroutine problems; and
- (c) verify and interpret the results with respect to the original problem situation and generalize to new problem

situations. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XC MATHEMATICS LEARNER GOALS: PROBLEM SOLVING: UPON GRADUATION (In accordance with Rules III and XXXIII) (1)

Upon graduation the student shall have had the opportunity to:

- (a) apply problem solving strategies; and
- (b) recognize, formulate, and solve problems within and outside of mathematics. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCI MATHEMATICS LEARNER GOALS: COMMUNICATION: PRIMARY (In accordance with Rules III and XXXIII) (1)

By the end of the primary level the student shall have had the opportunity to:

- (a) use oral and written language and symbols to communicate and extend mathematical ideas. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCII MATHEMATICS LEARNER GOALS: COMMUNICATION: INTERMEDIATE (In accordance with Rules III and XXXIII) (1)

By the end of the intermediate level the student shall have had the opportunity to:

- (a) model situations in a variety of ways (e.g. verbal, concrete, pictorial, graphical, algebraic);
- (b) read, interpret, and evaluate mathematical expressions of ideas; and
- (c) discuss mathematical ideas and situations, and make convincing arguments. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCIII MATHEMATICS LEARNER GOALS: COMMUNICATION: UPON GRADUATION (In accordance with Rules III and XXXIII) (1)

Upon graduation the student shall have had the opportunity to:

- (a) formulate mathematical definitions and express generalizations discovered through investigations;
- (b) express mathematical thoughts orally and in writing; and
- (c) understand written presentations of mathematics. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCIV MATHEMATICS LEARNER GOALS: REASONING: PRIMARY (In accordance with Rules III and XXXIII) (1)

By the end of the primary level the student shall have had the opportunity to:

- (a) describe, extend, and create auditory, visual, and written patterns;
- (b) represent and describe relationships between

quantities; and

(c) explain his/her thinking and justify solutions using models, known facts, properties, relationships, and real world experiences. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCV MATHEMATICS LEARNER GOALS: REASONING:
INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) recognize examples of deductive and inductive reasoning;

(b) make and validate conjectures using models, known facts, properties, and relationships; and

(c) apply proportional reasoning in problem solving and in discovering mathematical concepts. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCVI MATHEMATICS LEARNER GOALS: REASONING: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) make and test conjectures;

(b) formulate counterexamples;

(c) follow logical arguments and judge the validity of arguments; and

(d) construct simple valid arguments.

(2) students with extended interests shall be able to:

(a) construct formal proofs for mathematical assertions, including indirect proofs and proofs by mathematical induction. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCVII NUMERATION, COMPUTATION, AND ESTIMATION
LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) understand and construct number meanings through real world experiences and physical materials;

(b) demonstrate understanding of our numeration system by relating counting, grouping, and place value concepts;

(c) understand and apply the operations of addition, subtraction, and multiplication of whole numbers;

(d) demonstrate an intuitive understanding of division of whole numbers;

(e) model, explain, and demonstrate proficiency with basic facts, algorithms, and mental arithmetic techniques;

(f) apply estimation strategies to working with quantities, measurement, computation, and problem solving;

(g) use estimation to determine reasonableness of results;

(h) use inverse operations and other mathematical relationships to solve number sentences;

(i) demonstrate the meanings of familiar fractions, mixed numbers, and decimals to tenths; and

(j) use models to relate fractions to decimals, find equivalent fractions, and demonstrate the operations with decimals. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCVIII NUMERATION, COMPUTATION, AND ESTIMATION
LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) represent and use equivalent forms of numbers (fraction, decimal, percent, exponential, and scientific notation) in real world and mathematical situations;

(b) apply relationships between fractions, decimals, and percents;

(c) apply ratio, proportion, and percent;

(d) represent numerical relationships in one- and two-dimensional graphs;

(e) demonstrate operations, order relations, and number sense for whole numbers, fractions, decimals, and integers;

(f) apply basic number theory concepts;

(g) analyze, explain, and use procedures for addition, subtraction, multiplication, and division of whole numbers;

(h) select and use an appropriate method for computing from among mental arithmetic, paper and pencil, calculator, and computer;

(i) analyze, explain, and use estimation techniques; and

(j) use estimation to check reasonableness of results.

(Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE XCIX NUMERATION, COMPUTATION, AND ESTIMATION
LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation a student shall have had the opportunity to:

(a) compare and contrast the real number system and its various subsystems.

(2) Students with extended interests shall have the opportunity to:

(a) understand and apply the operations with complex numbers. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE C MEASUREMENT LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) understand measurable attributes, the concept of a unit, and the process of measuring; and

(b) apply measurement skills to everyday situations.

(Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CI MEASUREMENT LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) estimate, make and use measurements to describe, compare, or contrast objects in real world situations;
- (b) select appropriate units and tools to measure to a level of accuracy required in a particular setting;
- (c) use the customary and metric systems of measurement;
- (d) demonstrate the concepts of perimeter, area, and volume through concrete experiences; and
- (e) apply procedures and formulas to determine area and volume. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CII GEOMETRY LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) describe, model, and classify shapes;
- (b) investigate and predict results of combining, subdividing, and changing shapes; and
- (c) identify lines of symmetry, congruent and similar shapes, and positional relationships. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CIII GEOMETRY LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) identify, describe, construct, and compare plane and solid geometric figures;
- (b) understand geometric relationships and their consequences;
- (c) demonstrate an intuitive understanding of transformational geometry; and
- (d) use geometry to describe the physical world. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CIV GEOMETRY FROM A SYNTHETIC PERSPECTIVE LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation a student shall have had the opportunity to:

- (a) represent problems with geometric models and apply properties of figures;
- (b) classify figures in terms of congruence and similarity and apply these relationships;

(c) deduce properties of, and relationships between, figures from given assumptions; and

(d) use the computer as a tool to investigate geometric concepts.

(2) Students with extended interests shall have the opportunity to:

(a) understand an axiomatic system and investigate and compare various geometries (e.g., non-Euclidean and finite). (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CV GEOMETRY FROM AN ALGEBRAIC PERSPECTIVE LEARNER

GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) translate between synthetic and coordinate representations; and

(b) deduce properties of figures using transformations and coordinates.

(2) Students with extended interests shall have the opportunity to:

(a) analyze properties of Euclidean transformations, relate translations to vectors, and deduce properties of figures using vectors. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CVI STATISTICS AND PROBABILITY LEARNER GOALS:

PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) collect, organize, and display data;

(b) use data to make and check predictions; and

(c) demonstrate the basic concept of probability. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CVII STATISTICS AND PROBABILITY LEARNER GOALS:

INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) systematically collect, organize, and describe data;

(b) construct, read, and interpret tables, charts, and graphs such as stem-leaf, line, and box-whisker plots;

(c) draw inferences and construct and evaluate arguments based on data analysis;

(d) devise and carry out simulations involving probability;

(e) construct sample spaces and determine the theoretical and experimental probabilities of events; and

(f) make predictions based on experimental results or

mathematical probabilities. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CVIII STATISTICS AND PROBABILITY LEARNER GOALS:
UPON GRADUATION (In accordance with Rules III and XXXIII)

(1) Upon graduation the student shall have had the opportunity to:

- (a) use curvefitting to make predictions from data;
- (b) apply measures of central tendency and understand the concepts of variability and correlation;
- (c) design a statistical experiment to study a problem and communicate the outcomes;
- (d) differentiate between biased and unbiased sampling and valid and invalid reasoning in statistical arguments;
- (e) use the computer as a tool for statistical analysis;
- (f) use experimental probability, theoretical probability, and simulation methods to represent and solve problems; and

(g) apply properties of probability distributions.

(2) Students with extended interests shall have the opportunity to:

(a) deduce generalizations about the effects of data transformations on measures of central tendency and variability;

(b) select an appropriate sampling method for a given statistical analysis;

(c) test hypotheses using appropriate statistics; and

(d) apply random variables to generate and interpret probability distributions. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CIX ALGEBRA LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) use the concepts of variable, expression, and equation;

(b) represent concrete situations and number patterns with tables, graphs, verbal rules, and equations;

(c) analyze tables and graphs to identify properties and relationships;

(d) solve linear equations using concrete, informal, and formal methods;

(e) use models to demonstrate inequalities and non-linear equations; and

(f) use calculators and computers to explore algebraic concepts. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CX ALGEBRA LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation

the student shall have had the opportunity to:

- (a) represent problems with expressions, equations, and inequalities;
- (b) solve equations and inequalities; and
- (c) use tables, graphs, and computers as tools to investigate algebraic concepts.

(2) Students with extended interests shall have the opportunity to:

- (a) use matrices to represent and solve problems; and
- (b) apply techniques based on the theory of equations and computer based numerical methods. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXI FUNCTIONS LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation a student shall have had the opportunity to:

- (a) represent and analyze functions and relations using tables, rules, and graphs;
- (b) analyze the effects of parameter changes on the graphs of functions;
- (c) determine maximum and minimum points of a graph and interpret the results; and

- (d) investigate the concept of limit.

(2) Students with extended interests shall:

- (a) perform operations on and apply the properties of functions;

- (b) understand the conceptual foundations of limit, area under a curve, rate of change, and slope of a tangent line and their applications in other disciplines; and

- (c) analyze the graphs of polynomial, rational, radical, and transcendental functions. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXII TRIGONOMETRY LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation a student shall have had the opportunity to:

- (a) apply trigonometry to problems involving right triangles.

(2) Students with extended interests shall:

- (a) demonstrate the connection between trigonometric and circular functions;

- (b) use circular functions to model periodic phenomena;

- (c) apply general graphing techniques to trigonometric functions;

- (d) solve trigonometric equations and verify trigonometric identities; and

- (e) demonstrate the connections among trigonometric functions, polar coordinates, and complex numbers. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXIII DISCRETE MATHEMATICS LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1)

Upon graduation the student shall have had the opportunity to:

(a) use discrete structures such as finite graphs, sequences, and series; and

(b) solve enumeration and finite probability problems.

(2) Students with extended interests shall:

(a) solve problems using linear programming and difference equations;

(b) develop and analyze algorithms; and

(c) investigate problems in computer validation and application of algorithms. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXIV MATHEMATICS PROGRAM DEVELOPMENT (In accordance with Rules III and XXXIII) (1) The school district shall develop and evaluate a mathematics curriculum according to the standards for all program areas.

(2) The school district shall recognize the importance of technology as a tool for mathematics instruction. This technology may include but is not limited to computer systems, calculators, and other resources. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXV SCIENCE PROGRAM (In accordance with Rules III and XXXIII) (1) A basic program in science gives students the opportunity to:

(a) use scientific processes and communicate how they are used to develop scientific knowledge;

(b) develop the use of science skills to enhance his/her ability to think logically, critically, and creatively;

(c) recognize that scientific knowledge is continually subject to review, verification, and revision;

(d) gather reliable information in all areas of the sciences, using chemicals, laboratory equipment and hands-on activities safely and appropriately;

(e) show competence in measurement and mathematics;

(f) gain and convey information through oral, written, and graphic communication;

(g) recognize the character of independent and dependent variables;

(h) understand the core concepts of current scientific knowledge and use them in problem solving and decision making;

(i) identify problems of individual or social importance and select and apply appropriate scientific techniques to investigate these problems;

(j) understand the interactions of science, technology, and society; and

(k) explore the use of science-related skills effectively in careers, leisure activities, and lifelong learning. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXVI GENERAL SCIENCE LEARNER GOALS: PRIMARY

(In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) show confidence in his/her ability to learn science;
- (b) examine his/her environment using the five senses; recognize the limits of sensory perception;
- (c) convey information through the use of oral, written, and graphic communication;
- (d) group objects or events according to their observed characteristics;
- (e) suggest explanations for events based on observation;
- (f) predict possible results based upon past experiences;
- (g) measure and order properties of objects or events using standardized units of measure;
- (h) be aware of spatial relationships by describing an object's position in relation to other objects;
- (i) perform experiments to test hypotheses under controlled conditions with limited variables;
- (j) cite ways that science and technology have changed people's lives;
- (k) recognize that scientists and technicians are people with interesting jobs;
- (l) properly care for living organisms and show respect for life and property; and
- (m) be aware of the need for conservation, preservation, and the wise use of natural resources. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXVII GENERAL SCIENCE LEARNER GOALS: INTERMEDIATE

(In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) develop a positive attitude toward science;
- (b) use basic scientific skills to solve problems and answer questions about the environment;
- (c) work independently and in groups in the classroom, laboratory, and in the field;
- (d) identify and state a problem and use scientific processes to resolve it;
- (e) use tools and equipment for observations and measurement in a safe and appropriate manner;
- (f) gather and convey information through oral, written, and graphic communication;
- (g) be aware of the basic concepts in the life, physical, earth, and environmental sciences;
- (h) be aware of careers in the sciences and the skills needed for jobs in science-related fields;
- (i) cite and investigate scientific and technological issues which affect our lives;
- (j) properly care for living organisms and show respect for life and property; and
- (k) be aware of the need for conservation, preservation,

and the wise use of natural resources. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULES CXVIII LIFE SCIENCE LEARNER GOALS: INTERMEDIATE

(In accordance with Rules III and XXXIII) (1) A course of study in life science, offered at the intermediate level, shall give the student the opportunity to:

- (a) appreciate all living things and their relationships to one another and the environment;
- (b) observe, describe, compose, conclude, infer, and record from classroom, laboratory, and field experiences;
- (c) be aware of some of the contributions of scientists working in life science and of careers in life science;
- (d) demonstrate knowledge of kingdoms of living things and their basic characteristics, functions, diversity, and economic importance;
- (e) understand levels of biological organizations, growth and development;
- (f) demonstrate knowledge of reproductive processes, genetics, and heredity of living things;
- (g) demonstrate knowledge of local flora and fauna;
- (h) demonstrate knowledge and understanding of human growth and development, including the nine body systems and their functions, heredity and population genetics, behavior, and social and emotional growth;
- (i) be familiar with laboratory tools and techniques used in life science; and
- (j) understand the interdependence of biological systems as they affect social issues. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXIX PHYSICAL SCIENCE LEARNER GOALS: INTERMEDIATE

(In accordance with Rules III and XXXIII) (1) A course of study in physical science, offered at the intermediate level, shall give the student the opportunity to:

- (a) understand and use basic measurements in science, including charting, graphing, and interpreting measurable data;
- (b) design and carry out experiments that demonstrate physical and chemical changes;
- (c) identify physical and chemical characteristics of various types of matter;
- (d) understand and explain models of atoms, molecules, compounds, and mixtures;
- (e) understand physical, chemical, and nuclear changes using the laws of conservation of matter and energy;
- (f) understand the basic characteristics of light, sound, and mechanical waves;
- (g) understand the scientific principles and technological applications of the laws of motion;
- (h) understand the interrelationships of solar and galactic systems and of the earth-moon-sun system;
- (i) demonstrate a workable knowledge of electricity and

electronics and understand their importance to our human environment;

(j) apply basic physical and chemical principles to describe changes in common substances and devices;

(k) understand the effects of science and technology on humans and the environment; and

(l) be aware of careers in the physical sciences. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXX GENERAL SCIENCE LEARNER GOALS: UPON GRADUATION

(In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) make quantitative and qualitative observations to accumulate and evaluate data;

(b) classify objects and events based on observable similarities and differences of selected properties;

(c) suggest explanations, reasons, or causes for events which have occurred, test them with additional observations or data, and establish the reality of the inferences;

(d) make predictions based on prior observations, inferences, or experiments;

(e) describe or compare objectives and events using quantitative measurement;

(f) communicate data obtained from observations using graphs, charts, pictures, and other types of media;

(g) use processes such as classification, prediction, inference, and communication to interpret data;

(h) identify problems or questions and state hypotheses which can be tested;

(i) perform experiments to test hypotheses under controlled conditions with limited variables;

(j) construct and interpret models, using them to describe and explain relationships of ideas; understand their limitations;

(k) recognize the processes of change, such as in weather systems, life cycles, evolution, chemical and physical changes, and the transformation of energy;

(l) be aware of the processes of equilibrium, such as physical cycles, ecosystems, homeostasis, chemical equilibria, rates of reaction, and the laws of motion;

(m) cite the interrelationships among living and nonliving things and their environment;

(n) explain the organization of the physical and biological environment and the systems designed to describe them;

(o) demonstrate a knowledge of the effects of time and space on the environment's biological and physical properties;

(p) be aware of the diversity, variation, and constancy among living things and within the earth's physical and biological spheres;

(q) properly care for living organisms and show respect for life and property; and

(r) be aware of the need for conservation, preservation, and the wise use of natural resources. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXI EARTH SCIENCE LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in earth science shall give the student the opportunity to:

- (a) understand the basic concepts of earth science, including astronomy, geology, oceanography, and paleontology;
- (b) understand the basic motions in the solar system and how they affect the earth's environment;
- (c) understand the earth's history through the rock and fossil record and scientific dating methods;
- (d) understand the earth's tectonic and structural forces;
- (e) understand the earth's internal and surface processes, including weathering, erosion, volcanism, and deformation;
- (f) understand the use of aerial photos, topographic and geologic maps, and survey systems;
- (g) understand the earth's composition, including rocks and minerals;
- (h) understand the physical and compositional changes of the earth's weather and climate;
- (i) understand the oceans and their characteristics and development;
- (j) understand surface water and ground water systems;
- (k) understand that the flow of energy is basic to all earth science disciplines;
- (l) use the tools and methods employed by earth scientists, through field and laboratory experiences; and
- (m) demonstrate how earth science relates to careers, personal uses, and social needs. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXII BIOLOGY LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in biology shall give the student the opportunity to:

- (a) use scientific methods to investigate biological phenomena;
- (b) Relate field experiences to an understanding of ecological principles;
- (c) use microscopes, balances, and other biological instruments;
- (d) apply biological principles to situations in daily life;
- (e) understand the characteristic processes which define life;
- (f) understand the relationship between organic compounds and the physiological needs of living organisms;
- (g) understand the relation and interdependence of cell respiration and photosynthesis to food chains;
- (h) understand the concept of hemostasis in cells,

individuals, populations, communities, and ecosystems;

(i) understand cellular transport, cell structure, and cell functions;

(j) understand sexual and asexual reproduction and their relationship to ecological balances;

(k) understand heredity and the application of modern technology in medical genetics;

(l) understand the structure of DNA, its relationship to protein synthesis, and its role in living systems;

(m) understand the theory of evolution and its relationship to adaptation and speciation;

(n) categorize organisms representing the various kingdoms according to phyla;

(o) understand the relationship between structure and function as they relate to living things;

(p) trace the development of the major life functions through the various kingdoms;

(q) understand the importance of microbes and their relationship to other organisms;

(r) understand the importance of current issues in biology;

(s) be aware of careers in biology; and

(t) use appropriate safety techniques when handling chemicals, equipment, and organisms. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXIII CHEMISTRY LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in chemistry shall give the student the opportunity to:

(a) be competent in laboratory skills, including setting up equipment and using materials and chemicals safely;

(b) understand atomic structure and periodicity;

(c) understand the phases and properties of matter, including solids, liquids, and gases;

(d) understand the mole concept and stoichiometry and demonstrate their practical use in the laboratory;

(e) understand bonding and energy relationships;

(f) use formulas and equations competently;

(g) understand acids, bases, solubility, and chemical equilibrium;

(h) understand the basic principles of thermodynamics and kinetics;

(i) understand oxidation and reduction;

(j) understand basic organic, nuclear, and radiochemistry;

(k) understand the role of chemistry in society and technology;

(l) be able to apply chemistry principles to situations in daily life; and

(m) be aware of careers in chemistry and related fields. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXIV PHYSICS LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in physics shall give the student the opportunity to:

- (a) solve problems in physics, using mathematics and critical thinking skills;
- (b) collect, analyze, and interpret physical data;
- (c) use the appropriate instruments to measure physical quantities in a laboratory setting;
- (d) understand the historic, social, and scientific events that contributed to the development of physics;
- (e) understand that physics is a dynamic field in which concepts change as new data and new relationships are discovered;
- (f) understand the character and central role of conservation principles such as momentum, energy, and electric charge;
- (g) cite similarities and differences of wave and particle phenomena in nature;
- (h) demonstrate a basic knowledge of modern physics concepts such as relativistic effects, nuclear radioactivity, and wave-particle duality;
- (i) understand the basic principles of electricity and magnetism and their application to common occurrences;
- (j) cite accepted explanations for common terrestrial and celestial observations, using the laws of motion;
- (k) understand that the flow of energy is basic to all physical phenomena;
- (l) understand the basic concepts of geometric and physical optics;
- (m) understand the basic character of heat, temperature, and internal (thermal) energy;
- (n) evaluate the impact of discoveries in physics;
- (o) be aware of careers in physics and related fields;
- (p) understand the importance of physics in current social issues and its application to the other sciences; and
- (q) be able to apply physics principles to situations in daily life. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXV SCIENCE PROGRAM DEVELOPMENT (In accordance with Rules III and XXXIII) (1) The science curriculum shall be developed and evaluated according to the standards for all program areas.

(2) Elementary school science instruction shall include hands-on, investigative classroom activities and field experiences on a regular basis.

(3) Laboratory class size shall be limited for safety purposes. The number of students shall be determined through consultation with the teacher, considering the number, size and use of laboratory stations.

(4) Care shall be taken to ensure that laboratory activities are reasonably safe and under the constant supervision of an appropriately endorsed instructor.

(5) Chemicals shall be stored in a separate storeroom and according to reactive compatibilities. Flammable materials shall be stored with exhaust-only ventilation.

(6) All science classrooms shall be in compliance with the Montana Indoor Clean Air Act.

(7) All science classrooms shall have the proper safety equipment. For example, a chemistry laboratory should have a fire alarm, fire blanket, appropriate fire extinguisher(s), eye wash, goggles, and one-sided aprons. Gas supplies serving science laboratories shall have a master shut-off valve that is readily accessible to the instructor or instructor in charge. Electrical outlets must be ground-faulted. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXVI SOCIAL STUDIES PROGRAM (In accordance with Rules III and XXXIII) (1) A basic program in social studies gives the student an opportunity to:

(a) participate in meaningful first-hand and hands-on learning activities that draw on experiences in the home, school, neighborhood, and the world;

(b) participate in committee work, role playing, creative drama, classroom discussion, and interviews;

(c) develop research skills, which may include the gathering and recording of information from a variety of sources such as films, pictures, oral and written literature, music, and field trips;

(d) develop citizenship skills through sharing, acceptance of responsibility, cooperative learning, compromising, conflict resolution, and decision making;

(e) enhance his/her communication skills through drawing, acting, reading, writing, listening, and speaking;

(f) use topics that engage his/her interests and extend personal context for learning to a global realm. Learning activities are varied and involve the student intellectually, socially, and physically; and

(g) nurture an understanding of the contemporary and historical traditions and values of Native American cultures and other minority cultures of significance to Montana and to society. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXVII HISTORY AND WORLD CULTURE LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) begin to identify cultural characteristics such as social traditions, art forms, and language;

(b) demonstrate some basic knowledge about important chronological events in local, state, national, and world history;

(c) begin to provide examples of economic, cultural,

political, and technological developments which have contributed to human progress; and

(d) begin to identify individuals who played historical roles. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXVIII HISTORY AND WORLD CULTURE LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have had the opportunity to:

(a) explain how technology, economic activities, and learned patterns of behavior, such as prejudice, discrimination, conformity, and acceptance, influence culture;

(b) demonstrate knowledge of the dynamics of preindustrial, transitional, industrial, and postindustrial societies;

(c) explain how the characteristics of culture are manifested in history, economics, government, arts, sciences, and religion;

(d) detail how invention, diffusion, and adaptation influence cultural change;

(e) explain the biological, affectional, economic, and social functions of families; and

(f) demonstrate a knowledge of Montana history and of the state's diverse cultures. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXIX HISTORY AND WORLD CULTURE LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII)

(1) Upon graduation the student shall have had the opportunity to:

(a) discuss the influence of social movements on the state, the nation, and the world;

(b) analyze contemporary world issues in order to make decisions governing one's own personal life;

(c) apply knowledge of history in determining plans of action for current and future concerns; and

(d) use his/her understanding of local, national, and world culture in addressing modern social problems. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXX LAW AND LEGAL RIGHTS LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) list some of the basic characteristics of the U.S. Constitution;

(b) explain some of the freedoms contained in the Bill of Rights;

(c) understand the basic functions of the U.S. government;

- (d) begin to identify different levels of government, such as city, county, state, tribal, and federal government;
- (e) explain some of the basic sources of law, such as congress and state legislatures;
- (f) list basic public services provided by government; and
- (g) experience involvement in his/her community through active participation in a community group. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXCI LAW AND LEGAL RIGHTS LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) list the functions of the three branches of government;
- (b) explain the need for and function of separation of powers and checks and balances;
- (c) list the individual rights protected by the first ten amendments to the U.S. Constitution;
- (d) give reasons why the Bill of Rights was added to the Constitution;
- (e) explain how constitutional change is made;
- (f) discuss the characteristics of federalism;
- (g) identify how laws emanate from various authorities;
- (h) explain the difference between civil and criminal law;
- (i) discuss the importance of judicial review;
- (j) explain the need for and provision of due process of law;
- (k) discuss the fundamental principles of American democracy; and
- (l) continue his/her involvement in community groups, organizations, or services. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXII LAW AND LEGAL RIGHTS LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII)

(1) Upon graduation students shall have had the opportunity to:

- (a) participate in the American political process by running for office, by working on campaigns, or by voting;
- (b) make informed political decisions based on knowledge and understanding of political philosophy, constitutional doctrine, and organization of local, state, and national government; and
- (c) apply an understanding of one's legal and civil rights in pursuing private and vocational endeavors. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXIII ECONOMICS LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the

primary level the student shall have had the opportunity to:

- (a) provide some basic examples of the relationship between economics and human needs;
- (b) cite some characteristics of supply and demand;
- (c) list the roles of people in the division of labor; and
- (d) list basic economic systems, such as private enterprise and collective economies. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXIV ECONOMICS LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) discuss the importance of economic goals, such as growth, employment, and efficiency;
- (b) explain the causes and effects of economic problems such as scarcity, credit, and resource allocation;
- (c) detail the relationship between specialization and careers and occupations;
- (d) list the basic resources of production;
- (e) explain market interrelationships, such as cost/benefit, trade-offs, and distribution of goods and services; and
- (f) detail the characteristics of market and command economic systems and traditional economies. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXV ECONOMICS LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

- (a) understand how state and local taxes are both a product and a reflection of the economy;
- (b) use his/her mastery of economic concepts in the conduct of daily life; and
- (c) make career decisions based on an understanding of the economic significance of particular vocational and professional positions. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXVI GEOGRAPHY LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) begin to list the basic characteristics of natural, physical, and cultural environments;
- (b) learn to explain the earth/sun relationship as an energy system;
- (c) list the seasons;
- (d) explain the cause of night and day;
- (e) determine geographical location, such as position, site, and distance;
- (f) locate different cultural and physical regions;

- (g) list the basic characteristics of climate;
- (h) identify the basic land forms and water bodies;
- (i) give examples of the need for and benefits of natural resource conservation;
- (j) provide examples of the influence of geography on population size and distribution;
- (k) provide examples of land use;
- (l) define habitat; and
- (m) list the characteristics and use of maps. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXVII GEOGRAPHY LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) discuss the interrelationships of environments, cultures, and weather and how people adapt to them;
- (b) explain the relationship of the earth and sun;
- (c) locate geographic positions, using latitude, longitude, strategic sites, and maritime and time zones;
- (d) detail the effects of ocean currents, wind, mountains, and other physical and climatic elements on weather;
- (e) explain the impact of geography on human settlement patterns; and
- (f) detail and discuss the characteristics of Montana geography and locate critical sites. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXVIII GEOGRAPHY LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

- (a) demonstrate a knowledge of state, national, and world geography;
- (b) make civic, vocational, and private decisions guided by an understanding of various global environments and cultural settings; and
- (c) analyze the importance of geographical implications when political and economic decisions are made. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXXXIX SOCIAL INSTITUTIONS LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

- (a) begin to identify the traits of socialization, such as psychological, individual, and group behavior;
- (b) list individual responsibilities, such as honesty, tolerance, and compassion;
- (c) list some of the basic social institutions, such as family, educational, and religious institutions;

(d) identify some of the basic differences between individual values and group norms;

(e) begin to discuss traits of interactive social processes, such as cooperation, competition, and conflict and how social roles of leadership, following, aggression, and submission affect these processes;

(f) identify some social classes and social groups, including ethnic and minority groups; and

(g) give examples of social control, such as dependency, reward, and punishment. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXL SOCIAL INSTITUTIONS LEARNER GOALS: INTERMEDIATE

(In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) discuss and give examples of the reasons for socialization;

(b) explain how basic differences between individual values and group norms impact social problems;

(c) explain the relationship of economics, politics, science, and religion to social institutions;

(d) list examples of social interaction, such as peer pressure, group dynamics, assimilation, and accommodation; and

(e) discuss how societies implement social control. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLII SOCIAL INSTITUTIONS LEARNER GOALS: UPON GRADUATION

(In accordance with Rules III and XXXIII)

(1) Upon graduation the student shall have had the opportunity to:

(a) understand and appreciate diverse worldwide social institutions; and

(b) determine how current environmental, economic, and political changes affect various social changes throughout the world. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLIII CRITICAL THINKING, PROBLEM SOLVING, AND DECISION MAKING LEARNER GOALS: PRIMARY

(In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) classify information by sequence and in groups;

(b) interpret information by stating relationships, noting cause and effect, drawing inferences, and predicting outcomes;

(c) analyze information by organizing key ideas, separating major components, examining relationships, detecting bias, and comparing and contrasting ideas;

(d) summarize information by restating major ideas and

forming opinions;

(e) synthesize information by communicating orally and in writing;

(f) evaluate information by using criteria such as source, objectivity, and technical correctness; and

(g) apply decision making skills by securing needed factual information, recognizing values, identifying alternative courses and consequences, and taking action. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLIII CRITICAL THINKING, PROBLEM SOLVING, AND DECISION MAKING LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) summarize information by combining critical concepts into a statement of conclusions and by stating a hypothesis;

(b) synthesize information by proposing a new plan or system and reinterpreting events in terms of what might have happened; and

(c) use social and political participation skills to communicate effectively, recognize mutual relationships, set goals, plan, organize, and make decisions; keep informed, cooperate, negotiate, compromise, and accept responsibility. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLIV CRITICAL THINKING, PROBLEM SOLVING, AND DECISION MAKING LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) develop an ability to classify, interpret, and analyze information in the pursuit of his/her career, civic responsibilities, and economic and private endeavors; and

(b) make decisions based on summarizing data and evaluating alternatives. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLV STUDY AND RESEARCH SKILLS LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) identify key words and ideas and summarize them; and

(b) apply research skills such as questioning and the use of library and other resources to find answers. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLVI STUDY AND RESEARCH SKILLS LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have had the opportunity to:

- (a) skim, outline, review, and take notes;
- (b) use the library and other resources for research, refine topic selection and organize and present information in written formats to verify data; and
- (c) use technology appropriately, including databases.

(Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLVII STUDY AND RESEARCH SKILLS LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII)

(1) Upon graduation the student shall have had the opportunity to:

- (a) employ research, verbal, written, and technical skills in academic, career, and private endeavors. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLVIII SOCIAL STUDIES PROGRAM DEVELOPMENT (In accordance with Rules III and XXXIII) (1) The social studies curriculum shall be developed and evaluated according to the standards for all program areas.

(2) Students shall be encouraged to take advantage of spontaneous curiosity as it occurs in order to foster learning from current issues and events.

(3) Teachers shall recognize the effectiveness of thematic units that integrate social studies into cross-curriculum learning.

(4) Instruction in the social studies shall take advantage of out-of-classroom programs and resource people, natural and field experiences, and public service activities that enhance student learning. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CXLIX VOCATIONAL/PRACTICAL ARTS PROGRAM (In accordance with Rules III and XXXIII) (1) In general a basic program in vocational/practical arts shall:

(a) be an integral part of the education program and a complement to the academic program;

(b) motivate students, provide exploratory experiences, and increase career planning and employment skills; and

(c) be a cooperative effort of business, industry, and schools, contributing to Montana's economic development.

(2) The program shall give students the opportunity to:

(a) develop their vocational aptitudes to the highest level possible in order to promote success in their postsecondary living experience;

(b) increase their abilities to function successfully in

home, social, and consumer environments;

(c) develop student leadership skills through curricular and vocational organization activities that encourage active interest in the community and in the value of good citizenship;

(d) learn to use leisure time in a worthwhile manner;

(e) become motivated to master academic skills and demonstrate the practical application of those skills in a working and living environment;

(f) apply critical thinking, decision making, and problem solving skills to vocational education and occupations;

(g) develop positive attitudes toward work, respect for quality workmanship, and effective interpersonal skills; and

(h) develop an understanding of safe, efficient, and courteous highway use as a passenger, pedestrian, cyclist, or motor vehicle operator. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CL GENERAL VOCATIONAL/PRACTICAL ARTS LEARNER GOALS:

PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) be aware of various careers open to all students without regard to gender stereotyping;

(b) practically apply the oral and written communication skills related to vocational education;

(c) apply introductory skills in technical literacy;

(d) be aware of essential life and work skills, including acceptable social behavior, self-esteem, positive personal relationships, and respect for authority;

(e) be introduced to the relationship between academic knowledge and practical application; and

(f) demonstrate introductory concepts, skills, attitudes, and values in traffic education. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLI GENERAL VOCATIONAL/PRACTICAL ARTS LEARNER GOALS:

INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have had the opportunity to:

(a) be aware of a wide variety of careers and postsecondary experiences;

(b) have a working knowledge of the skills, responsibilities, and applications of vocations;

(c) build technical literacy skills;

(d) develop a work ethic, which includes an understanding of the importance of health, time, money, and scarce resource management to life and work;

(e) understand and appreciate the values of cooperation and a positive attitude in the world of work and an appreciation for quality workmanship;

(f) demonstrate the relationship between academic knowledge and practical application; and

(g) consistently demonstrate basic concepts, skills, attitudes, and values in traffic education. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLII GENERAL VOCATIONAL/PRACTICAL ARTS LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) assess the labor market for information essential to career decisions based on personal interests, ability, and aptitude;

(b) show and use oral and written communication through work-related activities or simulations and apply the process of evaluation;

(c) apply decision making and critical thinking skills through work;

(d) integrate academic and technological concepts; apply technical literacy skills; access and interpret technological information and project it to the future; and integrate mathematical, scientific, and technical knowledge and concepts in areas of occupational interests;

(e) apply academic and consumer skills to manage personal/work environment;

(f) demonstrate and assess life skills and use leadership and citizenship skills;

(g) demonstrate employment seeking skills (job search, interview, resume, etc.);

(h) demonstrate procedural skills necessary for entry employment in his/her occupation and an appreciation for quality work; and

(i) consistently apply appropriate traffic education concepts, skills, attitudes, and values for a lifetime of safe roadway use. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLIII PERSONAL/ADULT LIVING SKILLS LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in personal/adult living skills shall give the student the opportunity to:

(a) identify the responsibilities and privileges that characterize adulthood; recognize various roles of adults; and recognize skills and processes essential to functioning as an adult;

(b) given a problem situation, describe how the decision would be made if each of the processes and rules of decision making were followed;

(c) given a description of how decisions were made in allocating resources, identify principles of resource use applied in the decision;

(d) list personal motivational sources and explain how they relate to personal management;

(e) describe the benefits of a positive self-concept;

- (f) identify lifestyle choices as they exist today;
- (g) identify and describe stages of individual development and analyze family function in relation to that stage;
- (h) identify legal and moral commitments in beginning and ending a relationship;
- (i) explain the social and psychological forces involved in mate selection;
- (j) analyze male and female roles in a marriage;
- (k) identify issues an individual and his/her future mate should discuss prior to marriage;
- (l) describe family roles, functions, and interactions;
- (m) recognize the normalcy and function of conflict in marriage and assess the resources available to help couples resolve conflict;
- (n) describe the effect of employment on family life;
- (o) interpret his/her attitude toward divorce as it will affect attitudes toward marriage;
- (p) identify several factors involved in the decision to parent;
- (q) describe child abuse and neglect; analyze causes and effects of child abuse and neglect; and identify services and legal aid available to the abused and abuser;
- (r) interpret the role patterns of foster, adoptive, and step-parents;
- (s) describe reasons for one-parent families;
- (t) describe the growth and development of infants and children;
- (u) describe the important influences on prenatal development;
- (v) identify problem behavior in children in an effort to determine the goal of misbehavior and suggest positive techniques for guiding children's behavior;
- (w) identify personal and family crises and describe resources which can help in coping with crisis;
- (x) analyze the wise use of credit;
- (y) design a budget for managing income and expenses;
- (z) identify the financial services available to manage personal income;
- (aa) appraise his/her need for life, health, auto, and property insurance; and
- (bb) evaluate housing choice based on personal needs.

(Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLIV AGRICULTURAL EDUCATION LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in agriculture shall give the student the opportunity to:

- (a) be able to select self-employment or an appropriate career in the area of agricultural business and production, including mechanics, supplies and services, products and processes, resources, or in horticulture or forestry;

(b) display leadership, citizenship, and cooperation developed through membership and participation in civic and vocational organizations; and

(c) demonstrate knowledge, skills, attitudes, and practical experience as determined through task analysis for self-employment or for entry-level employment, in:

(i) basic soils management; plant growth and reproduction; field crop production, marketing, and management; range management; horticulture; and forestry;

(ii) selecting, breeding, and rearing of commercially important species of livestock; animal nutrition, health, and care; and the profitable management and marketing of livestock;

(iii) agricultural mechanization, including safety and care of hand and power tools, welding equipment, basic electricity, basic and applied power and farm machinery;

(iv) agricultural management, marketing, and economic principles; and business financial planning, including leasing, credit, depreciation, and machinery economics;

(v) propagation, management, and marketing of economically important horticulture crops; and

(vi) forestry production, transportation, processing, marketing, and distribution. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLV BUSINESS AND OFFICE EDUCATION LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in business and office education shall give the student the opportunity to:

(a) demonstrate the skills needed to apply for and obtain employment in one of the appropriate occupational areas (accounting, bookkeeping, banking, data processing, office supervision and management, secretarial, typing, general office, word information processing, electronic communications, general business, and related occupations);

(b) demonstrate knowledge of society's business economy and consumer systems;

(c) use equipment and technology that is currently used by industry;

(d) demonstrate the knowledge, skills, and attitudes necessary and appropriate for the business world;

(e) adapt and adjust to the changing needs and requirements of his/her occupation and of the business world in general, using tools such as employment projections and predictions;

(f) display leadership, citizenship, and cooperation developed through membership and participation in civic and vocational organizations; and

(g) develop an understanding of the importance of lifelong learning and continued acquisition of appropriate skills. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLVI HOME ECONOMICS AND HOME ECONOMICS WAGE EARNING LEARNER GOALS (In accordance with Rules III and XXXIII)

(1) If offered, a course of study in home economics shall give the student the opportunity to:

(a) be able to use skills which improve the quality of individual and family life;

(b) apply effective strategies for his/her future roles as employee/employer and home manager;

(c) use technology to meet personal and family needs;

(d) use applied learning to develop transferable job skills;

(e) develop an awareness of careers related to home economics;

(f) understand the world of work through entrepreneurship;

(g) understand the role of home economics and the family in economic development and worker productivity;

(h) develop consumer competence; and

(i) develop leadership through civic and vocational organizations. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLVII PREVOCATIONAL INDUSTRIAL/TECHNOLOGY EDUCATION LEARNER GOALS (In accordance with Rules III and XXXIII)

(1) If offered, a course of study in prevocational industrial/technology education shall give the student the opportunity to:

(a) be able to make informed and meaningful career and education choices relating to careers in construction, manufacturing, communication, and power/transportation;

(b) understand the importance of technology as it affects work and daily life, including the use of tools, how science and technology are related, and the ethical, sociological, and environmental issues technology has raised;

(c) understand that technology influences the future and requires personal and occupational adjustment;

(d) work with tools, materials, processes, and technical concepts safely and efficiently; and

(e) make wise consumer decisions. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLVIII VOCATIONAL INDUSTRIAL EDUCATION LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in vocational industrial education shall give the student the opportunity to:

(a) perform entry-level tasks and possess the skills and knowledge of current technology necessary to succeed in a trade or industrial occupation equivalent to a second-year apprentice level;

(b) use tools and equipment safely and promote a work environment that reduces hazards; and

(c) demonstrate knowledge of the related science and math

concepts and communication skills. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLIX MARKETING EDUCATION LEARNER GOALS (In accordance with Rules III and XXXIII) (1) If offered, a course of study in marketing shall give the student the opportunity to:

- (a) identify careers in marketing and the interests, aptitudes, personal qualities, and other information necessary to make informed career choices;
- (b) demonstrate the skills needed to successfully obtain and maintain employment in marketing occupations;
- (c) identify the basic features of the American economic system and their impact on business practices;
- (d) understand the purpose and use of marketing research;
- (e) identify the main types of business ownership and the elements needed for a successful business venture;
- (f) apply fundamental mathematics skills to problems encountered in marketing occupations;
- (g) understand how to purchase goods for resale and the terminology used by product buyers;
- (h) understand merchandise handling and inventory procedures used in businesses;
- (i) apply the elements of design and principles of arrangement to the sales promotion areas of advertising and display;
- (j) demonstrate how to satisfy customer needs through the use of selling techniques;
- (k) complete and record sales transactions accurately; and
- (l) apply management theories to business situations.

(Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLX TRAFFIC EDUCATION LEARNER GOALS (In accordance with Rules III and XXXIII) (1) Traffic education shall be an integrated K-12 curriculum that develops the concepts, skills, attitudes and values needed for a lifetime of safe, drug-free, courteous, and efficient use of roadways, as a passenger, pedestrian, bicyclist, or motor vehicle operator.

(2) If offered, a course of study in traffic education shall give the student the opportunity to:

- (a) demonstrate an awareness that one's physical, emotional, and mental health are essential to the proper use of streets and highways;
- (b) use the fundamental processes learned in earlier years;
- (c) understand how to use road maps, how to read and interpret instructions, and how to compute speed and stopping distances; understand the laws of motion;
- (d) understand that a person who can operate a vehicle safely and efficiently is a worthy family member, since American families depend on the automobile for a variety of

occupational and recreational uses;

(e) be prepared to use a motor vehicle for occupational and recreational purposes;

(f) develop good citizenship by complying with laws; by exercising civic responsibility for improving laws through legislation; and by practicing the habits of fair play, courtesy, and maintenance of property; and

(g) understand a driver's responsibility for the safety of others and exercise a respect for road ethics and the law. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXI VOCATIONAL/PRACTICAL ARTS PROGRAM DEVELOPMENT

(In accordance with Rules III and XXXIII) (1) Vocational/practical arts curricula shall be developed and evaluated according to the standards for all program areas.

(2) The school district shall make an effort to give faculty time for preparing grant applications and funding and budgeting resources.

(3) The school district shall ensure that all programs, resources, and facilities meet applicable safety and health standards and that class size and time provide for reasonable safety and optimal use of equipment and facilities. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXII LIBRARY/MEDIA PROGRAM (In accordance with Rules III and XXXIII) (1) Library/media services bring together the resources and technology that enable a student to:

(a) read for the sake of enjoyment and enrichment;

(b) read, listen, and view critically;

(c) learn effective ways to find information and material to meet his/her unique needs;

(d) organize, analyze, and interpret information;

(e) integrate information across content areas;

(f) reach conclusions; and

(g) become a lifelong learner.

(2) To help students achieve learner goals, the library/media program shall:

(a) teach library/media skills in sequence and in the context of the K-12 curriculum;

(b) support and enrich all areas of the school program;

(c) integrate library/media instruction across content areas;

(d) involve students in literature and reading, with the opportunity to be advised about reading in an unstructured, informal setting;

(e) encourage a love of reading and an appreciation of literature; and

(f) give students the opportunity to identify and meet personal information needs. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXIII INFORMATION ACCESS LEARNER GOALS: PRIMARY

(In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) demonstrate good library citizenship, such as caring for and returning materials, and express a sense of ownership of his/her school library/media center;

(b) be aware of the library catalog and possess the beginning skills to identify and locate print and nonprint materials;

(c) know what reference means and that there are sources for reference; have beginning skills to use references such as dictionaries and encyclopedias;

(d) translate information from print and nonprint resources;

(e) conduct research by selecting a topic and finding information on that topic; and

(f) identify people in the community as sources of information. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXIV INFORMATION ACCESS LEARNER GOALS:

INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have been given the opportunity to:

(a) be aware of the types of libraries and of the unique nature of libraries in a free society;

(b) locate materials which fulfill assignments and satisfy personal interests;

(c) be aware of types of basic reference sources (encyclopedias, dictionaries, almanacs, atlases, periodical indexes, subject encyclopedias, subject dictionaries and data bases);

(d) gather, analyze, select, and use materials;

(e) select a topic, find a variety of information sources on that topic, summarize, paraphrase, evaluate, synthesize, and present the information in a new form while citing sources; and

(f) identify sources of information in the community. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXV INFORMATION ACCESS LEARNER GOALS: UPON

GRADUATION (In accordance with Rules III and XXXIII)

(1) Upon graduation the student shall have had the opportunity to:

(a) understand and appreciate the role of information in a free society;

(b) access print and nonprint materials effectively and efficiently for individual and group needs;

(c) identify, locate, and use basic and specialized reference sources and data bases;

(d) apply critical thinking and problem solving skills in selecting, evaluating, and using information; and

(e) identify community resources and access information networks and other resource centers. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXVI INFORMED AND CREATIVE USE OF MEDIA AND TECHNOLOGY LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:

(a) know that information can be delivered by a variety of technologies;

(b) be able to use technology for the creative expression of ideas;

(c) know the difference between factual and imaginary; and

(d) understand that a variety of people, such as authors, illustrators, publishers, are involved in the creation and production of books and other media. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXVII INFORMED AND CREATIVE USE OF MEDIA AND TECHNOLOGY LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:

(a) request information in a variety of formats and from a variety of technologies; select formats appropriate for his/her learning style;

(b) use technology for the creative expression of ideas;

(c) begin to evaluate appropriate print and nonprint media for accuracy, relevance, and bias;

(d) appreciate aesthetically a variety of media; and

(e) understand that many people, such as authors, illustrators, and publishers, collaborate in the production of books and other media and own the material through copyrights. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXVIII INFORMED AND CREATIVE USE OF MEDIA AND TECHNOLOGY LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:

(a) select materials in a variety of formats, delivered by a variety of technologies;

(b) use technology for the creative expression of ideas;

(c) evaluate appropriate print and nonprint media for accuracy, relevance, and bias;

(d) appreciate aesthetically a variety of media; and

(e) use information legally and ethically. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXIX LIBRARY/MEDIA PROGRAM DEVELOPMENT (In accordance with Rules III and XXXIII) (1) The library/media program shall be developed and evaluated according to the standards for all program areas.

(2) The library/media program shall have a collection development policy.

(3) The school shall cooperate with other libraries through resource sharing.

(4) Each school shall have a centralized library/media collection that includes print and nonprint materials that are readily accessible to students and staff. The collection shall be:

(a) selected by professionals to meet the learner goals, curricular needs, and student recreational needs;

(b) culturally diverse;

(c) centrally based, inventoried, and catalogued;

(d) sufficient to meet the professional needs of the staff; and

(e) current and adequate to meet the learner goals, curricular requirements, and recreational needs of the students. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXX DEFINITION (In accordance with Rules III and XXXIII) (1) Guidance counseling is the specific educational service that helps individual students develop their personal, social, educational, and career/life planning skills. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXI GUIDANCE: PERSONAL DEVELOPMENT LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had an opportunity to:

(a) develop a positive self-image, personal initiative, and physical independence;

(b) experience security in his/her school environment;

(c) be able to identify and express feelings; and

(d) develop decision making skills and accept responsibility for his/her decisions. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXII GUIDANCE: PERSONAL DEVELOPMENT LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have had the opportunity to develop:

(a) a sense of conscience, morality, personal value, and self-worth;

(b) a positive and realistic self-concept;

(c) an acceptance of sexuality and physical image.

(d) self-direction and independence;

(e) appropriate ways to express feelings; and
(f) strong decision making skills and an acceptance of responsibility for his/her decisions. (Eff. 7/1/89)
AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE CLXXIII GUIDANCE: PERSONAL DEVELOPMENT LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation a student shall have had the opportunity to:
(a) develop personal independence as a responsible adult; and
(b) identify and use resources that help him/her cope successfully with life's complexities. (Eff. 7/1/89)
AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE CLXXIV GUIDANCE: SOCIAL DEVELOPMENT LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII) (1) By the end of the primary level the student shall have had the opportunity to:
(a) share experiences and manage school, family and social concerns;
(b) develop a sense of belonging;
(c) understand and appreciate the rights of others; and
(d) understand that other people have feelings. (Eff. 7/1/89)
AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE CLXXV GUIDANCE: SOCIAL DEVELOPMENT LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII) (1) By the end of the intermediate level the student shall have had the opportunity to:
(a) gain a sense of social recognition;
(b) have the opportunity to establish close peer relationships; and
(c) recognize and respect the fact that different people have different values and systems of values. (Eff. 7/1/89)
AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE CLXXVI GUIDANCE: SOCIAL DEVELOPMENT LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII) (1) Upon graduation the student shall have had the opportunity to:
(a) develop a sense of responsibility to self, others, and society; and
(b) use abilities and skills in establishing and maintaining family, peer, and community relationships. (Eff. 7/1/89)
AUTH: 20-4-114 MCA
IMP: 20-2-121 MCA

RULE CLXXVII GUIDANCE: EDUCATIONAL DEVELOPMENT LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII)

(1) By the end of the primary level the student shall have had the opportunity to:

(a) realize the meaning and value of learning. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXVIII GUIDANCE: EDUCATIONAL DEVELOPMENT LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have had the opportunity to develop:

(a) skills with which to form goals;

(b) an awareness of the need for lifelong learning; and

(c) motivation for achievement of personal goals. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXIX GUIDANCE: EDUCATIONAL DEVELOPMENT LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII)

(1) Upon graduation a student shall have had the opportunity to:

(a) formulate and attain realistic long-term goals; and

(b) strengthen his/her awareness of the need for lifelong learning. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXX GUIDANCE: CAREER DEVELOPMENT LEARNER GOALS: PRIMARY (In accordance with Rules III and XXXIII)

(1) By the end of the primary level the student shall have had the opportunity to:

(a) understand the nature and values of occupations at home, school, and within the community; and

(b) develop an awareness of his/her emerging interests and talents and their relationship to occupations. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXXI GUIDANCE: CAREER DEVELOPMENT LEARNER GOALS: INTERMEDIATE (In accordance with Rules III and XXXIII)

(1) By the end of the intermediate level the student shall have had the opportunity to:

(a) assess individual values, interests, aptitudes, and abilities and their relationship to career development;

(b) increase his/her understanding of the components of career planning; and

(c) begin in-depth exploration of career fields and specific occupations. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXXII GUIDANCE: CAREER DEVELOPMENT LEARNER GOALS: UPON GRADUATION (In accordance with Rules III and XXXIII)

(1) Upon graduation the student shall have had the opportunity to:

(a) use career guidance information and resources to plan for postsecondary education, vocational training, and/or work. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXXIII GUIDANCE PROGRAM DEVELOPMENT (In accordance with Rules III and XXXIII) (1) The guidance program shall be developed and evaluated according to the standards for all program areas.

(2) The school shall ensure confidentiality and privacy for counseling and the security of guidance records. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXXIV SCHOOL FACILITIES (1) School facilities shall be constructed, maintained, and supervised in accordance with all applicable local, state, and national codes, regulations, and laws.

(2) School facilities shall be of sufficient size and arrangement to meet all programs' educational goals.

(3) The board of trustees shall provide for educational facilities which are pleasant and reasonably safe for the conduct of the educational and extracurricular activities of students, and which are accessible to all students.

(4) The school shall provide the necessary equipment for emergency nursing care and first aid.

(5) When the board of trustees considers major remodeling or building a facility, it shall seek facility expertise in all affected program areas as well as comments from faculty, students, and community.

(6) The board of trustees shall have in writing a policy that defines the use of school facilities and resources. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXXV STUDENT RECORDS (1) Each school shall keep a permanent file of students' records, which shall include the name and address of the student, his/her parent or guardian, birth date, academic work completed, level of achievement (grades, standardized achievement tests), immunization records as per 20-5-406 MCA, and attendance data.

(2) Student records shall be kept in a fire resistant file or vault in the school building or, for rural schools, in the county superintendent's office. The board of trustees shall establish policies and procedures for the use and transfer of student records, which are in compliance with state and federal laws governing individual privacy.

(3) All inactive permanent records from a school that closes shall be sent to the county superintendent or the appropriate county official. (Eff. 7/1/89)

AUTH: 20-4-114 MCA

IMP: 20-2-121 MCA

RULE CLXXXVI SPECIAL EDUCATION RECORDS (1) A separate records file shall be maintained for each student receiving special education and/or related services. As a minimum, each record will contain the materials required by federal and state special education laws.

(2) Records will be maintained in a secure and confidential manner.

(3) The board of trustees shall establish written procedures for the destruction of confidential records. Records are to be kept for a minimum of five years after termination of special education services or after age 18 or legal age. (Eff. 7/1/89)

AUTH: 20-2-114 MCA

IMP: 20-2-121 MCA

5. The Board is proposing these new rules following a year-long comprehensive review of the current accreditation standards. These rules represent the instructional component of a basic system of quality elementary and secondary schools. They were developed by the Board of Public Education, public school trustees, administrators, teachers, college faculty, legislators and citizens, following extensive group participation and statewide public hearings. The Board of Public Education has made some rules effective in different years to allow schools and the state of Montana the time to develop and put into place the necessary funding and resources.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Alan Nicholson, Chairperson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than November 10, 1988.

7. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Alan Nicholson
ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: *Claudette Morton*

Certified to the Secretary of State October 3, 1988.

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

In the matter of the amendment of)
rules 16.44.202, 16.44.302,)
16.44.303, 16.44.304, 16.44.306,)
16.44.325, 16.44.327, 16.44.334 &)
16.44.699 regarding definition of)
waste, definition of hazardous)
waste, requirements for samples)
collected for treatability studies,)
requirements for recyclable)
materials, reclassification to a)
material other than a waste,)
reclassification as a boiler,)
regulation of certain recycling)
activities and applicability of)
interim status requirements.)
* * * * *
In the matter of an information)
statement pertaining to ARM Title)
16, Chapter 44, subchapter 10,)
regarding the availability of)
information.)

NOTICE OF THE
AMENDMENT OF RULES

NO PUBLIC HEARING
CONTEMPLATED

(Hazardous Wastes)

To: All Interested Persons

1. On or after November 14, 1988 the department will adopt the amendment of the above-captioned rules which pertain to minor clarification of citations and phraseology, definitional changes, disposition of samples collected for treatability studies and applicability of interim status requirements.

2. The proposed amendments are intended to adopt minor changes in order to achieve parity with federal regulations. Passage of these amendments is necessary for authorization from the Environmental Protection Agency (EPA) to the state of Montana to independently operate a hazardous waste program.

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

16.44.202 DEFINITIONS

(1)-(93) Same as existing rule.

(94)(a) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(i) Whether the waste is amenable to the treatment process;

(ii) What pretreatment, if any, is required;

(iii) The optimal process conditions needed to achieve the desired treatment;

(iv) The efficiency of a treatment process for a specific

waste or wastes; or

(v) The characteristics and volumes of residuals from a particular treatment process.

(b) Also included in this definition, for the purpose of the exemptions contained in ARM 16.44.304(4) and (5), are liner compatibility, corrosion, and other material compatibility studies, and, toxicological and health effects studies.

(c) A treatability study is not a means to commercially treat or dispose of hazardous waste.

~~(94)-(107)~~(95-108) Same as existing rule

AUTHORITY: 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.302. DEFINITION OF WASTE

(1)(a) A waste is any discarded material that is not excluded by ARM 16.44.304(1)(b), (c), (d), (f), (g), ~~(h)(j)~~, or ~~(k)(j)~~ or that is not reclassified upon application to the department pursuant to ARM 16.44.328.

(b) Same as existing rule

(2)-(6) Same as existing rule

AUTHORITY: 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.303. DEFINITION OF HAZARDOUS WASTE

(1)-(2) Same as existing rule

(3)(a) Same as existing rule

(b) The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(i) waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, and

(ii) wastes from burning any of the materials exempted from regulation under ARM 16.44.306(1)(c)(iv), (v), (vii), or (viii)

(4) Same as existing rule

AUTHORITY: 75-10-405, MCA

IMPLEMENTING: 75-10-403, 75-10-405, MCA

16.44.304. EXCLUSIONS

(1)-(2) Same as existing rule

(3) The following provisions apply to samples of waste, water, soil and air collected for analytical testing:

(a)-(c) Same as existing rule

(4) The following provisions apply to samples collected for the purpose of treatability studies as defined in ARM 16.44.202.

(a) Except as provided in subsection (4)(b), persons who generate or collect samples for the purpose of conducting treatability studies are not subject to any requirement of this chapter nor are such samples included in the quantity determinations of ARM 16.44.205 and ARM 16.44.401(4) when

(i) The sample is being collected and prepared for transportation by the generator or sample collector.

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(b) The exemption in subsection (4)(a) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(1) The generator or sample collector uses (in "treatability studies") no more than 1000 kg of any non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 1000 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water or debris contaminated with acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill or vaporize from its packaging during shipment and the requirements of subsections (4)(b)(iii)(A) or (4)(b)(iii)(B) below are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under section (3) of this rule or has an appropriate hazardous waste management permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the feasibility study;

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under

subsection (4)(b)(v)(C) in its annual report required under ARM 16.44.417.

(c) The department may grant requests on a case-by-case basis, for quantity limits in excess of those specified in subsection (4)(b)(i), for up to an additional 500 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when:

(i) There has been an equipment or mechanical failure during the conduct of a treatability study;

(ii) There is a need to verify the results of a previously conducted treatability study;

(iii) There is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

(iv) There is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. The additional quantities allowed are subject to all the provisions in subsections (4)(a) and (4)(b).

(d) The generator or sample collector must apply to the department and provide in writing the following information:

(i) The reason why the generator or sample collector requires additional quantity of samples for the treatability study evaluation and the additional quantity needed;

(ii) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(iii) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(iv) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(v) Such other information that the department considers necessary.

(5) Provisions in this section (5) apply to samples undergoing treatability studies and to the testing facilities at which such treatability studies are conducted. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to the requirements of this chapter) are not subject to any requirement of this chapter provided that the conditions of subsections (3)(a) through (k) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to subsections (3)(a) through (k). Where a group of MTUs are located at the same site, the limitations specified in (a) through (k) of this section (5) apply to the entire group of MTUs collectively as if the group were one

MTU.

(a) No less than 45 days before conducting treatability studies, the facility must notify the department in writing that it intends to conduct treatability studies under this section.

(b) The laboratory or testing facility conducting the treatability study must have an EPA identification number.

(c) No more than a total of 250 kg of "as received" hazardous waste may be subjected to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(d) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies may not exceed 1000 kg, the total of which can include 500 kg of soils, water or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. This quantity limitation does not include:

(i) Treatability study residues; and

(ii) Treatment materials (including nonhazardous waste) added to "as received" hazardous waste.

(e) No more than 90 days may elapse from the time the treatability study for the sample was completed, or, no more than one year may elapse from the time the generator or sample collector ships the sample to the laboratory or testing facility, whichever date first occurs.

(f) The treatability study may not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(g) The facility must maintain records (for 3 years following completion of each study) that show compliance with the treatment rate limits, the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample.

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day.

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day.

(vi) The date the treatability study was concluded; and

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(h) The facility must keep, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(i) The facility must prepare and submit a report to the department by March 15 of each year that estimates the number

of studies, the amount of waste expected to be used in treatability studies during the current year, and that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies.

(ii) The types (by process) of treatability studies conducted.

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification number).

(iv) The total quantity of waste in storage each day.

(v) The quantity and types of waste subjected to treatability studies.

(vi) When each treatability study was conducted.

(vii) The final disposition of residues and unused sample from each treatability study.

(i) The facility must determine whether any unused sample or residues generated by the treatability study are hazardous waste under ARM 16 44 303. If so, the residues and unused samples are subject to the requirements of this Chapter, unless the residues and unused samples are returned to the sample originator under the exemption in section (4) of this rule.

(k) The facility must notify the department by letter when the facility is no longer planning to conduct any treatability studies at the site.

AUTHORITY: 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16 44 306 REQUIREMENTS FOR RECYCLABLE MATERIALS

(1)-(2) Same as existing rule

(3)(a) Unless exempted in (1)(b) and (1)(c) above, owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts B through L of 40 CFR Parts 264 and 265 (except subpart H of each Part and except for 40 CFR 264.75 and 40 CFR 265.75), subparts C through G of 40 CFR Part 266, and subchapters 1, 6, 7, and 8 of this chapter (The recycling process itself is exempt from regulation)

(b) Same as existing rule

(4) Same as existing rule.

AUTHORITY: 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16 44 325 RECLASSIFICATION TO A MATERIAL OTHER THAN A WASTE

(1) In accordance with the standards and criteria in ARM 16 44 326 and the procedures in ARM 16 44 328, the department may determine on a case-by-case basis that the following materials are not wastes:

(a)-(b) Same as existing rule.

(c) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered for their original uses.

AUTHORITY: 75-10-404, 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.327 RECLASSIFICATION AS A BOILER (1) In accordance with the standards and criteria in ARM 16.44.202 (definition of "boiler"), and the procedures in ARM 16.44.226 16.44.328, the department may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in ARM 16.44.202, after considering the following criteria:

(a)-(f) Same as existing rule.

AUTHORITY: 75-10-405 MCA

IMPLEMENTING: 75-10-405, MCA

16.44.334 ADDITIONAL REGULATION OF CERTAIN HAZARDOUS WASTE RECYCLING ACTIVITIES ON A CASE-BY-CASE BASIS

(1) The department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in ARM 16.44.306(1)(b)(iv) should be regulated under ARM 16.44.306(2) and (3). The basis for this decision is that the materials are being accumulated or stored in a manner that jeopardizes does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible as further explained in 40 CFR Part 265, Appendix V. (Reference to 40 CFR Part 265, Appendix V, is not intended to be exclusive or formal authority for what is incompatible but is included here for illustrative purposes.) In making this decision, the department will consider the following factors:

(a)-(e) Same as existing rule.

(2)-(3) Same as existing rule.

AUTHORITY: 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS)

(1) Same as existing rule.

(2) Interim status standards apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status and until either a hazardous waste management permit is issued or until applicable closure and post-closure requirements under 40 CFR Part Q are fulfilled, and, to those owners of facilities in existence on November 19, 1980 who have failed to file a Part A permit application as required by ARM 16.44.605 and ARM 16.44.119. These standards apply to all treatment, storage and disposal of hazardous waste at treatment, storage and disposal facilities except as specifically exempted in ARM Title 16, chapter 44.

(2)(3) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, subparts B through and including Q, and excluding subpart H and 40 CFR 265.75. The correct CFR edition is listed in ARM 16.44.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 265.75 is set forth in ARM 16.44.613. Subparts B through Q of 40 CFR Part 265 are federal agency

rules setting forth general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I) and requirements for tanks (J); surface impoundments (K); waste piles (L); land treatment (M); landfills (N); incinerators (O); thermal treatment (P); and chemical, physical and biological treatment (Q). A copy of 40 CFR Part 265, subparts B through and including Q, excluding subpart H, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-405, MCA
IMPLEMENTING: 75-10-405, MCA

4. To comply with requirements imposed by the EPA for authorization of the state program, DHES has committed to an agreement with EPA for assisting members of the public to obtain information from DHES as required by ARM Title 16, Chapter 10. Although public notice is not required here, DHES chooses to publish the following statement for public review and comment.

The Department of Health and Environmental Sciences ("DHES") will make every reasonable effort to assist in the identification and description of records sought by members of the public under ARM Title 16, Chapter 10, and to assist the requestor in formulating his request including, if necessary, narrowing the scope of the request. All non-exempt records will be made available to the public to the fullest possible extent under Montana law regardless of whether the requestor has stated a reason or a need for the records.

Insofar as confidential business information, if appropriate, a provider of information to DHES may deem information submitted to DHES as confidential under the Uniform Trade Secrets Act, Section 30-14-401, et seq., MCA. It should be emphasized that under ARM 16.44.1008, claims of confidentiality of business information must be made at the time of submission of the information to DHES; any information which is not legally confidential under the Trade Secrets Act or otherwise will be disclosed to members of the public by DHES upon request. DHES will be advising providers of information to DHES that where there is a question of confidentiality, pursuit of a protective order under the Uniform Trade Secrets Act prior to submission of the information may be appropriate. Within 10 days of the request, DHES may inform a person who has submitted a request under ARM 16.44.1009 that the information requested

is confidential or that a claim of confidentiality is in the process of being resolved. At the time of denial of the request for information, DHES is obligated to state the reason for the denial under ARM 16.44 1009 including, if applicable, the reason that DHES has denied the request in order to resolve claims of business confidentiality. If and when the information is deemed not to be confidential, DHES will notify the requestor that the information is available.

In order to comply with the oversight objectives of the EPA, DHES will keep a log or files of denials of requests which have been sent to requestors.

5. The department is proposing these amendments to the rules in order to effect minor changes necessary for authorization by the EPA.

6. Interested persons may submit their written data, views, or arguments concerning these amendments to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 11, 1988.

7. If a party who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 11, 1988.

8. If the department receives requests for a public hearing under Section 2-4-315, MCA, on the proposed amendments, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 4, based on the number of hazardous waste generators which are required to comply with ARM Title 16, chapter 44, subchapter 3.

JOHN J. DRYNAN, M.D., Director


By Robert L. Solomon

Certified to the Secretary of State October 3, 1988.

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

In the matter of the adoption)	NOTICE OF PUBLIC
of new and amended rules)	HEARING ON REVISION OF
governing unemployment)	UNEMPLOYMENT INSURANCE
insurance)	RULES, TITLE 24, CHAPTER
)	11, PARTS 1, 2, 3, 4, 5,
)	6, 7, AND 8.

TO: All Interested Persons:

1. On November 9, 1988, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed updated and revised rules governing the administration of unemployment insurance for the State of Montana.

2. The rules as proposed to be amended and adopted are:

24.11.101 DIVISION ORGANIZATION --- BUREAU ADDRESSES (1)

The Division of the Employment Security unemployment insurance division of the Department of Labor and Industry department of labor and industry adopts and incorporates the organizational structure of the Division of Employment Security as it has been set out and explained in Chapter 1 of this title.

(2) The unemployment insurance division is divided into three bureaus:

- (a) benefits;
- (b) contributions; and
- (c) planning and evaluation.

(3) The address for the department's main office in Helena is: P.O. Box 1728, Helena, MT, 59625. The phone number for the Helena office is: (406) 444-3555.

(4) The department's local job service offices also handle many unemployment insurance matters. There are 24 job service offices located throughout the state, with the following addresses and phone numbers:

Address	Phone number
Anaconda Job Service Office 307 East Park Anaconda, MT 59711	563-3444
Billings East Job Service Office 624 N. 24th St. Billings, MT 59101	248-7371
Billings West Job Service Office 1425 Broadwater Ave.	259-5529

Suite E Billings, MT 59102	
Bozeman Job Service Office 121 North Willson Bozeman, MT 59715	586-5455
Butte Job Service Office 206 W. Granite Butte, MT 59703	782-0417
Cut Bank Job Service Office 20 South Central Cut Bank, MT 59427	873-2191
Dillon Job Service Office 310 E. Schree P.O. Box 1309. Dillon, MT 59725	683-5501
Glasgow Job Service Office 238 Second Ave. So. Glasgow, MT 59230	228-9369
Glendive Job Service Office 211 South Kendrick Avenue Glendive, MT 59330	365-3314
Great Falls Job Service Office 1018 Seventh Street South Great Falls, MT 59405	761-1730
Hamilton Job Service Office 333 Main Street Hamilton, MT 59840	363-1822
Havre Job Service Office 416 First Street Havre, MT 59501	265-5847
Helena Job Service Office 715 Front Street Helena, MT 59601	444-6006
Kalispell Job Service Office 427 First Ave. E. Kalispell, MT 59901	257-5627
Lewistown Job Service Office 324 W. Broadway Lewistown, MT 59457	538-8701

Libby Job Service Office 317 Mineral Ave. Libby, MT 59923	293-6282
Livingston Job Service Office 228 South Main Livingston, MT 59047	222-0520
Miles City Job Service Office 12 North 10th Street Miles City, MT 59301	232-1316
Missoula Job Service Office 539 S. Third St. W. Missoula, MT 59806	728-7060
Polson Job Service Office 417 Main Street Polson, MT 59860	883-5261
Shelby Job Service Office 462 First Street South Shelby, MT 59474	434-5161
Sidney Job Service Office 120 South Central Sidney, MT 59270	482-1204
Thompson Falls Job Service Office 608 Main Street Thompson Falls, MT 59873	827-3472
Wolf Point Job Service Office 200 Highway 2 East Wolf Point, MT 59201	653-1720

(History: Sec. 39-51-202, MCA; IMP, Sec. 2-4-201 MCA;

RULE I GENERAL DUTIES AND RESPONSIBILITIES OF THE DIVISION

(1) The unemployment insurance division has two main responsibilities:

(a) administering the receipt of unemployment insurance benefits, including determinations of the eligibility, amount and duration of benefits; and

(b) administering the unemployment insurance tax or contribution system, including the amount of contributions owed by employers and the collection of the contribution.

(2) The division strives to provide these services in a courteous and efficient manner, within the parameters of federal state law.

(3) The following rules were drafted and are administered by the unemployment insurance division. However, to avoid confusion if the department is reorganized, the rules refer to the "department" as a whole.

AUTH. 39-51-301, 39-51-302, MCA. IMP. 39-51-102

24.11.201 ADOPTION OF MODEL RULES (1) Pursuant to the authority vested in the Administrator of the Employment Security Division, the Administrator adopts the Model Rules proposed by the Attorney General, namely, ARM 1.3.102 through ARM 1.3.224 (Rules 1-24). The department hereby adopts by reference the following model rules recommended by the attorney general:

(a) ARM 1.3.102; and

(b) ARM 1.3.203 through 1.3.210.

(2) The department further adopts the following rules only to the extent such rules do not conflict with the hearing rules in subchapter 3 of this chapter:

(a) ARM 1.3.211 through 1.3.216;

(b) ARM 1.3.218 through 1.3.220; and

(c) ARM 1.3.222 through 1.3.233.

(3) ARM 1.3.217 and 1.3.221 have not been adopted because the rules of evidence and civil procedure are not binding in hearings on unemployment insurance matters.

(History: Sec. 39-51-202, MCA; IMP, Sec. 2-6-204 MCA;

RULE II DEFINITIONS The terms used by department are, in great part, defined in sections 39-51-201 through 39-51-205, MCA. In addition to these statutory definitions, the following definitions apply to this chapter, unless context or the particular rule provides otherwise:

(1) "Board" means the board of labor appeals provided for in Title 2 chapter 15, part 17, MCA, with the functions as defined in section 39-51-310, MCA.

(2) "Claimant" means an individual who has qualified for or who is trying to qualify for eligibility to receive unemployment insurance benefits.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Interested party" means:

(a) the claimant;

(b) the claimant's most recent employing unit;

(c) the chargeable employer;

(d) the department;

(e) the alleged employer in employment relationship determinations; and

(f) any other person who, upon written application, is found by the department or an appeals referee to have a substantial interest in the determination.

(4) "Employer" means an employer that is subject to payment of unemployment insurance contributions as defined in section 39-51-202, MCA. Such an employer is known as the "covered" or "subject" employer for unemployment insurance tax purposes.

(5) "Local office" means the job service office that serves the area including the interested party's residence or business.

(6) "Regular benefits" are the unemployment insurance benefits paid to a claimant under this chapter, but do not include extended benefits provided for in Title 39, Chapter 51, Part 25, MCA.

(7) "Tax" means the unemployment insurance contributions owed or paid by an employer under section 39-51-1103 and any other special assessments imposed under Title 39, chapter 51, MCA.

AUTH: 39-51-301, 39-51-302, MCA; IMP. 39-51-101-3207, MCA

24.11.301 FILING OF APPEALS (1) Interested parties appealing either to an appeal referee from a decision of a deputy, or from a determination of classification and rate, or to the Board of Labor Appeals from a decision of an appeal referee, shall file with the division, within the time provided by law, at either a local office or the central office of the division, a notice of appeal, setting forth the reason for the appeal. Appeals may be filed by regular letter mail or by the use of appropriate appeal forms available to the claimants and employers at all local offices of the division.

APPEAL OF DEPARTMENT DETERMINATIONS. (1) An interested party appealing a department decision, determination, or redetermination under section 39-51-1109 or 39-51-2402, MCA, must file with the department a written notice of appeal within 10 days after the decision was mailed to the interested party's last known address.

(2) The notice of appeal must contain reasons for the appeal. Appeal forms, known as UI-214, may be used and are available at local offices.

(3) The notice of appeal must be filed either in person or by mail at a local office or at the department's office in Helena. (History: Sec. 2-4-201, 39-51-2407 MCA; IMP, Sec. 2-4-201, Sec. 39-51-2407 MCA;

RULE III. TRANSFER OF FILES TO APPEALS BUREAU --- NOTICE TO DEPARTMENT (1) After receiving a notice to appeal a department determination or redetermination on benefits, the benefits bureau sends the administrative file to the appeals bureau of the department.

(2) Upon receiving a notice to appeal a department determination or redetermination on tax matters, the contributions bureau sends the notice to the appeals bureau, but retains the administrative file.

(3) If the department is an active participant in the administrative hearing, the department's representative at the hearing must receive notices and other hearing documents in the same manner as any other interested party.

AUTH. 39-51-301, 31-51-302, MCA. IMP. 39-51-1109, 39-51-2403, 39-51-2407, MCA.

24.11.302 NOTICE OF HEARINGS (1) ~~Upon the scheduling of an appeal, the appeal tribunal shall give to the appellant and to all other interested parties, written notice of the date, time and place of the hearing, and such notice shall be mailed to such parties at least ten (10) days prior to the date of the hearing.~~

(1) A hearing is scheduled as soon as practical. Written notice of the hearing or pre-hearing conference is mailed to all interested parties, including the department's representative, at least 20 days before the hearing or conference. The notice complies with section 2-4-601, MCA, stating the date, time, and place of the hearing, legal authority for the hearing and the issues involved in the matter.

(History: Sec. 39-51-2407 MCA; IMP, Sec. 39-51-2407 MCA;

RULE IV TELEPHONE HEARINGS (1) Any conference, prehearing, or hearing may be held by telephone conference call.

(2) An in-person hearing or conference may be scheduled in Helena if a party requests in writing such a hearing at least 10 days before the scheduled telephone hearing.

(3) At least 5 days before a telephone hearing in tax cases, or as provided in the prehearing order, the following information or documents must be mailed or delivered to the appeals referee and all other parties:

(a) legible and accurate copies of all documentary evidence;

(b) the names, addresses and telephone numbers of all proposed witnesses; and

(c) the telephone numbers where the parties and witnesses may be reached at the time of the hearing.

AUTH: 39-51-301, 39-51-302, MCA. IMP. 39-51-1109, 39-51-2403, 39-51-2407, MCA.

24.11.303 HEARING PROCEDURE -- BENEFIT DETERMINATIONS

Subsection (1) remains the same

(2) Benefit Hearings hearings shall be are conducted informally, and in such a manner as to ascertain the substantial rights of the parties. All issues relevant to an appeal shall be are considered and passed upon. Any interested party, his any witness or witnesses, under oath, or affirmation, may present such evidence as may be pertinent evidence, subject to examination by any member of an the appeal referee and to cross examination by any opposing interested parties.

(3) The parties to an appeal, with the consent of the appeal referee, may stipulate the facts involved in writing. Further hearing to take additional evidence may be ordered, upon notice as set out above, if such stipulation is found inadequate for the determination of the appeal. With the consent of the appeals referee, the parties may stipulate in writing the facts of the case. A hearing may nevertheless be held if the appeals referee finds such a stipulation inadequate for decision in the case.

(4) If any party to any appeal fails to appear at the hearing, and no good cause for continuance is shown, the appeal

referee shall render its ~~issues the~~ decision on the basis of the best evidence available. ~~to it; provided, however, a~~ The hearing before an appeal referee may be postponed for good cause upon application to the appeal referee orally or in writing before the hearing is concluded, and may be postponed or reopened by the appeal referee on application.

(5) ~~Any party who fails to appear in person or by authorized representative at a hearing before the appeal referee may, within ten (10) days after the scheduled date of the hearing, file an application for reopening, and such application for reopening shall be granted if good cause is shown for failing to appear. An application for reopening must be in writing, it must state the reasons (s) believed to constitute good cause for failing to appear at the hearing, and it must be delivered or mailed within such ten (10) day period to the referee at either the local office where the appeal was filed or to the Central Office of the Employment Security Division, Employment Security Building, Corner of Lockey and Roberts Streets, P.O. Box 1728, Helena, Montana, 59601.~~

(6) ~~Where it appears that an application for reopening may not have been filed within such ten (10) day period, the procedure in Section 39-51-2403 MCA shall be followed. If an application for reopening is not allowed, a copy of such decision shall be given or mailed to each party, together with a clear statement of right of appeal or judicial review. If an application for reopening is allowed, the appeal shall be reopened and a copy of the decision and order shall be given or mailed to each party to the appeal, and in the reopened proceedings the allowance of the application may be contested.~~

(7) ~~Where it appears that an appeal or application for leave to appeal to the division, or an application for reopening, or any other request or application may not have been filed within the period of time prescribed for filing, the appellant or applicant (as the case may be) shall be notified and be given an opportunity to show that such an appeal, application or request was timely. If it is found that such appeal, application or request was not filed within the applicable time limit, it shall be dismissed on such grounds. If it is found that such appeal, application or request was timely, the matter shall be decided on merits. Copies of a decision under this provision shall be given or mailed to all interested parties, together with a clear statement of right of appeal or judicial review.~~

(8) (5) The appeal referee may, in its discretion, adjourn any hearing for a reasonable period of time, in order to secure all the evidence that is necessary and to be fair to the parties. (History: Sec. 39-51-2407 MCA; IMP, Sec. 39-51-2407 MCA;

RULE V HEARING PROCEDURES --- TAX DETERMINATIONS (1) Tax hearings are informal, but are conducted in such a manner as to determine the substantial rights of all parties. The appellant must show by a preponderance of the evidence that the department

erred in determining the application, duration, or amount of the tax. The employer presents testimony and evidence first, followed by the department, and any interested party.

(2) Rules of evidence are not strictly applied or followed. However, the appeals referee uses those rules as guidelines in determining the relevance, prejudice, or weight of evidence.

(3) All parties have the right to conduct cross-examination of witnesses for a full and accurate disclosure of the facts. Other examination, such as examination beyond the scope of direct examination, cross or redirect examination is within the discretion of the appeals referee.

(4) The appeals referee may, at any time, postpone or continue a hearing to secure evidence or information necessary for a fair and complete hearing.

AUTH: 39-51-302, 39-51-2407; IMP. 39-51-1109, 39-51-2403.

RULE VI DISCOVERY IN TAX HEARINGS (1) Except as otherwise provided in this rule, the methods, scope and procedures of discovery in rules 26 through 37 of the Montana rules of civil procedure are guidelines for the appeals referees in determining discovery, but are not mandatory.

(2) The appeals referee may fix the time, place and method of discovery by conference, prehearing order, or otherwise. The appeals referee may enter appropriate orders for violations of orders fixing discovery procedures.

(3) Depositions, interrogatories and answers to them, requests for production of documents and responses to them, and other discovery documents need not be filed with the appeals referee. If a party makes a motion based on discovery documents, the motion must be supported by verified copies or abstracts of the discovery documents.

(4) If a party wants to introduce a product of discovery as part of the administrative record, the party must identify the evidence in a prehearing memorandum or at the prehearing conference.

(5) The use of depositions in lieu of live testimony at a hearing is determined by the Montana rules of civil procedure. If only portions of a deposition are necessary, the appeals referee may order the preparation of excerpts to avoid a bulky record or consideration of irrelevant or prejudicial matters.

AUTH: 39-51-302, 39-51-2407; IMP. 39-51-1109, 39-51-2403.

RULE VII MOTIONS IN TAX HEARINGS (1) A motion must:

(a) be in writing and signed by the moving party;

(b) be submitted to the appeals referee before or at the prehearing conference no later than 10 days prior to the hearing; and

(c) briefly state the relief asked for and the reasons for the motion.

(2) The moving party must serve a copy of the motion on all other parties and deliver or mail to the appeals referee the original with proof of service.

(3) A party opposing the motion has 10 days from the filing of the motion to respond, unless the appeals referee directs otherwise.

(4) The appeals referee may hear oral argument on the motion.

(5) A motion for continuance of a hearing or conference scheduled by an appeals referee may be granted only upon a showing of good and sufficient cause. The motion must indicate whether or not opposing parties object to the continuance. A motion for a continuance filed with the appeals referee within 3 days of a scheduled hearing or conference will be considered only under extraordinary circumstances.

AUTH: 39-51-302, 39-51-2407; IMP. 39-51-1109, 39-51-2403.

RULE VIII PREHEARING CONFERENCE FOR TAX HEARINGS (1) A prehearing conference may be held to:

(a) determine the issues that must be decided by the appeals referee;

(b) exchange copies of all proposed exhibits and names, addresses and telephone numbers of all proposed witnesses;

(c) identify possible remedies;

(d) discuss hearing procedures;

(e) hear oral argument on any motions; and

(f) perform any other duties that may facilitate the disposition of the case.

(2) All parties, including the department, are notified of the prehearing conference at least 10 days before the conference is scheduled.

(3) A prehearing order supersedes all other prior pleadings in the matter.

(4) If a party fails to participate in the prehearing conference, or fails to comply with a prehearing order, the appeals referee may impose sanctions upon that party including but not limited to:

(a) dismissal of the case;

(b) default judgment for the opposing party;

(c) limitation of evidence or witnesses at the hearing.

AUTH: 39-51-302, 39-51-2407; IMP. 39-51-1109, 39-51-2403.

RULE IX SUBPOENAS (1) The appeals referee may issue subpoenas on the referee's own motion or on motion of a party. Subpoenas may be issued for the attendance of witnesses or the production of documents. Subpoenas must be served in the same manner as provided in civil actions.

(2) The appeals referee may enter the appropriate order for failure to comply with the provisions of a subpoena.

AUTH: 39-51-302, 39-51-2407; IMP. 39-51-1109, 39-51-2403.

RULE X DEFAULT (1) If a party fails to appear at the hearing, and no good cause was shown for absence or a continuance, the appeals referees may issue the decision based on the evidence in the administrative and hearing record.

(2) Within 10 days after the date of the scheduled hearing, a party who didn't attend the hearing may move for a rehearing. Such a motion may be granted only in extraordinary circumstances.

AUTH: 39-51-302, 39-51-2407; IMP. 39-51-1109, 39-51-2403.

RULE XI. FINDINGS OF FACT AND CONCLUSION OF LAW, AND ORDER

(1) After the hearing, the appeals referee issues findings of fact, conclusions of law, and decision, affirming, modifying, or reversing the department's determination or redetermination.

(2) The appeals referee's decision also contains a notice of the appeal rights of an interested party, stating the time, place, and manner in which an appeal may be made.

(3) This appeals referee's decision is final unless further review is begun under sections 39-51-2403 and 39-51-2404, MCA, within 10 days after the appeals referee's decision was mailed to the interested party's last known address.

AUTH: 39-51-302, 39-51-2407; IMP. 39-51-1109, 39-51-2403.

RULE XII. INDEPENDENT CONTRACTOR APPEALS --- SIMILARLY SITUATED EMPLOYEES

(1) A hearing before an appeals referee on the issue of whether an individual is an employee or an independent contractor may be conducted for both unemployment insurance and workers' compensation purposes. A final decision by the board on this issue is binding on both the unemployment insurance division and the workers' compensation division.

(2) A final decision by an appeals referee or the board that an individual is an employee is binding with respect to all similarly situated employees in the employer's business.

AUTH: 39-51-302, 39-51-2407, MCA; IMP. 39-51-1109

RULE XIII. SELF-EMPLOYMENT APPEALS --- NECESSARY PARTIES --- DECISIONS BINDING FOR TAX PURPOSES

(1) If a claimant who has been denied benefits because the department determined that the claimant was self-employed under section 39-51-2308, MCA, appeals the department's determination, the following interested parties are necessary parties to the action:

- (a) the claimant;
- (b) the department;
- (c) the chargeable employer;
- (d) the employing unit claimed to be the claimant's employer.

(2) All of the necessary parties must be given notice of any administrative proceedings with opportunity to present evidence and cross-examine witnesses.

(3) A final decision by the appeals referee or the board on a self-employment issue is binding for tax purposes as well as for benefits purposes.

AUTH. 39-51-302, 39-51-2407, MCA. IMP. 39-51-2308, 39-51-1109, MCA.

24.11.305 WITNESS FEES (1) Witnesses, subpoenaed pursuant to Section 39-51-2409 MCA, shall be paid witness and mileage fees for attendance at hearings on appeals as follows: Ten dollars (\$10.00) for each day's attendance plus mileage in

traveling to the place of the hearing at the rate of seventeen cents (.17¢) per mile each way. (History: Sec. 2-4-201, 39-51-2407 MCA; IMP, 2-4-201, 39-51-2407 MCA;

24.11.306 DISQUALIFICATION, CHALLENGES (1) ~~No member of the division or of an appeal tribunal shall participate in the hearing of any appeal in which he has an interest nor shall any such member represent any interested party or witness at any appeal hearing. Any interested party may challenge at any time any member of the division or an appeal tribunal in writing, stating the reason therefore, served upon the administrator of the division. Such challenge shall be ruled upon immediately and such ruling shall be subject of the case. A challenge to the interest of the referee after the conclusion of a hearing must be made before the decision pursuant to such hearing becomes final and shall be considered an appeal from that decision. If the division shall find merit in the challenge, it shall disqualify the challenged member and shall appoint another person to hear the appeal.~~ (1) The appeals referee may be disqualified as provided in section 2-4-511, MCA, and this rule.

(2) After the filing of a motion and affidavit of disqualification, the appeals referee shall immediately rule upon the disqualification. This ruling is then appealable as a subject of the case.

(3) At any time, an appeals referee may issue an order or give notice of self-disqualification.

(History: Sec. 39-51-302, 39-51-2407 MCA; IMP, 39-51-2407 MCA;

24.11.307 APPEALS DECISIONS TO BE FILED (1) Copies of all decisions of appeal tribunals shall be kept on file at the office of the division appeals bureau in Helena, Montana. Such decisions shall be open for inspection. (History: Sec. 2-4-201, 39-51-2407 MCA; IMP, 2-4-302, 39-51-2407 MCA;

Subchapter 4

Claims for Benefits

RULE XIV DEFINITIONS. The following definitions apply to this subchapter, unless context clearly indicates otherwise:

(1) "Base period" means that period defined in 39-51-201, MCA, and generally means the first four of the last five completed calendar quarters immediately preceding the first day of a claimant's benefit year.

(2) "Benefit year" is defined in 39-51-201, MCA, lasts 52 weeks, and begins with the filing of an initial claim.

(3) "Valid claim" means a claim filed by a claimant who:
(a) has earned the qualifying amount of wages and worked the required number of weeks as required by 39-51-2105, MCA;
(b) is eligible to receive benefits under 39-51-2104, MCA;

and

(c) has not been disqualified under 39-51-2301, MCA, et seq. and the applicable administrative rules.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA. IMP. 39-51-2101-39-51-2601, MCA.

RULE XV. BENEFIT CLAIMS. (1) To apply for unemployment insurance benefits, a claimant must file the following information with a local office on a form or forms provided by the department:

(a) whether the claimant is totally unemployed;
(b) whether the claimant is able to work, available for work and is seeking work;

(c) the amount of earnings and the number of hours of work for any week for which benefits are claimed; and

(d) any other information the department may require for the proper administration of the claim.

(2) A claim generally must be filed in person at a local office. Application by mail may be permitted if the department finds good cause for not reporting in person or if it is impractical for the department to accept the claim in person.

(3) A claim is effective on the first day of the calendar week for which the claim was filed and lasts 52 weeks as provided in 39-51-2014, MCA. When the claim is not filed within 7 days of the first day of unemployment, the claimant may request that the claim be backdated. If the department finds good cause for the claimant's delay, the claim will be backdated.

(4) Each claimant must serve a one-week waiting period to receive benefits. The claimant must be eligible to receive benefits to be credited with serving the waiting period. A continued claim must be submitted for this week. A claimant is required to serve only one waiting period for each benefit year.

(5) A claim may be cancelled if a claimant requests cancellation within 10 days of mailing of the initial determination. Any requests for cancellation received after this time period will be granted only if the claimant shows good cause for the delay.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2101-2410, MCA.

RULE XVI. INITIAL MONETARY DETERMINATION---WAGES---
REVISIONS (1) After filing a claim, a claimant will receive an initial monetary determination stating whether the claimant has sufficient wages and weeks of work to qualify for benefits.

(2) The initial monetary determination informs the claimant of:

(a) the department's records of claimant's base period employer or employers;

(b) the amount of wages reported in the base period;

(c) the number of weeks worked in the base period;

(d) the average weekly wage;

(e) the potential amount of benefits the claimant may

receive in the benefit year; and

(f) the effective date of the claim.

(3) If a claimant's wage records have not been received, and the department has determined that the employer is subject to unemployment tax, the claimant may support the claim by affidavit or documented evidence for the department's consideration in establishing the amount of base period wages.

(4) Generally, only wages actually or constructively paid determine the amount of wages in the claimant's base period. Wages are constructively paid if they are credited to the employee's account or set apart for an employee so that they may be drawn upon by the employee at any time, although not actually in the employee's possession. However, unpaid wages may be considered if a claimant:

(a) completes an affidavit stating:

(i) the name and address of any employer from whom wages are due;

(ii) the amount of unpaid wages and number of weeks of work; and

(iii) the reasons why the wages have not been paid; and

(b) provides at least one of the following:

(i) a W-2 or 1099 form as required by the Internal Revenue Service;

(ii) a signed statement from the employer affirming the truth of the claimant's affidavit;

(iii) a certified copy of the employer's schedule of assets and liabilities filed in a bankruptcy proceeding showing the unpaid wage claim;

(iv) a certified copy of the claimant's wage claim filed with the department, if the department has not dismissed the wage claim; or

(v) a certified copy of a decision of the department or a court of competent jurisdiction stating that the wages are owed the claimant.

(5) Vacation pay for vacation taken is wages and is used to determine the number of weeks of work. If a lump sum for accrued vacation leave is paid to a claimant, the sum is prorated over the period in which the vacation pay was earned.

(6) Except as provided in this rule, the initial monetary determination is final unless a claimant requests revision of the determination within 10 days after the determination was mailed. Upon request of the department, the claimant may be required to provide proof of earnings and weeks worked, such as check stubs, W-2 forms, or statements from employers.

(7) The amount of wages may be revised after the initial monetary determination becomes final if newly obtained wage information changes the claimant's maximum benefit amount by at least \$50.00.

(8) A monetary redetermination is final unless a claimant appeals the decision as provided in sections 39-51-2402 and 39-51-2403, MCA, within 10 days of the date the redetermination was mailed.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA.

RULE XVII CONTINUED CLAIMS (1) After making an initial application for benefits in a benefit year, and in order to receive benefits, a claimant must file bi-weekly a continued claim. A continued claim is also known as a pay card, a UI-203, or weekly certification.

(2) Each continued claim covers two weeks. The week ending dates are shown on the claim.

(3) A claimant must answer each question on the claim and sign it, or it will be returned to the claimant for completion.

(4) A claimant must report all earnings, except for commissions, in the week they were earned and not the week paid. Commissions may be reported when paid.

(5) A claimant must file a continued claim with the department within 7 days of the last week ending date on the claim. The department may extend the time limit for receipt of continued claims if the claimant shows good cause for the delay. Otherwise, the department may require a claimant to reactivate the claim.

(6) If a claimant files a redetermination request or an appeal, the claimant must also file continued claims for each week the redetermination or appeal is pending.

(7) A continued claim may be filed by mail.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2101-2308, MCA.

RULE XVIII COURTESY CLAIMS (1) When a claimant is seeking work outside of the area served by the local office, the claimant may file a continued claim at the local office in the area the claimant is seeking work. A claimant may not file such a claim for more than two consecutive weeks.

(2) If a claimant files courtesy claims for more than two consecutive weeks, then the claimant must register at the local office and submit a change of address.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2103, 39-51-2104, 39-51-2201, MCA.

RULE XIX INACTIVE CLAIMS---REACTIVATING A CLAIM (1) If a claimant fails to file a continued claim two consecutive weeks in the benefit year, the claim becomes inactive.

(2) A claimant may reactivate a claim by contacting the local office.

(3) A claimant must provide information on separation from employment.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2103, 39-51-2104, 39-51-2201, MCA.

RULE XX ELIGIBILITY REVIEW PROGRAM (1) A program has been established by the department to review a claimant's eligibility to receive benefits. The purpose of the program is to review the

work contacts made by the claimant and help the claimant in further worksearches. Any claimant may be selected to participate in the program.

(2) A claimant who is selected to participate in the program receives a written notice to report for an interview at the local office. Failure to report to the local office at the scheduled time, or failure to notify the office and reschedule the interview, may result in benefit disqualification.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2104, 39-51-2304, MCA.

RULE XXI PARTIAL BENEFITS A claimant may be eligible to receive partial benefits if, in a week, the claimant:

(1) earned less than twice the claimant's weekly benefit amount;

(2) was employed by an employing unit or self-employed but not disqualified under Rule XXIV; and

(3) worked less than the customary hours because of the lack of work.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2202, MCA.

RULE XXII NON-MONETARY DETERMINATIONS AND REDETERMINATIONS--NOTICE (1) The department determines whether a claimant has a valid claim with respect to non-monetary considerations. These considerations and tests are found in the following rules and in 39-51-2301, et seq, MCA.

(2) The initial non-monetary determination is based on the claimant's and the employer's responses on forms supplied by the department and answered within the time requested by the department. The forms provided by the department are the UI- 218, a Notice of Request for Information with Respect to Claim, or a UI-202a.

(3) If the claimant or the employer fails to return the forms supplied by the department, the determination will be based on the available facts. Before issuing the initial non-monetary determination, the department may consider information submitted by any interested party.

(4) The department sends notice of the determination or redetermination to all interested parties. The notice states the department's decision, its reasons, and the appeal rights of any interested party.

(5) When a non-monetary redetermination request is made, new evidence will be considered by the department only if all interested parties are given the opportunity to comment on the new evidence, and submit rebuttal evidence, if any.

(6) An interested party aggrieved by the department's decision may appeal the decision as provided in sections 39-51-2402 and 2403, MCA.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2301-2304, MCA.

RULE XXIII SIX-WEEK RULE (1) The department reviews each separation that occurred during the six weeks immediately preceding the effective date of the claim to establish whether the claimant is eligible for benefits. If the claimant was not employed during this six-week period, the department reviews the claimant's most recent separation from employment.

(2) If the claimant was disqualified for gross misconduct, as defined in 39-51-201, MCA, the 52-week disqualification in section 39-51-2303, MCA, controls the eligibility determination.

(3) If the claimant was separated from employment several times, the most recent disqualification is applied. If this disqualification is removed because of a redetermination or appeal, the next most recent disqualification applies. AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2301-2304, MCA.

RULE XXIV SELF-EMPLOYMENT (1) The test of whether a claimant is self-employed and thereby disqualified from benefits under 39-51-2308, MCA, is based on whether the claimant is available for work as required by 39-51-2104, MCA.

(2) If self-employment is casual in nature and the claimant is available to accept suitable work in the general labor market, then self-employment is not a claimant's principal occupation and a claimant will not be disqualified from receipt of benefits. The claimant is required to seek work and must be willing to accept suitable employment.

(3) A claimant's principal occupation is self-employment if the claimant:

(a) is not available for suitable work because the claimant intends to make self-employment a full-time occupation; or

(b) is available for suitable work for a temporary period and only until the claimant returns to self-employment.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2304, 39-51-2308, MCA.

RULE XXV LEAVES OF ABSENCE----DISCIPLINARY SUSPENSIONS (1) A claimant on leave of absence or under a disciplinary suspension from work may qualify for benefits if the employment relationship has been severed. The general test of whether the employment relationship has been severed is whether the claimant is available for other employment.

(2) A leave of absence does not sever the employment relationship if:

(a) a return-to work date has been agreed upon by the employer and the claimant;

(b) the claimant receives remuneration during the leave of absence; or

(c) the reasons for the leave of absence prevent the claimant from accepting employment during the duration of the leave.

(3) A disciplinary suspension may sever the employment relationship if the suspension is:

(a) indefinite; or

(b) so long that the claimant could not reasonably be expected to be without income during the suspension.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2101, 39-51-2104, MCA.

RULE XXVI ABLE, AVAILABLE, AND ACTIVELY SEEKING WORK. A claimant is not able, available or actively seeking work within the meaning of 39-51-2104, MCA, if the claimant:

- (1) is unwilling to accept suitable work;
- (2) is unavailable for employment, without good cause, for more than two days in a benefit week;
- (3) is on a leave of absence or under a disciplinary suspension and the employment relationship has not been severed;
- (4) fails to respond to an interview required by the department including, but not limited to, an interview under the eligibility review program or an interview because of a benefit overpayment;
- (5) fails to respond to a request for further information regarding the claim within 7 days of mailing the request, or fails to show good cause why the deadline has not been met;
- (6) is not willing to accept work for any shift or day normally required in the occupation suitable for the claimant; or
- (7) does not have and cannot obtain transportation to suitable work.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2101, 39-51-2104, 39-51-2304, MCA.

RULE XXVII VOLUNTARY AND INVOLUNTARY SEPARATIONS FROM EMPLOYMENT. (1) To determine whether a claimant quit or was discharged, three factors must be considered:

- (a) who was the "moving party" or who initiated the separation from employment;
- (b) what was the cause of the separation; and
- (c) what was the effect of the separation on the claimant and the employer.

(2) If the separation is voluntary, the claimant is disqualified unless the claimant left work for good cause attributable to employment as provided in 39-51-2302, MCA, and applicable rules. If the separation is involuntary in that the claimant was discharged, the claimant is disqualified if he was discharged for misconduct as provided in 39-51-2303, MCA, and applicable rules.

(3) A claimant has left work voluntarily if:

- (a) the claimant gives a clear and unequivocal notice of resignation even if the claimant later attempts to withdraw the resignation;
- (b) leaving employment was based upon a certain condition within the employer's control and the condition has been met, such as, the claimant agreed to stay at work until a replacement was hired and this has been done;
- (c) the claimant leaves employment in anticipation of a discharge not based on misconduct as defined in Rules XXVIII and

XXIX; or

(d) the claimant is deemed to have constructively quit as defined in this rule.

(3) A claimant is deemed to have constructively quit if the claimant accepts employment on specified conditions and the claimant fails to meet those conditions through the claimant's own fault. Such conditions may include, but are not limited to, failing to meet license or permit requirements for employment or failing to maintain insurability.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2101, 39-51-2104, 39-51-2302, and 39-51-2303, MCA.

RULE XXVIII. DISQUALIFICATION FOR MISCONDUCT (1) Misconduct as used in 39-51-2303, MCA, includes, but is not limited to, the following conduct by a claimant:

(a) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer;

(b) deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) carelessness or negligence that causes or would likely cause serious bodily harm to the employer or fellow employee; or

(d) carelessness or negligence of such degree or recurrence as to show an intentional or substantial disregard of the employer's interest;

(2) The term misconduct does not include:

(a) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) inadvertences or ordinary negligence in isolated instances; or

(c) good faith errors in judgment or discretion.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2303, MCA.

RULE XXIX. SPECIFIC ACTS OF MISCONDUCT (1) The following acts are considered misconduct because the acts signify a willful and wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include:

(a) insubordination showing a deliberate, willful or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) repeated inexcusable tardiness following warnings by the employer;

(c) dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception or lying.

(d) repeated and inexcusable absences for which the employee was able to give advance notice and failed to do so;

(e) deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; and

(g) violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2303, MCA.

RULE XXX. OFF-DUTY CONDUCT (1) While misconduct usually occurs during the claimant's normal working hours, "off-duty" conduct may constitute misconduct if it meets the criteria in Rule XXVIII and if such conduct:

(a) significantly and adversely affects the claimant's ability and capacity to perform job duties; and

(b) significantly and adversely affects the employer's business to a substantial degree.

(2) The connection between the misconduct and its effect on the employer's business must be reasonable and discernible. Speculation as to adverse effect upon the employer's business will not be sufficient.

(3) The employer must demonstrate by a preponderance of the evidence that the off-duty conduct significantly affected the employment relationship.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2303, MCA.

RULE XXXI. LEAVING WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) A claimant has left work with good cause attributable to employment as provided in 39-51-2302, MCA, if:

(a) compelling reasons arising from the work environment caused the claimant to leave;

(b) a reasonable person in the claimant's position and wanting to retain employment would similarly have left work;

(c) the claimant attempted to correct the problem in the work environment; and

(d) the claimant informed the employer of the problem and gave the employer a reasonable opportunity to correct it.

(2) The term "compelling reasons" as used in this rule includes but is not limited to:

(a) undue risk of injury, illness, physical impairment, or reasonably foreseeable risks to the claimant's morals;

(b) unreasonable actions by the employer concerning hours, wages, or working conditions;

(c) the claimant's health would be jeopardized by remaining employed, as supported by a medical statement; or

(d) unreasonable rules or discipline by the employer so severe as to constitute harassment.

(3) A claimant who voluntarily leaves work to attend school has left work without good cause attributable to employment. Under 39-51-2302, MCA, the claimant can requalify for benefits,

other than extended benefits, without earning the required six times weekly benefit amount if:

(a) the school schedule would have interfered with the previous employment; and

(b) the school is an accredited educational institution which the student has regularly attended for at least 3 consecutive months from the date of enrollment.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-2302, 39-51-2307, MCA.

RULE XXXII. OVERPAYMENTS (1) All overpayments of benefits must be repaid to the department, regardless of the cause of the overpayment, unless the claimant obtains a waiver in accordance with Rule XXXIII.

(2) If, after a preliminary investigation, there is reason to believe that an overpayment occurred, the department sends to the claimant a notice containing the following information:

(a) the information obtained during the department's investigation;

(b) a statement asking the claimant to respond within 7 days to the information either by mail or in person to the local office and schedule an appointment with the local office; and

(c) a statement explaining the claimant's rights and responsibilities.

(3) If, after the claimant's response is received or the allotted time has expired, and if the department finds an overpayment exists, the department issues an overpayment determination and notifies the claimant of appeal rights under section 39-51-2402 and 39-51-2403, MCA.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-3206, MCA.

RULE XXXIII. WAIVER OF OVERPAYMENTS (1) A claimant may request a waiver of an overpayment determination.

(2) The department considers the following factors in reviewing requests for waivers:

(a) the degree of the claimant's fault;

(b) the cause of the overpayment, including whether a decision from an appeals referee caused the overpayment, and whether the claimant was advised that repayment is required if benefits are denied in the appeals process; and

(c) the claimant's ability to repay, including whether repayment would cause a lasting and extraordinary financial hardship on the claimant.

(3) The department notifies the claimant of its determination and the claimant's right to appeal under sections 39-51-2402 and 39-51-2403, MCA.

(4) A claimant may ask for a redetermination of the department's decision if the claimant's financial situation has significantly changed since the initial determination.

(5) The department does not consider waiver requests for fraudulent overpayments as defined in sections 39-51-3201 and 39-

51-3203, MCA, and Rule XXXIV.

(6) Repayment of an overpayment by offset of benefits continues while a waiver application is processed and until a waiver determination, including any appeals decision, is final. If a waiver is granted, the claimant is reimbursed for the overpayment from monies collected after the date a completed waiver application was received by the department.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-3206, MCA.

RULE XXXIV FRAUDULENT OVERPAYMENTS (1) A fraudulent overpayment is an overpayment caused by a person who obtains benefits or other payments as described in 39-51-3201, MCA.

(2) The phrase "false statement or representation" as used in 39-51-3201 and 39-51-3202, MCA, means a statement made with the purpose to mislead and known by the maker to be untrue.

(3) The department conducts a preliminary investigation to determine whether there is reason to believe a person made a false statement or representation. If the department finds such a reason, notice is sent to the person containing the same information as the notice in Rule XXXIII.

(4) The department considers all the available information, in particular, evidence that:

- (a) the person received wages or other payments that would reduce benefits, but failed to report them;
- (b) the person made a false statement or representation;

and

- (c) the person's acts resulting in overpayment were intentional.

(5) If the evidence convincingly establishes by a preponderance of the evidence that the person made a false statement or representation or knowingly failed to disclose a material fact as described in 39-51-3201, MCA, the department notifies the person of its determination, imposes administrative penalties, and may refer the matter to a county attorney for prosecution.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-3201, 39-51-3202, 39-51-3203, MCA.

RULE XXXV QUALITY CONTROL (1) The department operates a quality control program that gathers statistics by investigating claims on a random selection method. The purpose of the quality control program is to identify and recommend solutions to problems in the benefits system. If selected, a claimant must participate in the program to remain eligible for benefits.

(2) This program includes, but is not limited to:

- (a) a review of the claim forms;
- (b) a personal interview with the claimant by department personnel; and
- (c) verifications of wages, statements, and worksearches.

AUTH: 39-51-301, 39-51-302, 39-51-2407, MCA; IMP. 39-51-301, MCA.

24.11.412 APPROVAL OF TRAINING BY THE DIVISION (1) ~~The division shall approve~~ department approves training for any individual ~~claiming eligibility for benefits~~ claimant eligible under Section 39-51-2307, MCA, of the Montana Unemployment Insurance Law if it is found that the training meets the following conditions:

(a) ~~The training facility has been~~ is approved by the agency;

(b) ~~The individual's~~ claimant's skills are either obsolete or, ~~for some other reason,~~ employment opportunities for employment in claimant's ~~him in his~~ usual labor market are minimal and are not likely to improve;

(c) The training course of instruction relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in any labor market area in the state in which the individual claimant intends to seek work;

(d) ~~The individual possesses~~ claimant has aptitudes or skills which can be usefully supplemented within a short time by retraining;

(e) ~~The individual claimant is not receiving~~ a training or educational allowance under another Federal or State program.

(2) On a week-to-week basis a trainee meeting the foregoing qualifications may continue to receive benefits until benefits are exhausted as long as if the training facility certifies that he the claimant is enrolled in and satisfactorily pursuing the training course of instruction. (History: Sec. 39-51-2401 MCA, IMP, 39-51-2401 MCA;

24.11.414 DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS PURPOSES (1) ~~An individual claimant who fails to apply for available suitable work or fails to accept available suitable work or, when so directed by the department, fails to return to his claimant's customary occupation, if any, shall be is denied benefits for the week in which the failure occurred occurs, and for following weeks until the claimant earns an amount equal to or greater than the extended weekly benefit amount, as defined in 39-51-2509, MCA, in services other than self-employment for any four weeks in the period of eligibility. The four weeks need not be continuous. The individual shall also be denied extended benefits beginning with the first day of the week following the week in which the failure occurred until services in other than self-employment are performed and the individual has earnings equal to or greater than the extended weekly benefit amount, as defined in 39-51-2509, MCA in any four weeks within the period of eligibility for extended benefits following the disqualification. These four weeks need not be continuous. The individual's extended benefit duration shall be reduced by four weeks. The claimant's extended benefit duration is nevertheless reduced by the four weeks.~~

(2) For extended benefits purposes the term 'suitable work' means any work which is within the individual's capabilities. No

~~work shall be determined suitable for an extended benefits claimant unless all of the meets the following criteria are met:~~

- ~~(a) The work is within the claimant's capabilities;~~
- ~~(ab) The gross average weekly remuneration payable wages for the work must exceed exceeds the individual's claimant's extended weekly benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in 26 USCA 501(c)(17)(D) of the Internal Revenue Code of 1954 as amended) payable for such week;~~
- ~~(bc) The wages payable are higher than the minimum wage provided by 29 USCA 206(a)(1), of the Fair Labor Standards Act of 1938 as amended, or any state or local minimum wage. These wages will be are the exterior rule even if the occupation is not subject to the minimum wage requirements; and~~
- ~~(ed) The position was offered to the individual claimant in writing or was listed with the Montana State Job Service a local office or, for interstate claims, with the Job Service of the state in which the claimant is filing in the case of an interstate claim.~~

~~(d3) When determining if a denial of benefits will be denied is to be assessed the definition of suitable work in Section 39-51-2304(2)(3)(a)(b)(c), MCA will be is applied. The failure to apply for or to accept suitable work could will not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Section 39-51-2304(2) to the extent that if the criteria of suitability in that section are not inconsistent with the provisions in this rule.~~

~~(e4) Regardless of the provisions of this rule, no work shall be determined is suitable if it does not meet the labor standards provisions required by Section 202(a)(3), of the Federal State Extended UC Act and contained in Section 39-51-2304(3), MCA.~~

~~(35) If the individual claimant furnishes satisfactory evidence that his or her prospects are good for obtaining work in his or her claimant's customary occupation within four weeks of the date of eligibility for extended benefits, the definition of suitable work for regular benefits is used to determine if any work is suitable for the extended benefits claimant. the determination of whether any work is suitable for that individual shall be made in accordance with the definition of suitable work for regular benefit claimants. A final determination that the work is not suitable under the regular benefit criteria shall dispose disposes of that issue and it shall not again be will not be determined again under the provisions of this rule.~~

~~(46) The Job Service shall refer refers any claimant entitled to extended benefits to any suitable work which meets the criteria prescribed in this rule. (History: Sec. 39-51-2508 MCA, IMP, Sec. 39-51-2508 MCA;~~

24.11.436 DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE

~~(1) This rule defines and interprets disqualification when unemployment is due to a strike as set forth in 39-51-2305, MCA,~~

and describes the procedural steps the department will follow as set forth in 39-51-2402 MCA and 39-51-2403 MCA.

(2) (1) ~~"Strike" defined.~~ A For purposes of this rule, a strike is a concerted cessation of work by employees of an establishment in an effort to obtain desirable terms from an employer.

(3) Purpose. This rule is primarily concerned with explaining the procedure by which the department will determine whether a class of workers on strike are excepted under 39-51-2305(3), MCA. The department's authority to promulgate said procedural rules is derived from 39-51-2402 MCA.

(4) The intent of the legislature concerning benefits to striking employees is to deny benefits unless the employee shows the employer's violation of law caused the strike.

(5) This exception to the general rule of denying benefits to strikers requires the claimant to prove that:

(a) a law violation occurred

(2) To qualify for benefits, a claimant who is on strike must prove, by a preponderance of the evidence, that:

(a) the employer failed to conform to any law of the state where the dispute arose or to federal laws pertaining to collective bargaining, hours, wages, or other conditions of work as described in 39-51-2305, MCA, and

(b) the law violation employer's failure to conform was the cause in fact, and proximate cause, of the strike.

(6) (3) The alleged law violation failure to conform does not need to be the sole reason for the strike. However, it must be a factor in the claimant's decision to participate in the strike. ~~So, employer refused to grant: 1) 2 percent increase in wages, 2) an additional paid holiday, 3) additionally the employer refused to hire any women or men over the age of 40. In this example the first two actions by the employer may arguably not be violations of the law. However the third reason concerns a potential Montana human rights violation and EEOC violation. If the employees can show that the employer's refusal to hire persons over 40 occurred and that his refusal was a factor in their decision to strike, benefits would be awarded.~~

(7)(4) Class Determination. All claims filed by employees belonging to the same or similar grade or class of workers against a singular employer shall be consolidated as a class claim. This will prevent disparate treatment and promote uniformity in the administration of the claims.

(8) Determination if claimants allege employer's unlawful conduct caused the strike.

(a) Burden of Proof. It shall be the ultimate burden of the claimant or claimant representative to show by a preponderance of the evidence that the employer's failure or refusal to conform to any law of the state wherein the dispute arose or of the federal laws pertaining to collective bargaining, hours, wage or other conditions of work the claimants to strike.

(b) (a) Causal Relationship. There must be a causal relation relationship between the alleged employer's employer's

alleged law violation and the employees' reasons for participating in the strike. The alleged law violation does not need to be the sole reason for the strike. However, it must be a factor in the claimant's decision to participate in the strike.

~~(c) Department's procedure in determining alleged employer law violations:~~

~~(i)(5) If the a claimants allege claimant alleges the reason for participating in the strike was caused by the employer's failure to conform to state or federal laws, they the claimant shall as specify must indicate on the initial claims form provided by to the department, stating the circumstances of the alleged law violation failure and its relation to the claimants decision to strike.~~

~~(ii)(6) The department will forward forwards the above claims forms to the employer. Within five (5) working days from mailing the forms employer must respond to the allegations if there is a dispute. Failure to do so will be deemed an admission that the allegations contained in the claims form are true. If the employer, without good cause, fails to respond within 5 working days from the mailing of the form, the department will make a decision based on the available information.~~

~~(iii)(7) The department will review reviews the claimant's allegations and the employer's response. If there is no genuine issue of fact is in dispute, the claims examiner department will determines whether, on the available facts, a preponderance of evidence shows the alleged law violation failure to conform caused the strike. If so, benefits shall be are awarded. The employer may exercise its right to appeal the decision under 39-51-2403, MCA.~~

~~(iv) (a) Factual Dispute Determinations: In the event if a genuine issue of fact exists at the initial determination stage, the department may refer the questions of fact to an appeals referee for the initial determination. Such a hearing before the appeals referee is conducted in the same manner as tax hearings. The employer or claimant may exercise its right of review by appealing appeal the referee's decision directly to the Board of Labor Appeals.~~

~~(v) (b) The findings and conclusions of the department representative or the Board of Labor Appeals is limited to unemployment insurance cases and is not precedent in any other proceeding which may be initiated by the parties involving the same issues, parties, or facts. (History: Sec. 2-4-201, 39-51-301, 39-51-302, 39-51-2402, 39-51-2403, 39-51-2305, 39-51-2407 MCA; IMP, Sec. 2-4-201, 39-51-301, 39-51-302, 39-51-2402, 39-51-2403, 39-51-2305, 39-51-2407 MCA;~~

Sub-Chapter 5

Interstate Claimants

24.11.501 DEFINITIONS (1) As used in this sub-chapter,

unless the context clearly requires otherwise:

(a) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies that contains a method for paying benefits to claimants who:

(i) earned unused covered employment and wages; or
(ii) have valid claims, but may not receive benefits because they are no longer in the state where their benefit credits accumulated. work would under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.

(b) "Interstate claimant" means an individual claimant who files for who claims benefits under the unemployment insurance law of one or more liable States states through the facilities of an agent State state. The term "Interstate claimant" shall ~~does~~ not may also include any individual claimant who customarily commutes from a residence in an agent State state to work in a liable State unless to a work site in a liable state and the division department finds that this exclusion would create undue hardships on such claimants in specified areas undue hardships may be created for the claimant.

(c) "State" includes, in addition to the States of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Dominion of Canada.

(d) (c) "Agent State" means any State in which an individual claimant files a claim for benefits from another State.

(d) "Liable state" means the state whose trust fund is used to pay benefits.

AUTH. 39-51-302, MCA, IMP. 39-51-504, MCA.

24.11.502 REGISTRATION FOR WORK (1) Each interstate claimant shall be must registered for work, through any a public employment office in the agent state when and as required by the law. Such This registration shall be accepted as meeting is sufficient to meet the registration requirements of the agent the liable State. (History: Sec 39-51-504 MCA' IMP, Sec. 39-51-504 MCA;

24.11.503 BENEFIT RIGHTS OF INTERSTATE CLAIMANTS (1) If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits in such State Claims can be filed against a state as long as if benefit credits are available in that State. Thereafter, the When a claimant has exhausted benefits in that state may file claims may be filed against any other State in which there are available benefit credits are available. For the purpose of this rule, benefit credits shall be deemed to be are unavailable whenever benefits if they have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits are affected by the application of a seasonal restriction. (History: Sec. 39-51-504 MCA; IMP: 39-51-504, MCA

24.11.504 CLAIMS FOR BENEFITS (1) Claims for benefits or

~~waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be are filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be are made by the liable State on the basis of consecutive claims filed.~~

(2) ~~Claims shall be are filed in accordance with according to agent State regulations for intrastate claims. Claims may be filed at in local employment offices, or at the itinerant point, or by mail.~~

(a) ~~With respect to claims Claims for weeks of unemployment in which individual a claimant was not working for the claimant's his regular employer, that are filed up to one week or one reporting period late, may be reopened the liable State shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be filed used to begin a claim series and no continued claim for a past period shall be accepted.~~

(b) ~~With respect to For weeks of unemployment during which an individual a claimant is attached to his regular employer the liable State shall accepts any claim which is filed within the time limit applicable to such claims under the law of the agent State. (History: Sec. 39-51-504, MCA, IMP, 39-51-504 MCA,~~

24.11.505 DETERMINATIONS OF CLAIMS (1) ~~The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State. For each interstate claim filed, the agent state reports to the liable state all available information concerning claimant's availability for work and eligibility for benefits.~~

(2) ~~The agent State's responsibility and authority in connection with the determination of concerning interstate claims shall be is limited to investigation and reporting of relevant facts. The agent State shall may not refuse to take an interstate claim. (History: Sec. 39-51-504 MCA, IMP, Sec. 39-51-504 MCA;~~

24.11.506 APPELLATE PROCEDURE (1) ~~The agent State shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with a disputed benefit claims. An appeal made by an interstate claimant shall be deemed to have been is considered made and communicated to the liable State on the date when it is received by any qualified officer of the agent State. (History: Sec. 39-51-504 MCA; IMP, 39-51-504 MCA;~~

Sub-Chapter 6

Classification and Rates

24.11.602 PAYMENTS BY THE STATE AND ITS POLITICAL SUBDIVISIONS STATE AND LOCAL GOVERNMENTS. (1) ~~The division shall establish a rate for the state and its political subdivision to be applied to the gross wages paid and reported each quarter. This rate will be subject to adjustment the beginning of each tax year based upon the benefit cost experience of governmental entities as a whole and individually. A governmental entity that does not elect to reimburse the trust fund is assigned an experience rating based on section 39-51-1212, MCA. (See Chart on page 24-621)~~
(History: Sec. 39-51-302, MCA; IMP, Sec. 39-51-302, MCA;

RULE XXIV DEFINITIONS The following definitions apply to subchapters 6, 7, and 8, of these rules:

(1) "Calendar quarter" means any one of the following quarters in a year:

First - January, February, March

Second - April, May, June

Third - July, August, September

Fourth - October, November, December

(2) "Contribution rate schedule" is the schedule setting the range of contribution rates that may be assigned to employers in each calendar year. The contribution rate schedule is the ratio of the trust fund balance as of December 31 to the total wages in employment for each year, ending September 30. See section 39-51-1218, MCA.

(3) "Experience factor" is described in section 39-51-1213, MCA, and is computed for each employer to determine the amount of tax owed by the employer.

(4) "Trust fund" means the unemployment insurance trust fund created in section 39-51-401, MCA.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1103, 39-51-1213, MCA.

RULE XXIV EXPERIENCED-RATED EMPLOYERS (1) An experienced-rated employer is a private employer whose tax rate is based on the experience rating record of each business operated by the employer and the rate classification assigned to the employer under the contribution rate schedule.

(2) The contribution rate for each experience-rated employer is calculated by:

(a) determining the employer's experience factor;

(b) comparing that experience factor to the experience factors of all other employers; and

(c) assigning the employer a rate classification within the contribution rate schedule.

(3) (a) The experience factor as defined in 39-51-1213, MCA,

is computed by subtracting the benefits charged to the employer's account since October 1, 1981, from the amount of contributions paid by the employer since October 1, 1981. This is the "reserve." The reserve is then divided by the average annual taxable payroll for the last three fiscal years. The resulting ratio is the experience factor, also known as the reserve ratio. The following equations show how the experience factor is calculated:

$$\text{Contributions paid} - \text{Benefit charges} = \text{Reserve}$$

$$\text{Reserve} / \text{Average taxable payroll} = \text{Experience Factor}$$

(b) Each experience-rated employer is assigned a rate classification on the contribution rate schedule depending upon the employer's experience factor.

(c) Experience-rated employers are divided into three categories: eligible, unrated, and deficit employers. Each category is defined in section 39-11-1121, MCA.

(4) On or before April 1 of each year, the department mails rate notices to employers. The type of notice depends upon whether the employer is an eligible employer, deficit employer, unrated employer, or a deficit employer with past due taxes.

(5) Eligible employers and deficit employers who do not have delinquent accounts are sent a rate notice with the following information:

(a) the employer's taxable wages from the three fiscal years immediately preceding the computation date;

(b) the amount of all contributions paid from October 1, 1981, through the computation date;

(c) the amount of benefits charged to the account since October 1, 1981 through the computation date;

(d) the average taxable wages for the last three years;

(e) the employer's reserve and reserve ratio;

(f) the tax rates for the current year; and

(g) the employer's taxable wage base for the current year.

(6) Unrated employers are sent a rate notice with the following information:

(a) the tax rates for the current year; and

(b) the taxable wage base for the current year.

(7) (a) Deficit employers with past due taxes or reports are assigned the maximum contribution rate effective for the current year. Eligible employers with past due taxes or reports are assigned the rate for unrated employers.

(b) If all past due taxes or reports are satisfied within 30 days of the date of mailing the rate notice, the employer's deficit or eligible contribution rate is reinstated. The department sends the employer a new contribution rate notice.

(8) (a) The rate notice is final unless the employer files a written request for a redetermination within 30 days of receiving the rate notice. The request for redetermination must explain why the employer believes the assigned contribution rate is

incorrect.

(b) If, after redetermination, the employer still contests the contribution rate, the employer may appeal the department's decision to an appeals referee under sections 39-51-2402 and 39-51-2403, MCA.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1103, 39-51-1121, 39-51-1123, and 39-51-1213, MCA.

RULE XXXVIII EMPLOYERS ELECTING TO REIMBURSE THE TRUST

FUND. (1) Under sections 39-51-1124 through 39-51-1126, MCA, in lieu of paying taxes, a nonprofit organization or governmental entity may elect to reimburse the trust fund for benefit payment costs.

(2) To qualify for reimbursement, the employer must:

(a) meet the criteria in Section 501(c)(3) of the Internal Revenue Code;

(b) submit a copy of the exemption letter from the Internal Revenue Service; and

(c) file an election of method of payment form (UI 1A).

(3)(a) To reimburse the trust fund, an employer must pay into the trust fund an amount equal to the regular benefits and the State of Montana's share of extended benefits charged to the employer's account.

(b) The department notifies the employer monthly of the amount of benefits charged to the account.

(c) The trust fund may be reimbursed on a monthly or quarterly basis, but must be reimbursed no later than 30 days after the end of the quarter in which benefits were charged to the account.

(4) A governmental entity that does not elect to reimburse the trust fund is assigned an experience rating based on section 39-51-1212, MCA.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1124, 39-51-1125, and 39-51-1126, MCA.

RULE XXXIX EXPERIENCE RATING TRANSFER

(1) The procedures for transferring an employer's experience rating are described in section 39-51-1219, MCA. For purposes of this rule, predecessor employer and successor employer are used in the same manner and have the same meaning as those terms have in section 39-51-1219, MCA.

(2) (a) Except as otherwise provided in this rule, a form for transferring the experience rating (UI-272) and a registration packet are automatically sent to the successor employer if, within 90 days of the change of ownership, the department discovers that an account involves a predecessor employer. After 90 days, the successor employer must request the form and registration packet.

(b) An experience rating is automatically transferred from the predecessor employer to the successor employer if the predecessor employer had a deficit rate and the ownership of the successor entity is substantially the same as that of the

predecessor entity. For purposes of transferring the deficit experience rating, "substantially the same" means that at least 50% of the successor entity is owned or controlled by the same individuals who owned or controlled the predecessor entity.

(3) A request for transfer of the experience rating record may be approved if:

- (a) all delinquent reports are filed;
- (b) all past due taxes are satisfied; and
- (c) the successor employer files an employer registration form (UI-1).

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1219,
MCA.

RULE XL CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS---CHARGEABLE EMPLOYERS (1) Benefit payments are charged to the experience-rated employer who paid the largest amount of wages in the claimant's base period. A claimant's last employer is not necessarily the employer whose account is charged with the benefits paid to the claimant.

(2)(a) When a claimant files a claim for benefits, the department mails a "Potential Benefit Charge Notice" to the chargeable employer. This notice tells the employer that the benefits paid to the claimant will be charged to the employer's experience-rating account unless the employer shows that the claimant was not eligible or was disqualified from receiving benefits.

(b) As provided in section 39-51-1214, MCA, the department reviews the information submitted by the employer and issues a determination notice stating whether or not the employer should be charged for the claimant's benefits.

(c) The employer may appeal the department's decision within 10 days of mailing the determination as provided in section 39-51-2402, MCA.

(3) Within 60 days of the end of each calendar quarter, the department mails to the employer a statement of benefits charged to the employer's account. This statement shows:

- (a) the claimant's name and Social Security number;
- (b) the date on which the charges were effective; and
- (c) the amount of benefits charged to the employer's account.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1214,
MCA.

RULE XLI. BENEFIT OVERPAYMENTS---CREDITING EMPLOYER ACCOUNTS (1) The department immediately credits an experience-rated employer's account if a benefit overpayment occurs. The employer is informed of the credit on the statement of benefits charged to the account.

(2) The employer's account is credited for the amount the account was previously charged for benefits. For example, if the employer was charged for 50% of the benefits, the employer would be credited for 50% of the overpayment.

(3) A governmental entity or an employer electing to reimburse the fund is credited for an overpayment when the overpayment is recovered from the claimant or when the overpayment is waived.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1110, MCA

Sub-Chapter 7

Records and Reports

24.11.701 RECORDS TO BE KEPT BY EMPLOYER

~~(1) Each employing unit shall preserve existing records with respect to employment performed in its service for a period of five years, as hereinafter set forth, and shall establish, maintain and preserve records with respect to workers engaged in employment on and after the effective date of this rule which shall show. Every employer must keep employment records for each employee for five years. Such records must show:~~

- ~~(a) For each pay period:~~
 - ~~(i) The beginning and ending dates for such pay period;~~
 - ~~(ii) The total wages, as defined in Section 39-51-201(10) MCA, for employment in such pay period;~~
 - ~~(iii) The number and date of weeks in which there were one or more employees.~~
- ~~(b) For each employee:~~
 - ~~(i) His name;~~
 - ~~(ii) His social security account number;~~
 - ~~(iii) His wages for each pay period, showing separately:~~
 - ~~(A) Money wages payable including special payments or constructive payment of wages;~~
 - ~~(B) Reasonable cash value of remuneration by the employer in any medium other than cash;~~
 - ~~(C) Estimated or actual amount of gratuities received from persons other than employer; and~~
 - ~~(D) Special payments of any kind, including annual bonuses, gifts, prizes, etc.;~~
 - ~~(iv) The date on which he the employee was hired, rehired, or returned to work after a temporary layoff;~~
 - ~~(v) The date when work employment was terminated by layoff, quit, discharge, or death;~~
 - ~~(vi) The cause of any termination;~~
 - ~~(vii) If he Whether the employee is given on a salary, or paid on an hourly, or by-piece basis his wage rate and the period covered by such rate;~~
 - ~~(viii) If he is paid on a fixed daily basis, his daily rate and the customarily scheduled days per week prevailing in the establishment for his occupation;~~
 - ~~(ix) The method by which his wages are computed, if he If the employee is paid on a piece rate or other variable pay basis, the method used to compute the wages; and~~
 - ~~(x) The number of weeks, as defined in section 39-51-201, MCA, in each calendar quarter during which the employee performed~~

services for the employer or was due wages from the employer. If a calendar quarter ends in the middle of a week, the week is counted in the calendar quarter that contains at least four days of that week.

(2) ~~These records and reports shall be~~ are open to periodic review by an ~~Employment Security Division~~ authorized representative representatives of the department to determine whether proper records are being maintained and all wages are being correctly reported. (History: Sec. 39-51-603 MCA; IMP, Sec. 39-51-603 MCA;

24.11.702 QUARTERLY REPORTS BY EMPLOYERS (1) When paying quarterly taxes, each every employer shall must report to the employment Security Division of Montana department at the time of paying each quarterly contribution, department all the information for each pay period covered by the contribution, concerning the number of workers, the total money wages and the total cash value of other remuneration, together with average amount of gratuities, and any other data which is called for on the quarterly summary contribution report form furnished by the division, requested by the department on the quarterly reporting form provided by the department. The department may request any information that is kept by the employer in accordance with ARM 24.11.701.

(2) ~~In making quarterly contribution and wage reports, the employer shall report for each quarter all wages, as defined in Section 39-51-201(19) MCA, paid during that quarter, and shall report separately for each worker all wages paid to such worker during such quarter; provided that, if all or any part of such wages are paid for services rendered in a preceding quarter, then the employer shall in such report, make separate notation for each worker of the wages paid to him in the current quarter for services rendered in the current quarter and of wages paid in the current quarter but for services rendered in preceding quarters. All employers must complete and return this form even if the employer did not pay any wages during the calendar quarter reported.~~

(3) The quarterly reports are due as shown below:

Quarter	Months Covered	Due Date
First:	January, February, March	April 30
Second:	April, May, June	July 31
Third:	July, August, September	October 31
Fourth:	October, November, December	January 31

(4) Within 20 days after the report due date for each quarter, delinquent report notices are mailed to all employers from whom quarterly wage reports have not been received. The notice requests receipt of the delinquent report, or other information that will clear the report delinquency, within 10 days. If no response is received from an employer within 10 days after the initial notice mailing, a final notice is mailed to the

employer demanding immediate filing of the delinquent report and stating that a subpoena may be issued if the delinquent report is not received within 7 days from the date of mailing. If a subpoena becomes necessary, an additional penalty of \$40.00 is charged to the employer's account.

(History: Sec. 39-51-603 MCA; IMP, Sec. 39-51-603 MCA;

24.11.704 IDENTIFICATION OF EMPLOYEES (1) Each person engaged in covered employment, including services covered by election, shall procure Every employee of every employer must:

(a) obtain a federal social security account number;

(b) shall furnish such number to each employer for whom he the employee performs services in employment; and

(c) shall furnish such number to the division department whenever requested.

(2) Each employer shall must ascertain the social security account number of each of his employees, and shall refer to such account number, as well as the employee's name, whenever reference is made to such employee in any letter, report form, claim for benefits, or other communication addressed to the division department. (History: Sec. 39-51-603, MCA; IMP, Sec. 39-51-603, MCA;

24.11.705 POSTING NOTICE TO WORKERS (1) Each Every employer shall must post and maintain a printed notice provided by the department to his workers, informing them showing that he the employer is subject to the Montana unemployment insurance law, and has been so registered by the division department. Such This notice may determine to be necessary and shall must be posted in conspicuous places near the actual locations where workers' services are performed. No such notice shall be posted by any person or employing unit to whom an unemployment compensation account number has not been assigned by the division or who has ceased to be an employer. (History: Sec. 39-51-603 MCA; IMP, Sec. 39-51-603 MCA;

24.11.707 EMPLOYER'S DUTY TO NOTIFY DIVISION OF DISSOLUTION OR DISTRIBUTION (1) Upon the commencement of if an employer becomes a party to any action under the laws of this state or the United States, for voluntary or involuntary bankruptcy, receivership, assignment for benefit or of creditors, adjudicated insolvency, composition, or similar proceedings, as the employer shall must immediately give notice to the division notify the department of such action. (History: Sec. 39-51-603 MCA; IMP, Sec. 39-51-603 MCA;

24.11.708 CLOSING ACCOUNTS (1) Whenever any employing unit has not been an employer as defined in Section 39-51-303 MCA, for a period of two (2) consecutive years, the division shall discontinue carrying such employing unit as a subject employer on the records of the division and shall thereupon

notify such employing unit of the action taken. If an employing unit ceases all employment and pays no wages for 8 calendar quarters, the department removes the employing unit from its record of active employers and notifies the employing unit of this action. (History: Sec. 39-51-603 MCA; IMP, Sec. 39-51-603 MCA;

Sub-chapter 8
Taxes and Payment

24.11.801 DUE DATE OF CONTRIBUTIONS AND ASSESSMENTS TAXES

(1) Taxes accrue when wages are actually or constructively paid. Wages are constructively paid if they are credited to the employee's account or set apart for an employee so that they may be withdrawn at the employee's discretion.

(1)(2) Contribution by employers shall become due and payable quarterly for each calendar quarter, as defined in Section 39-51-201(9), MCA and ARM, on or before the last day of the month next following the end of the calendar quarter for which contributions have accrued. Taxes are due and payable at the same time quarterly reports are due as provided in 39-51-201, MCA. Each quarterly payment shall include contributions with respect to wages, as defined in Section 39-51-201(10) MCA, for employment for all pay periods ending within the calendar quarter.

(3) Extensions to file a quarterly report may be granted for good cause if the employer applies in writing for an extension on or before the tax due date. An estimated tax payment based on the employer's past payrolls must nevertheless be made on or before the tax due date.

(4) Tax payments are applied to the following obligations in the following order, unless bankruptcy proceedings or the department has determined otherwise:

- (a) taxes and interest;
- (b) 1985 surtax and interest;
- (c) administrative fund tax and interest;
- (d) assessment for interest on the federal loan and interest; and
- (e) penalties.

(5) Tax payments submitted with quarterly reports are applied to that quarter. If an employer pays more than the amount owed under the quarterly report, the overpayment is applied to the unpaid taxes from the oldest quarter. The employer may request that payments be applied to a more recent quarter.

(6) An employer electing to reimburse the trust fund is notified by the department monthly of the amount of payment in lieu of taxes. Such payments are not delinquent until 30 days after the completed calendar quarter.

(History: Sec. 39-51-1103 MCA; IMP, Sec. 39-51-1103 MCA;

24.11.802 INTEREST ON UNPAID CONTRIBUTIONS TAXES (1) Interest

on overdue unpaid contributions taxes shall accrue accrues on and after from the day following the due date of any contribution payments up to and including the day payment was is made. For each period of less than one full month, interest shall be computed at the rate of one-thirtieth of one percent for each day or fraction thereof. (History: Sec. 39-51-302 MCA; IMP, Sec. 39-51-302 MCA;

24.11.803 REPORTING OF REMUNERATION WAGES IN EXCESS OF TAXABLE WAGE BASE (1) After wages paid in any one calendar year by employer to any one individual employee, up to and including the taxable wage for the particular calendar year have been reported, and contributions paid thereon, all further wages paid to such employee in such calendar year shall be reported but the amount of such wages in excess of the taxable wage base shall be segregated from the total wages paid for contribution payment purposes. If an employee has reported wages for an employee to another state, these wages shall be used in arriving at the wages in excess of the taxable wage base in this state. Wages paid to an employee in any single calendar year by an employer, up to and including the annual taxable wage base as defined in section 39-51-1108, MCA for that calendar year, are taxable wages. All further wages paid to the employee by that employer in that calendar year are "excess wages" and not taxable. Below is an illustration of total wages, taxable wages and excess wages:

Qtr.	Total Wages Paid in Qtr.	Total Wages Paid to Date	Taxable Wages	Excess Wages
First	5,000	5,000	5,000	none
Second	5,000	10,000	5,000	none
Third	5,000	15,000	2,600	2,400
Fourth	5,200	20,200	000	5,200

TOTAL 20,200 20,200 12,600 7,600
In this example, the \$12,600 taxable wage base for the 1988 calendar year was reached in the third quarter with \$2,600 as taxable and \$2,400 in excess of the \$5,000 paid to that employee. There is no tax due on the \$5,200 paid in the fourth quarter because these wages are in excess of the taxable wage base. All wages are reportable, however, as either total or excess wages.

(3) A successor employer, as described in section 39-51-1219, MCA, may use the amount of wages paid by the predecessor to determine the successor employer's taxable wages.

(4) If an employer has reported wages for an employee to another state, these wages may be used in determining the employee's taxable wage base.

(History: Sec. 39-51-1103 MCA; IMP, Sec. 39-51-1103 MCA;

24.11.804 DUE DATE OF CONTRIBUTIONS OF TAXES FOR NEW EMPLOYERS (1) All quarterly reports and contributions are due 30

~~days following the quarter in which the employing unit satisfies the conditions of becoming an employer. An employing unit that meets the definition of an employer must file all due quarterly reports and pay taxes thereon within 30 days following the quarter in which it met coverage requirements. (History: Sec. 39-51-1103; IMP., Sec. 39-51-1103, MCA;~~

24.11.805 DEMAND OF PAYMENT OR REPORTS UNDER CERTAIN CONDITIONS IF EMPLOYER TRANSFERS OR DISCONTINUES BUSINESS.

(1) The department may demand that an employer file a quarterly report and submit payment before the quarterly due date if the employer:

- (a) where an employer ceases to do quits doing business;
- (b) sells or transfers the business, or the major portion of the business assets thereof; or
- (c) or becomes insolvent; or, in any case where the division shall deem it necessary, the division may demand immediate payment of the contributions due.

+(2) If the report quarterly wage report and payment is are not received within thirty (30) days of demand, the accrued taxes are subject to penalty and interest will be charged as provided in Section 39-51-1301, MCA.

(History: Sec. 39-51-1103 MCA; IMP, Sec. 39-51-1103 MCA;

24.11.808 WAGES +(1) The term "Wages" wages as used in section 39-51-201, MCA, includes, but is not limited to, the following types of remuneration for services. --as used in Section 39-51-201(10), MCA shall include

+(1) Holiday pay. Such payments will apply to the week in which the holiday occurred. (b) Vacation and vacation pay, or payments in lieu of vacation pay, are wages. Such payments will apply to the vacation period taken.

+(2) Picket duty pay, including benefits paid to a striker from union or other employee funds, is wages if the striker must perform or be available to perform picket duty or another service. Such payments will be included when a service is performed according to union contract.

+(3) Back pay awards, are wages to the extent such awards are based on services performed or services that would have been performed if the worker had not been wrongfully terminated. Such payments will apply to the period under negotiation or dispute.

+(4) (a) Gratuities or tips. If are wages, if they are:

- (i) gratuities constitute of partial or entire payment for services performed by a worker an employee;
- (ii) added to the bill by the employer or by the customer;
- (iii) disbursed by the employer from a tip pool; or
- (iv) reported by the employee to the employer for federal tax purposes, or for other purposes.

the employer shall include as wages the amount of gratuities or

~~tips actually received by each worker, or shall make reasonable valuation of the average remuneration from that source, showing in detail on a statement attached to the employer's first contribution report and thereafter as requested, the basis of such valuation. The requirements of the law and the instructions of the division relating to the reporting of wages are not to be construed as requiring or permitting employers to require workers to report to their employers the amount of their tips.~~

(b) If the gratuities or tips are part or all of payment for services, the employer must report the actual gratuities or tips received by an employee.

(4) (5)(a) The cash value of Board and Room board and room is wages.

(i) Board and room is considered as payment for services performed rather than a deduction from wages paid. The division shall determine or approve determines the cash value of board and lodging room, unless the employment contract sets the value at an amount equal to or greater than the amounts established in this rule in individual cases. Where the cash value of board and lodging is agreed upon in a contract of hire and is equal to or more than the rates prescribed herein, the amount so agreed upon shall be deemed the value of such board and room.

(ii) (b) Board and room furnished shall have not less than has at least the following cash value:

Full board and room weekly	\$50.00
Meals, per week	\$30.00
Meals, per meal	\$ 1.50
Lodging Room, per week	\$20.00

(g) Equipment Rental. When an employer-employee relationship is established in accordance with Section 39-51-202 MCA, and the remuneration for services performed is included in the gross payment for equipment, the amount to be allotted as wages shall be determined in accordance with the following formula, unless the amount has been previously agreed upon in any contract of hire, and is acceptable to this division.

(i) Wage formula. Twenty-five percent (25%) of the total remuneration paid to employees furnishing heavy equipment (such as but not limited to trucks, bulldozers, etc.) Seventy-five percent (75%) of the total remuneration paid to employees furnishing light equipment (such as but not limited to chain saws.)

(2) Lump-sum payments will be prorated over the period for which the individual rendered services.

(2) The term "wages" as used in Section 39-51-201(17) MCA, shall not include:

(a) Jury duty.

(b) Sick pay as defined in Section 39-51-201(19) MCA.

(4) Retirement payments made on behalf of an employee are not included as wages for contribution purposes in Section 31-59-201(10) MCA, but are included in Section 39-51-2202 MCA to reduce a claimant's weekly benefit amount.

(a) To determine the weekly reduction of benefits by retirement received from a base-period employer, the following will apply:

<u>Bi-weekly payments</u>	<u>.....</u>	<u>x 26</u>	<u>..</u>	<u>53</u>
<u>Monthly payments</u>	<u>.....</u>	<u>x 12</u>	<u>..</u>	<u>53</u>
<u>Quarterly payments</u>	<u>.....</u>	<u>x 4</u>	<u>..</u>	<u>53</u>
<u>Semi-annual payments</u>	<u>.....</u>	<u>x 2</u>	<u>..</u>	<u>53</u>
<u>Annual payments</u>	<u>.....</u>			<u>53</u>

(6)(a) Sick leave payments are wages. Such payments are wages even if not paid directly by the employer, but rather by a third party such as an insurance agent. For example, if the employer pays premiums to the third party to cover sick leave costs, the payments paid by the third party to the employee are wages. If the employee pays the premiums for such coverage, the sick leave payments are not wages.

(b) The employer is responsible for tax payments attributable to sick leave payments. The third party assumes responsibility for the payments if the third party fails to give the following information to the employer within 15 days of the end of the calendar quarter in which the payments were made:

(i) the name and social security number of the employee who received the sick leave payments;

(ii) the total amount of the payments; and

(iii) the number of weeks of work attributable to the payments.

(7) Payments into deferred compensation or cafeteria plans and other similar plans are wages reportable for the period in which the compensation was earned.

(8) Payments distributed to corporate officers or shareholders are wages, even though designated as profits or dividends.

(9) Payments for termination, severance, separation, or other similar payments are wages.

(10) Advances or draws against future earnings are wages when paid. Payments designated as loans in the employer's records are considered wages unless the loan is to be repaid under schedule agreed upon by the employee and the employer.

(History: Sec. 39-51-1103 MCA; IMP, Sec. 39-51-1103 MCA;

RULE XLII PAYMENTS THAT ARE NOT WAGES --- EQUIPMENT RENTAL

(1) Except for hand tools and vehicles as provided in this rule, payments made by the employer to the employee for rental of equipment owned by the employee are not wages if:

(a) the equipment is necessary for the employee to perform his job;

(b) the employment contract provides for such payments and their documentation; and

(c) the payments reflect reasonable rental fees in light of the customary wages for such services in the locality.

(2) The actual expenses incurred by the employee may be considered reasonable rental fees if the employer's records show:

(a) the initial cost of the equipment;
(b) the equipment's depreciation; and
(c) maintenance and operational costs in connection with the services performed for the employer.

(3) With respect to light equipment, such as chain saws, the reasonable rental value may not be greater than 25% of the employee's gross remuneration.

(4) With respect to heavy equipment, including but not limited to semi-tractors or bulldozers, the reasonable rental value may not exceed 75% of the employee's gross remuneration.

(5) Hand tools customarily used in the employee's trade and vehicles used only in transporting the worker to and from the job site have no rental value for purposes of this rule. Any payments made with respect to these items are considered wages.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1103, 39-51-201, MCA.

RULE XLIII. PAYMENTS THAT ARE NOT WAGES --- EMPLOYEE EXPENSES (1) Payments made to an employee to reimburse the employee for ordinary and necessary expenses incurred during the course and scope of employment are not wages if all of the following are met:

(a) the amount of each employee's reimbursement is entered separately in the employer's records;

(b) the employer has documentation that the employee incurred the expenses in conducting business for the employer;

(c) the reimbursement is not based on a percentage of the employee's wage;

(d) the reimbursement does not replace the customary wage for the occupation; and

(e) the reimbursement is based on:

(i) actual expenses incurred by the employee supported by receipts; or

(ii) a flat rate no greater than the amount allowed to employees of the state of Montana under section 2-18-501 and 503, MCA, unless, through documentation, the employer can substantiate a higher rate.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1103, 39-51-201, MCA.

RULE XLIV. PAYMENTS THAT ARE NOT WAGES---JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, DIRECTOR AND PARTNERSHIP FEES (1) Expense reimbursements, fees, meals, or other payments provided through a court to a juror are not wages.

(2) Insurance premiums or other regular payments paid by the employer into a fund for costs arising from employee sickness, disability, medical or hospital expenses are not wages if:

(a) the coverage is offered under a plan available to all employees, a class or classes of employees; and

(b) the employee may not choose to receive cash instead of payment of the expenses, or to receive cash upon termination of the plan or upon termination of employment.

(3) Annuities, insurance premiums or other regular payments made by the employer into a fund for costs arising upon retirement or death are not wages, if the plan is offered to all employees or a class or classes of employees.

(4) Customary and reasonable director's fees for attending meetings of the board of directors of a corporation are not wages, if the fees are not paid in lieu of reasonable compensation for services performed.

(5) Draws by a sole proprietor or partner are not wages, even if designated as salary.

AUTH. 39-51-302, 39-51-2407, MCA. IMP. 39-51-1103, 39-51-201, MCA.

RULE XLV DETERMINATION OF INDEPENDENT CONTRACTOR---
DEPARTMENT PROCEDURES (1) As provided in section 39-51-201, MCA, the following two-part test is used to determine whether a worker is an independent contractor or an employee:

(a) whether a worker is and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) whether a worker is engaged in an independently established trade, occupation, profession, or business.

(2) For purposes of this rule and Rules XLVI and XLVII, "worker" means an individual who renders service in the course of an occupation, and "employing unit" means the individual or other legal entity as described in the definition of "employing unit" in section 39-51-201, MCA, that hired one or more workers.

(3) To determine whether an independent contractor or employment relationship exists, the department may:

(a) review written contracts between the individual and the employing unit;

(b) interview the worker, co-workers, or the employing unit;

(c) obtain statements from third parties;

(d) examine the books and records of the employing unit; and

(e) make any other investigation necessary to determine if an independent contractor relationship exists.

(4) After investigation, the department may issue a written determination on whether a worker is an independent contractor. Any person or employing unit aggrieved by this determination must request a redetermination or appeal within 10 days after the determination is mailed. Under section 39-51-1109, MCA, any person or employing unit aggrieved by this decision may appeal the redetermination.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1103, 39-51-201, MCA.

RULE XLVI DETERMINATION OF INDEPENDENT CONTRACTOR ----
EVIDENCE OF CONTROL. (1) A worker is an employee and not an independent contractor if the employing unit controls or has the right to control the way the worker renders services. Control, or the right to control, exists if:

(a) a worker is required to follow written or oral instructions concerning when, where, or how work is to be done. Although some workers, because of skill or expertise, work

without receiving instructions, they may still be employees if the employing unit has the right to give instructions on work performance;

(b) the success or continuation of a business depends in great part upon the services performed by the worker;

(c) the employing unit directs the hiring, supervising, or payment of the worker's assistants;

(d) the relationship between the worker and the employing unit is on a frequent, recurring basis, even if irregular or part time;

(e) a worker is required to perform services at certain established times;

(f) the work is performed on the business premises of the employing unit. This factor is especially important if the work could be performed elsewhere;

(g) the employing unit requires, or has the right to require, the worker to perform services in a certain manner, or in a certain order or sequence;

(h) the employing unit requires the worker to submit oral or written reports;

(i) the worker is paid based on the time spent doing the work rather than a flat fee;

(j) the worker is paid or reimbursed for travel or other business-related expenses;

(k) the employing unit furnishes the facilities, tools, materials or other equipment to the worker;

(l) the worker may be discharged at the will of the employing unit including failure to follow specified rules or methods. That the right of discharge is restricted by union contract or statute does not indicate a lack of control;

(m) training is provided to the worker by the employing unit;

(n) the worker does not realize a profit or suffer a loss as a result of the services performed; or

(o) the worker is prohibited or restricted from working for others or is required to devote primary attention to the employing unit.

(2) The above factors are weighed and evaluated depending on the circumstance of each case. Any one of the above factors, depending on the circumstances of the case, may be sufficient to show control and the existence of an employer-employee relationship. The burden of proof is on the employer to show a lack of control, and the existence of an independent contractor relationship.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1103, 39-51-201, MCA.

RULE XLVII DETERMINATION OF INDEPENDENT CONTRACTOR -----
INDEPENDENTLY ESTABLISHED BUSINESS - To be an independent contractor, a worker must be engaged in an independently established trade, occupation, profession, or business. The following factors indicate that an independently established

business exists if the worker:

- (1) has a place of business separate from the employing unit's place of business;
- (2) supplies substantially all of the tools, equipment, supplies, or materials necessary to perform the services;
- (3) pays all expenses associated with performing the services, and is not reimbursed by the employing unit;
- (4) has two or more effective contracts to perform services for several different employing units;
- (5) is paid based on a billing statement or invoice at completion of the services;
- (6) performs the services under a written contract that requires complete or partial payment after a certain amount of work is performed, and the contract terminates after a definite time period;
- (7) advertises services in telephone books, newspapers, or other media;
- (8) files federal or state business tax forms;
- (9) has the required or customary licenses or permits to maintain a business;
- (10) may realize the profit or suffer the loss from performing the services for the employing unit. This factor may be shown if the worker:
 - (a) hires or pays assistants to perform the services;
 - (b) performs the services at facilities owned or leased by the worker;
 - (c) has continuing or recurring liabilities associated with performing the services; or
 - (d) agrees to perform specific job for prices agreed upon in advance and pays expenses associated with the performance of the services;
- (11) is not prohibited or restricted from working for others;
- (12) may not end the relationship at will without incurring liability. An independent contractor agrees to complete a specific job, is responsible for its completion, and may be subject to liability for failing to complete the job in accordance with agreed upon specification.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1103, 39-51-201, MCA.

RULE XLVIII. RELEASING PROPERTY SUBJECT TO DEPARTMENT LIEN

- (1) Under section 39-51-1304, MCA, the department may acquire a lien on an employer's property for the amount of unpaid contributions. Property may be released from this lien if:
 - (a) the department has a lien on other property owned by the employer that has a fair market value, as determined by the department, of at least twice the amount of debt secured by the property;
 - (b) the employer pays to the department an amount, determined by the department, that is not less than the value of the property subject to the lien;

(c) the department determines its interest in the property has little or no value; or

(d) upon sale of the secured property, a fund from the sales proceeds is established to satisfy all claims against the property under an escrow agreement approved by the department.

(2) An employer or other applicant must give the following information when requesting the release of property secured by a department lien:

(a) the applicant's name, address, and telephone number;

(b) the name, address, and account number of the employer owning the property that is subject to the lien;

(c) the legal description and address of all property to be released by the department. If the request is based on subsection (1)(a) of this rule, then the request must include a legal description and address of all property secured by the department's lien;

(d) a list of the encumbrances, or a copy of the instrument creating the encumbrance, with priority over the department's lien, including:

(i) name and address of the secured party or holder of the encumbrance;

(ii) a description of the encumbrance with the date it was imposed;

(iii) date and place the encumbrance was recorded;

(iv) the terms of the security agreement creating the encumbrance; and

(v) the amount of money owed under the encumbrance at the time of application;

(e) a current written appraisal by a qualified appraiser of all property for which a release is requested; and

(f) a copy of the proposed escrow and sales agreement if the property is to be released because of a sale.

AUTH: 39-51-301, 39-51-302, 39-51-2407; IMP. 39-51-1304, MCA

3. In light of the above proposed amendments to existing rules and adoption of new rules, the department further proposes to repeal the following rules found on the corresponding page numbers in the Administrative Rules of Montana:

Rules	ARM Page No.
24.11.304	24-609
24.11.308-311	24-610 - 24-610.2
24.11.401-410	24-611 - 24-614
24.11.411	24-615.1
24.11.413	24-616
24.11.415-435.	24-617.2 - 24.617.24
24.11.601	24-620
24.11.603	24-622
24.11.703	24-623
24.11.706	24-624
24.11.806	24-626
24.11.807	24-626
24.11.809	24-628

4. The reasons for the above revisions are mainly to reorganize, edit, and update rules that were originally promulgated in 1972. The repealed rules have in great part been repealed because they repeated statutory language, reflected outdated practices by the department, or contained numerous repetitions. The amended rules, for the most part, do not reflect changes in practice, but involve grammatical and editorial changes. The proposed new rules are necessary to reflect current practices and procedures of the department in the administration of the unemployment insurance program.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Administrator, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT. 59624, no later than Friday, November 11, 1988.

6. Elizabeth L. Griffing, department staff attorney, has been selected to preside over and conduct the hearing.

7. The authority of the department to make the proposed revisions is in sections 39-51-301, 39-51-302, and 39-51-2407, MCA. The proposed revisions are intended to implement sections 39-51-101 through 39-51-3207, MCA.

By: Mary M. Hartman
Mary M. Hartman, Commissioner
Department of Labor and Industry

Certified to the Secretary of State October 3, 1988.

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

In the Matter of Proposed Adoption) NOTICE OF PROPOSED
of Rules on Pipeline Safety) ADOPTION OF RULES ON
) PIPELINE SAFETY
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons

1. On November 14, 1988 the Department of Public Service Regulation proposes to adopt rules regarding pipeline safety.

2. The rules proposed to be adopted provide as follows:

RULE I STATEMENT OF GENERAL POLICY (1) The Montana legislature has empowered the public service commission to enforce the safety regulations and provisions adopted under the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as well as any amendments thereto. The rules of this sub-chapter describe the procedures and enforcement authority exercised by the commission for achieving and maintaining pipeline safety. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE II INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191 and 192. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191 and 192 may be obtained from the Department of Transportation, Materials Transportation Bureau, Office of Operations and Enforcement (Pipeline Safety), Western Region, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 2701 Prospect Avenue, Helena, Montana 59620. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE III COMMISSION'S PROCEDURAL RULES TO APPLY (1) Except as otherwise provided in these rules, the commission's procedural rules shall govern any proceedings under this sub-chapter. AUTH: Secs. 69-3-103 and 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE IV INSPECTIONS (1) The commission, its employees, or authorized agents, have the power to investigate all methods and practices of pipeline owners and operators; to require the maintenance and filing of reports, records and other information in the form and detail as the commission may prescribe; to enter upon and to inspect the property, buildings, plants, and offices of pipeline owners and operators; and to inspect books, records, papers and documents relevant to enforcement responsibilities under the NGPSA. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE V INFORMAL REPORT OF PROBABLE VIOLATION (1) If an inspection indicates that a pipeline owner or operator is not in compliance with the applicable pipeline safety regulations, the commission's inspector will issue a Report of Probable Violation to the owner or operator following the inspection. This report shall include a citation of the law, regulation or order which the owner or operator appears to have violated, and a statement that the owner or operator is required to correct all cited violations within 60 days following issuance of the report. This report will also note any on-site corrective actions which were taken during the inspection. The inspector may informally discuss the report with the owner or operator and an informal conference may be requested with commission staff. When the owner or operator corrects a violation in the report to the satisfaction of the inspector, the correction and the date thereof shall be noted in the report. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE VI FORMAL ENFORCEMENT PROCEDURE (1) If the violations are not satisfactorily resolved within 60 days following issuance of the report of probable violation, through the informal procedure described in Rule V above, the commission may issue an order to show cause to the pipeline owner or operator, based upon the inspector's report indicating that the owner or operator remains in probable violation of the regulations or provisions of the NGPSA.

(2) The order to show cause shall include a statement of the laws, regulations or orders which the pipeline owner or operator is alleged to have violated and a statement of the evidence upon which the allegations are based. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE VII RESPONSE TO ORDER TO SHOW CAUSE (1) Within 30 days of the date of service of the order to show cause, or within such other reasonable period as may be set by the commission in the order to show cause, the pipeline owner or operator shall file a written response with the commission. The response shall be filed in accordance with the commission's procedural rules relating to the filing of answers, found generally at ARM 38.2.2107. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE VIII HEARING (1) Upon request of an interested party, or upon its own motion, the commission may schedule a hearing in furtherance of its investigation under these rules. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

RULE IX COMMISSION DECISION (1) After a hearing, or, if no hearing has been held, after the expiration of the response period allowed by the commission to the pipeline owner or operator, the commission may proceed to issue a decision in the form of an order.

(2) The order issued by the commission in any proceeding brought under these rules may direct compliance, or indicate

an intention to seek judicial remedies, or both. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA.

3. Rationale: Since 1969 the Public Service Commission has annually been certified by the Department of Transportation to have regulatory jurisdiction over the safety standards and practices of all intrastate pipeline transportation within Montana, as allowed by Section 5(a) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 USC 1671 et seq.).

Under the federal certification, the Commission receives federal funding and is required to adopt the federal safety standards established under the Natural Gas Pipeline Safety Act applicable to the intrastate pipeline transportation under its jurisdiction.

The Commission has incorporated by reference the Federal Pipeline Safety Regulations under ARM 38.3.1901 contained in the Commission's Motor Carrier Administrative Rules.

The Commission proposes Rule II to adopt these same federal regulations through incorporation by reference to properly locate the incorporation rule in the utilities administrative rules. This change of rule location will clearly indicate that it is the Commission's Utility Division that has the responsibility for implementation of the safety program and to assist the reader in locating the pipeline safety rules.

The Montana Legislature has empowered the Public Service Commission to enforce the safety regulations and provisions adopted under the Federal Natural Gas Pipeline Safety Act of 1968, § 69-3-207, MCA. The Commission is proposing these rules to describe the procedures and enforcement authority exercised by the Commission for achieving and maintaining pipeline safety within Montana.

4. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to Chuck Evilsizer, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than November 14, 1988.

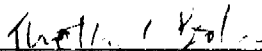
5. If a person who is directly affected by the proposed adoptions wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Chuck Evilsizer, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than November 14, 1988.

6. If the agency receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code 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 ? owners or operators or 25 members of the public.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, MT 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.


CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 3, 1988.


Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING on
of ARM 42.25.501 relating to)	the PROPOSED AMENDMENT of ARM
Coal Sales Revenue.)	42.25.501 relating to Coal
)	Sales Revenue.

TO: All Interested Persons:

1. On November 3, 1988, at 1:30 pm, a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.25.501 relating to Coal Sales Revenue.

2. The amendment as proposed provides as follows:

42.25.501 DEFINITIONS (1) "Agreement not at arm's length" is defined as an agreement between two parties when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sales price.

(2) "Contract-revenue" "Coal sales value" is defined as the total receipts or accruals from all sales of coal during the reporting period and may include a value imputed by the department.

(3) "Contract sales price" ~~is defined as the FOB mine price less production taxes included by the producer in the sales price to pay taxes on production or a price imputed by the department of the revenue according to ARM 42.25.512.~~ includes all compensation received in any form for coal purchased except amounts charged to pay production taxes and the deductible portion of federal, state and Indian royalties. It includes revenue received from purchasers for initial coal sales billings, Btu premiums, cost escalation adjustments, sampling and analysis, and any other miscellaneous payments related to the sale of coal. It also includes purchasers' payment of, or reimbursement for, any expenses typically incurred by the coal producer. Alternatively, contract sales price may be based on a price imputed by the department according to ARM 42.25.512. Payments made pursuant to multiple contemporaneous agreements between a producer and purchaser, whether contained in one contract or in separate contracts, governing the sale of coal in the same general time frame will be considered in total to determine contract sales price.

(a) "Take or pay penalties" are includable as part of contract sales price to the extent that these payments represent reimbursement to the producer for the difference between the F.O.B mine price per ton charged in expectation that the buyer will purchase at least the contract minimum tonnage and the F.O.B. mine price per ton that would have been charged if the lower amount actually purchased was the original amount contracted for. In other words any reimbursement for unearned quantity "discounts" is taxable. The "penalty" portion of these payments is not taxable.

(b) "Options and Other Lump Sum Payments" will be reviewed to determine whether the payments are to be included as part of contract sales price. These payments will be determined to be taxable in the instance where the substance of the transaction is to provide the producer with additional compensation for coal being purchased. The department will consider current market conditions, the purchaser's capacity to utilize optioned amounts, corresponding declines in other coal costs to the purchaser and any other relevant criteria when making this determination. Taxpayers may request a declaratory ruling relating to these payments in accordance with Section 2-4-501 MCA.

(4) "FOB mine price" is defined as contract-revenue coal sales value exclusive of all shipping expenses or any other expense incurred by the producer after the coal has been crushed to size and loaded for shipment.

(5) "Market value" is defined as an amount determined by multiplying "FOB mine price" of a similar ton of coal, as fixed on the market place, by the number of tons of coal sold.

(6) "Production taxes" is are defined as the resource indemnity trust tax, severance tax, and the gross proceeds tax, black lung tax and the federal reclamation fee. AUTH, 15-23-108 MCA; IMP, 15-35-102 MCA.

4. The Department is proposing these amendments because Contract sales price as defined in 15-35-102, MCA, merely states that it is the price of coal extracted and prepared for shipment less certain deductions. More guidance is needed as to what specifically is included in the price of coal. This is especially important now that many coal supply agreements are being amended or rewritten in response to changing market conditions.

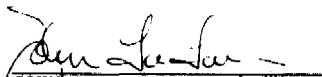
Section 15-35-102(5) MCA allows a deduction for "taxes paid on production". The federal black lung tax and reclamation fee were added to the rule listing the deductible taxes.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than November 14, 1988.

6. Paul Van Tricht, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/3/88.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption)
of a new rule relating to)
creditable service for absence) without pay (2.44.408) and)
amendment of Rules 2.44.403,)
2.44.510 and 2.44.511 for the)
purpose of clarifying)
redeposits of amounts)
withdrawn; earnings after)
retirement and the)
recalculation of benefits)
using termination pay relating) to the Teachers' Retirement)
System)

NOTICE OF THE ADOPTION
AND AMENDMENT OF RULES
RELATING TO THE
TEACHERS' RETIREMENT
SYSTEM

TO: All Interested Persons.

1. On July 14, 1988, the Teachers' Retirement Board published notice of proposed adoption of a rule concerning creditable service for absence without pay, 2.44.408, and amendment of Rules 2.44.403, 2.44.510 and 2.44.511 concerning redeposit of amounts withdrawn, earnings after retirement and the calculation of benefits using termination pay at page 1292 of Issue No. 13 of the Montana Administrative Register.

2. The Teachers' Retirement Board has adopted and amended the rules as proposed. However, the rule concerning creditable service for absence without pay was noticed as implementing 19-4-402, MCA and should have been noticed to implement 19-4-204, MCA.

3. No comments or testimony were received.

By:


DAVID L. SENN, EXECUTIVE SECRETARY
TEACHERS' RETIREMENT DIVISION

Certified to the Secretary of State September 23, 1988

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF INVESTMENTS

In the matter of the adoption	)	NOTICE OF ADOPTION OF NEW
of new rules and repeal of	)	RULES AND REPEAL OF ARM
rules pertaining to invest-	)	2.42.101, 2.42.201, 2.42.
ments by the Montana Board of	)	301 THROUGH 2.42.304, 8.97.
Investments	)	101, 8.97.201, 8.97.202, 8.
	)	97.301 THROUGH 8.97.309, 8.
	)	97.401 THROUGH 8.97.415
	)	PERTAINING TO INVESTMENTS BY
	)	MONTANA BOARD OF INVESTMENTS

TO: All Interested Persons:

1. On August 11, 1988, the Board of Investments published a "Notice of Public Hearing on Proposed New Rules and Repeal of Rules Pertaining to Investments by the Board of Investments" on page 1747 of the Montana Administrative Register, issue number 15.

2. The Board of Investments has adopted new rules: I. (8.97.1101); II. and III. (8.97.1202 and 8.97.1201); IV. through X. (8.97.1301 through 8.97.1307); XI. through XXVI. (8.97.1401 through 8.97.1416); XXVII. and XXVIII. (8.97.1501 and 8.97.1502), XXIX. through XXXI. (8.97.1601 through 8.97.1603) as proposed, some with changes as shown below; and repealed rules 8.97.101, 8.97.201, 8.97.202, 8.97.301 through 8.97.309, 8.97.401 through 8.97.415, and transferred rules 2.42.101, 2.42.201, 2.42.301 through 2.42.304 to the Department of Commerce, renumbered the rules as 8.97.1001 through 8.97.1006 and repeal of those rules as proposed in the Notice of August 11, 1988, referenced in Section 1 above.

3. The changes will appear as follows: (new matter underlined, deleted matter interlined)

"8.97.1415 SELLER/SERVICER-LOAN DELINQUENCY FOR RESIDENTIAL, COMMERCIAL, AND MULTI-FAMILY (1) through (3) will remain the same as proposed.

(4) The seller/servicer must comply with the following timetable and procedures for all delinquent loans serviced by the board:

<u>Days of Delinquency</u>	<u>Required Action</u>
15	Seller/servicer mails late notice to borrower.
20 25	Seller/servicer contacts the borrower by telephone concerning the delinquency.
45	Seller/servicer has personal interview with borrower.
60	Seller/servicer must submit a Loan Service Report to be provided by the board, with MAR by the 25th of the month.

90

Seller/servicer must submit a Property Inspection Report, to be provided by the board, with MAR by the 25th of the month.

Seller/servicer must establish a repayment plan with the borrower to cure the delinquency within the shortest period of time.

Seller/servicer must determine which of the following actions it will follow and so inform the board:

1. establish a liquidation plan with the borrower providing for a minimum of 1-1/2 payments per month unless a different liquidation plan is approved by the board;
2. recommend that the borrower sell the property;
3. determine if the borrower is eligible for assignment or will offer deed in lieu of foreclosure; and,
4. recommend foreclosure.

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

"8.97.1303 FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS (1) through (3)(c) will remain the same as proposed.

(d) an annual fee of up to .5 percent of the amount committed will be charged for participation in working capital lines of credit. The fee must be paid at the time the working capital loan is closed and on each anniversary date. The forward commitment fee will be applied as part of this fee.

(d) (e) ...

(e) (f) ..."

"8.97.1602 LOAN LOSS RESERVE ACCOUNT FOR THE IN-STATE INVESTMENT FUND (1) All fees collected under ARM 8.97.1603 and half of the fees collected under ARM 8.97.1303 shall be deposited to the loan loss reserve fund.

(2) and (3) will remain the same as proposed."

"8.97.1407 FHA AND VA LOAN PROGRAMS-OFFERING CHECKLIST

(1) through (h) will remain the same as proposed.

(i)--the acknowledgement of non-exemption from--execution as a homestead pursuant to 70-32-2027-MEA;

(2) will remain the same as proposed."

3. Comments received on the proposed adoption and repeal of rules are as follows:

COMMENT: The United Savings Bank of Great Falls, Montana, proposed that the telephone contact to the borrower from the

seller/servicer (as set forth in ARM 8.97.1415(4)), concerning delinquency should be increased from 20 to 25 days. The Bank also suggested that a liquidation plan requirement of one and one half payments per month from the delinquent borrower may be unrealistic. Also, the bank commented that the loan-to-value ratio on refinances (as set forth in ARM 8.97.1404(5)), is restrictive at 70 percent for owner occupied.

RESPONSE: The first two proposals of the United Savings Bank have merit and the applicable rules have been modified accordingly. (See section 2 of this Notice.) As to the third suggestion, the Board rejects the proposal to change the loan-to-value ratio on refinances because the Board's experience with higher loan-to-value ratios on refinances has been poor.

COMMENT: The Department of Commerce also submitted a comment which suggested that the commercial loan program fee schedule address revolving lines of credit loans with multiple advances and pay-downs because the current fee schedule only addresses long-term loans with a fixed amortization schedule.

RESPONSE: This comment has merit and the rule has been modified to allow the Board to charge a fee to accommodate this type of loan.

COMMENT: The Legislative Council commented that the internal reference contained in ARM 8.97.1602(1) was incorrect.

RESPONSE: The internal reference has been corrected accordingly.

COMMENT: Board staff observed that ARM 8.97.1407(1)(i) was not necessary since it was most appropriately contained in 8.97.1407(2)(i).

RESPONSE: ARM 8.97.1407(1)(i) has been deleted accordingly.

4. No other comments or testimony were received.

MONTANA BOARD OF INVESTMENTS
W. E. SCHREIBER, CHAIRMAN



GEOFFREY L. BRAZIL, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 3, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 11.12.104	)	RULE 11.12.104 PERTAINING
pertaining to youth care	)	TO YOUTH CARE FACILITY
facility licensing criteria	)	LICENSING CRITERIA

TO: All Interested Persons

1. On April 14, 1988, the Department of Family Services published notice of the proposed amendment of Rule 11.12.104 pertaining to youth care facility licensing criteria at page 646 of the 1988 Montana Administrative Register, issue number 7.

RULE 11.12.104 YOUTH CARE FACILITY, LICENSES
Subsections (1) through (6) remain the same.

(7) Any applicant who has received services for documented abuse or neglect of a child SHALL BE DENIED A FOSTER CARE LICENSE.

(8) ANY APPLICANT whose own children have been in foster care should be denied a foster care license, unless an exception is granted by the department because the circumstances leading to the provision of services or the placement no longer exist.

AUTH: Sections 41-3-1103, 41-3-1142 and 53-4-111 MCA;
AUTH Extension, Sec. 2, Ch. 177, L. 1985, Eff. 7/1/85; Sec. 8, Ch. 531, L. 1985, Eff. 10/1/85; Sec. 88, Ch. 609, L. 1987, Eff. 10/1/87

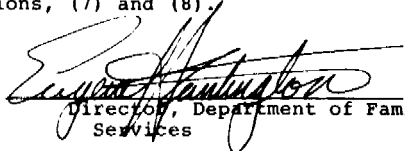
IMP: Sections 41-3-1103, 41-3-1142 and 53-4-113 MCA

2. The department has thoroughly considered all commentary received:

COMMENT: Because of the high rate of recedevism, individuals with a history of abuse or neglect present a high risk to children and should not be given foster care licenses.

RESPONSE: The department agrees with the comment and has adopted a final rule which will preclude granting of a license to persons who have received child protective services for documented abuse or neglect of a child. The rule will allow the department the authority to grant an exception only if the child was placed in foster care for reasons other than documented abuse or neglect.

For clarification, the proposed subsection (7) has been divided into two subsections, (7) and (8).


Director, Department of Family
Services

Certified to the Secretary of State September 27, 1988.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF AMENDMENT OF
amendment of ARM 12.6.901) ARM 12.6.901: EXTENSION
OF 10 HORSEPOWER RESTRICTION
ON YELLOWSTONE RIVER TO THE
SPRINGDALE BRIDGE

TO: All interested persons

1. On June 9, 1988, the Montana Fish and Game Commission published notice of the proposed adoption of ARM 12.6.901 relating to the extension of the 10 horsepower restriction on the Yellowstone River to the Springdale Bridge at page 1063 of the 1988 Montana Administrative Register, issue number 11.

2. Written and oral comments were received at a public hearing on June 30, 1988. Other written comments were received through July 10, 1988.

3. A report summarizing the public comment was prepared and submitted to the Commission and Department.

4. The Department recommended to the Commission that the proposed amendment be adopted.

5. After considering the public comment and the Department's recommendation the rule has been amended as proposed.

6. The Commission responds to the comments opposing the adoption as follows:

COMMENT: The real reason for the ban is the economic benefit that would be enjoyed by commercial outfitters if the ban were adopted.

RESPONSE: The Commission feels that the safety concerns presented in the public comment and by the Department are compelling. Economic factors were not considered.

COMMENT: It is inappropriate for the Commission to favor one special interest group over another with respect to decisions concerning access to a river.

RESPONSE: The Commission believes that the safety problem is caused by jet boats using a section of river that is too small. The best way to solve the problem is to restrict jet boats to larger sections of river.

COMMENT: Jet boats do not create a safety hazard in this stretch of river and there is no documented evidence or statistics showing a single incident of injury to person or property caused by jet boat use in this stretch of river.


RESPONSE: The Commission believes that injury to person or property is likely if jet boat use is allowed to continue on this stretch of river. Jet boats take up a disproportionate share of the river and are more safely used where the river is larger.

COMMENT: Floaters already have most of the best trout fishing on the Yellowstone to themselves and should not be given more.

RESPONSE: The Commission feels that the safety problem outweighs the resource distribution problem presented in this comment.

COMMENT: There should have been a public hearing in Billings because many of the users of this stretch of river live in the Billings area.

RESPONSE: The Commission feels that it received adequate public comment to make an informed decision. Jet boaters were well represented at the Livingston hearing and in the written comments.


James W. Flynn, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State October 3, 1988.

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

In the matter of the amendment of)	
16.20.603, 16.20.604, 16.20.605,)	
16.20.607, 16.20.608, 16.20.616 -)	NOTICE OF ADOPTION
16.20.624, 16.20.633, 16.20.641,)	OF DEFINITION (19)
and 16.20.642, and the adoption of)	IN ARM 16.20.603
NEW RULE I, all concerning surface)	
water quality standards and the)	
classification of surface waters)	(Surface Water Quality
in the state)	Standards)

To: All Interested Persons

1. On June 9, 1988, at page 1191 of issue number 11 of the 1988 Montana Administrative Register, the Board published notice of amendment and adoption of the above-captioned rules, except for a new definition (19) of rule 16.20.603, which was to be presented for adoption in revised form at the July 15, 1988 Board meeting.

2. The Board has adopted the definition, revised as follows (new material is capitalized; material to be deleted is interlined):

16.20.603 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in section 75-5-103, MCA:

(1)-(18) Same as amended previously.

(19) "Reasonable land, soil, and water conservation practices" means methods, measures, or practices that will protect present and reasonably anticipated beneficial uses. These practices include but are not limited to structural and non-structural controls and operation and maintenance procedures. These APPROPRIATE practices may be applied before, during, or after pollution-producing activities. to--prevent--impacts-to beneficial-uses.

(19)-(27) to be renumbered (20)-(28): Same as amended previously.

3. No comments or testimony were received.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND ENVIRONMENTAL
SCIENCES

by 
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 3, 1988.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION

In the matter of adoption	)	NOTICE OF ADOPTION
of new rules under sub-	)	OF RULES 36.12.801 THRU
chapter 8 outlining new	)	36.12.809 ESTABLISHING NEW
appropriation verification	)	APPROPRIATION VERIFICATION
procedures.	)	PROCEDURES

To: All Interested Persons

1. On July 28, 1988, the Board of Natural Resources and Conservation proposed adoption of new rules pertaining to the new appropriation verification process at pages 1651 thru 1656 of the 1988 Montana Administrative Register, Issue No. 14.

2. The Board has adopted these rules as proposed with the following changes in Authority.

RULE I. 36.12.801 PURPOSE OF RULES AND SUMMARY OF NEW APPROPRIATION VERIFICATION PROCESS

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87
IMP: 85-2-314, 315, 402, MCA

RULE II. 36.12.802 DEFINITIONS

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87
IMP: 85-2-314, 315, 402, MCA

RULE III. 36.12.803 NOTICE OF FIELD INVESTIGATION

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87
IMP: 85-2-314, 315, 402, MCA

RULE IV. 36.12.804 INVESTIGATION AND DOCUMENTATION

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87
IMP: 85-2-314, 315, 402, MCA

RULE V. 36.12.805 RECOMMENDATIONS

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87
IMP: 85-2-314, 315, 402, MCA

RULE VI. 36.12.806 INFORMAL CONFERENCE

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573,

L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87

IMP: 85-2-314, 315, 402, MCA

RULE VII. 36.12.807 REASONS FOR MODIFICATION

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87

IMP: 85-2-314, 315, 402, MCA

RULE VIII. 36.12.808 REASONS FOR REVOCATION

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87

IMP: 85-2-314, 315, 402, MCA

RULE IX. 36.12.809 ADMINISTRATIVE HEARING AND FINAL ACTION

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Auth. Extension, Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87

IMP: 85-2-314, 315, 402, MCA

3. Comments received on the proposed adoption of the rules are as follows:

COMMENT: The Montana Legislative Council comments the rule history should include the extension of authority Sec.10, Ch. 535, L. 1987, effective 4/17/87.

RESPONSE: Although the interpretation of the Legislative Council as to the applicability of the extension of authority provision to these rules is questionable as a matter of law the comment is accepted.

4. No other comments or testimony were received.

BOARD OF NATURAL RESOURCES AND
CONSERVATION


WILLIAM A. SHIELDS, CHAIRMAN

Certified to the Secretary of State on October 3, 1988.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF THE ADOPTION of
of Rule I (42.25.102) and Rule)	Rule I (42.25.102) and Rule
II (42.25.103) relating to)	II (42.25.103) relating to
Metalliferous Mines License)	Metalliferous Mines License
Tax.)	Tax.

TO: All Interested Persons:

1. On August 11, 1988, the Department of Revenue published notice of the proposed adoption of rule I (42.25.102) and rule II (42.25.103) relating to Metalliferous Mines License Tax at page 1786 of the 1988 Montana Administrative Register, issue no. 15.

2. A public hearing was held on August 31, 1988 where written and oral comments were received.

3. As a result of the comments received the Department has adopted rule I (42.25.102) and rule II (42.25.103) as proposed.

4. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

RULE I (42.25.102)

COMMENT: The market value of metals must be determined at the time and place of production.

RESPONSE: Neither the rule nor the applicable statute makes any mention of valuing minerals at the place of production. The value of minerals is determined at the time of production, which also presumes the quantity is determinable at that time, since both quantity and price per unit must be known to determine gross value. This is addressed in the first sentence of this rule.

COMMENT: The use of the term "deductions" is inappropriate in the rule since the statute provides for the determination of market value, as in the case of other taxes, based upon market or merchantable value.

RESPONSE: The applicable statute provides that the tax is based on the market value of metals produced without deductions for costs of smelting, reduction, treatment, etc.. It seems totally appropriate to the Department to emphasize this in a rule since metal producers have claimed these deductions against value reported on the tax returns.

COMMENT: Where smelting, reduction or treatment is not necessary to ascertain the metal contents then the value of the metal must be determined by ascertaining the market value of the

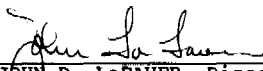
saleable metals produced, extracted, sold or otherwise disposed of as provided in the statute.

RESPONSE: The rule addresses the situation where smelting costs have been incurred and emphasizes that no deductions may be claimed for these costs. Obviously, if these costs have not been incurred, they will not have been claimed as deductions by the producer and the question of deductions is moot.

RULE II 42.25.103

COMMENT: Only the market value of the saleable or merchantable minerals can be included in the taxable metal content.

RESPONSE: The rule and the statute both state that all merchantable minerals are subject to tax. Merchantable minerals includes those recoverable metals exchanged for smelting and refining services.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/3/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE REPEAL)	NOTICE OF THE REPEAL of
of ARM 42.25.1021, 42.25.1022,)	ARM 42.25.1021, 42.25.1022,
and 42.25.1023 relating to New)	and 42.25.1023 relating to New
Production of Net Proceeds.)	Production of Net Proceeds.

TO: All Interested Persons:

1. On August 11, 1988, the Department published notice of the repeal of ARM 42.25.1021, 42.25.1022, and 42.25.1023 relating to New Production of Net Proceeds at page 1781 of the 1988 Montana Administrative Register, issue no. 15.

2. The Department has repealed these rules as proposed.

3. No comments or testimony were received.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/3/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE ADOPTION)	CORRECTED NOTICE OF ADOP-
of Rule I (42.26.275) and)	TION of Rule I (42.26.275)
Rule II (42.26.276) relating)	and Rule II (42.26.276)
to Installment Gains -)	relating to Installment Gains
Corporations.)	- Corporation.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed adoption of Rules I (42.26.275) and Rule II (42.26.276) relating to Installment Gains - Corporations at page 963 of the 1988 Montana Administrative Register, issue no. 10.

2. On July 14, 1988 the Department noticed these rules for adoption on page 1544 of the 1988 Montana Administrative Register, issue no. 13. The numbers (42.26.270 and 42.26.271) assigned to these rules are incorrect and we are correcting the numbers through this notice.

3. Therefore, the Department has adopted rules I (42.26.275), Special Rules Related To Installment Sales; and II (42.26.276), Unreported Income On Installment Obligation In Year of Dissolution as proposed.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 10/3/88.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.12.501 and	)	RULE 46.12.501 AND ADOPTION
adoption of Rules 46.12.2101	)	OF RULES 46.12.2101 AND
and 46.12.2102 pertaining to	)	46.12.2102 PERTAINING TO
Medicaid reimbursement for	)	MEDICAID REIMBURSEMENT FOR
non-hospital laboratory and	)	NON-HOSPITAL LABORATORY AND
radiology services	)	RADIOLOGY SERVICES

TO: All Interested Persons

1. On August 25, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.501 and adoption of Rules 46.12.2101 and 46.12.2102 pertaining to Medicaid reimbursement for non-hospital laboratory and radiology services at page 1885 of the 1988 Montana Administrative Register, issue number 16.

2. The Department has amended Rule 46.12.501 as proposed.

3. The Department has adopted the following rules as proposed with the following changes:

46.12.2101 NON-HOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REQUIREMENTS (1) "Non-hospital laboratory and radiology (x-ray) services" are professional and technical laboratory and radiology services which are either:

(a) ordered and provided by a physician, ~~or other dentist or optometrist licensed practitioner--of-the-healing-arts~~ within the scope of his practice as defined by state law; or

(b) ordered and provided under the direction of a physician; ~~or.~~

~~(c)--ordered-and-billed-by-a-physician-but-provided-by-an independent-laboratory.~~

(2) Non-hospital laboratory and radiology (x-ray) services may be provided in an office or similar facility other than a hospital outpatient department or clinic.

(3) Out-of-state providers must meet the following requirements:

(a) Providers of laboratory services must be:

(i) medicare certified; and

(ii) meet licensing requirements of the state in which they are located.

(b) Providers of radiology services must:

(i) be supervised by a physician who is licensed to practice medicine within the state in which the services are provided; and

(ii) meet state facility licensing requirements, if applicable.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-113 and 53-6-141 MCA

46.12.2102 NON-HOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REIMBURSEMENT

(1) These reimbursement requirements are in addition to those contained in ARM 46.12.2003.

(2) Independent laboratory ~~services~~ providers must meet the following requirements to receive medical reimbursement:

(a) the independent laboratory ~~service~~ provider must be certified by medicare;

(b) the independent laboratory ~~service~~ provider must meet any state licensing requirements for laboratory facilities; and

(c) the independent laboratory service must have been ordered by a physician, dentist or optometrist licensed to practice in Montana.

(i) Medicaid does not reimburse services ordered by chiropractors.

(3) Independent radiology (x-ray) services must meet the following requirements to receive medical reimbursement:

(a) the independent radiology ~~service~~ provider must meet any state licensing requirements for radiology facilities;

(b) the independent radiology service must be ordered by a licensed physician, dentist or optometrist;

(c) technical components of diagnostic and therapeutic radiology services must be performed under the supervision of a physician; and

(d) the physician with supervisory responsibilities for the radiology services must meet state licensing requirements; and

(e) technical components of the radiology (x-ray) service must be billed by and reimbursed to the supervising physician.

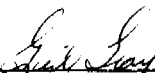
AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-113 and 53-6-141 MCA

4. The Department has thoroughly considered all commentary received;

COMMENT: P.L. 98-369 eliminated Section 1902(a)(43) of the Social Security Act. Thus, a state agency may no longer allow a physician to bill for clinical diagnostic laboratory tests that are not personally performed or supervised by the physician.

RESPONSE: Rule I(1)(c) has been deleted from the proposed rule.



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 3, 1988.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA


In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.3601	)	RULES 46.12.3601 AND
and 46.12.3603 pertaining	)	46.12.3603 PERTAINING TO
to non-institutionalized	)	NON-INSTITUTIONALIZED SSI-
SSI-related individuals and	)	RELATED INDIVIDUALS AND
couples	)	COUPLES

TO: All Interested Persons

1. On August 25, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.3061 and 46.12.3603 pertaining to non-institutionalized SSI-related individuals and couples at page 1883 of the 1988 Montana Administrative Register, issue number 16.

2. The Department has amended Rules 46.12.3601 and 46.12.3603 as proposed.

3. No written comments or testimony were received.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State October 3, 1988.

VOLUME 42

OPINION NO. 110

COAL - Authority of Legislature to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

LEGISLATURE - Authority to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

STATE GOVERNMENT - Authority of Legislature to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

TAXATION AND REVENUE - Authority of Legislature to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

MONTANA CODE ANNOTATED - Sections 1-2-102, 17-5-703, 17-5-704;

MONTANA CONSTITUTION - Article V, section 11(1); Article IX, section 5.

HELD: The Legislature may not appropriate by a simple majority vote the income and interest earned on the coal severance tax trust fund since July 1, 1983, and deposited to the permanent fund pursuant to section 17-5-704, MCA.

15 September

Ellen Feaver, Director
Department of Administration
Room 155, Mitchell Building
Helena MT 59620

Dear Ms. Feaver:

You have asked for my opinion on the following question:

May the Legislature appropriate by a simple majority vote the income and interest earned on the coal severance tax trust fund since July 1, 1983, and deposited to the permanent fund pursuant to section 17-5-704, MCA?

Montana Administrative Register

19-10/13/88

Article IX, section 5 of the Montana Constitution requires that at least 50 percent of the coal severance tax be dedicated to a trust fund. The interest and income from the trust fund may be appropriated, but the principal must "forever remain inviolate" unless appropriated by a vote of three-fourths of the members of each house of the Legislature.

The statutory procedure for depositing money in the trust fund is set forth in sections 17-5-703 and 17-5-704, MCA. The trust fund is actually composed of three funds: a bond fund, a permanent fund, and an income fund. Except for amounts necessary to meet coal severance tax bond payments, the principal is deposited in the permanent fund. § 17-5-703, MCA. Money in all three funds is to be invested with a fixed portion of the investment income to be deposited in the permanent fund. § 17-5-704, MCA. It is this deposit of a portion of the investment income which gives rise to your inquiry.

The Legislature first provided that, beginning in 1983, 15 percent of the income and earnings from the three funds must be appropriated and deposited in the permanent fund. Senate Bill 409, ch. 505, 1981 Mont. Laws. During the 1987 legislative session, the statute was amended to require that only 2 percent of the income from the three funds be deposited in the permanent fund for the period July 1, 1987, through June 30, 1988. On July 1, 1989, the rate will return to 15 percent. The statute has always required that this money may not be appropriated without a three-fourths vote of each house of the Legislature, tracking the constitutionally-required three-fourths vote needed to appropriate the trust fund principal. Mont. Const. Art. IX, § 5. Your question is whether a simple majority vote or a three-fourths vote of the Legislature is required to appropriate the income that has been deposited in the permanent fund. The answer turns upon whether the income deposited in the permanent fund under section 17-5-704, MCA, becomes a part of the principal of the trust.

In the construction of a statute, the intention of the Legislature is to be pursued if possible. § 1-2-102, MCA. The clear intent of the Legislature in providing that a percentage of the trust income be appropriated and deposited to the permanent fund was that the

deposited investment income be treated as principal. The discussion of Senate Bill 409 reflected in the minutes of the meeting of the Select Committee on Water, April 2, 1981, indicates that the permanent fund was intended as a repository for the principal of the trust. A portion of the trust income and earnings was to be deposited in the permanent fund to replace any of the principal lost due to debt service on severance tax bonds. Id., testimony of Leo Berry.

The income deposited in the permanent fund, by virtue of its becoming a part of the principal, must remain inviolate unless appropriated by a three-fourths vote of the Legislature. Mont. Const. Art. IX, § 5. The three-fourths vote required by section 17-5-704(3), MCA, to appropriate the income deposited in the permanent fund is consistent, but unnecessary language since the Constitution already requires a supermajority vote to appropriate the principal.

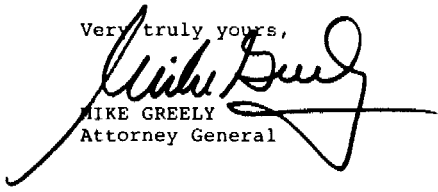
I note that the Constitution contemplates that acts of the Legislature require a simple majority vote, unless otherwise specified in the Constitution itself. Mont. Const. Art. V, § 11(1). Thus, for example, the Legislature could, by a simple majority vote, increase beyond 50 percent the portion of coal severance tax that is dedicated to the trust fund. Moreover, the authority given to the Legislature under Article IX, section 5 of the Montana Constitution to appropriate the interest and income from the trust fund may be exercised by a simple majority vote. The Legislature exercised this authority when it enacted section 17-5-704, MCA, requiring a fixed portion of the interest to be appropriated and deposited in the permanent fund. By the same token, the Legislature could amend or repeal this section by a simple majority vote. It is for this reason that section 17-5-704, MCA, does not violate the general rule that the act of one Legislature may not restrict the power of subsequent Legislatures. See Am. Jur. 2d States § 40 (1974).

THEREFORE, IT IS MY OPINION:

The Legislature may not appropriate by a simple majority vote the income and interest earned on the coal severance tax trust fund since July 1, 1983,

and deposited to the permanent fund pursuant to
section 17-5-704, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 111

COUNTIES - Lack of authority of county with general powers to implement employee safety incentive bonus program;

COUNTY COMMISSIONERS - Lack of authority of county with general powers to implement employee safety incentive bonus program;

COUNTY OFFICERS AND EMPLOYEES - Lack of authority of county with general powers to implement employee safety incentive bonus program;

EMPLOYEES, PUBLIC - Lack of authority of county with general powers to implement employee safety incentive bonus program;

MONTANA CODE ANNOTATED - Section 7-5-2101;

MONTANA CONSTITUTION - Article XI, sections 4(1)(b), 6;

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 17 (1983), 37 Op. Att'y Gen. No. 105 (1978).

HELD: A county with general government powers, such as Teton County, has no inherent authority within its statutory system to implement an employee incentive award program whereby county employees are paid bonuses for maintaining accident-free periods in their departments.

21 September 1988

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion on the following question:

Does section 7-5-2101, MCA (the statute setting out the general authority of county commissioners), grant county commissioners the authority to implement a program which pays bonuses to county employees for maintaining accident-free periods in their departments?

You have explained that Teton County's government has chosen to retain general powers rather than to adopt a self-government charter. This fact is important because of the nature of the authority of those entities under the Montana Constitution.

Under the Constitution, local governments have the option of adopting a self-government charter or retaining general government powers. If a local government adopts a charter, then it may exercise any power not prohibited by the Constitution, its law or charter; hence, it has, in effect, the authority to share powers with the state government. Mont. Const. art. XI, § 6. If a local government chooses to retain general government powers, the local government has only the powers given to it by the Legislature. D & F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 80, 713 P.2d 977, 982 (1986); 40 Op. Att'y Gen. No. 17 at 63 (1983). This distinction is central to your request because Teton County has not adopted a self-government charter. Hence, it may only exercise "legislative, administrative, and other powers provided or implied by law." Mont. Const. art XI, § 4(1)(b).

The focus of your request shifts, because of the above analysis, to ask whether the Legislature expressly or implicitly authorizes safety incentive bonus programs in its grant of general government powers. Title 7, chapter 4, part 25, MCA, addresses the compensation of local government employees. There is no mention in these statutes of any authority to grant employee bonuses. Although there is no express authority in Montana law for such bonuses, there is a general grant of authority in section 7-5-2101, MCA, which states:

(1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the

full discharge of the duties of the chief executive authority of the county government.
[Emphasis added.]

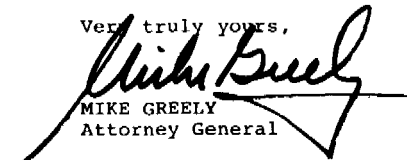
In the context of governmental powers, the word necessary means "reasonable and appropriate" or "reasonably well adopted to the accomplishment" of governmental duties or powers. 37 Op. Att'y Gen. No. 105 at 441, 445 (1978). While there is little guidance on this subject, it is my opinion that the power to grant employee bonuses may not be inferred from this general grant of authority.

Because my research discloses no statutes conferring either express or implied authority to establish employee incentive awards programs, I conclude that Teton County has no authority to implement an employee incentive award program. See 40 Op. Att'y Gen. No. 17 at 66. If the Teton County commissioners are interested in pursuing the idea, the proper course would be to seek legislative authorization. This opinion does not address the situation where an employee incentive program is part of a collective bargaining agreement.

THEREFORE, IT IS MY OPINION:

A county with general government powers, such as Teton County, has no inherent authority within its statutory system to implement an employee incentive award program whereby county employees are paid bonuses for maintaining accident-free periods in their departments.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 112

COUNTIES - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

LIENS - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

PROPERTY, REAL - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

PUBLIC ASSISTANCE - Authority of counties to execute on liens for welfare payments against property bearing a homestead declaration;

MONTANA CODE ANNOTATED - Sections 70-32-201, 70-32-202;

MONTANA CONSTITUTION - Article XI, section 4;

MONTANA LAWS OF 1973 - Chapter 299.

HELD: A county may not execute on a lien for welfare payments against residential property owned by welfare recipients where there has been a homestead declaration recorded on the property.

27 September 1988

J. Allen Bradshaw
Granite County Attorney
P.O. Box 490
Philipsburg MT 59858

Dear Mr. Bradshaw:

You have asked my opinion on the following question:

May the county assert a lien for welfare payments against residential property owned by welfare recipients where there has been a homestead declaration recorded on the property?

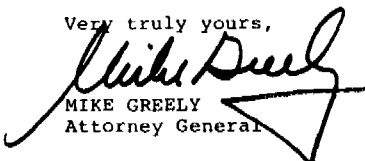
A dwelling declared to be a homestead is generally exempt from execution, § 70-32-201, MCA. Execution is allowed in satisfaction of judgments obtained on debts secured by construction liens or certain mortgages, § 70-32-202, MCA. Homestead exemption laws should be

liberally construed in favor of the debtor. Oregon Mortgage Co. v. Dunbar, 87 Mont. 603, 289 P. 559 (1930). Liens for welfare payments are not enumerated among the exceptions to the general homestead exemption, and I find no statutory authority for counties of any type to execute on judgments obtained on liens for welfare payments. Moreover, it is questionable whether a county with general powers, such as Granite County, has authority to assert a lien for welfare payments. Neither Title 53, MCA, pertaining to general assistance programs, nor Title 7, MCA, pertaining to county law, nor Title 71, chapter 3, MCA, pertaining to the creation of liens by operation of law, gives authority to assert such liens. See Mont. Const., Art. XI, § 4. I note that where the State has assumed all responsibilities for public assistance programs pursuant to sections 53-2-801 to 822, MCA, it lacks authority to assert such a lien because that authority was rescinded in 1973. 1973 Mont. Laws, ch. 299 (repealing sections 71-241 and 71-243 to 246, R.C.M. 1947, which gave the Department of Social and Rehabilitation Services authority to assert liens against recipients of public assistance).

THEREFORE, IT IS MY OPINION:

A county may not execute on a lien for welfare payments against residential property owned by welfare recipients where there has been a homestead declaration recorded on the property.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 113

COUNTIES - Requirement to assess maximum poor fund mill levy to become eligible for state grant-in-aid to pay for indigent felon's medical expenses;

COUNTY COMMISSIONERS - Requirement of either a judgment against the county or passage of resolution by county commissioners and election to increase county poor fund mill levy over 1986 levels;

COUNTY GOVERNMENT - Requirement of either a judgment against the county or passage of resolution by county commissioners and election to increase county poor fund mill levy over 1986 levels;

PUBLIC ASSISTANCE - Requirement that counties assess maximum poor fund mill levy to become eligible for state grant-in-aid to pay for indigent felon's medical expenses;

SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - Requirement that counties assess maximum poor fund mill levy to become eligible for state grant-in-aid to pay for indigent felon's medical expenses;

TAXATION AND REVENUE - Requirement to reduce county liability to judgment or hold election to increase county poor fund mill levy over 1986 levels, in light of I-105;

MONTANA CODE ANNOTATED - Sections 7-6-2344, 15-10-401, 15-10-402, 15-10-412, 53-2-321 to 53-2-323;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987), 39 Op. Att'y Gen. No. 20 (1981).

- HELD: 1. Before a county that has exhausted its poor fund due to liability for an indigent felon's medical expenses becomes eligible for an emergency grant-in-aid under section 53-2-323, MCA, it must first assess the maximum poor fund levy of 13.5 mills authorized by sections 53-2-321 and 53-2-322(1), MCA. In light of the adoption of Initiative No. 105, this may be done pursuant to either section 15-10-412(8)(f) or section 15-10-412(9), MCA.
2. In light of Initiative No. 105, increasing a county poor fund levy over 1986 levels to pay for an indigent felon's medical expenses requires either that a liability against the county be reduced to a judgment, or that the county commissioners pass a resolution pursuant to section 15-10-412(9), MCA,

followed by either a special or general election in which the issue of increased property tax liability is presented to the voters for authorization.

28 September 1988

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion concerning the effect of Initiative No. 105 on a county's request for an emergency state grant-in-aid, and I have rephrased your questions as follows:

1. In light of sections 15-10-401 and 15-10-402, MCA (Initiative No. 105, 1986), must a county that has exhausted its poor fund due to an indigent's medical expenses have levied the maximum 13.5 mills authorized by sections 53-2-321 and 53-2-322(1), MCA, in order to qualify for an emergency grant-in-aid pursuant to section 53-2-323, MCA?
2. If a county must first levy the maximum 13.5 mills as authorized in sections 53-2-321 and 53-2-322, MCA, before it can qualify for an emergency grant-in-aid, what procedure should be used to impose additional levies, in light of sections 15-10-401 and 15-10-402, MCA (Initiative No. 105, 1986)?

I understand from your letter that a resident indigent convicted in Teton County of felony assault incurred extensive medical costs stemming from the assault, and those costs will exhaust the Teton County poor fund, leaving a balance of about \$26,000 in unpaid medical bills. In addition, it is my understanding that Teton County has levied 3.3 mills for the Teton County poor fund every year since 1986. Finally, you have stated

that Teton County has neither self-government powers nor a state-assumed welfare service.

It is clear that Teton County is responsible for the indigent's medical bills. Montana Deaconess Medical Center v. Johnson, No. 88-91 (Mont. July 7, 1988).

Section 53-2-323, MCA, provides in pertinent part that:

[A] county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

....

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted[.] [Emphasis added.]

Section 53-2-321, MCA, authorizes a county to levy a property tax not to exceed 13.5 mills for the purpose of caring for the indigent sick of the county, and section 53-2-322, MCA, requires that "[t]he board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary."

In 39 Op. Att'y Gen. No. 20 (1981) at 77, I construed the language of the statutes quoted above as requiring a county to have exhausted the entire 13.5 mill levy authorized by section 53-2-321, MCA, before that county could become eligible for an emergency grant under section 53-2-323, MCA. That conclusion was based upon a careful review of the legislative history of section 53-2-323, MCA. See 39 Op. Att'y Gen. No. 20 at 80-81. Although the issue in that opinion involved counties

with self-government powers, the holding has application to counties with general government powers as well:

Section 53-2-321, MCA, specifically authorizes the counties "to levy and collect annually a tax on property not exceeding 13½ mills...." [Emphasis in original.] This is the only mill levy authorized for public assistance. Thus, referring to county mill levies, as opposed to other unrelated sources of revenue, once a county has levied and collected 13½ mills for purposes of the county poor fund it has exhausted "all lawful sources of revenue" and thus met the requirement of section 53-2-323(1)(b), MCA.

....

[T]he Legislature specifically limited the scope of the application for a grant-in-aid to whether the county had levied and collected the "whole of the 13.5 mill levy,"

....

The reference in chapter 37 to the specific mill levy limit authorized now in section 53-2-321, MCA, read together with language requiring exhaustion of all sources of revenue makes it clear that in reviewing an application to the department for a state grant-in-aid, the Legislature intended that the review be limited to the mill levy authorized in section 53-2-321, MCA.

....

While counties with self-government powers are not subject to statutory mill levy limits it does not necessarily follow that such counties must levy more than 13.5 mills to be eligible for a grant-in-aid. All that is required is that the county exhaust "the whole of the 13.5 mill levy" authorized in section 53-2-321, MCA. [Emphasis added.]

39 Op. Att'y Gen. No. 20 at 79-81.

In 1981 the Legislature amended section 53-2-323, MCA, by providing the Department of Social and Rehabilitation Services with authority to establish criteria for evaluating the reasonableness and necessity of county poor fund expenditures when reviewing an application for an emergency grant-in-aid. 1981 Mont. Laws, ch. 400 (HB 291). The holding cited above in 39 Op. Att'y Gen. No. 20 (1981) was affirmed by the Statement of Intent issued in conjunction with HB 291, which announced that "[g]rants-in-aid are mandatory if the county is spending over the 13.5 poor fund mill levy and if the present law is followed." Minutes of House Committee on State Administration, February 10, 1981.

However, because the passage of Initiative No. 105 (I-105) in 1986, codified in sections 15-10-401 and 15-10-402, MCA, limited imposition of property taxes to amounts levied in 1986, the question remains whether Teton County has exhausted all "lawful sources of revenue" in accord with section 53-2-323, MCA, by limiting its county poor fund levy to 1986 levels, i.e., 3.3 mills. In other words, is there any lawful avenue for Teton County to levy the maximum of 13.5 mills authorized by section 53-2-321, MCA, in light of sections 15-10-401 and 15-10-402, MCA?

I conclude that section 15-10-412, MCA, provides such an avenue. Subsection (8)(f) sets forth a specific exception to the limitations imposed by sections 15-10-401 and 15-10-402, MCA, as follows:

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

....

(f) satisfaction of judgments against a taxing unit[.]

Thus the county may levy the maximum 13.5 mill levy despite sections 15-10-401 and 15-10-402, MCA, if its obligation to repay the indigent's medical expenses is reduced to a judgment.

Teton County also has the option of passing a resolution and conducting an election to determine whether the voters of the county would authorize the increase in tax liability necessary in levying the maximum 13.5 mills for the county poor fund, pursuant to section 15-10-412(9), MCA.

In your second question, you ask what procedure should be used to increase Teton County's poor fund mill levy from its 1986 level of 3.3 mills to 13.5 mills.

In the absence of a judgment against the county for the amount of medical expenses due (see § 15-10-412(8)(f), MCA), such a process would first require the county commissioners to adopt a resolution which satisfies the requirements of section 15-10-412(9), MCA. That resolution must include, inter alia, a finding that there are no other alternative sources of revenue, and a summary of the alternatives considered by the commissioners. § 15-10-412(9)(e), (f), MCA. In passing such a resolution, it should be made clear that in the wake of I-105, local governments may be required to reduce discretionary spending in order to perform legally mandated duties. See 42 Op. Att'y Gen. No. 21 (1987).

Following adoption of the resolution, "the voters in the taxing unit" must approve the proposed tax increase. Although there is no specific direction in section 15-10-412(9), MCA, regarding the process to be used in securing voter approval, guidance is provided by sections 7-6-2341 to 2345, MCA. Until the approval of I-105 in 1986, those statutes were among the exclusive provisions addressing emergency expenditures by the county commissioners. Under section 7-6-2344, MCA, when emergency expenditures by a county exceed certain statutory levels, any further emergency spending must be "authorized by a majority of the electors of the county, voting at a general or special election." Unless one of the exceptions enumerated in section 15-10-412(8), MCA, applies, however, section 15-10-412(9), MCA, requires an election for any increase in property tax liability over 1986 levels.

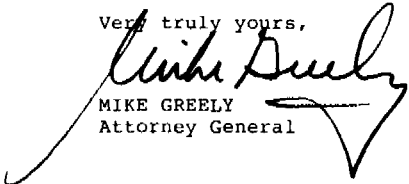
Thus, under section 15-10-412(9), MCA, Teton County voters must have an opportunity to authorize any increase in the poor fund tax levy in either a general or special election, conducted in accord with the

provisions of Title 13, MCA. In addition, section 15-10-412(9), MCA, suggests that the ballot contain specific language indicating that granting authorization to raise the poor fund mill levy will increase the tax liability of property owners in the county.

THEREFORE, IT IS MY OPINION:

1. Before a county that has exhausted its poor fund due to liability for an indigent felon's medical expenses becomes eligible for an emergency grant-in-aid under section 53-2-323, MCA, it must first assess the maximum poor fund levy of 13.5 mills authorized by sections 53-2-321 and 53-2-322(1), MCA. In light of the adoption of Initiative No. 105, this may be done pursuant to either section 15-10-412(8)(f) or section 15-10-412(9), MCA.
2. In light of Initiative No. 105, increasing a county poor fund levy over 1986 levels to pay for an indigent felon's medical expenses requires either that a liability against the county be reduced to a judgment, or that the county commissioners pass a resolution pursuant to section 15-10-412(9), MCA, followed by either a special or general election in which the issue of increased property tax liability is presented to the voters for authorization.

Very truly yours,



MIKE GREELY
Attorney General

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

* * * * *

IN THE MATTER of the Petition of)	
Molerway Freight Lines, Inc. for a)	DECLARATORY RULING
Declaratory Ruling on Whether)	
Molerway can Lawfully Operate Over)	
Montana Highway 16 Between Glendive) DOCKET NO. T-9164	
and Sidney.)	

Background and Law

On December 16, 1987, the Public Service Commission (Commission) received a Petition for Declaratory Ruling from Molerway Freight Lines, Inc. (Molerway). The question raised by Molerway is as follows:

Whether Molerway, which holds no Montana intrastate authority over Highway 16 between Glendive and Sidney, can carry freight from one Montana point to another Montana point over that portion of Highway 16 by routing that freight through its Williston, North Dakota terminal?

The law to be applied to this question was stated succinctly by this Commission as follows:

Both the Motor Carrier Act of 1935 and the Motor Carrier Act of 1980 provide that the Interstate Commerce Commission (ICC) has jurisdiction over persons or property transported by motor carrier between a place in a state and another place in the same state through another state. See 49 USCA § 303(10) and 49 USCA § 10521(a)(1)(B). Thus, as the ICC explained in Pennsylvania P.U.C. v. Arrow Carrier Corp., 113 M.C.C. 213, 219 (1971) (Arrow), "shipments originating at and destined to points in the same state are unquestionably in 'interstate commerce' if routed through another state, even though the out-of-state portion of the mileage be small." However, it is also the case that both the 1935 and 1980 Motor Carrier acts reserve to the states the power to regulate intrastate motor carriage. See 49 USCA § 302(b) and 49 USCA § 10521(b)(1). "[I]t is well established that interstate routings may not be employed in 'bad faith' as a 'subterfuge' to avoid legitimate state regulation." Arrow, supra at 219 (and cases there cited). The question, therefore, is whether Molerway's routing of intrastate freight through Williston should be interpreted as an attempt to avoid legitimate state regulation.

The ICC still recognizes Arrow as the leading case in this area. See Oregon P.U.C. v. Southwest

Delivery Co., Inc. (Southwest), 1985 F.C.C. 47,726, 47,728. In Arrow the ICC described the criteria for determining "bad faith" and "subterfuge" as follows:

Generally speaking, this Commission and the courts have looked ... to the "reasonableness" of a carrier's modus operandi, as evidenced by (1) the degree of circuitry involved in the interstate route when compared with the "local" route normally employed by intrastate carriers, (2) the presence or absence of economic or operational justification for such routing apart from the carrier's lack of intrastate authority and desire to transport otherwise unavailable traffic, and (3) the incidental or dominant character of the intrastate traffic as a portion of the carrier's overall operation. No single factor is controlling. Nor is there any presumption in favor or against any one.

Arrow, supra at 220; 1971 F.C.C. 45,232.

Notice of Hearing, Docket No. T-9164, Service Date March 15, 1988.

The Commission held a hearing on this Petition to establish the facts of Molerway's operation through its Williston terminal sufficient for the Commission to determine, pursuant to the above criteria, whether that operation is a "subterfuge" to avoid intrastate regulation. All certificated carriers in Montana were notified of this Petition. Carriers who commented on the Petition were notified of the hearing. Bob's Pickup and Delivery, ANR Freight System, Inc. and Dixon Bros., Inc., appeared at the hearing in opposition to the Petition. They were allowed to cross-examine Molerway and to present testimony. Post hearing briefs were submitted.

Discussion and Ruling

As noted above, freight that is transported from one Montana point to another, through a point outside of Montana, is in interstate commerce and not subject to this Commission's jurisdiction. The only exception to this statement is if the freight is deliberately routed through an out-of-state point, in bad faith and as a subterfuge, to avoid legitimate intrastate regulation. In this case, Molerway does not have an intrastate certificate allowing it to transport freight over Montana Highway 16 between Glendive and Sidney. Molerway does have Class A, route specific authority to serve Sidney by going north from Billings to Malta, then east across the hi-line. Similarly, Molerway has authority to serve from Billings through Glendive to the North Dakota border along Interstate 94. The question, therefore, is whether Molerway delib-

erately established its Williston, North Dakota terminal in order to overcome its lack of intrastate authority to travel a portion of Highway 16? The Commission finds from the evidence, as explained below, that it did not.

The first consideration is whether the degree of circuitry involved in the out-of-state route indicates subterfuge. Specifically, does the evidence indicate that there is no reason, other than avoiding intrastate regulation, to route freight from Billings to Williston and then backhaul as far as Sidney? Both witnesses for Molerway explained that its system utilizes several terminals as hubs. Freight is linehauled to these hubs where it is sorted for distribution, often in the form of a backhaul. Molerway uses this system for both interstate and intrastate freight. In addition to the testimony provided by Molerway, the Commission is aware that linehauling to central hubs for sorting, and then backhauling to distribution points, is common in the motor carrier industry. The record does not support a finding of this Commission that Molerway's backhaul of freight from Williston to Sidney is circuitous to such a degree that it can only be justified by a desire to avoid state regulation. The uncontradicted testimony is that Molerway would continue its backhaul to Sidney, even if it had intrastate authority to travel the section of Highway 16 in question. The Commission does not find the circuitry involved in Molerway's operation through Williston unreasonable or evidence of bad faith.

The second issue to be considered is whether Molerway has demonstrated a business justification for its Williston terminal apart from its desire to avoid state regulation. The unrebutted evidence on the record indicates that there were sound business reasons for Molerway moving its terminal from Glasgow to Williston. Because of increased competition, the Glasgow terminal was not as profitable as it had been. In the course of searching for an alternative, Molerway recognized Williston as 1) a larger city than Glasgow with a larger labor force, 2) a city with adequate dock facilities, 3) a city with more vendors for truck parts and tires, 4) a convenient location for interlining with carriers to and from the east, as well as for serving northeastern Montana points. These appear to the Commission to be sound reasons for relocating the terminal. In the absence of evidence, the Commission will not infer a bad faith motive for the relocation.

The third question to be considered is whether the Montana freight routed through Williston¹ is dominant or incidental to Molerway's Williston operation. The reason for in-

1 In Arrow, supra, the ICC referred to the incidental or dominant character of the intrastate freight as a portion of the carriers overall operation. This was modified by the ICC in later cases so that challenged single-state traffic is compared with the carriers' overall operation at the same operating terminal. See e.g., Oregon P.U.C. v. Southwest Delivery Co., supra.

cluding this question is that the larger the percentage of in-state freight, that a carrier would not be able to haul because of lack of intrastate authority, the more plausible the presumption that the carrier is taking that freight across a state line in order to defeat state regulation. The record indicates that Molerway's in-state freight constitutes from 15 percent to 20 percent of its Williston operation. There are a number of ICC cases in which a much smaller percentage of in-state freight was determined incidental. See, e.g., Arrow, supra (5%), Southwest Delivery, supra (2.5%). However, there is at least one case where 18 percent in-state freight did not preclude a finding of bona fide interstate operation. See Jones Motor Co. v. United States, 218 F.Supp. 133 (1963). The Commission concedes that its decision on this petition would be much easier if Molerway's in-state freight constituted a smaller percentage of the total freight handled by the Williston terminal. However, the Commission does not find, when all elements for determining bad faith and subterfuge are considered together, that the relatively large percentage of in-state freight evident here supports a finding of bad faith and subterfuge. First, in order to demonstrate good faith, a carrier does not have to strictly qualify under each element of the test identified by the ICC in Arrow. As the ICC said in that case, the elements are evidence of the reasonableness of a carrier's operation and "no single factor is controlling." The Commission finds that, viewed as a whole, Molerway's Williston terminal is a reasonable interstate operation, despite handling a fairly large percentage of in-state freight. Second, the facts in this case are slightly different from the facts in the ICC cases that have addressed this question. In the ICC cases the carriers in question lacked intrastate authority so that routing freight interstate allowed these carriers to serve points they otherwise could not serve. In this case, Molerway has the intrastate authority to serve all points in question, however it must use certain specific routes. The presumption, therefore, that the greater percentage of in-state freight that is routed interstate, the more likely it is that such routing is done in bad faith, does not necessarily hold in this case. All of the in-state freight that Molerway carries through Williston, could also be carried intrastate, though perhaps not as efficiently.

Based on the above, the Commission finds that Molerway did not locate a terminal in Williston in order to circumvent its lack of authority over a portion of Highway 16. Therefore, Montana freight that is routed over Montana Highway 16, through Williston, is in interstate commerce and not subject to this Commission's jurisdiction. The Commission cannot prohibit the transportation of interstate freight on a public highway.

Having ruled, the Commission makes the following additional points. First, it was argued by those opposed to this Petition that the Commission must find against Molerway in order to be consistent with its obligation to regulate intrastate

carriers and to promote common carriage. This argument is without merit for the very simple reason that this ruling concludes that the transportation in question is interstate, and this Commission has no control over such transportation. It is not an obligation of this Commission to assert jurisdiction where none exists.

Second, Molerway stated at hearing, and at several places in its briefs, that this Commission is responsible for the increased costs that Molerway has incurred as a result of not being able to transport over a portion of Highway 16. Further, Molerway has stated that the Commission has committed waste by its enforcement action, and Molerway has strongly implied, if not stated directly, that the enforcement action amounts to harassment. The Commission strongly resents these allegations and finds that they reflect an ignorance of the Commission's obligation to enforce the Montana motor carrier statutes (Title 69, Chapter 12, MCA). The officers charged with enforcing those statutes have a responsibility to issue citations if they have reasonable cause to believe that a violation is being committed. A carrier charged with a violation has all due process rights to make a defense based on the facts, the law, or both. In this case, there is no question that the enforcement officer had reasonable cause to issue the citation because Molerway was carrying Montana freight over a section of highway on which it has no Montana authority to operate. Molerway has now convinced this Commission that it has the legal right to operate over this section of highway, despite its lack of Montana authority. But this conclusion was reached after a lengthy analysis of the facts and federal law. Molerway apparently expected this Commission to simply accept a very complicated legal defense at face value and to refrain from enforcement. This is not the way the system works. Molerway had the option, which it never exercised, of requesting a stay of enforcement from this Commission pending a ruling on this Petition. Absent the issuance of a stay, this Commission is obligated to continue enforcement until it concludes, after a formal process, or is told by a proper authority, that such enforcement should cease.

It should be noted further that the Commission's decision to entertain this Petition was done as a courtesy, not an obligation. The United States Supreme Court has stated that the interpretation of interstate certificates should first be done by the ICC. See Service Storage v. Virginia, 359 U.S. 171 (1959). The Commission could have taken the position that Molerway's remedy was at the ICC and continued enforcement pending an ICC decision. The Commission recognized however that an administrative remedy at the ICC is time consuming and costly, and agreed to accept Molerway's Petition and refrain from enforcement if it found Molerway's Williston operation in interstate commerce according to the criteria established in federal law.

Additionally, the ruling herein is limited to the question presented and the facts revealed at hearing. The Commission does not declare in this ruling that all in-state freight

transported by Molerway through its Williston terminal is in interstate commerce. Different facts may result in a different conclusion.

Done and Dated this 1st day of September, 1988 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


HOWARD L. ELLIS, Commissioner


TOM MONAHAN, Commissioner


DANNY OBERG, Commissioner

ATTEST:


Carol Frasier
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter 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 list 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 Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1988. This table includes those rules adopted during the period June 30, 1988 through September 30, 1988 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1988, this table and the table of contents of this issue of the MAR.

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