

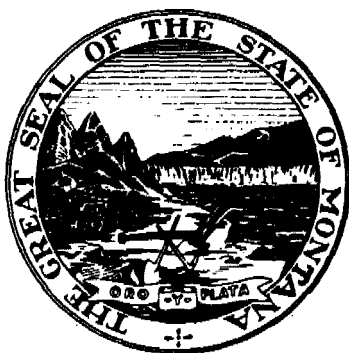
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MONTANA ADMINISTRATIVE REGISTER

1988 ISSUE NO. 24
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PAGES 2609-2765



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

The Montana Administrative Register (MAR) is a twice-monthly publication, has three sections. The first section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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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(f) An employee must be returned to a 40-hour schedule when the extended schedule is no longer required. At this point the employee will no longer be eligible to be paid straight time wages for hours over 40 until such time as he or she is returned to a schedule of at least 48 hours per workweek.

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

3. Currently, the Exempt Compensatory Time policy, ARM 2.21.1801 et seq., provides that employees exempt from the Fair Labor Standards Act earn compensatory time for hours worked in excess of 40 hours in a workweek. It does not provide for any cash compensation for those hours. This new rule has been proposed at the request of several state agencies which have particular employees who are regularly scheduled to work weekly schedules exceeding 40 hours. These employees have little or no opportunity to take off the resulting compensatory time and frequently forfeit accrued hours. This situation has led to problems with recruitment and retention. The proposed new rule would address this problem by allowing agencies under limited circumstances to establish a 48-hour or more workweek and to pay straight time cash wages up to the number of hours in the new schedule. Employees would accrue exempt compensatory time for hours in excess of the scheduled amount.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption to:

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

no later than January 19, 1989.

5. 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.

6. The authority of the agency to make the proposed adoption is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.



Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State December 12, 1988.

24-12/22/83

MAR Notice No. 2-2-178

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BUILDING CODES BUREAU

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendments of rules pertaining	)	PROPOSED AMENDMENTS,
to incorporation by reference	)	REPEAL, AND ADOPTION OF NEW
of codes; standards; fees and	)	RULES
adoption of new rules)	

TO: All Interested Persons:

1. On January 18, 1989, at 9:00 a.m., a public hearing will be held in the Director's Conference Room of the Department of Natural Resources building, 1520 East Sixth Avenue, Helena, Montana, to consider the amendments of the above-stated rules and adoption of the above referenced new rules.

2. The proposed amendment of 8.70.101 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1991 through 8-1994, Administrative Rules of Montana)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Building Code, 1985 1988 Edition, together with the Appendix Chapter 7 (Part 1, Covered Mall Buildings) (Part 11, Aviation Control Towers), ~~Appendix Chapter 12 (requirements for Group R7, Division 3 Occupancies) as amended by 8.70.108;~~ Appendix 23 (Division 1 - Alternate Snow Load Design), Appendix Chapter 32 (Re-Roofing), Appendix Chapter 49 (Patio Covers), Appendix Chapter 53 (Energy Conservation in New Building Construction), as amended by 8.70.104, and Appendix Chapter 55 (Membrane Structures), with the following amendments thereto:

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

(d) Subsections (b) and (c) of section 304 of the Uniform Building Code, 1985 1988 Edition, are amended to read as follows:

Sec. 304.(b) will remain the same.

Sec. 304.(c) Plan Review Fees: When a plan or other data are required to be submitted by subsection (b) of section 302, a plan review fee shall be paid. Said plan review fee shall be 25 percent of the building permit fee as set forth in Table No. 3-A.

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

(7) The Uniform Building Code, 1985 1988 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for building construction. A copy of the Uniform Building Code, 1985 1988 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing

the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(8) will remain the same.

(9) Appendix Chapter 1 (Division 1 - Life Safety Requirements for Existing Buildings other than High-rise Buildings), Appendix Chapter 1 (Division 11 - Life Safety Requirements for Existing High-rise Buildings), Appendix Chapter 11 (Agricultural Buildings), Appendix Chapter 12 (Requirements for Group R, Division 3 Occupancies) as amended by 8.70.108, Appendix Chapter 23 (Division 11 - Earthquake Instrumentation), Appendix Chapter 35 (Sound Transmission Control), Appendix Chapter 38 (Basement Pipe Inlets), Appendix Chapter 57 (Regulations Governing Fallout Shelters), Appendix Chapter 70 (Excavation and Grading) are adopted for use by local governments specifically adopting them. However, the department will not be enforcing them."

Auth: 50-60-104, 50-60-203, MCA Imp: 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-203, MCA

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

3. The proposed amendment of 8.70.102 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1994 through 8-1995, Administrative Rules of Montana)

"8.70.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Housing Code, 1985 1988 Edition, with the following amendments thereto:

(a) Section 203 of the code will be left in as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. Local governments may use the board of appeals created in accordance with section 204 of the Uniform Building Code, 1988 Edition to serve as the Housing Advisory and Appeals Board. The bureau and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 203.

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

(3) The Uniform Housing Code, 1985 1988 Edition, is a nationally recognized model code setting forth minimum standards and requirements for maintenance of residential buildings. A copy of the Uniform Housing Code, 1985 1988 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at a cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: 50-60-203, MCA Imp: 50-60-203, MCA

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

4. The proposed amendment of 8.70.103 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1995 and 8-1996, Administrative Rules of Montana)

"8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Code for the Abatement of Dangerous Buildings, 1985 1988 Edition, with the following amendments thereto:

(a) will remain the same.

(b) Section 205 of the code will be left in as is for use by local governments (i.e., municipalities and counties) who by 50-60-303, MCA, must provide an appeal procedure. Local governments may use the board of appeals created in accordance with section 204 of the Uniform Building Code, 1988 Edition, to serve as the board of appeals. The bureau and the state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 205.

(2) will remain the same."

Auth: 50-60-203, MCA Imp: 50-60-203, MCA

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

5. The proposed amendment of 8.70.104 will read as follows: (new matter underlined, deleted matter interlined) (amendments to adopted by reference code sections shown with section in quotes) (full text of the rule is located at page 8-1996, Administrative Rules of Montana)

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Model Energy Code, 1983 1986 Edition with the following ~~change~~ amendments thereto:

(a) will remain the same.

(b) Section 105.2 Approvals Required, is deleted in its entirety when the code is used by the building codes bureau of the department of commerce. It remains undeleted and available for use for certified local governments using the code.

(c) Section 502.1.1, is amended to read as follows: "The stated U value of any assembly such as roof/ceiling, wall or floor may be increased and the U value for other components decreased, provided that the total heat gain or

loss for the entire building envelope does not exceed the total resulting from conformance to the U values specified in Tables Nos. 5-1 and 5-2. For Group R buildings regulated by Section 502.2, Figure No. 11 may be used to determine a lower U value for the roof/ceiling assembly when the U value of the wall does not conform to the U value specified in Table No. 5-1." The following building component R values represent minimum levels of insulation to be provided in Group R buildings in Montana.

<u>Component</u>	<u>R Value</u>
ceiling	38
walls	19*
<u>floors over unheated space</u>	<u>19</u>
slab	6
door	2

Windows shall be at least double glazed.

*Lesser R value may be allowed for log building walls.

(2) will remain the same.

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

Auth: 50-60-203, MCA Imp: 50-60-201, 50-60-203, MCA

REASON: The bureau is proposing these amendments to the rules to keep the state standard current with modern technology by adopting energy codes that are cost effective and energy efficient as required by sections 50-60-201(2), (5) and (6), MCA.

6. The proposed amendment of 8.70.105 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1996 through 8-1999, Administrative Rules of Montana)

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE

(1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Mechanical Code, 1985 1988 Edition, as amended, with the following amendments thereto:

(a) will remain the same.

(b) Section 203 of the code will be left as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. Local governments may use the board of appeals created in accordance with section 204 of the Uniform Building Code, 1988 Edition, to serve as the board of appeals. The bureau and state of Montana, however, will use the applicable provisions of the

Montana Administrative Procedure Act in all cases of appeal, in lieu of section 203.

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

(5) The Uniform Mechanical Code, 1985 1988 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the Uniform Mechanical Code, 1985 1988 Edition may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5832-Athambra-Avenue, Los Angeles, California 90032 20001 South Walnut Drive, Walnut, California 91789 or the International Conference of Building Officials, 5360 S. Workman Mill Road, Whittier, CA 90601."

Auth: 50-60-104, 50-60-203, 50-60-508, MCA Imp: 50-60-103, 50-60-104, 50-60-203, MCA

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

7. The bureau is proposing to repeal ARM 8.70.106. (Full text of the rule is located at page 8-1999, Administrative Rules of Montana.) The reason for this repeal is that the document is no longer maintained by the U.S. Department of Energy and without being kept current with updated technology serves no useful purpose.

8. The proposed amendment of 8.70.108 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2000, Administrative Rules of Montana)

"8.70.108 INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the CABO One & Two Family Dwelling Code, 1983 1986 Edition together with the 1984 1987-1988 amendments, with the following amendments thereto:

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

(3) The CABO One & Two Family Dwelling Code, 1983 1986 Edition together with the 1984 1987-1988 amendments, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for the construction, prefabrication, alteration, repair, use, occupancy and maintenance of detached one or two family dwellings not more than three stories in height, and their accessory structures. A copy of the CABO One & Two Family Dwelling Code, 1983 1986 Edition together with the 1984 1987-1988 amendments may be obtained from the Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing

the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601."

Auth: 50-60-203, MCA 50-60-401, MCA Imp: 50-60-103, 50-60-402, MCA

REASON: The bureau is proposing these amendments to the rules to keep the state standard current with modern technology by adopting the latest available edition of the CABO One & Two Family Dwelling Code.

8. The proposed amendment of 8.70.203 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2011 and 8-2012, Administrative Rules of Montana)

"8.70.203 ADOPTION OF CODES (1) The codes adopted by local governments must be the same as those adopted by the bureau. This is as required by 50-60-301, MCA. However, local governments need only adopt those codes which they intend to enforce; that is, plumbing, electrical, building, mechanical, etc. The codes adopted by local governments must also be of the same edition as those adopted by the bureau. Each time the bureau updates the codes, local governments must also update their codes. The bureau will notify local governments of these code updates, at which time local governments will have 90 days from receipt of the notice to update their codes. Local governments shall notify the bureau in writing within 180 days of receipt of the notice to update their codes, that the updated codes have been adopted and are being enforced. Such notification shall include a copy of the appropriate code adoption ordinance(s).

Auth: 50-60-302, MCA Imp: 50-60-301, 50-60-302, MCA

REASON: The bureau is proposing these amendments to the rules to provide for self-reporting of required code update adoptions.

9. The proposed amendment of 8.70.302 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2025 through 8-2029, Administrative Rules of Montana)

"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE: (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Uniform Plumbing Code, 1985 1988 Edition, as amended by this rule. The Uniform Plumbing Code, 1985 1988 Edition, is a nationally recognized model code setting forth minimum standards and requirements for plumbing installations. A copy of the Uniform Plumbing Code, 1985 1988 Edition, may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5032-Atthambra-Avenue, Los Angeles, California-

90032 20001 South Walnut Drive, Walnut, California 91789. The Uniform Plumbing Code, 1985 1988 Edition, adopted herein by reference is amended as follows:

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

(i) Sec. 20.3, Violation and Penalties~~7-page-2a~~. This entire section is to be deleted and replaced by the violation and penalty procedure contained in 50-60-110 and 50-60-515, MCA.

(ii) Sec. 20.5, Work not requiring a Permit~~7-page-3a~~. This section is to be deleted and replaced with the following wording: "No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 50-60-503 or 50-60-506, MCA. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act. Factory-built buildings covered by an insignia issued by the building standards section need not have a plumbing permit for the construction of the unit; however, a permit will still be required for on-site work, as provided for in these rules."

(iii) and (iv) will remain the same.

(v) Section 203 (a), Use of Copper Tubing~~7-page-11~~. Delete "DWV" and substitute "L".

(vi) Sec. 203 (d), Use of Copper Tubing~~7-page-14~~. Delete "or underground outside of structures." ending the sentence with "building."

(vii) Sec. 406 (a), Cleanouts~~7-page-40~~. Line 4 shall be changed to read as follows: "... shall be provided with a cleanout for each 50 feet ...", rather than "... 100 feet ... with a cleanout for each 100 feet, or fraction thereof, in length of such piping."

(viii) Sec. 407, Grade of Horizontal Drainage Piping~~7-page-41~~. Change "four (4) inch" to "2 inch," and delete "When first approved by the Administrative Authority."

(ix) Sec. 409 (a), Drainage of Fixtures Located Below the Next Upstream and Manhole or Below the Main Sewer Level~~7-page-41~~. Lines 3 - 4, amend to read as follows: "the public sewer serving such drainage piping may be protected from backflow."

(x) Sec. 506 (a) and (c), Vent Termination~~7-pages 46-47~~. Change "six inches" to "12 inches."

(xi) Sec. 1004 (a), Materials~~7-page-75~~, amend to read as follows: "Sec. 1004 - Materials (a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron; galvanized steel, lead or other approved materials. Asbestos-cement, CPVC, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building; provided however, that this same material may extend to a point immediately inside the building when a sleeve for all pipe passing through or under concrete construction and valve are provided at the point of entrance. CPVC and PB

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

(xii) Sec. 1008, Installation, Inspection and Testing, ~~page-77~~, after subsection (e) add the following new subsection (f): "(f) Disinfection. (1) When required by the administrative authority having jurisdiction, potable-water systems or any part thereof installed or repaired shall be disinfected in accordance with one of the following methods:

- by filling the system or any part thereof with a solution containing 50 parts per million of available chlorine and allowing it to stand for a minimum period of 6 hours before flushing.
- by filling the system or any part thereof with a solution containing 100 parts per million of available chlorine and allowing it to stand for a minimum period of 2 hours before flushing.
- In the case of a potable-water storage tank where it is not possible to disinfect by one of the above methods, the entire interior of the tank shall be swabbed with a solution containing 200 parts per million of available chlorine and allowing it to stand 2 hours before flushing.
- In the case of potable-water filters or similar equipment, the mixture shall be determined by the administrative authority having jurisdiction."

(xiii) Sec. 1009 (h), Size of Potable Water Piping, ~~page 79~~. Amend the second paragraph to read: "No building supply pipe shall be less than 3/4 inch in inside diameter."

(xiv) Sec. 1106, Grade, Support and Protection of Building Sewers, ~~pages-86-87~~. Amend line 7 to read: "pipe or piping three (3) inches (76.2mm) or larger may have a slope of."

(xv) Appendix E, Mobile Home Parks, ~~pages-165-177~~. Delete.

(xvi) Appendix C, Minimum Plumbing Facilities, ~~pages 153-156~~. Delete. Rule ARM 8.70.303 will be used in lieu of Appendix C.

(xvii) Appendix I, Private Sewage Disposal Systems, ~~pages-181-196~~. Delete.

(2) will remain the same."

Auth: 50-60-203, 50-60-504, 50-60-508, MCA Imp: 50-60-203, 50-60-504, 50-60-508, MCA

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

10. The proposed amendment of 8.70.402 will read as follows: (new matter underlined, deleted matter interlined)

24-12/22/88

MAR Notice No. 8-70-3

(full text of the rule is located at pages 8-2041 and 8-2042, Administrative Rules of Montana)

"8.70.402 WIRING STANDARDS The following rules supplement or modify sections of the National Electrical Code adopted under ARM 8.70.401:

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

~~(3) -- NEE-ARTICLE 110-8 (SUPPLEMENTARY) -- Raceways as defined in Article 100, NEE, or MI, ABS, or ES cable shall be the wiring method for buildings or other structures for commercial, industrial, institutional, or public use. EXCEPTION #1: -- Class 2 or 3 systems installed in conformity with Article 725, NEE.~~

~~(4) (3) ...~~

~~(5) (4) ...~~

~~(6) (5) ...~~

~~(7) -- NEE-ARTICLE 336-3 (MODIFICATION) -- Nonmetallic sheathed cable shall be permitted to be used only in residential dwellings up to and including 12 units and residential, farm and ranch garages, outbuildings, or other structures when no portions of or additions to said structures are maintained or intended for commercial use."~~

Auth: 50-60-203, 50-60-603, MCA Imp: 50-60-203, 50-60-603, MCA

REASON: The bureau is proposing these amendments to keep the state standard current with modern technology and agreement with the latest edition of the National Electrical Code.

11. The proposed amendment of 8.70.502 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2055 and 8-2056, Administrative Rules of Montana)

"8.70.502 APPLICABILITY OF STATE STATUTES AND ADOPTED ADMINISTRATIVE RULES (1) and (2) will remain the same.

(a) the latest adopted edition of the Uniform Building Code, ~~Volume I, and Uniform Mechanical Code, Volume II,~~ as drafted by the international conference of building officials;

(b) will remain the same.

(c) the latest adopted edition of the Uniform Plumbing Code and Uniform Mechanical Code as drafted by the international association of plumbing and mechanical officials.

(3) Recreational vehicles shall meet the requirements of the ~~National Fire Protection Association (NFPA) 501C/ANSI A119.2,~~ latest adopted edition, regarding recreational vehicles.

(4) Park trailers shall meet the requirements of the ANSI A119.5, latest adopted edition."

Auth: 50-60-203, 50-60-401, MCA Imp: 50-60-203, 50-60-401, MCA

REASON: The bureau is proposing these amendments to make more clear the matter of applicable standards for factory-built buildings, recreational vehicles and park trailers.

12. The proposed amendment of 8.70.566 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2113, Administrative Rules of Montana)

"8.70.566 IN-STATE PLAN AND SYSTEM REVIEW FEES The following are the plan and system review fees to be charged by the bureau:

(1) will remain the same.

(2) Structural fee for units with up to two parts \$100 ~~\$200~~ for each set of plans and specifications describing the structural system for a model group. For units with more than two parts the standard plan review fee listed in the Uniform Building Code will be charged.

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

(6) Plan resubmission fee - \$20 minimum, ~~plus \$10 for each 30 minutes or fractional part thereof in excess of 1 hour.~~

(7) Plan supplement fee - \$20 minimum, ~~plus \$10 for each 30 minutes or fractional part thereof in excess of 1 hour.~~

(8) Plan renewal fee - ~~\$15~~ \$20 for each set of documents describing a unit which is to be utilized during the next approved plan period. Obsolete plans or specifications are to be removed at the time of plan renewal by written notification at ~~not~~ no additional cost."

Auth: 50-60-203, 50-60-401, MCA Imp: 50-60-203, 50-60-401, MCA

REASON: The bureau is proposing to adjust plan and system review fees to generate revenue needed to support the bureau's programs. Fees have not increased in 13 years, but program costs have increased substantially.

13. The proposed amendment of 8.70.567 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2113, Administrative Rules of Montana)

"8.70.567 PLAN AND SYSTEM REVIEW FEES HANDLED THROUGH

RECIPROCAL STATES (1) Plan registration fee - ~~\$15~~ \$25 for each set of documents transmitted describing a unit. Manufacturer must furnish written certification that the plans and specifications submitted are true copies of those originally approved by the reciprocating state.

(2) Plan supplement fee - ~~\$5~~ \$20 for each set of documents transmitted affecting a unit.

(3) Plan renewal fee - ~~\$15~~ \$20 for each set of documents describing a unit which is to be utilized during the next approved plan period. Obsolete plans or specifications are to be removed at the time of plan renewal by written notification at no additional cost."

24-12/22/88

MAR Notice No. 8-70-3

Auth: 50-60-203, 50-60-401, MCA Imp: 50-60-203,
50-60-401, MCA

REASON: The bureau is proposing to adjust plan and system review fees to generate revenue needed to support the bureau's programs. Fees have not increased in 13 years, but program costs have increased substantially.

14. The proposed amendment of 8.70.568 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2113 and 8-2114, Administrative Rules of Montana)

"8.70.568 INSIGNIA FEES (1) The following are the insignia fees to be charged by the bureau:

+1+ (a) Factory-built buildings - \$60 per unit up to two parts. This insignia fee covers the building construction, plumbing, and electrical.

+2+ (b) Multiple unit (more than two parts) factory-built buildings - \$60 per part, or if a building permit, electrical permit, and plumbing permit are obtained for the total building, no insignia fee will be charged.

+3+ (c) Recreational vehicles - ~~\$10~~ \$15 per unit.

+4+ (d) Replacement insignia - ~~\$2~~ \$10 for each replacement insignia."

Auth: 50-60-203, 50-60-401, MCA Imp: 50-60-203,
50-60-401, MCA

REASON: The bureau is proposing to adjust insignia fees to generate revenue needed to support the bureau's programs. Fees have not increased in 13 years, but program costs have increased substantially.

15. The proposed amendment of 8.70.569 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2114, Administrative Rules of Montana)

"8.70.569 MISCELLANEOUS FEES (1) Quality control manual filing fee - \$10.

(2) Inspection fee - \$30, provided that such inspection of vehicle(s) is not in excess of 1 hour in duration. Fifteen dollars for each 30 minutes or fractional part thereof in excess of 1 hour. On lot inspection fee for unapproved units (units from unapproved plants in nonreciprocal states) - \$300 minimum plus above rates for inspections in excess of 1 hour in duration.

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

Auth: 50-60-203, 50-60-401, MCA Imp: 50-60-203,
50-60-401, MCA

REASON: The bureau is proposing to adjust miscellaneous fees to generate revenue needed to support the bureau's programs. Fees have not increased in 13 years, but program costs have increased substantially.

16. The proposed amendment of 8.70.601 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2137, Administrative Rules of Montana)

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

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

Auth: 50-60-203, 50-60-702, MCA Imp: 50-60-203, 50-60-702, MCA

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

17. The proposed amendment of 8.70.604 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-2138 and 8-2139, Administrative Rules of Montana)

"8.70.604 CERTIFICATES OF INSPECTION (1) through (5) will remain the same.

(6) The annual certificates of inspection fees shall be as follows:

(a) Fees when inspections are made by the bureau, for each elevator, escalator, and moving walk (also applies to follow-up inspections done after certified inspector's inspection) - ~~\$50.00~~ \$100.00

~~(b) --Fees when inspections are made by certified inspectors, for each elevator, escalator, and moving walk-- \$25.00~~

(c) (b) Fees when inspections are made by certified inspectors and no follow-up is required by the bureau, for each elevator, escalator, and moving walk - \$10.00

(7) and (8) will remain the same."

Auth: 50-60-203, 50-60-702, MCA Imp: 50-60-203, 50-60-701, 50-60-702, MCA

REASON: The bureau is proposing to adjust fees to generate revenue needed to support the bureau's programs. Fees have

not increased in about 10 years, but program costs have increased substantially.

18. The proposed new rules will read as follows:

"I. INCORPORATION BY REFERENCE OF THE NORTHWEST ENERGY CODE (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the Northwest Energy Code, 1987 Edition, as an alternate energy code (alternate to the Model Energy Code) for optional use by local governments as an alternate energy code applicable to new electrically heated residential buildings (Uniform Building Code Group R, Division 1 and 3 Occupancies). The Model Energy Code adopted in 8.70.104 will apply to all non-residential buildings. Log homes are exempted from the Northwest Energy Code. The Model Energy Code adopted in 8.70.104 will apply to log homes exempted from the Northwest Energy Code.

(2) The purpose of this code is to provide minimum requirements for the design of new electrically heated residential buildings and structures and additions to existing buildings, regulating their exterior envelopes and selection of their heating, ventilating, air conditioning, service water heating, electrical distribution and illuminating systems and equipment for effective use of energy.

(3) The Northwest Energy Code, 1987 Edition, is a regionally developed energy code intended to maximize energy efficiency in residential construction. A copy of the Northwest Energy Code, 1987 Edition, can be obtained from the Northwest Power Planning Council, Governor's Office, Capitol Station, Helena, Montana 59620."

Auth: 50-60-203, MCA Imp: 50-60-201, MCA

REASON: The bureau is proposing adoption of this code to keep the state standard current with modern technology by adopting energy codes that are cost effective and energy efficient and can be used as alternative codes for local governments as required by section 50-60-201(2), (5) and (6), MCA.

"II. INCORPORATION BY REFERENCE OF ANSI A119.5 AMERICAN NATIONAL STANDARD FOR PARK TRAILERS (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the ANSI A119.5 National Standard for Park Trailers, 1988 Edition. The ANSI A119.5 American National Standard for Park Trailers, 1988 Edition, is a nationally recognized model code for construction of park trailers, which are travel trailers with gross area of greater than 320 sq. ft. and are not covered by the National Mobile Home Construction and Safety Standards Act of 1974 and subsequent federal rules and regulations. A copy of ANSI A119.5 American National Standard for Park Trailers, 1988 Edition, may be obtained from the Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing

to the Recreational Vehicle Industry Association, P.O. Box 2999, Reston, Virginia 22090.

(2) The purpose of this standard is to provide a uniform standard covering the construction of and installation of plumbing, heating, and electrical systems for park model travel trailers."

Auth: 50-60-401, MCA Imp: 50-60-401, MCA

REASON: The bureau is proposing the adoption of this rule to keep the state standard current with modern technology by adopting the latest available edition of the ANSI A119.5, American National Standard for Park Trailers.

19. 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 Mr. Jim Brown, Bureau Chief, Building Codes Bureau, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than January 19, 1989.

20. Raymond W. Brault, of Helena, Montana, has been designated to preside over and conduct the hearing.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 12, 1988.

BEFORE THE DEPARTMENT OF COMMERCE
OF STATE OF MONTANA
BOARD OF HOUSING

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT
amendment of Rule 8.111.305	)	OF RULE 8.111.305 QUALIFIED
qualified lending institutions)	)	LENDING INSTITUTIONS and
and adoption of a rule	)	ADOPTION OF A RULE FOR
establishing qualified loan	)	QUALIFIED LOAN SERVICERS
servicer guidelines)	
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 23, 1989, the Montana Board of Housing proposes to amend Rule 8.111.305, which provides the guidelines used by the board in selecting qualified lending institutions and to adopt a rule specifying the guidelines for selecting qualified servicers of mortgage loans.

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

8.111.305 QUALIFIED LENDING INSTITUTIONS (1) remains the same.

(2) All requests must include:

(a) through (c) remain the same.

(d) a certificate stating that the firm or corporation has an of errors or and omissions insurance policy coverage and a fidelity coverage policy for a direct surety bond issued in favor of the board covering all officers, employees, and other persons duly authorized by the lending institutions to act on behalf of the lending institution for the board in a minimum amount as is required by the program documents for each bond issue in which the lending institution participates.

(e) the most recent audited financial statements or regulatory agency reports, plus current financial statements which have been prepared within 60 days of submission;

(i) financial statements and regulatory agency reports shall be comprised of a balance sheet, year to date income statement, and a statement of change covering at least a six-month period;

(ii) current financial statements must indicate a positive return on average assets;

(iii) current financial statements must indicate total capital as a percentage of average assets of at least 6%.

(f) evidence of current corporate and ownership structure demonstrating more than one year of existence. This applies to existing approved lending institutions which are restructured by the institution's regulatory agency or corporate reorganization.

(3) through (5) remain the same.

(6) Each year and at such other times as may be necessary the or as requested by the board, the qualified and approved lending institutions participating in the board's bond programs shall file audited financial statements or equivalent.

regulatory agency reports as requested by the board. The financial statements shall exhibit total capital as a percentage of average assets of at least 6%. If the qualified and approved lending institution's capital to average assets ratio is below 6%, the institution must meet the capital requirements of its regulatory agency (i.e., banks - FDIC; savings & loans - FSLIC; credit unions - NCUA), or demonstrate, with current financial statements, an increasing ratio of capital to average assets.

AUTH: 90-6-104, MCA, and 90-6-106, MCA IMP: 90-6-108, MCA

The proposed rule to be adopted provides as follows:

RULE 1 QUALIFIED LOAN SERVICERS (1) Any institution which has, as its function, the servicing of mortgage loans secured by residential real estate, and maintains an office in the state, may apply in writing to be designated as a qualified and approved servicer for board of housing mortgage loans. All applications shall include the following:

(a) designation of office(s) in the state of Montana for loan servicing;

(b) evidence of current corporate and ownership structure demonstrating more than one year of existence;

(c) a list of the applicant's principal officers, and officers authorized to execute legal contracts, agreements or other documents;

(d) a listing of personnel principally involved with servicing mortgage loans, their office location, and their qualifications;

(e) a certificate of errors and omissions insurance coverage and/or fidelity insurance coverage in a minimum amount as is required by the program documents for each bond issue in which the loan servicer participates;

(f) the most recent audited financial statement or regulatory agency report, plus current financial statements which have been prepared within 60 days of submission;

(i) financial statements and regulatory agency reports shall be comprised of a balance sheet, year to date income statement, and a statement of change covering at least a six-month period;

(ii) current financial statements must indicate a positive return on average assets;

(iii) current financial statements shall indicate total capital as a percentage of average assets of at least 6% or meet capital requirements of their regulatory agency;

(g) evidence that applicant is an FHA/VA approved servicer.

(2) A qualified and approved servicing institution restructured by the institution's regulatory agency, or corporate reorganization or ownership restructure shall reapply for designation as an approved and qualified servicer. The restructured institution shall be exempt from the one year corporate ownership requirement set forth in (1)(b), above, and the requirement for a financial statement covering a six-month period as set forth in (1)(f)(i), above. The financial

statements required shall cover the period from the date restructured through the date of application.

(3) The application for approved and qualified servicer will be reviewed by the board's staff, and the institution will be notified in writing of the status of the application.

(4) The approved and qualified servicer for mortgage loans shall continue to meet the following requirements to retain the status of approved and qualified servicer:

(a) maintain an office in the state of Montana for loan servicing;

(b) provide the board with a certificate of errors and omissions insurance coverage in a minimum amount as is required by the program documents for each bond issue in which the loan servicer participates;

(c) each year or as requested by the board, file audited financial statements or equivalent regulatory agency reports. The financial reports shall exhibit total capital as a percentage of average assets of at least 6%. If the institution's capital to average assets ratio is below 6%, the institution must meet the capital requirements of its regulatory agency (i.e., banks - FDIC; savings & loans - FSLIC; credit unions - NCUA), or demonstrate, with current financial statements, an increasing ratio of capital to average assets.

AUTH: 90-6-104, MCA, and 90-6-106, MCA IMP: 90-6-108, MCA

3. The rule amendment and adoption is proposed in order to establish and clarify the (i) type and amount of insurance coverage required, (ii) financial reporting requirements; and (iii) standards of financial condition for institutions which participate in the board's programs as lending institutions and servicers of mortgage loans. The establishment of reporting requirements and standards of financial conditions for lending institutions and servicers will provide greater assurance of financial responsibility to the board from those institutions participating in the board's programs.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoption in writing to Richard A. Kain, Administrator, Montana Board of Housing, 2001 Eleventh Avenue, Helena, Montana 59620, no later than January 19, 1989.

5. If a person who is directly affected by the proposed amendment and adoption 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 Richard A. Kain, Administrator, Montana Board of Housing, 2001 Eleventh Avenue, Helena, Montana 59620, no later than January 19, 1989.

6. If the agency receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; 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 eight lending institutions and seven servicers based on the number of qualified lending institutions and servicers for the board's 1988 Series A single family mortgage loan bond issue.

MONTANA BOARD OF HOUSING

By: 

Richard A. Rain, Administrator

Certified to the Secretary of State, December 12, 1988.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON PROPOSED
amendment of Standards) AMENDMENT OF ARM, CHAPTER 58,
For State Approval Of) STANDARDS FOR STATE APPROVAL OF
Teacher Education) TEACHER EDUCATION PROGRAMS LEADING
Programs Leading To) TO INTERSTATE RECIPROCITY OF TEACHER
Interstate Reciprocity) CERTIFICATION
of Teacher Certifica-)
tion)

TO: All Interested Persons

1. On January 26, 1989, at 3:00 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Education Offices Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM Chapter 58, Standards For State Approval Of Teacher Education Programs Leading To Interstate Reciprocity Of Teacher Certification.

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

10.58.102 PROCESS LEADING TO APPROVAL OF TEACHER EDUCATION PROGRAMS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.103 VISITATIONS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.104 APPROVED PROGRAMS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.201 PURPOSES AND OBJECTIVES Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.202 ORGANIZATION Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.203 STUDENT ADMISSION, RETENTION, AND EXIT POLICIES AND PRACTICES Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.204 STUDENT PERSONNEL SERVICES Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.205 STUDENT PARTICIPATION IN TEACHER EDUCATION
PROGRAM DEVELOPMENT AND EVALUATION Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.206 FACULTY Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.207 INSTRUCTION Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.208 FACILITIES AND INSTRUCTIONAL MATERIALS Remains
the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.209 SCHOOL-INSTITUTION RELATIONSHIPS Remains the
same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.301 CURRICULUM PLANNING AND DEVELOPMENT Remains
the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.302 GENERAL EDUCATION (1) through (1)(a)(v) remain
the same.

(vi) encourage discernment in the examination of the values inherent in the variety of American ethnic cultures and in foreign cultures to the end that a clearer understanding of other peoples will reduce local, national, and international tensions; and

(vii) include instruction in the contributions and status of minorities with specific emphasis on Native Americans in Montana and North America and instruction in the nature of prejudice.

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

(iii) aesthetic values in human experience expressed through the fine arts (See ARM 10.58.503, 10.58.507, 10.58.519);

(1)(c)(iv) through (1)(c)(vi) remain the same.

(vii) growth and development of the United States as a nation and its place in world affairs; and

(viii) principles of physical and mental health as they apply to the individual and to the community; and

(ix) the application of mathematical concepts to a variety of both common and complex real world problems; and

(x) the use of emerging technologies in the dynamic growth and change in mathematics and their impact on the role of mathematics in real world decision making.

(2) remains the same.

(3) All teaching areas shall include subject matter preparation substantially beyond that which a teacher may be expected to teach.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.303 PROFESSIONAL EDUCATION (1) through (1)(b) remain the same.

(i) knowledge of safety and first aid including CPR as well as basic health principles as they apply to adolescents including information on stress, nutrition, substance use and abuse, exercise and peer pressure in addition to the etiology of disease including AIDS and other sexually transmitted diseases;

(i) (ii) knowledge of the process of human growth, development, and learning, and the ability to apply this knowledge to the teaching of all students, including atypical children.

(ii) (iii) knowledge of professional literature, current trends, issues, research, and research methods, materials, standardized tests, curriculum development, procedures, and media and technology appropriate to teaching. Emphasis shall be in the student's field(s) of specialization; and shall include but not be limited to:

(A) task analysis, planning and adoption of various teaching methods to suit individual needs;

(B) identification and use of a variety of resource materials to develop concepts;

(C) familiarity with standardized tests and measures, alternative assessment procedures and evaluation procedures including followup studies;

(D) awareness of curriculum development procedures including role and scope; and

(E) a variety of media and technology appropriate to teaching and pupil development;

(iii) (iv) awareness of the impact of computers on society and the ability to incorporate the use of computers into the instructional process in the student's field(s) of specialization;

(iv) (v) ability to teach effectively, work ethically and constructively with pupils, and articulate the nature and purposes of the curricula to professional peers, teachers, administrations, parents, and other concerned persons and organizations;

(vi) the ability to work ethically and constructively and to communicate effectively with parents including the following:

(A) identifying and understanding the roles of parents and families in the education of the preschool child, youth and adolescent;

(B) communicating the student's level of development;

(C) articulating the student's identified needs; and

(D) assessing methods of addressing those needs;

(v) (vii) understanding of the foundations underlying

the development and organization of education in the United States;

(vi) (viii) understanding of all education aspects of the school, including its purposes, administrative organization, finance aspects, board functions, and operations;

(vii) (ix) ability and willingness to analyze teaching so that teaching skills continually improve;

(viii) (x) ability to teach thinking, listening, speaking, reading, and writing skills appropriate to the student level and the content of the field(s) of specialization, including:

(A) through (D) remain the same.

(i*) (xi) knowledge of the following areas: the legal aspects of teaching in Montana schools including identifying and reporting child abuse; professional ethics, conduct, rights and responsibilities; and the structure and financial basis of the Montana school system;

(*) (xii) knowledge of the legal, practical and philosophical basis of education equity and opportunity in Montana schools; and

(xiii) knowledge of and skill in a variety of effective methods of discipline and classroom management including the ability to structure environments to promote appropriate social and learning interactions;

(c) The program shall provide experiences which will lead the preparing teacher to develop human qualities that enhance pupil learning. Those qualities include but are not restricted to:

(i) personal and professional growth;

(i) (ii) personal self-esteem and confidence;

(ii) (iii) open attitudes for evaluating practices which affect social groups;

(iii) (iv) knowledge, humaneness, and sensitivity which reduce conflict and tension and promote constructive interactions among people of differing economic, social, racial, ethnic, and religious background; and

(iv) (v) respect for the worth of all students, their language and desires, and their individual uniqueness.

(d) The professional education component shall include a comprehensive program of carefully designed basic experiences in a variety of relevant settings. These experiences shall include a wide range of laboratory, clinical, and practicum experiences with school-age youth that begin early in the program.

(1)(e) through (1)(f)(i) remain the same.

(ii) Student teaching shall be a comprehensive experience with expanding responsibilities in the full range of teacher activities in a school situation. K-12 program must include student teaching at both elementary and secondary levels.

(1)(f)(iii) through (1)(f)(viii) remain the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.401 FIELDS OF SPECIALIZATION Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.402 DEVELOPMENT OF TEACHER EDUCATION PROGRAM

Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.403 STATEMENT OF PURPOSE AND OBJECTIVES Remains

the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.404 STATEMENT OF SKILLS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.405 PROGRAM OF STUDY (1) through (1) (d) remain

the same.

(e) include work in fields related to the teaching area
which include the exceptional student; and

(f) remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.406 PROGRAM EVALUATION Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.407 PROGRAM SUPPORT Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.408 STAFF Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.501 GENERAL REQUIREMENTS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.502 AGRICULTURE For the prospective teacher the
program shall:

(1) through (4)(d) remain the same.

(e) computer application in agriculture;

(5) through (7) remain the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.503 ART K-12 For the prospective teacher the
program shall:

~~(1) enable the prospective teacher to acquire knowledge,
understanding, and appreciation of art in contemporary and~~

past cultures and understand the relationship of art to the culture in which it was produced and its influence on subsequent cultures;

(2)--develop an understanding of philosophical, social, and aesthetic aspects of art and the contributions art makes to individuals and society;

(3)--develop the prospective teacher's understanding of a wide variety of two and three dimensional works of art, including the ability to perceive, describe, interpret, and evaluate his/her own work and the works of others;

(4)--develop the ability to produce original and expressive art forms in a variety of media while participating in studio experiences that broaden the prospective teacher's personal and professional abilities;

(5)--develop skills in the following:

(a)--perception-----the ability to exercise and refine fundamental and discriminating sensory intake;

(b)--organization-----the ability to value and understand information that is manifest in art forms;

(c)--creation-----an ability to produce or create original expressive art from a variety of media;

(d)--reflection/action-----the ability to respond to art, enjoy and appreciate it, and assimilate its meaning and presence into an individual lifestyle that strengthens society;

(6)--provide training in the development of art education curricula for all grades that assure pupil development and competence in a wide variety of art activities and media;

(7)--provide the knowledge and skills to organize, plan, administer, and evaluate art education and curricula;

(8)--develop beginning abilities as an artist, with emphasis on basic concepts and skills;

(9)--develop an understanding of the technological and safety aspects of studio work, including materials, tools, and classroom design;

(10)--develop an understanding of the developmental levels of children in picture making as they relate to current psychological studies;

(11)--develop the skills to serve as a resource for educational and vocational counseling in art and related fields; and

(12)--develop an understanding and appreciation of related areas such as dance, film, music, literature, theater and applied arts.

(1) develop skills and a working vocabulary in the following:

(a) art production: the ability to produce original, expressive works of art in a variety of media;

(b) art history: the perception of art within the iconographic and chronological context of society as part of our cultural legacy;

(c) art criticism: the ability to understand and respond to works of art in both form and content;

(d) aesthetic awareness: the ability to exercise, refine, and discriminate sensory intake, and to develop a

sensitive awareness of things encountered in daily life;

(2) develop in the studio setting the ability to produce original and expressive art forms in a variety of media, to include drawing, painting, printmaking, graphic communication, sculpture, photography, and established craft areas of woodworking, fibers, metalwork, jewelry, ceramics, etc.;

(3) develop the ability to perceive, describe, interpret, and evaluate one's own work and the work of others;

(4) develop abilities as an artist, with emphasis on creative thinking, critical analysis using the elements and principles of design, and aesthetic awareness;

(5) develop the knowledge, understanding, and appreciation of art in contemporary and past cultures, and the relationship of art to the culture in which it was produced;

(6) develop a working understanding of philosophical, social, and aesthetic aspects of art and the contributions art makes to individuals and society;

(7) provide an understanding of and the ability to develop sequential visual arts curriculum with a scope and sequence articulated K-12 that assures pupil development and competence in a variety of media;

(8) develop an understanding of the technological and health and safety aspects of studio work, including materials, tools, equipment, classroom design and procedures;

(9) develop, through basic and current literature, skills as a resource person for educational and vocational counseling in art and related fields, including training in portfolio development and photographing art work; and

(10) develop an understanding and appreciation of related fine art areas of dance, film, music, literature, theater and the applied arts and of their relationship to the visual arts.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.505 BUSINESS EDUCATION WITH SHORTHAND--SECRETARIAL OCCUPATIONS ~~Section--10.58.504 is applicable.---In addition, for the prospective teacher the program shall:~~

~~(1)--develop proficiency in basic secretarial and related office skills; and~~

~~(2)--develop an understanding of various secretarial procedures and their relationship to job opportunities in the business world.~~

The education program shall provide the prospective teacher with the ability to:

(1) understand and present the fundamental concepts of accounting;

(2) present proper keyboarding techniques and develop student keyboarding skills;

(3) understand, use, and present the basic concepts of effective oral and written communications including development of effective listening skills and selection of proper media for business communications;

(4) understand and present the legal framework for personal, business, and social interactions;

(5) identify and present the elements of the business document cycle for both manual and electronic office systems;

(6) understand and present effective techniques for managing employee work stations, personnel relations, and the budgeting of time and resources;

(7) identify the economic events and issues that impact businesses and individuals;

(8) use and present a symbolic, outline, or alphabetic note taking system, and develop student note taking skills using these systems;

(9) apply and present the concepts and techniques of the data processing cycle and a fully integrated automated business office system, including use of word processing, automated data bases, spreadsheet accounting, telecommunications, graphics, reprographics, and other current technologies used by businesses;

(10) understand, use, and present the elements of digital operating systems and techniques for evaluating systems of business hardware and software;

(11) identify and present opportunities in marketing and the basic marketing concepts of exchange, distribution, and facilitation;

(12) understand and present the basic organizational, operational, and integration styles of businesses in a free enterprise system;

(13) understand the philosophy and objectives of vocational education and occupational technology, and apply them in classroom activities;

(14) understand and use the process for developing, adopting, adapting, and revising vocational programs and curricula, including the use of advisory committees, business partnerships and classroom management techniques;

(15) plan and administer a cooperative education program;

(16) organize and advise a vocational student organization;

(17) identify careers and opportunities in business and related occupational fields, and assess the interests, aptitudes, personal qualities, and other information necessary for students to make informed career choices;

(18) identify and present the skills needed to successfully obtain and maintain employment;

(19) conduct studies of the occupational outcomes of former students which provide current occupational information for classroom use obtained from followup studies; and

(20) complete or augment an appropriately successful related occupational experience or internship.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.506 DISTRIBUTIVE EDUCATION/MARKETING For--the prospective teacher the program shall--

(1)--develop--competence--in--teaching,--services, coordination,--research,--and--leadership--in--purchasing, marketing, merchandising, and management--

(2)--provide experiences that develop competence in data

processing,--business--law,--accounting/bookkeeping,--general business,--business-math-and-business-machines;

(3)--provide-experiences-and-include-studies-which-develop-the-skills-to:

(a)--plan,--develop,--and-administer-a-comprehensive-program-of-distributive--education--for--both-high-school--and--adult students;

(b)--organize--and--use--a--wide--variety--of--methods--and techniques-for-teaching-youth-and-adults;

(c)--conduct--learning--experiences--for--students--with--a broad-array-of-abilities-and-career-objectives-recognizing-and-responding-to-individual-differences-in-students;

(4)--provide---for---a---variety---of---occupational---work-experiences;--and--

(5)--provide-experiences-that-develop-a-knowledge-of-and-involvement-in-distributive-education-organizations--

In addition to providing the elements of ARM 10.58.505, the education program shall provide the prospective teacher with the ability to:

(1) identify and present the primary types of business ownership and the elements needed for a successful business venture, including the use and purpose of marketing research, the activities of a retail business, the role of managerial accounting and finance, and the impact of marketplace economics on business practices;

(2) understand and present the fundamental methods of promotion and the techniques of salesmanship that facilitate business transactions;

(3) use and apply basic statistical analysis techniques to business situations; and

(4) understand the use of demographic information in product development, site selection, and marketing products to consumers.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.507 DRAMA For the prospective teacher the program shall:

(1) through (5) remains the same.

(6) provide an understanding of the function of theater in the school at all grade levels and the place of theater and drama in everyday life;

(7)--develop--the--ability--to--design--and--provide environments--conducive--to--the--development--of--individual creativity;--

(8)--provide--a--knowledge--of--the--methods--for--teaching theater,--content--and--organization--of--coursework,--the development-of-individual-units-of-study,--and--the-evaluation-of-student-achievement-and-potential-at-various-grade-levels;

(9)--develop--the--ability--to--organize--an--academic--or--non-academic--production--or--program,--including--audience-services within-the-context-of-school-time,--facilities,--and--monies,--and to-augment-existing-facilities-and-materials-in-an-order-of-significant-priority;

(10) (7) develop the ability to manage, promote and publicize an activity or production; in order to gain the attention--and--support--of--the--school--and--community--and encourage--appreciation--of--theater--in--school--and--community audiences;

(11) (8) develop the ability to serve as a school's resource person in the development of facilities, preparation of classroom projects, assembly programs, or any activity in which elements of theater are found central;

(12) (9) develop the ability to assist in the organization of a progressively planned and comprehensive theater and/or other fine arts curriculum which includes experiences in music, film, literature, art, dance, and theater as they relate to elementary through high school students and--to theater--as--a--synthesis--of--the--arts; and

(13) (10) develop the ability to disseminate accurate information and to be a resource for educational, and vocational, and avocational counseling in theater arts and related fields.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.508 ELEMENTARY For the prospective teacher the program shall:

(1) provide knowledge and theories of early intervention;

(2) provide knowledge of child growth and development to include:

(a) prenatal development;

(b) normal developmental sequences during the first five years which include motor, language, cognitive, perceptual, sensory, psychological and social;

(c) variability in human development including the full range of normal variations and types of developmental delays;

(4) (3) provide knowledge of child--growth--and development--and--of the social, emotional, physical and health characteristics and needs of children at the preprimary, primary, intermediate, and middle school/junior high school levels to include:

(a) the affective needs of the young child; and

(b) the role of play in child development;

(2) (4) include studies and experiences in the sociological and the behavioral sciences which emphasize the relation interaction of children to with their environment and the roles of parents and families to include:

(a) knowledge of various ethnic, linguistic and cultural backgrounds and their effect on parenting styles and the effect of those styles on the child;

(b) knowledge of a variety of family structures and settings, and possibilities and limitations of parents and teachers; and

(c) knowledge of family dynamics--functional/dysfunctional models;

(5) explore alternatives for classroom management and self-discipline;

(3) (6) provide sufficient preparation for competence in the subject areas normally found in the elementary and preschool curriculum, including:

(a) art -- specifically the ability to:

(i) develop skills, knowledge and a working vocabulary in art production, art history, art criticism and aesthetics;

(ii) acquire an understanding of and the ability to develop sequential visual arts curriculum with scope and sequence;

(iii) understand the health and safety aspects of art production including materials, tools and equipment; and

(iv) understand and appreciate related fine arts areas of dance, film, music, literature, theater and the applied arts and their relationship to visual arts;

~~(b) -- health~~

(c) (b) music -- specifically the ability to:

(i) develop skills, knowledge and a working vocabulary in music production, music history, music criticism and aesthetics;

(ii) acquire an understanding of and the ability to develop sequential music curriculum with scope and sequence;

(iii) understand the health and safety aspects of music production including materials, tools and equipment; and

(iv) understand and appreciate the contribution musical experiences can make to the development of the whole person and to the total K-8 curriculum, particularly the fine arts;

(4) (c) social studies -- specifically, the development of instructional competence in teaching methods and the use of materials that promote effective pupil use of the sequentially developed social studies skills in the areas of history, economics, geography, political science and sociology. Competencies shall include but are not restricted to the following:

(i) knowledge of prerequisite readiness skills at all levels and the ability to assess and teach them;

(ii) ability to apply techniques for teaching basic social studies skills including but not limited to group interaction, decision making, graphing, mapping, research and study skills;

(iii) ability to use special materials and strategies that assist students to recognize that Native American people and their unique history make a significant impact on Montana and United States history;

(iv) ability to use materials and practices that encourage broad-based and independent study of different cultures and their interdependence; and

(v) ability to use strategies and materials to educate students in becoming more effective and analytical citizens;

~~(a)~~ (d) language arts--specifically, the development of instructional competence in teaching methods and the use of materials that promote effective pupil use of the sequentially developed language arts skills which include thinking, viewing, listening, speaking, reading, and writing. Competencies shall include but are not restricted to the

following:

(i) through (ii) remain the same.

~~(iii)---knowledge---of---the---scope---and---sequence---of---an
elementary---language---arts---curriculum,---including---thinking,
listening, speaking, reading and writing;~~

~~(iv)---ability---to---use---formal---and---informal---assessment
techniques---to---assist---in---diagnosis---and---prescription---of
individual needs;~~

~~(v)---knowledge---of---a---variety---of---instructional---approaches
to---all---the---language---arts---skills---and---the---ability---to---apply---them
to---individual learning needs;~~

(vi) (iii) ability to use special materials and strategies that assist students with differing cultural or language backgrounds;

(vii) (iv) ability to use criteria to evaluate and select appropriate materials and strategies for teaching thinking, viewing, listening, speaking, reading, and writing in the content areas;

(viii) (v) ability to use materials and practices that encourage independent and broad-based reading through children's literature; and

~~(ix) (vi) ability to use strategies and materials to
educate students in becoming more efficient and analytical
viewers;~~

(vii) provide a comprehensive knowledge of literature
appropriate for children in the elementary grades and provide
techniques in developing children's sensitivity to and
enthusiasm for literature;

~~(f)---mathematics---specifically, the competence to:~~

~~(i)-----understand mathematics substantially beyond that
which the teacher may be expected to teach;~~

~~(ii)-----identify, develop, and solve problems that are
related to the pupils' environment and involve the
mathematical concepts and principles usually taught in the K-8
curriculum;~~

~~(iii)-----identify and use problem-solving strategies
appropriate to the K-8 curriculum;~~

~~(iv)-----illustrate prenumeration concepts (attributes,
classification, ordering, patterns, and sets);~~

~~(v)-----illustrate and explain number and numeration
concepts (cardinal and ordinal numbers, place value);~~

~~(vi)-----explain the concepts of whole numbers, integers,
rationals, fractions, including decimals and reals, ratio,
proportion, and percentage, using models appropriate to the
K-8 curriculum;~~

~~(vii)-----develop and explain why the usual algorithms work
for the for basic operations with whole numbers and illustrate
these operations, using models and thinking strategies
appropriate to the K-8 curriculum;~~

~~(viii)-----relate the properties of the real number system
to the basic algorithms and to their use in problem-solving;~~

~~(ix)-----recognize alternate algorithms for the basic
operations and explain them, using appropriate models or
properties of the number system;~~

(x)-----use--estimation--whenever--appropriate,---in particular--to--pose--and--select--alternatives--concerning reasonable responses;

(xi)-----solve-simple-problems-involving-the-reporting-of data--(measure--of--central-tendency,--dispersion,--graphs, expectation,--and-prediction);

(xii)-----use-calculators-and-computers-appropriately--in problem-solving-and-in-exploring-and-developing-mathematical concepts;

(xiii)-----employ--the--fundamental--concepts--of--computer programming;

(xiv)-----model--the--process--of--mathematical--discovery (conjecture,--testing,--refinement,--more--testing,--and--final statement-of-result);

(xv)-----relate-examples-in-the-pupil's-environment--to mathematics;

(xvi)-----develop-basic-planar-and-spatial--relationships (parallelism,--perpendicularity,--etc.)--and--model--them--with examples-from-the-pupil's-environment;

(xvii)-----use-standard-and-nonstandard-units-in-measuring length,--perimeter,--area,--capacity,--volume,--mass,--weight, angle,--time,--and-temperature;

(xviii)-----design-classroom-experiences-illustrating-the geometric-and-measurement-concepts-appropriate-to-the-various grade-levels;

(xvix)-----use--mathematical--terminology--and--symbolism appropriately-while-working-with-the-K-8-curriculum;

(xx)-----recognize-and-construct-consistent--and--logical arguments-appropriate-to-the-pupil-level;

(xxi)-----solve-simple-problems---in---two---and three-dimensional-geometry---involving---parallelism, perpendicularity,---congruence,---similarity,---translation, reflection,---rotation,---symmetry,---incidence,---perimeter,---area, and-volume;

(xxii)-----explain--and--solve--problems--involving--the development,--analysis,--and-practice-of-algebraic-and-geometric relationships-found-in-the-K-8-curriculum;

(xxiii)-----employ-concepts-related-to-functions-and-graphs in-the-K-8-curriculum;

(xxiv)-----describe-the-historical-and-cultural-development of--the-main-mathematical-concepts-and-principles-usually taught-in-the-K-8-curriculum; and

(xxv)-----identify---resource---materials---(such---as manipulatives,--games,--kits,--films,--computer-software,--video tapes,--periodicals,--and-books)--that-may-be-used-to-develop concepts-and-to-generate-enthusiasm-for-mathematics-in-pupils of-these-grades;

(e) mathematics--specifically, the program shall include mathematics substantially beyond the K-8 curriculum and shall provide experiences and studies which develop the skills to:

(i) integrate appropriate technology including the calculator and the computer in the learning and teaching of mathematics;

(ii) integrate problem solving, reasoning, estimation,

and manipulatives in the learning and teaching of mathematics:

(iii) understand and appreciate the historical and cultural development of the mathematical concepts and principles usually taught in K-8 curriculum;

(iv) use a variety of problem solving strategies to investigate, understand, apply and teach mathematical concepts;

(v) correctly communicate the use of the language of mathematics through discussion, modeling and writing;

(vi) apply inductive and deductive reasoning in developing mathematical concepts;

(vii) understand, represent and explain the concepts of, operations on, and the relationships among subsets of the real numbers;

(viii) understand and apply fundamental number theory concepts;

(ix) analyze and explain various procedures and algorithms for computation with real numbers using a variety of models;

(x) select, model and use an appropriate method for computing from among mental arithmetic, paper and pencil, calculator, computer and other technology in a variety of settings;

(xi) explore, apply and explain estimation strategies, recognize when an estimate is appropriate, and determine reasonableness of results;

(xii) understand and explain measurement, the concept of a unit, the process of measuring and the structure and use of both the customary and metric systems;

(xiii) model and explain the concepts of perimeter, area and volume through concrete and abstract experience;

(xiv) identify, describe, construct, compare and classify geometric shapes and figures;

(xv) visualize and represent spatial relationships of geometric shapes;

(xvi) understand and apply geometric properties and relations in solving problems and in developing other mathematical concepts appropriate to the K-8 curriculum;

(xvii) understand, apply and explain coordinate systems;

(xviii) use informal statistical methods to solve problems and make inferences;

(xix) understand the concepts of probability, develop simulations and make predictions;

(xx) represent and analyze relationships using tables, rules and graphs, and translate among tabular, symbolic and graphical representations of functions;

(xxi) understand, apply and explain algebraic concepts to examine and solve a variety of real world problems; and

(xxii) illustrate the connectedness of mathematical concepts;

(g)---physical-education---specifically, the competence to:-

(i)---develop the body of knowledge involved in human movement and its application to various skill/development levels;

(ii)---develop positive feelings toward the values of and

attitudes about movement; and

(iii) ~~develop basic movement patterns including locomotor, nonlocomotor, manipulative, spatial awareness, gymnastics, rhythms, games, and physical fitness;~~

(f) physical education and health--specifically, the ability to:

(i) implement methods and materials that promote health enhancement via movement experiences and health concepts which include but are not limited to:

(A) personal health and fitness;

(B) accident prevention and safety;

(C) nutrition;

(D) consumer, community and environmental health;

(E) mental and emotional health;

(F) family life education/human sexuality;

(G) stress management;

(ii) understand basic motor development and its sequential application to specific movement patterns, including locomotor, nonlocomotor, manipulative, rhythm/dance, movement exploration, Native American games and activities, outdoor education, games and sport skills;

(iii) select and use appropriate techniques to evaluate movement patterns in order to design appropriate programs; and

(iv) understand traffic and safety education including bicycle, passenger, and pedestrian safety, disaster preparedness, fire safety, and water, home and recreational safety.

(h) ~~science--specifically, the competence to:~~

(i) ~~provide a comprehensive knowledge of science appropriate for children in the elementary grades and teacher competence in developing children's sensitivity to and appreciation of the importance of general literacy in a scientific and technological society;~~

(ii) ~~use methods and materials that promote effective pupil skills in elementary school laboratory science; and~~

(iii) ~~provide specific experiences in laboratory science, in each of the areas of life science, earth science, and physical science.~~

(g) science--specifically, the program shall:

(i) provide the competence to understand science content in laboratory and field-oriented science including study in life science, physical science, and earth science disciplines;

(ii) provide competence in the teaching of science processes, content safety and attitudes;

(iii) require completion of extensive preparation in elementary science methods scheduled after the science content courses have been completed and prior to student teaching. The preparation shall include experiences with hands-on activities to promote process skill development, the selection of appropriate science content, development of techniques for evaluating pupil progress, the design of classroom environments that promote positive attitudes, the selection and use of a variety of instructional strategies and

materials, and skills and abilities necessary to promote logical, critical and creative thinking;

(iv) develop a professional orientation by including experiences that instill positive attitudes toward science and science teaching and foster an appreciation for the value of science in the total curriculum and in the lives of children; and

(i)-(h) traffic and safety education--specifically, the competence-ability to:

(i) provide a comprehensive knowledge of traffic and safety education, including bicycle and pedestrian safety, passenger and pupil transportation safety, basic first aid, disaster preparedness, fire safety principles and exit drills, and water, home, and recreational safety;

(4)--develop--instructional--competence--in--the--use--of methods--and--materials--that--promote--effective--pupil--skills--in the--subject--areas--normally--found--in--the--elementary--school curriculum;

(5)--provide--a--comprehensive--knowledge--of--literature appropriate--for--children--in--the--elementary--grades--and--provide teacher--competence--in--developing--children's--sensitivity--to--and enthusiasm--for--literature;

(6)--develop--knowledge--and--understanding--of--the--techniques involved--in--individual--instruction,--team--teaching,--and--various methods--of--grouping--within--a--self--contained--classroom;

(7)--adequately--prepare--the--pre-teacher--for--teaching atypical--children;--and

(8)--develop--skills--in--the--diagnosis,--prescription,--and correction--of--learning--difficulties--of--elementary--school children.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.509 ENGLISH LANGUAGE ARTS For the prospective teacher the program shall:

(1) provide knowledge of language including:

(a) the structure, history, dialect, grammatical system, nonverbal system, and semantic system and--grammars of the English language;

(b) the developmental processes by which individuals acquire, understand, and use language;

(c) the influence of social, regional, economic, and cultural factors on language variations and use;

(d) how speaking, listening, writing, reading, thinking, and nonverbal communication are interrelated; and

(e) how language is used to influence the thinking of others;

(2) provide knowledge of composition including:

(a) the stages involved in the composing process (i.e., prewriting, writing, revising, editing and evaluating);

(b) the elements involved in composing oral and written forms (e.g., considerations of subject, purpose, audience, point-of-view, mode, tone and style);

(a) (c) the linguistic, rhetorical, and stylistic

concepts that influence the substance and structure of oral and written discourse;

(b) (d) the processes and criteria by which oral, and written and nonverbal discourse can be evaluated (e.g., observation, holistic scoring, analytic scoring in writing and individual conferences);

(c) (e) the development of individuals' oral and written language abilities;

(f) processes and strategies for writing across the curriculum;

(g) the major grammatical theories;

(h) the latest research on effective strategies for teaching the composing process;

(3) provide knowledge of an extensive body of literature, including:

(a) American, English, and world, including nonwestern, and mythology, contemporary literature, literature by women and multicultural groups, and literature for children and adolescents;

(b) approaches to literary analysis and criticism as well as varied ways to respond to, discuss, understand and evaluate literature, including:

(i) knowledge of genres; and

(ii) sensitivity to literature as a means for examining human problems, achievements, values and conflicts;

(c) approaches to appreciating literature and reading as a life-long source of learning as well as pleasure;

(4) remains the same.

(5) provide knowledge about the nature, function, and structure of nonprint and nonverbal media and their relationship to print and verbal expression, including:

(a) how various media influence and communicate different messages; and

(b) how to evaluate, select and use a variety of instructional media and technology;

(6) provide knowledge of English language arts curricula including:

(a) the development, implementation, and evaluation of curricula;

(b) the procedures used to design English language arts curricula for students of different ages, abilities, and linguistic, and cultural and community backgrounds;

(c) the selection, evaluation, and use of instructional resources and materials, including nonprint media and computer software;

(d) the communication of curriculum objectives to colleagues, parents, and the public; and

(e) an awareness of the language, subject matter, and teaching strategies which evoke criticisms by special interest groups as well as strategies and legal information for coping with the criticisms;

(7) develop the ability to identify, assess, evaluate, and interpret student progress in thinking, listening, speaking, reading, and writing and viewing in a variety of

communicative contexts and purposes;

(8) through (8)(e) remain the same.

(f) helping students recognize the ever-changing nature of language;

(9) remains the same.

(10) develop the ability to help students respond to, discuss, understand, analyze and evaluate all forms of print, nonprint, and nonverbal media and communication;

(11) develop the ability to help students ask questions that elicit facts, opinions, generalizations, and judgments that are appropriate to the subject and occasion; and

(12) develop the ability to design instruction that engages the intellect, imagination, and emotions of students in their thinking, listening, speaking, reading, writing, and viewing.

~~(13) develop the ability to use a variety of appropriate teaching methods, materials, and resources to match the students' needs, abilities, and interests with the objectives of the curriculum;~~

~~(14) develop the ability to help students increase their power to use and respond to language both creatively and responsibly.~~

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.510 EXCEPTIONAL CHILDREN K-12 (1) through (2) remains the same.

(a) an understanding of the types of exceptionalities among preschool children, children and youth and their educational relevance;

(b) experiences in individual and group classroom management procedures appropriate to exceptional children, such as:

(i) use of diagnostic procedures to identify the exceptional child's learning difficulties and specialized needs;

(ii) and (iii) remain the same.

(iv) sufficient preparation to address the following for developing appropriate programming and program evaluation:

(A) knowledge and skills in devising appropriate early childhood developmental activities in all areas of learning; and

(B) ability to set up and use a system of continuous program evaluation (e.g., consumer satisfaction and child progress including IEPs);

~~(c) social skills and attitudes that enable the prospective teacher to work effectively with other school personnel in coordinated programs for exceptional children;~~

~~(d) the ability to interpret the educational program to parents, teachers, administrators, and community groups;~~

~~(e) (c) opportunities to observe institutions and facilities concerned with the education, health, and welfare of all types of exceptional children;~~

~~(f) (d) early opportunities for supervised laboratory experiences with exceptional children as one means of~~

determining the candidate's maturity for work with exceptional children;

(g) (e) encouragement of student affiliation with professional groups, and an awareness of the referral agencies available for aid to exceptional children;

(h) (f) a specific understanding of federal and state rules and regulations related to educating exceptional children;

(i) (g) opportunities to work with groups of children and individuals within groups who have different educational needs; and

(j) (h) opportunities to work with children who have difficult handicapping conditions.

(3) through (3)(a)(iii) remain the same.

(iv) knowledge of the results of research in the area of emotional disturbance and closely allied fields as well as specific discipline.

(b) Hearing impaired: For the prospective teacher the program shall provide:

(i) develop skills in managing pupils with speech and hearing disorders, including diagnosis and evaluation, therapeutic methods and materials;

(ii) provide study in audiometry and hearing rehabilitation, including studies in hearing problems and hearing tests;

(iii) develop skills in auditory training and speech reading, speech for the acoustically handicapped, sign language, and working with the deaf;

(iv) provide opportunities to observe procedures of diagnosis and case management by qualified clinicians;

(v) develop therapeutic skills and judgments and provide opportunities to perform therapeutic services under supervision; and

(vi) provide study of the anatomy and physiology of the auditory system and knowledge of the symptoms and diagnosis of hard-of-hearing and deafness.

(c) Mentally retarded: For the prospective teacher the program shall provide:

(i) provide knowledge related to the needs of the mentally retarded, knowledge of programs and procedures for working with the mentally retarded, and professional laboratory experiences with mentally retarded children;

(ii) include studies and experiences which give the prospective teachers knowledge of the following:

(A) through (H) remain the same.

(iii) provide knowledge of all levels of mental retardation and allow for emphasis in one or more of these levels.

(d) through (e)(v) remain the same.

(f) Specific learning disabilities: For the prospective teacher the program shall provide:

(i) provide knowledge of learning theory as well as educational psychology, orientation in psychological testing, and diagnosis and correction of learning disabilities;

(ii) ~~require~~ experience in the education of those with learning disabilities (such as dyslexia, perceptual handicaps, brain injury, minimal brain dysfunction, and developmental aphasia), remedial work in basic skills, reading, and in curriculum development for teaching students with learning disabilities; and

(iii) ~~provide--for an~~ adequate understanding of group dynamics, interviewing, and counseling and for knowledge of community resources; and

(iv) ~~---provide professionally supervised experiences with pupils, teachers, and administrators that are properly planned and professionally supervised and of such duration to prepare the pre-teacher for work in this field--~~

(g) Preschool handicapped child: For the prospective teacher, the program shall provide:

(i) knowledge of prenatal development, normal developmental sequences, and theoretical foundations for contemporary developmental theories, with emphasis on the following:

(A) prenatal care and the birth process;

(B) birth defects and genetic syndromes;

(C) play and its role in development;

(D) motor, perceptual, sensory, language, psychological, cognitive, and social developmental sequences;

(E) variations in human development including both normal variations and developmental delays; and

(F) the child as a whole person, with consideration for the special needs (physical, emotional/affective, moral/spiritual, etc.) imposed by handicapping conditions;

(ii) knowledge of the young child within the context of the family and the demographic and socioeconomic factors impinging on the family, with special emphasis on the following:

(A) bonding and separation, and their reciprocal effects;

(B) family dynamics with respect to functional and dysfunctional family relationships;

(C) various ethnic, linguistic, and cultural backgrounds and their effect on parenting style and impact on children;

(D) the variety of family structures and settings;

(E) the unique, personal needs of parents and siblings of disabled children; and

(F) the potentials and limitations of parents as teachers of their disabled children;

(iii) skills in programming issues related to:

(A) assessing (e.g., using evaluation techniques and tools, reviewing comprehensive health status evaluations, performing criterion referenced and culturally fair testing, estimating family needs and capabilities, and measuring the child's social integration);

(B) planning (e.g., integrating assessment and observational data, using assessment data to develop curricula and activities, developing strategic individual education or family service plans);

(C) programming for families (e.g., encouraging parents

to participate and support educational programs, assisting parents to work effectively with their children on developmental skills, working with parents to identify and advocate for services in the most normal and least restrictive settings, individualizing intervention tactics to meet unique handicapping conditions, developing practical listening and communication skills, and providing counseling to the family);

(D) programming for children (e.g., devising appropriate developmental activities, demonstrating effective techniques in line with the child's strengths, enabling young children to make choices and decisions, preparing children for the transition from the home to preschool or school, demonstrating skills in task analysis and adaptation, and displaying effective methods of classroom management and discipline); and

(E) evaluating outcomes of activities (e.g., setting up and using continuous program evaluation systems such as child progress measures and consumer satisfaction ratings, ensuring that all program elements meet child and family needs, making data based decisions to modify program objectives, and sharing evaluative information appropriately);

(iv) skills in designing, organizing, and implementing learning environments and intervention models, specifically:

(A) directing the activities of paraprofessionals and parent volunteers;

(B) operating in various settings, (e.g., home based, center based, consultative, itinerant resource, etc.); and

(C) relating to various administrative or organizational structures (e.g., public schools, special education cooperatives, nonprofit corporations, etc.);

(v) skills in multidisciplinary processes, specifically:

(A) sharing and exchanging information with parents, professionals from other disciplines, and support personnel;

(B) functioning as case manager to coordinate team processes and resolve conflicts between team members; and

(C) knowing the scope and function of service and support systems, including financial resources, which assist in the care and education of young children and their families;

(vi) knowledge and skills with respect to the following topics:

(A) history, philosophy, and theory of special education and early intervention; and

(B) federal, state, and local laws, regulations, and policies that effect early intervention.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.511 FOREIGN LANGUAGES Certificate--endorsements available in Montana are based on the following knowledge and performance--criteria---Candidates--for--endorsement--in--any language must provide evidence of having completed an approved program--in--a--specific--language--leading--to--teaching preparation. For the prospective teacher the program shall provide:

(1) through (11) remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.512 GUIDANCE AND COUNSELING K-12 For the prospective counselor the program shall provide:

(1) through (3) remains the same.

(4) an developmental understanding of the individual growth and development, including the dynamics of human behavior;

(5) the extension of the pre- teacher's counselor's understanding of basic educational philosophies and school curriculum patterns K-12;

(6) through (7) remain the same.

(a) administration and interpretation of intelligence, aptitude and interest, achievement, and personality assessment;

(7)(b) through (7)(g) remains the same.

(h) drug and alcohol prevention/intervention programs, suicide, eating disorders, child abuse (physical and sexual), teenage pregnancy, human sexuality, family relations, grief, separation, and loss; and

(i) computer applications in guidance and counseling; and

(j) consultation with families and professional staff;

(8) through (10) remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.513 HEALTH For the prospective teacher the program shall provide:

(1) knowledge of child growth and development and the social, emotional, physical, and health characteristics and needs of children, including personal health, use and misuse of substances, human sexuality, nutrition, and safety;

(2) basic knowledge of the biological sciences which primarily deal with the humans quest for a healthy life, including knowledge and understanding in human physiology and anatomy, basic body chemistry, microbiology, genetics and ecology;

(3) basic studies in the behavioral and social sciences pertinent to the study of health;

(4) an understanding of:

(a) personal health and physical fitness, including basic understanding of the body and its vital organs;

(b) community and environmental health, including sanitation and pollution;

(c) nutrition, including weight control, food fads, and diet supplements;

(d) emotional and mental health;

(e) physical, social, and emotional health hazards of drugs, alcohol, and tobacco;

(f) physical and emotional aspects of sex;

(g) communicable diseases (including venereal disease), body defenses, and immunization programs;

(h) common physical and mental exceptionalities and

degenerative diseases;

(j) ~~consumer health, including the selection of health products and professional services and the evaluation of advertising;~~

(k) ~~first aid and emergency care;~~

(l) ~~safety, including outdoor, water, home, industrial, and traffic; and~~

(m) ~~values, processes and clarification~~

(n) ~~opportunities for developing, promoting, and implementing a school health environment and cooperative relationships with voluntary, community, and other health agencies.~~

(1) the ability to plan, organize, and implement a comprehensive school health program including:

(a) school health curriculum, including goals and objectives, planned learner activities and integrated with related disciplines, to include:

(i) personal health and fitness;

(ii) accident prevention and safety;

(iii) nutrition;

(iv) community health;

(v) consumer health;

(vi) family life education/human sexuality;

(vii) chronic and communicable disease prevention;

(viii) use and abuse of substances;

(ix) mental and emotional health; and

(x) environmental health;

(b) school health services, including awareness of health professionals, barriers to learning, health records, and health policies; and

(c) healthy school environment, including health promotion for staff, food services, sanitation, and social climate;

(2) knowledge and skills related to health concepts including:

(a) the interrelationship of the physical, emotional, social, and intellectual dimensions of growth and development;

(b) the many topical areas included in the health curriculum and the relationship to total health;

(c) the educational, environmental, and organizational strategies used to involve staff in health promotion and wellness; and

(d) medical ethical issues as they relate to the availability of technology and procedures for society at large;

(3) knowledge and skills to teach prevention and intervention strategies, including but not limited to:

(a) basic communication and counseling skills;

(b) assertiveness;

(c) building self-esteem/self-concept;

(d) stress management;

(e) conflict resolution;

(f) ethical decision making; and

(g) identification of obstacles to learning and referral.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.514 HOME ECONOMICS For the prospective teacher the program shall provide:

(1) provide basic information about child development and the creation and maintenance of an environment in which children and families develop and interact as individuals and family members;

(2) provide an understanding of the multiplicity of factors involved in clothing and textiles for personal and family needs;

(3) emphasize emphasis on the importance of value judgments and decisions about shelters, furnishings, and equipment for individual and family needs;

(4) provide the knowledge and experience for selecting, planning, preparing, and serving foods that meet the nutritional needs of various individuals, families, and groups;

(5) provide knowledge and experience in individual and family resource management that meets individual and family goals at the various stages of life;

(6) provide knowledge in planning, developing, teaching, supervising, and evaluating programs in occupational home economics;

(7) provide an opportunity for interdisciplinary and multi-agency approaches to the preparation of home economics teachers;

(8) provide study in the humanities and the social, behavioral, and natural sciences; and

(9) enable the preparing teacher the ability to use home economics youth organizations as a means to teach leadership skills through public speaking, parliamentary procedures, and cooperative group efforts.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.515 INDUSTRIAL ARTS/TECHNOLOGY EDUCATION For the prospective teacher the program shall:

(1) prepare the pre-teacher for teaching a general industrial arts course that covers the main divisions of industrial arts, and a general laboratory or shop unit in one of the main divisions of industrial arts;

(2) provide study of the philosophy, principles, and methods of industrial arts in elementary, secondary, adult, and higher education;

(3) provide a fundamental knowledge of the historical development of technology and its impact on humans and society;

(4) develop technical skills in the following:

(a) Drafting; learning activities concerned with communicating ideas or illustrations graphically;

(b) Electricity and electronics; study of technology involved in the industrial uses of electrical energy and the theory, applications, and control of electrical energy;

(c) Communications; learning activities concerned with the tools, materials, and processes used in the printing industries, including the technical aspects of printing, related occupations, management problems, and

consumer/printing-industry-relationships;

(d) ~~Manufacturing and construction studies of the methods and processes used in manufacturing articles for mass consumption. These studies shall be concerned with the industry, technology, and products of materials and processes such as ceramics, crafts, metals, plastics, textiles, and woods;~~

(e) ~~Power and transmission study of the technology involved in harnessing and controlling power, including its source, generation, and transmission and the use of powered devices and vehicles;~~

(5) ~~allow the student to study industrial problems, and make independent investigations of the origins and evolution of present industrial conditions;~~

(6) ~~offer opportunities to design, construct, and test individual projects; and~~

(7) ~~enable the preparing teacher to use industrial arts youth organizations as a means to teach leadership skills through speech, parliamentary procedures, and cooperative group efforts.~~

(1) provide an emphasis on course work in math/science and related subject areas beyond the core requirements;

(2) provide a fundamental knowledge about the development of industry and technology and its effect on people, the environment and culture; and about industry, its organization, personnel systems, techniques, resources and products and their sociological impact;

(3) provide instructional content drawn from the following content organizers:

(a) communication: efficiently using resources to transfer information to extend human potential;

(b) construction: efficiently using resources to build structures on-site;

(c) manufacturing: efficiently using resources to extract and convert raw/recycled materials into industrial and consumer goods; and

(d) transportation: efficiently using resources to save time and to attain and maintain direct physical contact and exchange among individuals and societal units through the movement of materials/goods and people;

(4) provide skill in the use of tools, instruments and machines;

(5) assist students in developing insight, understanding and application of technological concepts, processes and systems;

(6) assist students to apply tools, materials, machines, processes and technical concepts safely and efficiently;

(7) develop skills, creative abilities, positive self-concepts and individual potentials relating to technology;

(8) develop student problem-solving and decision-making abilities involving human and material resources, processes and technological systems;

(9) provide activities-oriented laboratory instruction with students reinforcing abstract concepts with concrete

experiences:

(10) emphasize "know-how" and "ability to do" in carrying out technological work;

(11) develop student attitudes, knowledge and skills regarding the functioning of industrial and technological systems;

(12) develop the ability to apply technological attitudes, knowledge and skills to understand new or different past-present-future technology systems;

(13) develop an understanding of the application of other areas of knowledge (i.e., mathematics, science, history) to technology and the solution of human and social problems; and

(14) provide courses/experience to enable the graduate to perform the following tasks:

(a) establish a student association within the industrial arts technology education program including selection of appropriate organizations, establishing a chapter, conducting activities and assisting in management and evaluation; and

(b) develop and coordinate an external advisory committee for the program.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.516 JOURNALISM -Per The program shall enable the prospective teacher the program shall enable him or her to:

(1) through (13) remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.517 LIBRARY MEDIA K-12 For the prospective library media specialist the program shall develop skills in:

(1)--provide a liberal arts education as stated in subchapter 4--(Teaching--Areas--General--Standards);--and--a professional core as stated in subchapter 5, section ARM 10-58-501--(Specific Standards);

(2)--develop skill in selection as it relates to:

(a)--developing--criteria--for--evaluating--and--selecting materials and equipment;

(b)--planning and implementing processes, procedures, and policies for the evaluation and selection of materials and equipment;

(c)--using bibliographic aids and tools and other sources to obtain current reviews and information about materials and equipment; and

(d)--developing---a---knowledge---and---understanding---of literature for children and young adults;

(3)--develop skill in the use of media as it relates to:

(a)--teaching skills in the retrieval and use of materials and equipment;

(b)--helping teachers and students identify, obtain, and adapt media to their specific needs;

(c)--guiding students and teachers in reading, listening, and viewing;

(d)--identifying and using community resources; and

(e)--providing--specific--information--and--responses--to
reference requests;

(4)--develop--skill--in--the--production--of--media--as--it
relates-to;

(a)--designing--and--producing--materials--to--meet--stated
learning-objectives;

(b)--operating--production--equipment;--and

(c)--producing--media--for--specific--learning--objectives
which-use-the-basic-principles-of-design;

(5)--develop--skill--in--research--and--evaluation--of--media
programs-as-it-relates-to;

(a)--developing--plans--to--assess--needs--and--evaluate--the
media-program;

(b)--applying--the--principles--of--research--to--improve--the
media-program;--and

(c)--designing,--developing,--and--writing--proposals--for
funds--to--support--the--media--programs;

(6)--develop--skill--in--the--organization--of--media--as--it
relates-to;

(a)--procedures--for--acquisition,--processing,--distribution,
and--maintenance--of--materials--and--equipment;--and

(b)--rules--and--procedures--for--classifying--and--cataloging
all--print--and--nonprint--materials;

(7)--develop--skill--in--administration,--supervision,--and
management--as--it--relates--to;

(a)--assessing--the--status--of--the--media--program--in--terms--of
local,--state,--regional,--and--national--guidelines--and
establishing--short--and--long--range--plans;

(b)--initiating--and--developing--policies--and--procedures--for
the--operation--of--a--media--center;

(c)--applying--the--principles--of--budgeting--and--management
to--the--administration--of--the--media--program;--and

(d)--establishing--job--specifications--and--applying
principles--of--personnel--management;

(8)--develop--skill--in--the--application--of--the--principles--of
learning--and--teaching--methods--as--it--relates--to;

(a)--determining--goals--for--the--media--program--as--an
integral--part--of--a--school's--educational--program;

(b)--participating--as--a--member--of--the--education--team--in
curriculum--design--and--the--integration--of--media;

(c)--planning--activities--and--opportunities--for--increasing
independence--in--learning;

(d)--evaluating--media--programs--as--they--relate--to
curriculum--needs;--and

(e)--planning,--using,--and--evaluating--methods--and
procedures--for--teaching--media--skills--in--a--variety--of--school
curricula;

(9)--develop--skill--in--leadership--and--professionalism--as--it
relates--to;

(a)--designing--and--using--methods--of--interpreting--media
programs--to--teachers,--students,--administrators,--and--the
community;

(b)--providing--the--right--of--access--to--information--for
students--and--teachers--within--the--existing--legal--framework;

- (c) ~~participating in local, regional, state and national professional organizations; and~~
- (d) ~~engaging in self-evaluation to identify needs for continuing education and professional growth; and~~
- (10) ~~provide opportunities for a supervised practicum that includes a wide variety of experiences in library media.~~
- (1) organization and administration of the library media center including:
 - (a) assessing needs;
 - (b) setting goals, objectives, and priorities;
 - (c) interpreting the program through public relations;
 - (d) establishing policies and procedures;
 - (e) planning use of facilities and equipment;
 - (f) using computers/technology for library media center management;
- (g) formulating the budget and developing funding proposals;
- (h) supervising and training personnel;
- (i) developing job descriptions;
- (j) evaluating programs and procedures according to state, regional, and national guidelines; and
- (k) participating in a supervised practicum experience;
- (2) selection, acquisition, and organization of resources/media including:
 - (a) evaluating and selecting resources (knowledge of evaluative selection aids--print, nonprint, and equipment--and of review sources, standard and current);
 - (b) acquiring resources (publishers, jobbers, producers, vendors, ordering procedures);
 - (c) organizing resources (knowledge of cataloging, indexing, processing, filing, and records management); and
 - (d) maintaining resources (knowledge of inventory, shelving, weeding, storage, and maintaining security);
- (3) information sources and services including:
 - (a) acquiring knowledge of reference works and uses;
 - (b) acquiring knowledge of children and young adult literature;
 - (c) acquiring knowledge of community resources, networks, and resource sharing; and
 - (d) acquiring knowledge of data bases to locate and retrieve information;
- (4) instructional services including:
 - (a) participating in design and development of the curriculum;
 - (b) assisting in selection and use of appropriate media to achieve specific instructional objectives and learner outcomes;
 - (c) teaching media, reference, research, literature, and production skills;
 - (d) producing basic nonprint media;
 - (e) applying instructional design principles in the production and adapting of materials;
 - (f) integrating library media skills into the curriculum;
 - (g) using computers and technology in the instructional

program; and

(h) operating common audio, projection, video, and computer equipment;

(5) professional development including:

(a) being aware of the role and function of professional organizations and state and federal agencies; and

(b) being familiar with laws and regulations pertinent to library media programs such as those concerning copyright and confidentiality.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.518 MATHEMATICS For the prospective teacher the program shall:

(1)--develop--the--pre-teacher's--capacity--and--disposition for--continued--learning--in--mathematics,--including--current research--in--mathematics--education;

(2)--include---studies---and---experiences---relevant---to mathematics---curricula---grades---5-12---and---a---knowledge---of curriculum--improvement--projects;

(3)--include---laboratory---experiences---that---develop competence--to--teach--mathematics--from--computational--to--abstract levels;

(4)--develop--the--competence--to:

(a)--understand--mathematics--prerequisite--to,--consistent with,--and--substantially--beyond--that--which--the--teacher--may--be expected--to--teach;

(b)--employ--appropriate--strategies--to--identify,--develop, and--solve---problems---involving--mathematical--concepts--and principles;

(c)--use--number--theory--and--algebra--to--analyze--standard--or unusual--algorithms--for--computation--with--real--numbers;

(d)--select--or--develop--appropriate--mathematical--models--to solve--problems--in--several--areas--of--application--(e.g.,--science, psychology,--economics);

(e)--identify,--select,--adapt,--and--evaluate,--resource materials--(such--as--manipulatives,--games,--kits,--films,--computer software,--video--tapes,--periodicals,--and--books)--that--may--be used--to--develop--concepts--and--generate--enthusiasm--for mathematics;

(f)--recognize--and--construct--proofs--involving--mathematical concepts--and--principles--usually--taught--in--these--grades;

(g)--demonstrate---the---interrelationship---of---different branches--of--mathematics--and--describe--the--historical,--cultural, and--philosophical--significance--of--mathematical--principles;

(h)--use---estimation---and---approximation---skills---when appropriate;

(i)--use--statistical--methods--(organizing--and--tabulating data),--probability,--inference,--and--hypothesis--testing--to--solve problems;

(j)--use--mathematical--terms--and--symbols--appropriate--to grades--5-12;

(k)--select,--develop,--and--explain--problems--that--require the--student's--use--of--a--computer--as--a--tool;--and

(1) solve problems using a programming language on a computer.

(1) include content studies and methods experiences relevant to mathematics curricula grades 5-12:

(2) include hands-on laboratory experiences that develop competence to teach mathematics in grades 5-12:

(3) include experiences that develop competence to teach applications of mathematics from the concrete to abstract levels in a variety of real world situations:

(4) include problem solving as a method of learning and teaching mathematics:

(5) include the principles of inductive and deductive reasoning:

(6) develop an understanding of the interrelationship of different branches of mathematics, including the historical, cultural and philosophical significance of mathematical principles:

(7) include current trends in mathematics and the impact of technology in changing both content and methods of teaching mathematics:

(8) include experiences with current technology (calculator, software, programming, etc.) and mental arithmetic and estimation, and stress appropriate uses of each in the learning and teaching of mathematics:

(9) include the identification, selection, adaptation, evaluation and the use of a variety of resource materials to develop concepts and generate enthusiasm for mathematics:

(10) develop an understanding of:

(a) the structure of the real and complex number systems:

(b) number theory:

(c) the general properties and behavior of algebraic and transcendental functions, including real world and theoretical applications:

(d) the principles of differential and integral calculus:

(e) linear algebra with applications to different disciplines:

(f) spatial geometric relationships:

(g) Euclidean and non-Euclidean geometries by comparing their axiomatic systems and applying the geometric principles involved to real world situations:

(h) experimental probability, theoretical probability, probability distributions and simulation methods as appropriate, to represent situations and to make predictions involving uncertainty:

(i) statistical methods, inference and hypothesis testing to solve problems:

(j) discrete as well as continuous mathematical systems:
and

(k) the appropriate use of technology in the process of learning and teaching mathematics.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.519 MUSIC K-12 For the prospective teacher the

program shall develop:

- (1) through (4) remain the same.
- (5) comprehensive knowledge and skills in basic conducting for choral and instrumental ensembles, score reading, rehearsal, and motivation techniques;
- (6) through (7) remain the same.
- (8) functional proficiency on keyboard and ~~for~~ fretted instruments sufficiently advanced to use the instruments for demonstration; and accompaniment; ~~---transposition;---and---as teaching tools;~~
- (9) individual performance ability ~~sufficient to assure accurate and musically expressive performance to accurately and expressively perform standard solo literature;~~
- (10) the ability to perform in large both vocal and instrumental ensembles;
- (11) through (13) remain the same.
- (14) the ability to place identify compositions in as to historic and stylistic perspective;
- (15) an understanding of the philosophical, emotional, ~~societal, psychological, and aesthetic aspects of music as well as the meaning and contribution music makes to individuals and to society;~~
- (16) the ability to formulate a comprehensive music program, including curricula for a school or ~~school-system district~~ which is based upon a sound philosophy of aesthetic education;
- (17) through (19) remain the same.
- (20) knowledge of current music series methods and materials for elementary education and appropriate supplementary materials;
- (21) a knowledge of the techniques of selecting music literature (solo/ensemble) appropriate for general music, vocal/choral music (considering range, tessitura, and the growing and changing voice), and instrumental music with ~~emphasis on what music to teach and how to teach it at the elementary and secondary levels;~~
- (22) remains the same.
- (23) a knowledge of and skills to disseminate music career information; and
- (24) the ability to plan and program musical performances and productions;
- (25) the ability to use the singing voice in teaching young children; and
- (26) the ability to assist young children in the development of their singing voices.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.520 PHYSICAL EDUCATION AND HEALTH K-12 For the prospective teacher the program shall:

- (1) ~~develop a knowledge of the aims and objectives of physical education in schools and the competence a teacher needs to provide learning experiences;~~
- (2) ~~provide study in the biological sciences for~~

understanding the structure and function of the human body; including--an--understanding--of--the--principles--of--human movement;--human--physiology--and--anatomy;--body--chemistry; microbiology; genetics; and ecology;

(3)--provide--understanding--of--skills--used--to--observe; analyze;--prescribe;--and--manage--student--learning--in--a--wide variety--of--physical--activities;--such--as--fundamental--motor skills--and--exercises;--gymnastics;--individual--and--dual--sports; team--sports--and--games;--mass--games--and--activities;--rhythms--and dance;--camping;--and--outdoor--recreation;

(4)--provide--knowledge--and--skill--in--organizing;--planning; administering;--and--evaluating--a--total--physical--education program;--The--following--competencies--are--illustrative;

(a)--relate--physical--education--to--the--total--education program;

(b)--select;--purchase;--and--maintain--facilities;--equipment and--supplies;

(c)--organize--and--administer--intramural;--recreational;--and interscholastic--programs;

(d)--select--and--use--appropriate--techniques--for--evaluating student--performance;

(e)--relate--principles;--standards;--and--procedures--of safety;

(f)--possess--techniques--of--good--public--relations--in interpreting--the--health--and--physical--education--program;

(g)--organize--and--administer--programs--for--atypical students;

(h)--possess--knowledge--of--legal--aspects--of--liability--and insurance;--and

(i)--possess--knowledge--of--first--aid--and--athletic--training methods--and--techniques;

(5)--provide--an--understanding--of;

(a)--personal--health--and--physical--fitness;--including--a basic--understanding--of--the--body--and--its--vital--organs;

(b)--community--and--environmental--health;--including sanitation--and--pollution;

(c)--nutrition;--including--weight--control;--food--fads;--and diet--supplements;

(d)--emotional--and--mental--health;

(e)--physical;--social;--and--emotional--health--hazards--of drugs;--alcohol;--and--tobacco;

(f)--physical--and--emotional--aspects--of--sex;

(g)--communicable--diseases--(including--venereal--disease); body--defenses;--and--immunization--programs;

(h)--common--physical--and--mental--exceptionalities--and degenerative--diseases;

(i)--consumer--health;--including--the--selection--of--health products--and--professional--services--and--the--evaluation--of advertising;

(j)--first--aid--and--emergency--care;--and

(k)--safety;--including--outdoor;--water;--home;--industrial; and--traffic;

(6)--provide--knowledge--to--assess--programs--and--evaluate atypical--students;

~~(7) provide opportunity for a variety of practicum experiences in addition to student teaching early in the curriculum; and~~

~~(8) provide for student teaching opportunities on both elementary and secondary levels.~~

(1) provide competence for the delivery and evaluation of planned learning activities which are developmental and sequential in the area of:

(a) personal health and fitness, including:

(i) emotional and mental health;

(ii) the physical, social and emotional hazards of drugs, alcohol and tobacco;

(iii) physical and emotional aspects of human sexuality;

(iv) communicable diseases including STDs, body defenses, and immunization programs;

(v) consumer health including the evaluation of health products and services;

(vi) the study of anatomy, exercise physiology, kinesiology, and body chemistry;

(vii) nutrition, including weight control, food fads, diet supplements and eating disorders;

(viii) training and conditioning methods and techniques, including weight training as it relates to physical growth and maturation; and

(ix) role modelling as it pertains to a healthy life style and its impact on society;

(b) societal issues, including:

(i) community and environmental health, including sanitation and pollution;

(ii) communicable diseases, including STDs and immunization programs;

(iii) consumer health education, including the ethical use of benefits plans and health care services; and

(iv) medical ethical issues as they relate to the availability of technology and procedures for society at large;

(2) provide knowledge and skills to teach prevention and intervention strategies, including:

(a) basic communication and counseling skills;

(b) assertiveness;

(c) building self-esteem/self-concept;

(d) stress management;

(e) conflict resolution;

(f) ethical decision making; and

(g) identification of obstacles to learning and referral;

(3) provide an understanding of the skills used to observe, analyze, prescribe and manage student learning in a wide variety of activities including:

(a) fundamental motor skills and exercises;

(b) movement exploration and tumbling;

(c) individual and dual sports;

(d) team sports and games;

(e) mass games and activities;

(f) rhythms and dance;

(g) outdoor education; and

(h) Native American games and activities:

(4) provide knowledge and skill in organizing, planning, administering and evaluating the total health enhancement curriculum including:

(a) the relationship of health enhancement to the total curriculum;

(b) maintenance of facilities: the selection, purchase and care of equipment and supplies;

(c) organization and administration of intramural, recreational, and interscholastic programs;

(d) good public relations skills in interpreting the health enhancement curriculum;

(e) aspects of liability and insurance;

(5) provide competence in working with exceptional students including:

(a) administration of programs;

(b) identification of common physical and mental exceptionalities; and

(c) prescription of adapted programs specific to individual exceptionalities;

(6) relate the importance and appropriate use of language arts skills to the health enhancement program;

(7) provide knowledge of principles, standards and procedures of safety including:

(a) first aid and emergency care including required advanced Red Cross certification, CPR training; and

(b) safety, including outdoor, water, home and traffic.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.521 READING SPECIALISTS K-12 For the prospective reading specialist the program shall provide:

(1) a planned sequence of study, including but not limited to: general background (psychology of the reading process, nature and scope of reading program), reading skills and ~~abilities leading to comprehension~~ (readiness for reading at any level, word recognition skills, vocabulary development), ~~accommodation for experiential and cultural background, diagnosis diagnostic~~ and remedial teaching, organization of the reading program (classroom organization, varied approaches to reading instruction), selection and use of materials, and the application of reading skills;

(2) through (3) remain the same.

(4) skills to diagnose reading problems of ~~exceptional students, including those who are bilingual~~, and design appropriate instruction ~~for all students~~;

(5) remains the same.

(6) studies, experiences, and activities in language arts which increase knowledge and skill ~~in relation related to~~:

(6)(a) through (8) remain the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.522 SCIENCE (1)---The science program may follow the subject major pattern or the comprehensive major pattern (General Science).---It shall cover a broad base of science, including biology, chemistry, physics, physical science, and earth science, with an emphasis of at least 20 quarter credits in one field.---This General Science concentration must be coupled with the equivalent of 15 quarter credits in at least three other science areas.---Curricula leading to a certificate in a discrete subject (biology, chemistry, et al) must meet section 10.58.522 (2) and the appropriate provisions (3)(a) through (3)(e) of that section.

(2)---Common Standards:---The program shall:

(a)---enable the prospective teacher to attain:

(i)---at least minimum specified levels of preparation in the processes of science common to the several disciplines;

(ii)---at least minimum specified levels of preparation in the concepts and principles in several areas of science; and

(iii)---a specified high level of preparation in a specialized field so that the prospective teacher is prepared to provide courses and experiences relevant to the high school curriculum in that field;

(b)---provide the knowledge and experience to illustrate the cultural significance of science, to relate science and technology to social conditions, and to apply the analytical methods of science in multidisciplinary approaches to studying and solving societal problems such as the use of the environment;

(c)---provide opportunities for gaining insight into the intellectual and philosophical nature of science and mathematics;

(d)---develop the capacity and disposition for continued learning in science and the teaching of science subjects;

(e)---provide work in areas related to the teaching subjects, with at least minimal preparation in mathematics;

(f)---provide experiences related to the nature of learning, conditions that help young people learn, and the maintenance of a proper learning environment;

(g)---develop the ability to select, adapt, evaluate, and use strategies and materials for teaching science or mathematics so that teaching-learning situations will be consistent with general teaching and learning methods and will be appropriate both to the special needs of the learners and to the special characteristics of the science disciplines or the interdisciplinary problem;

(h)---provide emphasis on the processes used in investigating scientific phenomena and those used in communicating the findings of such investigations to other science students and to the general public;

(i)---provide an awareness of the recommendations for curriculum improvement currently being made by various national scientific groups, and incorporate, as well, new teaching strategies that research demonstrates are effective;

(j)---provide a program that emphasizes breadth rather than depth, including interrelationships among the sciences and the

history and philosophy of science;

(k) -- develop competence in the use of teaching aids and laboratory equipment of all appropriate science fields;

(l) -- provide a knowledge of the current curriculum studies in the various science fields; and

(m) -- emphasize lab safety;

(3) -- Specialized Standards

(a) -- Biology. -- For the prospective teacher the program shall:

(i) -- provide study and experiences that emphasize actual living materials by using laboratory and field experiences which promote investigation, inquiry, and experimental methods;

(ii) -- provide knowledge of the significant biological phenomena as they appear in micro-organisms, plants and animals, and the relation of these phenomena to the broad areas of biology;

(iii) -- provide knowledge of the interrelationship of living organisms with their physical and biotic environments;

(iv) -- provide understanding of the characteristics of living organisms in terms of maintenance, regulation, behavior, reproduction, genetics, development, evolution, and systematics;

(v) -- provide studies and experiences in areas which emphasize the relationships of biology to other sciences, such as chemistry (including introduction to organic and biochemistry), physics, paleontology, behavior, and mathematics;

(vi) -- provide preparation in organizing, presenting and evaluating subject matter content; and

(vii) -- provide laboratory skills necessary to design experiments and demonstrations for a biology classroom.

(b) -- Chemistry. -- For the prospective teacher the program shall:

(i) -- provide a systematic and quantitative study of the fundamental principles of chemistry, interrelated and illustrated with descriptive and historical material;

(ii) -- provide preparation in organizing, presenting, and evaluating subject matter content in a manner which develops the pupil's understanding of the concepts of chemistry;

(iii) -- provide preparation in construction of meaningful pupil learning experiences through lecture and laboratory in organic, inorganic analytical, and physical chemistry;

(iv) -- provide studies and experiences which develop basic knowledge in other natural sciences and mathematics; and

(v) -- provide laboratory skills necessary to design experiments and demonstrations for a chemistry classroom.

(c) -- Earth Science. -- For the prospective teacher the program shall:

(i) -- provide preparation in mathematics and the basic sciences (biology, chemistry, and physics) and a concentration in one of the earth sciences (astronomy, geology, meteorology, and/or oceanography), with supporting work in the other three. -- A major in the broad field of the earth science is recommended.

(ii)---provide an understanding of earth science as an interdisciplinary science that involves the study of the lithosphere,---atmosphere,---and---hydrosphere---and---their relationship to human environment;

(iii)---provide emphasis on field work,---assuring a mastery of technique in using the local environment as a laboratory;

(iv)---provide preparation in organizing,---presenting,---and evaluating subject matter content; and

(v)---provide laboratory skills---necessary to design experiments and demonstrations for an earth science classroom.

(d)---Physical Science---For the prospective teacher the program shall:

(i)---provide experiences in chemistry and physics in nearly equal proportions;

(ii)---provide experiences in at least three of the following---disciplines:---astronomy,---biology,---geology, meteorology, and physical geography;

(iii)---develop a knowledge of mathematics;

(iv)---provide laboratory experience in chemistry and physics as well as in one other science area;

(v)---provide an understanding of the integration of the physical sciences and their implications for contemporary society;

(vi)---develop skills in organizing,---presenting,---and evaluating subject matter content in ways which are optimal for learning; and

(vii)---provide laboratory skills---necessary to design experiments---and---demonstrations---for---a---physical---science classroom.

(e)---Physics---For the prospective teacher the program shall:

(i)---provide a systematic and quantitative study of the fundamental topics of physics,---interrelated and illustrated with descriptive and historical material;

(ii)---emphasize mathematical preparation concurrently with the preparation in physics;

(iii)---develop skills in organizing,---presenting,---and evaluating subject matter content in a manner which enhances the pupil's understanding of physics;

(iv)---develop knowledge of various pupil learning experiences appropriate for areas of classical and modern physics;

(v)---provide studies and experiences which develop basic knowledge in biology, chemistry, and mathematics, including an introduction to differential equations; and

(vi)---provide laboratory skills---necessary to design experiments and demonstrations for a physics classroom.

(1) The comprehensive major shall include a concentration in one of the endorsable disciplines that is coupled with balanced study in three other endorsable science disciplines. Science disciplines selected shall adhere to a scope and sequence approach which ensures a thorough grounding in the basic philosophy, theory, concepts and skills associated with the discipline. Curricula leading to a certificate in a

science area must meet 10.58.522(2) and the provisions of (3) through (8) of that section.

(2) Common standards. For the prospective teacher the program shall:

(a) provide a thorough preparation of course work in one or more of the sciences, as well as supplementary study in closely related areas. This preparation shall include:

- (i) both breadth and depth of knowledge in science;
 - (ii) competency in basic mathematics, statistics, and computer applications to science teaching; and
 - (iii) preparation and experience in environmental science;
- (b) provide the ability to interpret science research to others;

(c) provide instruction with equipment and technology typically found in the contemporary secondary classroom; and

(d) provide an understanding of how to develop and maintain the highest levels of safety in classrooms, stockrooms, laboratories, and other areas related to instruction in science.

(3) Physical science. For the prospective teacher the program shall:

(a) require systematic and quantitative study of the fundamental topics in chemistry and physics interrelated and illustrated with descriptive and historical perspectives, as well as the applications of physical science in society;

(b) require study in mathematics, including a working knowledge of calculus;

(c) provide opportunities to study the interaction of chemistry and physics with technology in contemporary health, ethical, and human issues;

(d) require study in biology and/or earth science, emphasizing the interrelationships among the sciences and their relationships to physical science; and

(e) require experience in designing, developing, and evaluating field, demonstration, and laboratory instructional activities, and in using special skills and techniques with equipment, facilities, and chemicals which support and enhance curricula and instruction in the physical sciences.

(4) Earth science. For the prospective teacher the program shall:

(a) require systematic and quantitative study of the fundamental topics in earth science, interrelated and illustrated with descriptive and historical perspectives, as well as the applications of earth science in society;

(b) require course work in astronomy, geology, paleontology, meteorology, and oceanography, and their relationships with each other;

(c) require course work in biology, chemistry, or physics, emphasizing the interrelationships among the sciences and their relationships to earth science;

(d) require study in mathematics including a working knowledge of trigonometry and statistics;

(e) provide opportunities to study the ethical and human implications of such contemporary issues as the impact of

technologies on the lithosphere, atmosphere, hydrosphere, and biosphere; and

(f) include experiences in designing, developing, and evaluating field, demonstration, and laboratory instructional activities, and in using special skills and techniques with equipment and facilities which support and enhance curricula and instruction in earth science. Techniques and strategies for using the local environment as a teaching/learning laboratory must be emphasized.

(5) Biology. For the prospective teacher the program shall:

(a) include study and experiences emphasizing living organisms including laboratory and field studies promoting investigation, inquiry, applications of biology in society, and the use of experimental methods;

(b) include course work in zoology, botany, physiology, genetics, ecology, microbiology, cell biology/biochemistry, and evolution, and their relationships with each other;

(c) include study in mathematics including a working knowledge of probability and statistics;

(d) include course work in physics, chemistry or earth science emphasizing the interrelationships among the sciences;

(e) provide opportunities to study the relationships between biology and technology and the impacts of biology/technology upon humans and their environment; and

(f) provide experiences in designing, developing, and evaluating field, demonstration, and laboratory instructional activities, and in using special skills and techniques with equipment, facilities, and specimens which support and enhance curricula and instruction in biology.

(6) Chemistry. For the prospective teacher the program shall:

(a) include systematic and quantitative study of the fundamental topics in chemistry, interrelated and illustrated with descriptive and historical perspectives, as well as the applications of chemistry in society;

(b) include course work in organic, inorganic, analytical, physical, and biochemistry, and their relationships with each other;

(c) include course work in physics, biology, or earth science emphasizing the interrelationships among the sciences;

(d) include study in mathematics, including a working knowledge of calculus;

(e) provide opportunities to study the interaction of chemistry and technology in contemporary health, ethical and human issues, e.g., the effects of synthetic molecules and food additives on life systems and the disposal of toxic chemical wastes, etc.; and

(f) provide experiences in designing, developing, and evaluating field, demonstration, and laboratory instructional activities, and in using special skills and techniques with equipment, facilities, and chemicals which support and enhance curricula and instruction in chemistry.

(7) Physics. For the prospective teacher the program

shall:

(a) include systematic and quantitative study of the fundamental topics in physics, interrelated and illustrated with descriptive and historical perspectives, as well as the applications of physics in society;

(b) include course work in classical mechanics, electricity and magnetism, heat and thermodynamics, waves, optics, atomic and nuclear physics, radiation and radioactivity, relativity, and quantum mechanics, and their relationships with each other;

(c) include course work in biology, chemistry or earth science emphasizing interrelationships among the sciences;

(d) require study in mathematics, including an introduction to differential equations;

(e) provide opportunities to study the interaction of physics and technology in contemporary health, ethical, and human issues, e.g., power plant siting and waste disposal, long-range energy policies, and the effects of radiation on living systems, etc.; and

(f) provide experiences in designing, developing, and evaluating field, demonstration, and laboratory instructional activities, and in using special skills and techniques with equipment and facilities which support and enhance curricula and instruction in physics.

(8) Broadfield science. For the prospective teacher the program shall:

(a) require systematic and quantitative study of the fundamental topics in biology, chemistry, physics and earth science including descriptive and historical perspectives, as well as the applications of these sciences in society;

(b) include study and experiences emphasizing interrelationships among all the sciences, as well as between the sciences and other areas of study such as mathematics;

(c) include the study of mathematics, including a working knowledge of calculus;

(d) emphasize the relationships between science and technology and the impacts of science and technology upon humans and the environment;

(e) provide experiences in designing, developing, and evaluating field, demonstration, and laboratory instructional activities, and in using special skills and techniques with equipment, facilities, chemicals, and specimens which support and enhance curricula and instruction in all sciences including laboratory and field studies that promote investigation and inquiry, and the use of experimental methods;

(f) require preparation in the earth sciences including course work in astronomy, geology, paleontology, meteorology, and oceanography, and their relationships with each other;

(g) require preparation in biology including course work in zoology, botany, physiology, genetics, ecology, microbiology, cell biology/biochemistry, and evolution, and their relationships with each other. This preparation must include study and experiences emphasizing living organisms;

(h) require preparation in chemistry including course work in organic, inorganic, analytical, physical and bio-chemistry and their relationships with each other; and

(i) require preparation in physics including course work in classical mechanics, electricity and magnetism, heat and thermodynamics, waves, optics, atomic and nuclear physics, radiation and radioactivity, relativity, and quantum mechanics, and their relationships with each other.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.523 SOCIAL SCIENCE (1) The social science program may follow the subject-major pattern or the comprehensive-major pattern. It The comprehensive major shall embrace a broad base of social studies, science disciplines including anthropology, history, sociology, government, economics, psychology, and geography, with an emphasis of at least 20 quarter credits in one field. This concentration must be coupled with the equivalent of 15 quarter credits in at least three other social studies areas. The comprehensive major shall include a concentration in one of the endorsable disciplines that is coupled with balanced study in three other endorsable social science disciplines. Social science disciplines selected shall adhere to a scope and sequence approach which ensures a thorough grounding in the basic philosophy, theory, concepts and skills associated with the discipline. Curricula leading to a certificate in a discrete subject (history, political science, et al.) must meet 10.58.523(2) and the appropriate provisions of (3) through (8) of that section.

(2) though (2)(a) remains the same.

(i) the ability to relate to and feel for others;

(ii) the ability to examine understand one's own feelings self in the process of developing a positive self concept and develop positive self-awareness;

(iii) the recognition that all human problems cannot be handled with scientific precision the ability to address and recognize individual differences; and

(iv) the ability to work effectively with others as a member of a group;

(b) develop a process approach to teaching social studies which uses various structures and inquiry tools in the social science disciplines;

(c) (b) develop the ability to organize the content of social sciences into teaching/learning sequences that:

(i) reflect meaningful address basic factual information as a base;

(ii) arrange major concepts and data into learning sequences that help students discover the one ascertain relationships between facts, concepts, and generalizations; and

(iii) organize teaching/learning strategies in a manner that lets pupils that proceed from factual information to the development of and subsequent application of theories;

(d) (c) provide for the study of the scientific processes

in-teaching-social-studies;

(e) (d) develop the ability to organize material in ways that maximize pupils' afford student opportunities to make:

(i) ~~observations that use all of the use all one's~~ senses for data collection, ~~or awareness of problem areas, or~~ other ~~classroom purposes~~ perceiving problems, observing environments and classifying objects and events;

(ii) ~~classifications from the observations of objects and events and their similarities and differences;~~

(iii) ~~inferences about what is not directly or immediately observable and involves the evaluation and judgment of data;~~

(iv) ~~hypotheses from inferences and predictions that can be tested by a proof process;~~

(v) ~~reliable predictions about the consequences of a solution to a particular problem based on past observations and the nature of the event being predicted; and~~

(vi) ~~tests of hypotheses by designing and using data collection procedures;~~

(i) evaluate and judge data, make inferences, form and test hypotheses; and

(ii) make reliable predictions based on learning, observations, classification, evaluation judgment, inference and tests of hypotheses;

(f) (e) provide knowledge of a variety of processes used in examining controversial and value-related issues, including those that permit examination of both affective and cognitive input;

(g) (f) develop and demonstrate the ability to think critically and ~~formulate a rational basis for decision-making~~ make decisions through:

(i) application of social studies science data disciplines by constructing support materials such as charts, maps, tables, and graphs, and other pictorial models;

(ii) knowledge use of library research skills that use current and applying information gleaned from national repositories and clearinghouses varied local, regional, state and national sources; and

(iii) use of appropriate levels of questioning which elicit pupil response from recall through evaluation questioning effectively to generate student response;

(h) (g) provide understanding of the use of develop and employ simulation and game techniques which enable the pre-teacher to generate direct student experience with different social science discipline concepts.

(i) ~~use simulations and games to give pupils direct experience with selected social studies concepts; and~~

(ii) ~~develop a simulation game or role playing situation for selected content.~~

(3) Economics: For the prospective teacher the program shall provide:

(a) ~~knowledge of the impact of economic principles and processes in diverse economic systems;~~

(b) ~~knowledge of basic economic decisions made with~~

regard to production, consumption, and distribution;

(e) knowledge of how economic systems confront the problem of unlimited wants and limited resources;

(d) knowledge of how economic patterns within a society reflect the values and objectives of that society;

(e) study of the concept of comparative advantage and its relationship to the exchange of goods and services among developed and developing nations of the world;

(f) knowledge of the comparative economic performance of different cultural groups;

(g) knowledge of the comparative effect of production on the industrial power of different nations;

(h) the analysis of the potential standards of living among nations by examining factors of production;

(i) the examination of the concept of specialization and the resultant interdependency within and among nations;

(j) the analysis of economic fluctuations which have resulted from periods of inflation, deflation, or depression;

(k) the feelings and perceptions of people during periods of economic fluctuations;

(l) the ability to assess major value differences and resulting conflicts during periods of inflation, deflation, or depression; and

(m) the analysis of the causes of economic fluctuations and the development of policies to cope with these problems.

(a) knowledge of economic principles, systems, history, patterns, effects and applications; and

(b) study of such concepts as:

(i) production, consumption and distribution;

(ii) unlimited wants and limited resources;

(iii) exchange of goods and services; and

(iv) societies, cultures, environments and governments.

(4) Geography: For the prospective teacher the program shall provide:

(a) knowledge of the effects of spatial relationships, physical environments, and regionalization on the development of the human experience;

(b) knowledge of the changes affecting the nature of a locale through time;

(c) the analysis of the effects of site and situation on developing cultures and life patterns;

(d) study of reasons for different human activities in regions of similar natural factors;

(e) study of reasons for similar human activities in regions of different environmental conditions;

(f) the ability to assess the impact of the uneven geographical distribution of humans and their pressures on the physical resources of selected areas of the world;

(g) the study of adverse conditions associated with the use of human space, including crime, slums, pollution, value systems, degeneration and deterioration, and deterioration of other physical, mental, and moral qualities;

(h) a knowledge of the earth's physical environment and its influences on the development of culture;

(i) the study of the natural environment and man's ability to alter it in a positive or negative way;

(j) the ability to analyze the physical and cultural components of a portion of the world;

(k) the analysis of current environmental problems and the roles of individuals, societal agents, and technology on developing and effecting solutions;

(l) the analysis of the use of formal and functional regions in the organization of space;

(m) the ability to use a region as a planning device for making rational use of the earth's resources through strategies and establishing priorities;

(n) the analysis of the region as a method to organize space and use regional systems for handling large amounts of diverse information; and

(o) the assessment of regional disorganization of space and factors that account for discontinuity.

(a) knowledge of the physical, social, historical and economic theories of geography; and

(b) study of such issues and concepts as:

(i) influence of geography on human development;

(ii) difference of physical resources in various geographic areas;

(iii) impact of human use and development of geographic areas; and

(iv) impact of geological time.

(5) Government: For the prospective teacher the program shall provide:

(a) knowledge of the fact that every society has some authority structure which can be recognized as a government and has been created by the interdependence of individuals and groups within the society;

(b) the study of a society's decisions, policies, and laws as a reflection of its values, beliefs, and traditions;

(c) the study of how the political aspects of a culture interrelate with its economic, social, geographic, and environmental factors and problems;

(d) the analysis of the current political actions and attitudes of a society in relation to its history;

(e) development of the ability to critically examine government systems, not only as forms of government, but also as methods, processes, and reflections of societal convictions;

(f) the study of sources of political power and authority;

(g) the development of the ability to examine political ethics as a reflection of the moral conduct of the society as a whole;

(h) knowledge of a society's processes of conflict resolution and public policy adjudication;

(i) knowledge of how public policy evolves from competing demands on influential groups;

(j) the analysis of the governmental structures and institutions established to protect public policy decisions and enforce them on the society at large;

(k) the development of the ability to examine the

agencies--created--to--protect--the--rights,--liberties,--and obligations of each member or group within the society; and

(1)--the--study--of--methods--of--interest--articulation--and communication--as--practiced--by--interest--groups,--pressure groups,--and--lobbies--in--various--systems;

(a) knowledge of the evolution and development of government, systems of government, and sources of power and authority; and

(b) study of such political science concepts and issues as:

(i) interdependence of individuals and groups within a society;

(ii) influence of social values, beliefs and traditions on government;

(iii) sources of political power and authority;

(iv) forms of governmental structures and institutions; and

(v) impact of interest groups, pressure groups and lobbies.

(6) History: For the prospective teacher the program shall provide:

(a)--a--knowledge--of--the--human--past--as--a--means--to understand the present and the possibilities for the future;

(b)--the--study--of--the--relationship--of--history--to--the social sciences as means to explain the human experience;

(c)--the--study--of--history--as--a--response--to--the--eternal desire of humans to know about themselves and others;

(d)--an--understanding--that--history--is--concerned--with societies--and--collective--human--experiences--as--well--as individuals--and--their--uniqueness;

(e)--an--understanding--that--continuous--and--unrelenting change--has--been--a--universal--condition--of--human--society throughout--remembered--and--recorded--time;

(f)--an--understanding--that--each--generation--tends--to--create and--interpret--history--in--terms--of--its--own--needs--aspirations, and--points--of--view;

(g)--a--recognition--that--the--record--of--the--past--is irremediably fragmentary, selective, and biased;

(h)--knowledge--that--the--past--should--be--examined--in--light of--contemporary--standards,--values,--attitudes,--and--beliefs rather--than--exclusively--by--modern--standards;

(i)--the--development--of--an--awareness--of--the--value dilemmas of--modern--times--and--the--prospects--for--resolving--the--dilemmas;

(j)--the--development--of--an--understanding--of--the--inter-related--social,--cultural,--political,--geographical--and intellectual--factors--that--have--shaped--history;

(k)--an--understanding--that--multiple--causation--is--the dominant--pattern--in--explaining--the--human--past--and--that historical--events--can--seldom--be--explained--in--terms--of--a--simple cause--and--effect--relationship; and

(l)--knowledge--from--areas--of--study--that--are--important--to the--modern--pupil--and--relevant--to--his--or--her--needs--as--an intelligent--being--living--in:

(i)---Montana--and--the--Rocky--Mountain--region,--including

knowledge-of-minority-groups;

(ii) ~~the United States, including knowledge of minority groups;~~

(iii) ~~and as a part of a European and non-Western civilization, including knowledge of minority groups.~~

(a) knowledge of United States, European, non-Western history and historiography; and

(b) study of such historical concerns as:

(i) that the past is studied to understand the possibilities for the future;

(ii) that continuous and unrelenting change has been a universal condition of humans;

(iii) that each generation creates and interprets history according to its needs, aspirations and points of view;

(iv) that the record of the past is fragmentary, selective and biased;

(v) that interrelated social, cultural, political, geographical, and intellectual factors have shaped history; and

(vi) that Native American people and their unique history make a significant impact on Montana and United States history.

(7) Psychology: For the prospective teacher the program shall provide:

~~(a) the development of an understanding of behavior in humans and other animals;~~

~~(b) knowledge of investigative and scientific methods used in the study of behavior;~~

~~(c) an understanding of the effects of stimuli on behavior;~~

~~(d) study of how culture influences and modifies behavior; and~~

~~(e) recognition and explanation of behavior classified as deviant.~~

(a) knowledge of human and animal behavior and investigative and scientific methods used in psychology; and

(b) study of such psychological concerns as:

(i) effects of stimuli on behavior;

(ii) influence of culture on behavior; and

(iii) existence of deviant behavior.

(8) Sociology: For the prospective teacher the program shall provide:

~~(a) the development of an awareness of various aspects of human behavior related to the fact that humans live in groups;~~

~~(b) the study of the diverse and similar patterns of human grouping in relation to specific cultural values;~~

~~(c) the recognition that every society develops a system of roles, norms, values, and sanctions to guide behavior of individuals and groups;~~

~~(d) the analysis of society's general structure in terms of values, institutions, organizations, groups, status positions, and social roles;~~

~~(e) the study of diversity and variations within a given and comparative social structure; and~~

~~(f) knowledge of how culture is adapted to serve human~~

needs-as-well-as-how humans adapt to cultural conditions:

- (a) knowledge of social systems and institutions and how they evolved throughout the world; and
- (b) study of such social concepts as:
 - (i) most humans live in groups;
 - (ii) humans exist in diverse and similar patterns;
 - (iii) societies develop systems of roles, norms, values and sanctions to guide individual and group behavior; and
 - (iv) culture is adapted to serve human needs and humans adapt to cultural conditions.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.524 SPEECH COMMUNICATION Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.525 TRADES AND INDUSTRY For the prospective teacher the program shall provide:

(1) ~~vocational--training--and/or--supervised--work--if--the pre-teacher--does--not--have--experience--in--trades--or--industry; academic training resulting in at least a bachelor's degree;~~

(2) ~~general--education--requirements--in--the--humanities; mathematics--natural--sciences--social--studies--and--behavioral sciences--that--acquaint--the--learner--with--areas--of--human experience--to--which--he/she--has--not--yet--been--exposed; an awareness of the rules and regulations dealing with vocational certification, education and funding; and~~

(3) ~~on--the--job--supervision--during--the--first--year--of teaching--if--the--new--teacher--has--not--had--student--teaching experience, with modifications of this rule if necessary; and~~

(4) (3) skills necessary for the use of trades and industry youth organizations as a means for teaching leadership skills through speech, parliamentary procedures, and cooperative group efforts.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.526 TRAFFIC EDUCATION For the prospective teacher the program shall:

(1) through (2) remain the same.

(3) develop an understanding of the basic principles of motor vehicle systems, dynamics, maintenance, insurance and visual-perception-skills operation;

(4) develop an understanding of the interaction of all elements of highway transportation systems-, including vehicle occupant safety, alcohol safety, pedestrian safety, bicycle safety, driver education, the vehicle, driver and roadway;

(5) through (8) remain the same.

(9) provide a current listing of appropriate agencies involved with traffic safety and develop an ability to communicate effectively with ~~appropriate--agencies--concerned with-safety them;~~

(10) remains the same.

(11) provide study--of--procedures--and--conditions--for activating an emergency medical services system skills needed for giving emergency medical care and CPR to the sick and injured;

(12) through (13) remain the same.

(14) develop the ability to assess current trends and provide information about current materials and innovative methods in traffic materials education; and including vehicle occupant safety, alcohol safety, pedestrian safety, bicycle safety, and driver education;

(15) develop the ability to structure and implement driver education learning experiences and to identify and develop support materials related to;

- (a) regular classroom,
- (b) multi-media,
- (c) driving simulation,
- (d) off-street multiple car driving range,
- (e) on-street driving,
- (f) parent involvement.

(16) develop an awareness of the necessity to help students learn proper visual perceptual skills, vehicle handling and defensive driving skills and the ability to handle adverse conditions and emergency situations; and

(17) develop an awareness of the need to provide a variety of appropriate driving experiences and situations through an assortment of teaching and learning methods and activities.

10.58.527 TEACHING AREAS: ADDITIONAL FIELDS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.601 PROGRAM PLANNING AND DEVELOPMENT (1) through (5)(e) remain the same.

(f) evaluating and recommending graduate students (with reference to their special competencies in terms of specific program objectives) to the board of public education for certification.

(6) through (6)(f) remain the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.602 TEACHING AREAS: ADVANCED PROGRAMS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.701 SUPERVISORS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.704 SCHOOL PRINCIPALS AND SUPERINTENDENTS (1) through (2)(g) remain the same.

(3) Developing a systematic school curriculum that

assures both extensive cultural enrichment activities and mastery of fundamental as well as progressively more complex skills required in advanced problem solving, creative and technological activities. This competency shall include:

(a) planning future methods to anticipate occupational trends and their educational implications;

(b) through (7)(d) remain the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

Rules 10.58.704 through 10.58.706 Reserved.

10.58.707 SCHOOL PSYCHOLOGISTS For the prospective school psychologist the advanced program shall:

(1) through (3) remain the same.

(4) provide full-time faculty who have a doctorate degree in psychology or education or related disciplines or have training and experience deemed equivalent. At least one faculty member shall possess a doctorate ~~with advanced study~~ in school psychology and experience as a school psychologist. Part-time faculty shall meet the requirements for full-time faculty and shall be employed only when they can make special contributions to the school psychology programs;

(5) through (10) remain the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.801 TYPES OF PROGRAMS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.802 STANDARDS FOR APPROVAL Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

10.58.901 STANDARDS FOR APPROVING COMPETENCY-BASED OR PERFORMANCE-BASED PROGRAMS Remains the same.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

3. The Board is proposing these amendments in conformance with their commitment to a five year review cycle to assure that the standards represent contemporary practice.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearings. Written data, views or argument may also be submitted to Alan Nicholson, chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than January 25, 1989.

5. 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.

In the matter of the repeal) NOTICE OF PUBLIC HEARING ON
of ARM 10.58.504, Business) THE PROPOSED REPEAL OF ARM
Education) 10.58.504, BUSINESS EDUCATION

TO: All Interested Persons


1. On January 26, 1989, at 3:00 p.m., or as soon thereafter as it may be heard, a public hearing will be held in the Education Offices Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the repeal of ARM 10.58.504, Business Education.

2. The rule proposed to be repealed can be found on pages 10-873 through 10-874 ARM.

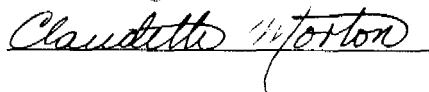
3. The Board is proposing the repeal of this rule because it is incorporated into the revision of 10.58.505, Business Education With Shorthand - Secretarial Occupations, and is no longer current with present teaching.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or argument may also be submitted to Alan Nicholson, Chairperson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than January 25, 1989.

5. 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, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State December 12, 1988.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
ARM 16.20.102 concerning enforce-) ON THE PROPOSED
ment procedures under the Water) AMENDMENT OF A RULE
Quality Act)
(Water Quality)

To: All Interested Persons

1. On March 10, 1989, at 9:00 A.M. or as soon thereafter as the matter may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rule 16.20.102, concerning enforcement procedures under the Water Quality Act.

2. The rule 16.20.102, as proposed to be amended, appears on pages 16-891 and 892 of the Administrative Rules of Montana.

3. The rule is amended so as to make the rule consistent with the statute that it was designed to implement (Sec. 75-5-611, MCA). The purpose of the amendment is to make enforcement action of the Department of Health and Environmental Sciences (DHES) discretionary, rather than mandatory when a given fact situation requires such action.

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

16.20.102 ENFORCEMENT PROCEDURE (1) Whenever the department has reason to believe that a violation of Title 75, Chapter 5, MCA, or any rule made under it has occurred, it ~~shall~~ may cause written notice to be served upon the alleged violator or his agent.

(2) through (4) same as existing rule.

AUTH: 75-5-201, MCA

IMP: 75-5-611, MCA

5. Interested persons may submit their data, views, or arguments concerning the proposed rule, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than March 11, 1989.

6. Robert L. Solomon of the above address has been designated to preside over and conduct the hearing.


for JOHN J. DRYMAN, M.D., Director

Certified to the Secretary of State December 12, 1988.

MAR Notice No. 16-20-344

24-12/22/88

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT
amendments of Rules 23.3.502,	)	OF RULES 23.3.502, 23.3.505,
23.3.505, 23.3.506, 23.3.507,	)	23.3.506, 23.3.507, 23.3.508,
23.3.508, 23.3.509, 23.3.511,	)	23.3.509, 23.3.511, 23.3.512,
23.3.512, 23.3.514, 23.3.515,	)	23.3.514, 23.3.515, AND
and 23.3.519, repeal of Rule	)	23.3.519, REPEAL OF RULE
23.3.516, and adoption of	)	23.3.516 AND ADOPTION OF A
a new rule.	)	NEW RULE, LICENSING OF
	)	COMMERCIAL MOTOR VEHICLE
	)	ENDORSEMENTS
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 23, 1989, the department of justice proposes to amend rules 23.3.502, 23.3.505, 23.3.506, 23.3.507, 23.3.508, 23.3.509, 23.3.511, 23.3.512, 23.3.514, 23.3.515, and 23.3.519, repeal rule 23.3.516 and adopt a new rule, regarding air brake restrictions on commercial motor vehicle endorsements. The rule to be repealed is on page 23-221 of the Administrative Rules of Montana.

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

23.3.502 DEFINITIONS (1) to (4) remain the same.

(5) "Commercial motor vehicle" means -a- all vehicles or combinations of vehicles with a GVWR GCVWR of 26,001 lbs. or more, a school bus, or any other bus capable of hauling more than 15 passengers including the driver, or a vehicle used to transport hazardous materials if the vehicle transports such materials in a quantity requiring the display of hazardous materials placards under federal hazardous materials regulations, i.e., the vehicle has a GVWR of 10,001 lbs. or more. Any vehicle registered as a "farm vehicle" and paying the 16% gross vehicle weight fee is not considered a commercial motor vehicle. A recreational vehicle or R.V. is not considered a commercial motor vehicle unless it is used for commercial purposes.

(6) "Disqualification" is a status in which the holder of a commercial driver's license is no longer authorized to operate commercial vehicles as provided in 49 C.F.R., part 391.

46+ (7) "Driver's license" or "Class -C- D license" means a license to operate normal passenger cars, light trucks, and other vehicles which are not commercial motor vehicles.

47+ (8) to (i) remain the same.

(ii) a "type 2 endorsement" authorizes operation of a commercial motor vehicle within the state of Montana but does not include vehicles operated solely within the state of Montana which are engaged in "interstate commerce" as defined in 49 C.F.R., part 391.

(b) "Hazardous materials endorsement" is a separate endorsement required of all hazardous materials haulers and may

be made to a regular driver's license, or accompanying a type 1 or type 2 endorsement in Class A, B, or C.

(c) "Tank endorsement" is a separate endorsement required of all drivers who transport bulk liquid materials in tanks permanently or temporarily attached to the vehicle but shall not include portable tanks having a rated capacity under 1,000 gallons. The tank endorsement may accompany a type 1 or type 2 endorsement in Class A, B, or C.

(d) "Passenger endorsement" is a separate endorsement required of all drivers who carry passengers while operating buses as described in item (9) classifications herein, and may accompany a type 1 or type 2 endorsement in Class A, B, or C.

(e) Double/triple endorsement is a separate endorsement required of all drivers who pull double or triple trailers and may accompany a type 1 or type 2 endorsement in Class A.

~~(8)~~ (9) "Classifications." Each type 1 or type 2 endorsement is classified as to the type of vehicle authorized to be driven, as follows:

(a) "Class A" authorizes driving any combination of two or more vehicles, including articulated buses with a GCVWR exceeding 26,001 lbs. and also all vehicles authorized to be driven under Class B and C or with a regular driver's license (Class D);

(b) "Class B" authorizes driving any single vehicle in excess of 26,001 lbs. GVWR, or any such vehicle towing a vehicle not in excess of 10,000 lbs. GVWR, a school bus, or any other bus which exceeds 26,001 lbs. GVWR and is capable of carrying more than 15 passengers including the driver, and all vehicles under Class C and vehicles authorized to be driven with a regular driver's license (Class D);

(c) Class C" authorizes driving any single vehicle less than 26,001 lbs. GVWR or any such vehicle towing a vehicle not in excess of 10,000 lbs. GVWR when the vehicle(s) are or must be placarded for hazardous materials under the provisions of 49 C.F.R., part 172, or any bus in this weight class capable of carrying more than 15 passengers including the driver and any vehicle authorized to be driven with a regular driver's license (Class D).

~~(9)~~ (10) remains the same.

(11) "Gross Combined Vehicle Weight Rating" (abbreviated GCVWR) means the total of the combined manufacturer's weight ratings, or the total of the combined current registered gross vehicle weights, whichever is greater, of all vehicles operated as a combination unit.

~~(10)~~ and ~~(11)~~ renumbered (12) and (13) remain the same.

~~(12)~~ (14) "Medical certificate" means the medical certificate described in federal regulations, 49 C.F.R., part 391.43.

~~(13)~~ (15) remains the same.

(16) "Nonresident commercial driver's license" means a commercial driver's license issued by the state to an individual who resides in a foreign country.

~~(14)~~ (17) "Certificate of employment/experience" means a certificate completed by the applicant's employer, or the applicant in the case of an owner/operator, stating the applicant's length of employment, the type(s) of vehicles operated, and the amount of experience in each type of vehicle if there is more than one.

~~(15)~~ (18) remains the same.

(19) "Out of service" means an order to preclude further operation of a commercial motor vehicle by its driver for a specified period of time or until a required condition is met.

(20) "Residence for the purpose of obtaining a commercial driver's license" means any licensed commercial motor vehicle operator who has resided in this state for a period exceeding 30 days is considered to be a resident for the purpose of being licensed to operate a commercial motor vehicle and must thereafter be licensed under the laws of the state before operating a commercial motor vehicle.

~~(16)~~ (21) "Federal waiver or exemption" means the waiver or exemption described in federal regulations, 49 C.F.R., parts 391.49, 391.61.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 20-10-103, 61-5-102, 61-5-104 to 108, 61-5-110 to 116, 61-5-305, 61-5-306 MCA

23.3.503 ELIGIBILITY FOR TYPE 1 ENDORSEMENT (1) to (2) remain the same.

(a) the person has less than ~~12~~ 24 months experience operating a commercial motor vehicle unless he or she presents a certificate of employment/experience from an employer licensed or authorized to do business in interstate commerce;

(b) to (3) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-104 61-5-105, 61-5-110 to 112, 61-5-210 MCA.

23.3.505 ELIGIBILITY FOR TYPE 2 ENDORSEMENT (1) to (a) remain the same.

(i) however, a person who is at least 16 years of age and has a minimum of 12 months driving experience may be issued a type 2 endorsement with a "B" classification, restricted to hauling goods and property only within a ~~200~~ 150 mile radius of his/her home or place of employment;

(ii) to (i) remain the same.

(j) certifies that he/she operates solely in intrastate activities and that he/she is not subject to 49 C.F.R., part 391.

(2) through (a) remain the same.

(b) the person is disqualified or has committed violations which would disqualify him or her under federal regulation, 49 C.F.R., part 391.15;

(c) to (3) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-104, 61-5-105, 61-5-110 to 112, 61-5-201 MCA.

23.3.506 PHYSICAL QUALIFICATIONS FOR TYPE 2 ENDORSEMENT

(1) to (f) remain the same.

(g) has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle unless he/she has not had any episode of loss of consciousness or control within the preceding 5 years as certified by his/her physician and who does not require medication for the control of the condition;

(h) to (l) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-104, 61-5-105, 61-5-110 to 112 MCA.

23.3.507 MEDICAL STATEMENT REQUIRED FOR TYPE 2

ENDORSEMENT (1) to (a) remain the same.

(b) the date(s), within the last 3- 5 years, of any episode of the conditions which resulted in a loss of consciousness or control, or which prevented the driver from operating a motor vehicle;

(c) through (3) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-102, 61-5-104 to 107, 61-5-110 to 113, 61-5-201, 61-5-206, 62-5-207 MCA.

23.3.508 APPLICATION FOR ENDORSEMENT (1) remains the same.

(2) An applicant for either type commercial motor vehicle endorsement must pay the fee for the type of endorsement (type 1 or type 2) applied for as a portion of his application. No examination will be conducted nor will any endorsement be issued until the required fee is paid. There is no fee for -a- hazardous material passenger, double/triple or tank endorsement(s) to a driver's license.

(a) Payment of the required fee entitles the applicant to 3 attempts of the examination within 6 months from the date of application except that no fee examinations shall be limited to 6 attempts within 6 months. If the applicant has not successfully completed the application within the 6-month period, the fee is forfeit, and any receipts or permits issued as a result of payment of the fee are void and must be returned to the department. A failure of an eye test is not an attempt at the examination.

(3) to (c) remain the same.

(d) the applicant's social security number which, in the case of all commercial motor vehicle endorsements, becomes the a part of the applicant's permanent record and it will be submitted, as required by federal regulations, to the Commercial Driver License Information System (CDLIS). The

applicant's driver's license number may be the social security number or, if the applicant chooses, a number assigned by the department;

(e) an acknowledgement by the examiner of his observation of a current medical certificate (required for type 1 endorsements) or his approval of a medical statement (required for type 2 endorsements) in the name of the applicant. All medical statements and medical supplements will be attached to and become a part of the application;

(i) remains the same.

(ii) In the event the examiner has knowledge that the applicant's medical condition has changed since the issuance of a medical certificate, the examiner may require a more recent certificate.

(f) to (h) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-111, 61-5-112 MCA.

23.3.509 CERTIFICATE OF EMPLOYMENT (1) (a) to (f) remain the same.

(g) a list of the type(s) of vehicles driven and whether the vehicles have air or air/combination brakes, each followed by the cumulative length of experience in that type;

(h) to (j) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-102, 61-5-104 to 107, 61-5-110 to 113 MCA.

23.3.511 SCHEDULING EXAMINATIONS (1) to (2) (b) remain the same.

(c) If the applicant has had an appointment cancelled due to nonappearance and had not informed the bureau of his inability to keep the appointment at least 24 hours prior to the scheduled time, a reappointment fee of \$20 may be required to establish another appointment.

(i) Fees collected under this provision shall be used by the bureau to abate the travel costs of commercial vehicle examiners.

(ii) Reappointment fees may be waived if the appointee was incapacitated and unable to contact the bureau.

~~(e)~~ (d) to (3) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-110, 61-5-112 MCA.

23.3.512 WRITTEN TESTS FOR ENDORSEMENTS (1) to (4) remain the same.

(5) Written tests for passenger endorsements consist of 20 questions relating to special driver responsibilities, handling characteristics, operating requirements, state and federal laws and regulations, and safety practices relating to the operation of passenger carrying vehicles. The maximum

score for the passenger endorsement written test is 100. Five points are deducted for each incorrectly marked or unanswered question. The minimum passing score is 80.

(6) Written tests for double/triple endorsements consist of 20 questions relating to special driver responsibilities, special handling and operating characteristics and state and federal laws and regulations regarding the operation of double/triple trailer combinations. The maximum score for the double/triple trailer endorsement written test is 100. Five points are deducted for each incorrectly marked answer or unanswered question. The minimum passing score is 80.

(7) Written tests for air brake operation will consist of 10 questions relating to the operating characteristics of air or air/combrination braking systems, safety factors, and applicable state and federal laws and regulations. The maximum score for the air brake test is 100. Ten points are deducted for each incorrectly marked answer or unanswered question. The minimum passing score is 80.

45+ to 46+ renumbered (8) to (9) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-110, 61-5-112 MCA.

23.3.514 GENERAL RULES FOR DRIVING EXAMINATIONS FOR CLASS A, AND B, AND C ENDORSEMENTS The following rules apply to both class A, B, and C and class B endorsement driving examinations:

(1) When a driving examination is required for a passenger endorsement, the examination must be conducted in a passenger vehicle capable of carrying more than 15 passengers including the driver which is within the passenger class applied for. Successful completion of such an examination will authorize the applicant to operate any other type(s) of vehicle within the class.

41+ to 44+ renumbered (2) to (5) remain the same.

45+ (6) If any of the following events occur, the applicant is failed and the test will be discontinued:

(a) to 46+ (7) remain the same.

47+ (8) Test routes for class A endorsements will be established in each county. Each test route will be mapped and approved by the commercial vehicle operator program supervisor, who will maintain a current file of approved class A routes. Driving test routes for class B and C endorsements will be as described in ARM 23.3.122 of this chapter, unless city ordinances or congestion interfere, in which case the route shall be the same as, or a portion of, the class A route.

48+ (9) The applicant for a class A, or B, or C endorsement, as a portion of the examination, will demonstrate to the examiner a "pre-trip" inspection of his vehicle and will be graded on the conduct of the inspection. The inspection includes:

(a) to (r) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-110, 61-5-112 MCA.

23.3.515 DRIVING EXAMINATION FOR CLASS A, B, AND C ENDORSEMENTS (1) The driving examination for a class A, B, and C endorsement is given over a test route divided into scoring sections. Up to 6 behaviors are scored at each scoring section. The accumulation of 25 errors constitutes failure of the test.

(2) to (10) remain the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-110, 61-5-112 MCA.

23.3.519 EXCHANGING OR CONVERTING A CHAUFFEUR'S LICENSE TO AN A COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT (1) Any person wishing to exchange or convert a chauffeur's license to a type 1 or type 2 commercial motor vehicle operator's endorsement or a hazardous materials endorsement must:

(a) have at least 24 months experience as a commercial vehicle operator immediately preceding the date of application and be currently employed as a commercial motor vehicle operator or an owner/operator;

(b) be eligible qualified to do so obtain a commercial vehicle operators endorsement under the provisions of ARM 23.3.503 or 23.3.505 and meet the requirements for the endorsement applied for;

(c) in addition to the traffic law violation requirements of ARM 23.3.503 and 23.3.505 have neither a violation of state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, nor a record of an accident where he/she was at fault, during the two years immediately preceding application for a commercial operators endorsement;

(d) to (ii) remain the same.

(e) if the application is for a type 1 endorsement, successfully complete all written examinations required for the class of endorsement(s) applied for.

(2) If a person applying for an exchange or conversion to a commercial motor vehicle operator's endorsement does not qualify as in (1)(a) or (c) above, he/she may obtain the endorsement by successfully completing all required examinations.

(3) If a chauffeur's license is in a probationary status due to convictions resulting from violations of traffic laws occurring while operating a commercial motor vehicle, the person is ineligible for a type 1, or type 2, or hazardous materials endorsement until the probationary status has ended and the chauffeur's license has been restored. The license may be renewed as a driver's license only.

(4) remains the same.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-102, 61-5-105 to 108, 61-5-110 to 112, 61-5-201, 61-5-209, 61-5-210 MCA.

3. The proposed new rule provides as follows:

RULE I AIR BRAKE RESTRICTION (1) All commercial vehicle operator's endorsements shall be issued subject to the restriction "may not operate air brake or air brake/combination equipped vehicles" unless the applicant has successfully completed a driving examination in a vehicle equipped with air brake or air brake/combination systems or has presented a certificate of experience showing at least 24 months experience in the operation of air brake or air brake/combination equipped vehicles.

AUTH: Sec. 61-5-112, 61-5-117, 61-5-125 MCA. IMP: 61-5-110 through 61-5-113, 61-5-201, 61-5-207, 61-5-305

4. The amendments, repeal, and adoption are proposed to conform Montana's administrative rules to recently adopted federal rules regarding the testing and licensing standards for commercial drivers.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments, repeal, and adoption in writing to William F. Furois, Administrator, Motor Vehicle Division, 303 Roberts, Helena, Montana 59620, no later than January 20, 1989.

6. If a person who is directly affected by the proposed amendments, repeal, or adoption 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 William F. Furois, Administrator, Motor Vehicle Division, 303 Roberts, Helena, Montana 59620, no later than January 20, 1989.

7. If the agency receives requests for a public hearing on the proposed amendments, repeal, and adoption 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 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 approximately 8,000 persons based on the fact that approximately 80,000 persons are currently licensed by the state of Montana to operate commercial motor vehicles.

By: 

MIKE GREELY

Attorney General

Certified to the Secretary of State December 12, 1988.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule	)	THE PROPOSED AMENDMENT OF
46.12.504 pertaining to	)	RULE 46.12.504 PERTAINING
requirements for inpatient	)	TO REQUIREMENTS FOR
hospital services	)	INPATIENT HOSPITAL SERVICES

TO: All Interested Persons

1. On January 11, 1989, at 1:30 p.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 amendment of Rule 46.12.504 pertaining to requirements for inpatient hospital services.

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

46.12.504 INPATIENT HOSPITAL SERVICES, REQUIREMENTS
Subsections (1) through (3) (a) remain the same.

(i) ~~Per persons eligible for medicaid benefits prior to hospitalization; The provider must obtain authorization for inpatient services rendered each admission on or after February 1, 1989, from the department or its designee prior to or during the hospitalization payment.~~

(ii) Hospitals or hospital units not reimbursed under the prospective payment system by medicaid must also obtain authorization for the entire length of stay for each admission if the stay exceeds the initial authorization. This authorization must be obtained ~~during the hospitalization prior to payment.~~

~~For admissions occurring on holidays and weekends, the provider shall obtain authorization within two working days.~~

Subsections (3) (a) (iv) through (4) (b) remain the same in text. However, (3) (a) (iv) will be recategorized as (3) (a) (iii).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-141 MCA

3. The department instituted a mandatory inpatient hospital screening process on July 1, 1987, at the request of the Joint Appropriations Subcommittee on Human Services.

Currently a 100% penalty is assessed for failure to screen even for medically necessary services rendered to Medicaid eligible claimants. Hospitals have not been able to comply fully with the prescreening for various reasons. For

example, they may not be aware of medicaid eligibility due to incorrect client information.

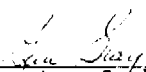
The Department proposes to make the screening requirement easier for hospitals to comply with, especially out of state hospitals which render services not available in Montana. The proposed change will also ease the administrative burden on department staff. Screening will still be required but it can be requested at any time prior to payment rather than discharge. The department feels this change is consistent with the subcommittee's intent of requiring 100% screening of inpatient hospital admissions.

The date of retroactive application of the proposed rule is February 1, 1989. The current requirement for screening during hospitalization with its 100% penalty will be required until that date.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 19, 1989.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

6. This rule will be applied retroactively to February 1, 1989.



Director, Social and Rehabilitation Services

Certified to the Secretary of State January 12, 1988.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rules 46.12.802	)	THE PROPOSED AMENDMENT OF
and 46.12.805 pertaining	)	RULES 46.12.802 and
to oxygen services	)	46.12.805 PERTAINING
reimbursement	)	TO OXYGEN SERVICES
	)	REIMBURSEMENT

TO: All Interested Persons

1. On January 11, 1989, 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 amendment of Rule 46.12.802 and 46.12.805 pertaining to oxygen services reimbursement.

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing home residents are contained in ARM 46.12.1205.

Subsections (1) and (1)(a) remain the same in text but will be recategorized as (2) and (2)(a).

(i) Prescriptions for oxygen shall include the liter flow per minute, the hours of use per day and the recipient's PO2 or oxygen saturation results of blood gas tests(s) results on the recipient.

Subsections (1)(b) through (2)(c) remain the same in text but will be recategorized as (2)(b) through (3)(c).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

Subsections (1) through (1)(c)(i) remain the same.

(d) ~~Except as provided in subsection (2)(a) below or as otherwise indicated in the fee schedule in ARM 46.12.806, purchase or rental of prosthetic devices, durable medical equipment and medical supplies of \$200.00 or more per month require written prior authorization on the claim before the service is rendered to the recipient. Items listed BR with a cost of less than \$200.00 per month for which prior authorization is not specifically mandated will be paid without authorization. Miscellaneous items or items not listed in the fee schedule with a cost of less than \$200.00 per month must be authorized~~

~~prior to payment. A prior authorization must be attached to each claim on which charges exceed \$200.00 for any line item listed in ARM 46.12.806 except:~~

~~(i) as otherwise indicated in the fee schedule; or~~

~~(ii) as provided in subsection (2) (a) of this rule.~~

~~Subsections (1) (e) through (2) remain the same.~~

~~(a) Oxygen concentrators shall be prior approved on a rental basis only and then only when the rental rate in the fee schedule would be equalled or exceeded by the cost of a conventional gaseous or liquid oxygen system. Liquid oxygen systems shall be prior approved initially on a rental basis only and then only when an oxygen concentrator would not be more economical or would be medically inappropriate. Purchase of liquid oxygen systems which meet the criteria for rental shall be considered on a case by case basis and must be prior authorized. Oxygen supplies need not be prior approved.~~

~~Subsection (3) remains the same.~~

AUTH: Sec. 53-6-113 MCA

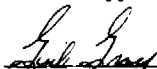
IMP: Sec. 53-6-101 and 53-6-141

3. As a result of revisions effective January 1, 1987, this rule concerning prosthetic devices, durable medical equipment and medical supplies has required all claims for service of \$200.00 or more to require prior authorization. This procedure has worked well except for oxygen services. Over three hundred persons are currently using oxygen and this has resulted in a burden of repetitive authorization procedures which already outweigh any administrative or cost benefit. Elimination of prior authorization for oxygen services would allow administrative staff more time to consider other more cost effective approaches to oxygen costs.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 19, 1989.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

6. This rule change will be applied retroactively to November 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 12, 1988.

BEFORE THE DEPARTMENT OF AGRICULTURE,
DEPARTMENT OF COMMERCE,
DEPARTMENT OF FISH, WILDLIFE AND PARKS,
MONTANA FISH AND GAME COMMISSION,
DEPARTMENT OF HIGHWAYS,
BOARD OF NATURAL RESOURCES AND CONSERVATION,
AND
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

In the matter of the repeal of	)	NOTICE OF REPEAL
A.R.M. 4.2.301 through 311,	)	OF A.R.M. 4.2.301
8.2.301, 12.2.401 through 427,	)	THROUGH 311, 8.2.301,
18.2.201 through 234, 36.2.501	)	12.2.401 THROUGH 427,
through 520, 36.2.601 through	)	18.2.201 THROUGH 234,
604 and 36.2.606 and the adoption)	)	36.2.501 THROUGH 520,
of New Rules I through XXVI	)	36.2.601 THROUGH 604 AND
providing standards and	)	36.2.606 AND THE ADOPTION
procedures for implementation	)	OF RULES I THROUGH XXVI
of the Montana Environmental)	
Policy Act)	

To: All Interested Persons

1. On July 28, 1988 the above-entitled agencies and the Department and Board of Health and Environmental Sciences, the Department of State Lands, and the Board of Land Commissioners published notice of public hearings on the proposed repeal of existing rules and adoption of new rules concerning implementation of the Montana Environmental Policy Act at page 1606 of the 1988 Montana Administrative Register, issue number 14.

2. The Department and Board of Health and Environmental Sciences, Department of State Lands, and Board of Land Commissioners will take action on the proposed rules and repealers in December and January and may publish notice of repeal and adoption in January. The above-entitled agencies have repealed the rules as proposed and have adopted the proposed rules with the following changes:

RULE I adopted as proposed.

RULE II. DEFINITIONS

- (1) same as proposed rule
- (2)(a) 'Alternative' means:
 - (a)(i) an alternate approach or course of action that would appreciably accomplish the same objectives or results as the proposed action;
 - (b)(ii) design parameters, mitigation, or controls other than those incorporated into a proposed action by an applicant or by an agency prior to preparation of an EA or draft EIS;
 - (c)(iii) no action or denial; and
 - (d)(iv) for agency-initiated actions, a different program or series of activities that would accomplish other objectives

or a different use of resources than the proposed program or series of activities.

(b) The agency is required to consider only alternatives that are realistic, technologically available, and that represent a course of action that bears a logical relationship to the proposal being evaluated.

(3) and (4) same as proposed rule

(5) 'Categorical exclusion' refers to a type of action which does not individually, collectively, or cumulatively have a significant impact on the quality of the human environment require an EA or EIS, as determined by rulemaking or programmatic review adopted by the agency, unless extraordinary circumstances, as defined by rulemaking or programmatic review, occur.

(6) 'Compensation' means the replacement or provision of substitute resources or environments to offset an impact on the quality of the human environment. The agency may not consider compensation for purposes of determining the significance of impacts (see Rule III(4)(b)).

(7) through (15) same as proposed rules

(16) 'Residual impact' means an impact that is not eliminated by mitigation.

(16)-(18) same as proposed rule but will be renumbered (17)-(19).

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE III. GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW

PROCESS Section 75-1-201 requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

(1) and (2) same as proposed rule

(3) The agency shall prepare an EA whenever:

(a) the action is not excluded under (4)(5) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

~~(b) the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design and committed, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level~~

~~of significance. Extensive public review must be provided for in such instances (see Rule VI);~~

(c)(b) the action is not excluded under (4)(5) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2) (a) and (d) through a similar planning and decision-making process; or

(d)(c) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

(4) The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

(4)(5) The agency is not required to prepare an EA or an EIS for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined and justified by rule or justified by a programmatic review. In the rule or programmatic review, a department the agency shall identify any extraordinary circumstances in which a normally excluded action may have a significant environmental effect and therefore require further evaluation under these rules; requires an EA or EIS;

(b)-(f) same as proposed rule.

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE IV. DETERMINING THE SIGNIFICANCE OF IMPACTS (1) In order to implement 75-1-201, MCA, the agency shall determine the significance of impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare an EIS and also refers to the agency's evaluation of individual and cumulative impacts in either EAs or EISs. The agency shall consider the following criteria in determining the significance of each impact on the quality of the human environment:

(1)-(7) same as proposed rule but will be redesignated (a)-(g).

(2) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial.

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE V. PREPARATION AND CONTENTS OF ENVIRONMENTAL ASSESSMENTS

(1) The agency shall prepare an EA, regardless of its length or the depth of analysis, in a manner which utilizes an interdisciplinary approach. The agency may initiate a process to determine the scope of issues to be addressed in an EA. Whenever the agency elects to initiate this process, it shall follow the procedures contained in Rule VII.

(2) same as proposed rule

(3) (a) same as proposed rule

(b) a description of the benefits and purpose of the proposed action. If the agency prepares a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it;

(c)-(f) same as proposed rule

(g) a listing and appropriate evaluation of mitigation, stipulations, and other controls ~~submitted to and~~ enforceable by the agency or another government agency;

(h)-(j) same as proposed rule

~~(4)-The agency may initiate a process to determine the scope of issues to be addressed in an EA. If the agency elects to initiate this process, it shall follow the procedures contained in Rule VII.~~

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE VI. PUBLIC REVIEW OF ENVIRONMENTAL ASSESSMENTS

(1)-(3) same as proposed rule

(4) For an action with limited environmental impact and little public interest, no further public review may be warranted. However, where an action is one that normally requires an EIS, but effects that otherwise might be deemed significant are mitigated in the project proposal or by controls imposed by the agency, extensive public involvement must be employed include the opportunity for public comment, a public meeting or hearing, and adequate notice. The agency is responsible for determining appropriate methods to ensure adequate public review on a case by case basis.

(5) and (6) same as proposed rule

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULES VII and VIII adopted as proposed.

RULE IX. PREPARATION AND CONTENTS OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS

If required by these rules, the agency shall prepare a draft environmental impact statement using an interdisciplinary approach and containing the following:

(1) and (2) same as proposed rule

(3) a description of the current environmental conditions in the area ~~significantly~~ affected by the proposed action or alternatives, including maps and charts, whenever appropriate. The description must be no longer than is necessary to understand the effects of the action and alternatives. Data analysis must be commensurate with the importance of the

impact, with less important material summarized, consolidated, or simply referenced;

(4) (a)-(e) same as proposed rule
(f) the relationship between local short-term uses of man's environment and the effect on maintenance and enhancement of the long-term productivity of the environment. When a cost-benefit analysis is prepared by the agency prior to the preparation of the draft EIS, it shall be incorporated by reference in or appended to the EIS;

(5)-(8) same as proposed rule
(9) the agency's preferred alternative ~~on the proposed action~~, if any, and its reasons for the preference;

(10) a section on consultation and preparation of the draft EIS that includes the following:

(a) the names of those individuals or groups responsible for preparing the draft EIS;

(b) and (c) same as proposed rule

(11) a summary of the draft EIS as required in Rule VIII;
and

(12) same as proposed rule

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE X. ADOPTION OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS AS FINAL

(1) Depending upon the substantive comments received in response to the draft EIS, the draft statement may suffice. ~~In this case, the agency shall notify the governor, EQC, the applicant, if any, and all commenters of its decision to adopt the draft EIS as a final EIS and provide a statement describing its proposed course of action. This notification must be accompanied by a copy of all comments or a summary of a representative sample of comments received in response to the draft statement, together with, at minimum, an explanation of why the issues raised do not warrant the preparation of a final EIS.~~

~~(2) The agency shall provide public notice of its decision to adopt the draft EIS as a final.~~

~~(3) The agency shall determine whether a final EIS is necessary within 30 days of the close of the comment period on the draft EIS.~~

~~(4) If the agency decides to adopt the draft EIS as the final EIS, it may make a final decision on the proposed action no sooner than 15 days after complying with subsections (1) and (2) above.~~

The agency shall determine whether to adopt the draft EIS within 30 days of the close of the comment period on the draft EIS.

(2) In the event the agency determines to adopt the draft EIS, the agency shall notify the governor, the environmental quality council, the applicant, if any, and all commenters of its decision and provide a statement describing its proposed course of action. This notification must be accompanied by a copy of all comments or a summary of a representative sample of comments received in response to the draft statement, together

with, at minimum, an explanation of why the issues raised do not warrant the preparation of a final EIS.

(3) The agency shall provide public notice of its decision to adopt the draft EIS as a final EIS.

(4) If the agency decides to adopt the draft EIS as the final EIS, it may make a final decision on the proposed action no sooner than 15 days after complying with subsections (1) through (3) above.

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE XI. PREPARATION AND CONTENTS OF FINAL ENVIRONMENTAL IMPACT STATEMENT Except as provided in Rule X, a -A- final environmental impact statement must include:

(1)-(4) same as proposed rule

(5) the agency's recommendation, preferred alternative, or proposed decision ~~on the proposed action~~, together with an explanation of the reasons ~~for the decision therefor~~.

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE XII adopted as proposed.

RULE XIII. SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS

(1) same as proposed rule

(2) A supplement must include, but is not limited to, a description of the following:

(a) an explanation of the need for the supplement;

(b) the proposed action; and

~~(b)(c)~~ (c) any impacts, alternatives or other items required by Rule IX for a draft EIS or Rule XI for a final EIS that were either not covered in the original statement or that must be revised based on new information or circumstances concerning the proposed action.

(3) same as proposed rule

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULE XIV. INCORPORATION-BY-REFERENCE-AND-ADOPTION OF AN EXISTING EIS

(1) The agency shall adopt and ~~incorporate-by-reference~~ as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS that has been previously or is being concurrently prepared pursuant to MEPA or the National Environmental Policy Act if the agency determines:

(a)-(c) same as proposed rule

(2) A summary of the existing EIS or the portion adopted ~~or incorporated-by-reference~~ and a list of places where the full text is available must be circulated as a part of the EIS and treated as part of the EIS for all purposes, including, if required, preparation of a final EIS.

~~(3) Whenever all or any part of an existing EIS is adopted or incorporated-by-reference, the agency must include the information required by Rule IX. The agency shall prepare a description of the proposed action and any other information~~

requested-by-Rule-IX. Adoption of all or part of an existing EIS does not relieve the agency of the duty to comply with Rule IX.

(4) The same time periods applicable to draft and final EISs apply to the circulation and review of EISs that include material adopted ~~ex-incorporated-by-reference~~ from an existing EIS.

(5) The agency shall take full responsibility for the portions of a previous EIS ~~adopted ex-incorporated~~. If the agency disagrees with certain adopted portions of the previous EIS, it shall specifically discuss the points of disagreement.

(6) No material may be adopted ~~ex-incorporated-by-reference~~ unless it is reasonably available for inspection by interested persons within the time allowed for comment.

(7) Whenever part of an existing EIS or concurrently prepared EIS is ~~incorporated-by-reference~~ adopted, the part ~~incorporated adopted~~ must include sufficient material to allow the part ~~incorporated adopted~~ to be considered in the context in which it was presented in the original EIS.

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULES XV, XVI, and XVII adopted as proposed.

RULE XVIII. RECORD OF DECISION FOR ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS

(1) same as proposed rule

(2) The agency may include in the final EIS, in addition to a statement of its proposed decision, preferred alternative, or recommendation on the proposed action, the other items required by (1), and additional explanation as provided for in (3) below. If the final decision and the reasons for that final decision are the same as set forth in the final EIS, the agency may comply with (1) by preparing a public notice of what the decision is and adopting by reference the information contained in the final EIS that addresses the items required by (1). If the final decision or any of the items required by (1) are different from what was presented in the final EIS, the agency is responsible for preparing a separate record of decision.

(3) and (4) same as proposed rule

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULES XIX, XX, XXI, and XXII adopted as proposed.

RULE XXIII. PUBLIC HEARINGS (1) Whenever a public hearing is held on an EIS or an EA, the agency shall issue a news release ~~or~~ legal notice to newspapers of general circulation in the area to be affected by the proposed action prior to the hearing. The news release or legal notice must advise the public of the nature of testimony the agency wishes to receive at the hearing. The hearing must be held after the draft EIS has been circulated and prior to preparation of the final EIS. A hearing involving an action for which an EA was prepared must

be held after the EA has been circulated and prior to any final agency determinations concerning the proposed action. In cases involving an applicant, the agency shall allow an applicant a reasonable time to respond in writing to comments made at a public hearing, notwithstanding the time limits contained in Rule XII. ~~the~~The applicant may waive his right to respond to comments made at a hearing.

(2) same as proposed rule

(3) The agency shall hold a public hearing whenever requested within 20 days of issuance of the draft EIS by either:

(a) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action;

(b) by another agency which has jurisdiction over the action; ~~or~~

(c) an association having not less than 25 members who will be directly affected by the proposed action; ~~or~~

(d) the applicant, if any.

(4)-(5) same as proposed rule

(6) Public meetings may be held in lieu of formal hearings as a means of soliciting public comment ~~on EAs (see Rule VI(2))~~ and on an EIS where no hearing is requested under (3) above. However, the agency shall provide adequate advance notice of the meeting; and, other than the degree of formality surrounding the proceedings, the objectives of such a meeting are essentially the same as those for a hearing."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

RULES XXIV. FEES DETERMINATION OF AUTHORITY TO IMPOSE

(1) same as proposed rule

(2) The agency shall determine within 30 days after a completed application is filed whether it will be necessary to compile an EIS and assess a fee as prescribed by this rule. If it is determined that an EIS is necessary, the agency shall make a preliminary estimate of the ~~its~~ costs ~~to compile the statement~~. This estimate must include a summary of the data and information needs and the itemized costs of acquiring the data and information, including salaries, equipment costs and any other expense associated with the collection of data and information for the EIS.

(3) Whenever the preliminary estimated costs of acquiring the data and information to prepare an EIS total more than \$2,500, the agency shall notify the applicant that a fee must be paid and submit an itemized preliminary estimate of the cost of acquiring the data and information necessary to compile an EIS. The agency shall also notify the applicant ~~that to prepare and submit~~ a notarized and detailed estimate of the cost of the project being reviewed in the EIS ~~must be submitted~~ within 15 days ~~after receipt of the request~~. In addition, the agency shall request the applicant to describe the data and information available or being prepared by the applicant which can possibly be used in the EIS. The applicant may indicate which of the agency's estimated costs of acquiring data and information for the EIS would be duplicative or excessive. The

applicant must be granted, upon request, an extension of the 15-day period for submission of an estimate of the project's cost and a critique of the agency's preliminary EIS data and information accumulation cost assessment."

AUTH: Sec. 75-1-202, MCA; IMP: Sec. 75-1-202, 203, 205, 206 and 207, MCA.

RULE XXV adopted as proposed.

RULE XXVI. USE OF FEE (1) The fee assessed hereunder may only be used to gather data and information necessary to compile an EIS. No fee may be assessed if an agency intends only to compile an EA or a programmatic review. If a department collects a fee and later determines that additional data and information must be collected or that data and information supplied by the applicant and relied upon by the agency are inaccurate or invalid, an additional fee may be assessed under the procedures outlined in these rules if the maximum fee has not been collected.

(2) Whenever the agency has completed work on the EIS, it shall submit to the applicant a complete accounting of how any fee was expended. If the ~~cost of compiling an EIS is~~ money expended is less than the fee collected, the remainder of the fee shall be refunded to the applicant without interest within 45 days after work has been completed on the final EIS."

AUTH: Sec. 75-1-202, MCA; IMP: Sec. 75-1-202, 203, 205, 206 and 207, MCA.

3. At the hearings and during the comment period, the agencies received written, oral, and both written and oral comments from the following persons:

- | | |
|---|---|
| 1. Pam Langley
Executive Director
Montana Agricultural
Business Assoc. | 17. Tony Schoonen
President
Montana Wildlife Federation |
| 2. Karla M. Gray
Legal Department
Montana Power Company | 18. Bruce Farling
Staff Researcher
Clark Fork Coalition |
| 3. Gary Langley
Executive Director
Montana Mining Assoc. | 19. Jill Davies
Noxon |
| 4. Stan Bradshaw
Montana Council of
Trout Unlimited | 20. Rep. Paul Rapp-Svrcek
Thompson Falls |
| 5. Doug Ferrel
The Cabinet Resource
Group | 21. Rep. Timothy J. Whalen
Billings |

- | | |
|--|---|
| 6. Richard Eggert
President
Flathead Resource
Organization | 22. Ray Brubaker
Acting State Director
Bureau of Land Management |
| 7. Sharlon L. Willows
Research Coordinator
Coalition for Canyon
Preservation | 23. Jim Harvey
Chairman
Big Muddy Resource Council |
| 8. Robert E. Gresswell
President
Montana Chapter American
Fisheries | 24. Ted J. Doney
Attorney at Law
Helena |
| 9. Betty Cross
Secretary
Last Chance Audubon
Society | 25. Mike Micone
Executive Director
Western Environmental Trade
Assoc. |
| 10. R. Mark Galloway
Conservation Attorney
Sun Exploration and
Production Co. | 26. Raymond White Tail Feather
Chairman
Fort Peck Tribes |
| 11. Louisa Willcox
Program Director
Greater Yellowstone
Coalition | 27. Richard G. Steffel
Missoula |
| 12. David W. Simpson
Vice President
Operations
Westmoreland Resources | 28. Richard D. Goddard
Regulatory Affairs Supervisor
Exxon Company, USA |
| 13. Kenneth C. Taylor
Northern Plains Resource
Council | 29. John F. Wardell
Director, Montana Office
Environmental Protection
Agency |
| 14. Richard P. Parks
Gardiner | 30. Rep. Jerry Driscoll
Billings |
| 15. James H. Carlson
Acting Director
Missoula City-County
Health Department | 31. Paul F. Berg
Billings |
| 16. Meg Nelson
Researcher/Lobbyist
Montana Environmental
Information Center | 32. Dennis Hemmer
Commissioner
Department of State Lands |

A summary of the comments received, and the agencies' responses to those comments follow. The number after the comment summary correspond to the numbers assigned above to the commenters.

GENERAL COMMENTS

COMMENT: The EQC and the Governor's Office are urged to establish a procedure to insure agency compliance with these rules. (9,29) The agencies could establish a board to review agency compliance. (26)

RESPONSE: The agencies adopting these rules have no authority over the Governor or the Environmental Quality Council. Thus, they can adopt no rule requiring the Governor or EQC to monitor agency compliance. The Governor has authority to establish a monitoring process without rules. The Environmental Quality Council staff presently monitors agency implementation of MEPA.

COMMENT: Because of numerous proposed developments and the threat of public backlash, agencies should do an EIS on any development that affect the Greater Yellowstone Ecosystem. (11)

RESPONSE: If the impacts, including cumulative impacts, of a project affecting the Greater Yellowstone Ecosystem are significant, an EIS will be prepared. The agencies cannot require an EIS for all such projects, however. They must apply uniform criteria to all projects in the state, no matter where they are located.

COMMENT: Because of the increased emphasis in the proposed rules on EAs, a provision assessing fees for preparation of EAs should be added. (14)

RESPONSE: MEPA does not authorize charging of fees for EAs. Legislation is necessary to implement this recommendation.

COMMENT: There is a need for a special review process for moderate impact projects. The rules should be amended to provide for three documents - EAs, Intermediate Impacts EISs, and Major Impact EISs. This would ensure that environmental reviews of intermediate impact projects receive public scrutiny and are subject to the fee bill. (15,27)

RESPONSE: Section 75-1-202, MCA, authorizes imposition of the fee bill only for projects that meet the criterion of 75-1-201 for detailed environmental statements. That criterion is significant effect on the quality of the human environment. It is therefore questionable whether the fee bill could be imposed on Intermediate Impacts EIS projects. In addition, the agencies believe that adequate evaluation of applicant-initiated projects without significant residual impacts can be performed concurrently with permit review. The agencies anticipate that adequate analysis to determine the significance of residual impacts will occur without imposition of the fee bill.

With regard to public participation, the right to notice, comment, and meeting or hearing have been added to Rule VI(4) for EAs on actions that would have significant impacts but for mitigation.

COMMENT: The agency should be required to assess public economic risk because of the tremendous economic losses suffered by the public as a result of foiled projects. (16)

RESPONSE: Rules IX(4)(e) requires evaluation of economic impacts, which includes the concept of public economic risk.

COMMENT: If detailed EAs become more commonplace, the costs of development will rise because of litigation challenging the sufficiency of EAs prepared by overworked agencies and the delay resulting from that litigation. (18)

RESPONSE: The agencies are confident that they will be able to comply with the rules as adopted.

COMMENT: Legal questions could arise unless there is added a savings clause saying that the new rules do not apply to any project for which an EA/EIS decision has not been made by the effective date of these rules. For example, it may be unclear for applications in process on the effective date of these rules whether a PER becomes an EA and whether mitigation may be imposed. (24)

RESPONSE: The new rules merely conform the rules to existing practice. No substantive differences exist between the old and new rules. No savings clause is therefore necessary.

RULE II

COMMENT: The agencies should take care not to misinterpret or misapply terms such as "cumulative effects," "secondary impacts," or "potential risks" so as to inhibit economic growth. (1)

RESPONSE: The comment contains a recommendation for application of the rules. The agencies note the comment.

COMMENT: The definition of "action" in (1) is too broad in that the part dealing with leases might be construed to require preparation of an EA or EIS whenever the drilling of an oil or gas well is proposed. This would create an impediment to oil and gas development. (10)

RESPONSE: The definition of "action" merely implements existing law. The agencies are not authorized to exempt oil and gas leases from MEPA.

COMMENT: In (2)(a), use of the word "appreciably" is inappropriate because it does not specify who determines the objective. (2)

RESPONSE: The agency, which is responsible for the analysis, determines the objective. The word "appreciably" is appropriate because, without it, the alternatives would be

required to accomplish exactly the same objectives as the proposed action.

COMMENT: In subsection (2)(d), placement of the final sentence could indicate that it applies only to agency-initiated actions. The sentence should be set off. (2)

RESPONSE: It has been set off.

COMMENT: Subsection (2)(d) appears to be too broad. It could be interpreted to require discussion of issues not identified through scoping. (22)

RESPONSE: Wherever the term "alternatives" is used in the subsequent rules, it is modified by the adjective "reasonable" or "prudent to consider." In addition, the need for and scope of the alternatives analysis varies with the factors listed in (2). This adequately narrows the alternatives to be considered.

COMMENT: The categorical exclusion concept in (5) should be reserved for those actions that are excluded from environmental documentation by rulemaking. Programmatic review must be in the form of an EA or an EIS. Actions that are cleared from further review by programmatic have therefore gone through the MEPA process. Actions that are categorically excluded by rule would be exempted from the MEPA process. (22)

RESPONSE: The definition and Rule III(4)(a) (now (5)(a)) have been amended to clarify that, under the proposed rules, categorical exclusion does not exempt the action from the MEPA process. Rather, it removes the requirement for EA or EIS preparation except in extraordinary situations.

COMMENT: The definition of "cumulative impact" in (7) appears to be too narrow in light of recent federal court decisions. All presently proposed or reasonably anticipated actions should be considered. (22)

RESPONSE: The federal rules are broader than the proposed rules, which are a verbatim rendition of the definition as it has existed at the state level since the mid-70s. This is an area in which MEPA and NEPA rules have historically differed. The agencies are of the opinion that projects for which no state agency consideration has been sought are too speculative to serve as a basis for making the significance determination. For this reason, the proposed language has been retained.

COMMENT: In section 6, the cross-reference to Rule III(4)(b) should be Rule III (3)(b). (2)

RESPONSE: The change has been made. Because (3)(b) has become (4), the (b) has been interlined.

COMMENT: Subsection (8)(a) should allow emergency exemptions only on declaration of the Governor. (18)

RESPONSE: Section 10-3-402 authorizes the principal executive officer of a political subdivision to declare a local disaster. If this occurs, a state agency should not be precluded because of MEPA requirements from assisting local

government until the Governor, who may be temporarily out of communication, declares a disaster.

COMMENT: Subsection (8)(b) should be amended by adding "or to privately owned facilities necessary to maintain service" so that private industry may repair damages without waiting for an EIS. (2)

RESPONSE: Most private industries can repair facilities without an EIS because MEPA only applies to state agency actions. Thus, unless the repair requires state approval, no EIS is required. Subsections (8)(b) and (c) apply to both publicly and privately owned facilities. Thus, the only private repair projects for which an EIS would be necessary are those undertaken on non-public service facilities where there is no threat to public health, safety, welfare, or the environment and where the repair would have a significant effect on the human environment. In those cases, an EIS should be prepared.

COMMENT: In (10)(b), the word "Rules" should be "Rule."
(2)

RESPONSE: When code numbers are inserted, the word "Rules" will be deleted.

COMMENT: This rule should define "residual impacts" as those remaining after mitigation and compensation. (28)

RESPONSE: A definition has been added. The concept of compensation has not been included because residual impacts are relevant to the significance determination and, in these rules, compensation is not considered to lower significant impacts below the level of significance.

COMMENT: The term "substantive comment" should be defined, perhaps as a comment providing new information or raising an issue not previously considered. (28)

RESPONSE: The definition suggested is too narrow. Generally, the agencies consider a comment to be substantive if it addresses issues of importance. Because the term is used in its more expansive sense, no definition is required.

RULE III

COMMENT: Subsection (1)(b) should be amended to require that an EIS be prepared whenever the project "could" result in a significant effect. (18)

RESPONSE: The language in the proposed rule is the same as the parallel provision of MEPA, which is 75-1-201(1)(b)(iii). The rule therefore requires preparation of an EIS to the same extent as the statute.

COMMENT: The appropriateness of (2) is questioned because it describes the functions of an EIS. (16)

RESPONSE: An EA may also serve any of the purposes listed in (2)(a),(b),(d) and (e).

COMMENT: A number of commenters stated that the rules, specifically (2), should not authorize use of an EA instead of an EIS when there are significant impacts, even if they can be mitigated below the level of significance. The reasons are that use of the EA: (1) lowers the level of analysis; (2) reduces public notice and participation; and (3) shifts the burden of paying for the analysis from the applicant to the taxpayer. (4,5,6,7,8,9,11,13,14,16,17,18,20,21,23,27, 30)

Another commenter stated that mitigation is such an imprecise practice that it should not serve as a basis for not preparing an EIS. (18)

One commenter suggested that a hearing rather than a meeting be required because an agency is required to consider comments made at a hearing, but not at a meeting and because use of the EA shortens the time frame for permit review. (13)

Other commenters supported inclusion of this concept because (1) it is recognized in existing case law; (2) it reduces the cost and level of analysis for impacts that are not significant; (3) it allows resolution of disputes using innovation and cooperation, thereby reducing costs to taxpayers, who are also consumers. (2,3,22,24,25) One commenter added that the current MEPA rules do not prohibit use of this concept, that agencies presently use it without guidelines, and that the rules merely establish guidelines for its use. (2)

RESPONSE: The agencies have retained this concept. The rules lower the level of analysis only when residual impacts are shown to be insignificant. However, they retain a requirement for thorough analysis, and, if mitigation cannot be shown to remove the likelihood of significant impact, an EIS must be prepared and the fee bill is available. Also, the possibility of use of this concept will in many instances result in better up-front design by applicants. Environmental problems often can be better alleviated in the initial design process than later in the process, even with the preparation of an EIS.

Rule VI(4) has been amended to expressly provide public notice, comment, and a public meeting or hearing. Public participation is therefore assured. The right to comment ensures that the agency will consider the comment.

Streamlining of the MEPA review process has resulted from use of this concept. In addition, the agencies believe that adequate evaluation of applicant-initiated projects without significant residual impacts can be performed concurrently with permit review. Preparation of an EA in these instances effectively integrates permit review personnel into the MEPA process. Thus, imposition of the fee bill, although a concept worthy of consideration, is not a prerequisite to adequate analysis to determine the significance of residual impacts.

The comment regarding expansion of permitting time frames by preparation of an EIS was no doubt directed at 82-4-337(1)(c)(ii). That provision is not, however, triggered by EIS preparation. Rather, it is tied to the concept of need to analyze a major operation. For this reason, an EA level project could trigger the time extension.

COMMENT: Sections (2) and (3) write too broad a scope for the EA. Subsection (2)(e) and (3)(d) are particularly troublesome because they invite evasion of the EIS by pleading time pressure. (14,23)

RESPONSE: Under current law as set forth in the Montana Supreme Court decision of Kadillak v. Anaconda Co., DSL, et al., agencies are not required to do a PER (EA in the proposed rules) or an EIS when the permitting statute imposes a deadline that does not give the agency sufficient time to do an EIS. Section (2) and (3) impose an obligation to do an EA in this instance. They therefore create an agency responsibility to do an environmental review document where none presently exists.

COMMENT: NEPA regulations do not allow federal agencies to avoid preparation of an EIS because of insufficient time. Thus, for federal-state projects, an EIS would be required under NEPA even if not required under (2)(e) and (3)(g). (22)

RESPONSE: In Flint Ridge Development Co. v. Scenic Rivers Assoc., 426 U.S. 776 (1976), the United States Supreme Court held that a statutory permit decision deadline supercedes the EIS requirement in NEPA. Therefore, federal law on this point is identical to state law and the proposed rules. It is, however, possible that federal and state permitting deadlines might not be the same and that a federal EIS might be required when a state EIS might not. The reverse could also occur.

COMMENT: The language of (3)(b) predisposes the agency to do an EA rather than an EIS. Subsection (b) should be made a paragraph under subsection (a) and "If in the case of preparing an EA, it becomes apparent that" precede the existing language. Also, complete mitigation should be required. (16)

RESPONSE: The suggested language would require preparation of an EA when the agency is already in the process of preparing an EA. However, the agencies agree that the agencies should not automatically be required to prepare an EA where it merely appears that residual impacts will not be significant. Because of the potential complexity of these issues and serious consequences, the agency should have the discretion to prepare an EA or EIS in these situations. The appropriate amendment, which is found in new section (4), has been made. Complete mitigation is impossible in almost every, if not every, instance. If significant impacts can't be mitigated below the level of significance, however, an EIS must be prepared.

COMMENT: If complete mitigation is not required in (3)(b), strict enforcement should be required. Perhaps "contractual agreements" could be substituted for "committed, enforceable controls." (16)

RESPONSE: The language proposed by the agencies is more stringent than the suggested language. The term "enforceable controls" includes several methods of enforcement, including enforcement of contractual obligations.

COMMENT: Subsection (3)(b) (and Rule II(b)) should be amended to allow agencies to consider compensation as mitigation. (2)

RESPONSE: Mitigation eliminates or decreases the magnitude of an impact. If mitigation is sufficient, the impact is reduced below the level of significance and it is possible that no EIS need be prepared. Compensation, on the other hand, does nothing to decrease the magnitude of the impact. It merely provides substitute resources. While the agency may determine in its decision on the proposed action that provision of substitute resources is acceptable, that decision should be made only after the impact of the action is analyzed. For that reason, compensation has not been incorporated into the concept of mitigation.

COMMENT: In subsections (3)(b) and Rule V(3)(g), the words "design and committed" should be deleted. The terms are redundant. In addition, use of the word "design" limits potential mitigation to design changes. (2)

RESPONSE: The agencies agree that the word "committed" is redundant and it has been eliminated. "Design" has been retained. Project design is part of the application. Controls or stipulations are requirements added in addition to the project design. Language has been added to clarify this.

COMMENT: The last sentence in (3)(b) is misplaced here. Rule VI deals with public review provisions. (2)

RESPONSE: The sentence has been deleted.

COMMENT: In (4)(a), the categorical exclusion concept should be by rule only. (22)

RESPONSE: See Response to comment on Rule II(5)

RULE IV

COMMENT: Section (3) is confusing or redundant, or both. It is not clear whether growth inducing or growth inhibiting aspects is more significant. If this is related to population and related impacts, then it is redundant because that is already covered in infrastructure and social systems. (27)

RESPONSE: Section (3) indicates that secondary and cumulative impacts are to be considered in assessing significance. It is not redundant because no other part of the rule includes these factors. Rule V does require inclusion of these factors in the EA, but it is Rule IV that defines their relevance to the significance decision.

COMMENT: The rules need to recognize that if none of the negative impacts of a project are significant, an EIS need not be prepared. (28)

RESPONSE: There are both positive impacts and negative impacts. Only negative impacts trigger the EIS. As the commenter points out, the proposed rule could be interpreted to require an EIS for a significant positive impact. Language that sets forth existing law on this point has been added.

RULE V

COMMENT: Section (2) constitutes a predetermination that an EA will be a substantial document. The first two sentences should be deleted. (16)

RESPONSE: The meaning of this comment was not clear to the agencies. Even without the first two sentences EAs on projects that would have significant impacts but for mitigation would be substantial documents.

COMMENT: There should be added to this rule a requirement that, if a cost/benefit analysis is done, it should be incorporated by reference or appended to the EA. (14,23)

RESPONSE: The recommended language has been added in (3)(b).

COMMENT: Use of the term "potentially significant" in (3)(d) and (e) tends to enflame emotional controversy. (3)

RESPONSE: Case law requires that impacts of which there is reasonable probability of significance be evaluated. If the impact is merely speculative, no evaluation is required. The existing language allows the agencies this latitude.

COMMENT: In (3)(d) and (e), the word "resources" or "factors" would be more appropriate than "topics." (22)

RESPONSE: "Topics" is sufficiently broad to describe all of the potential issues. "Resources" does not describe the topics that follow, such as "cultural uniqueness and diversity." "Factors," while not unacceptable, may be more limiting than the topics that follow.

COMMENT: In the federal process, there is often a disparity in the level of discussion attributed to adverse environmental impact and that attributed to economic benefits. To avoid this, (3)(d) and (e) should be combined because separation implies that impacts on the physical environment are not impacts on the human population. (29)

RESPONSE: Separation of these subsections is not intended to and does not imply this distinction. At the state level this language, which is taken from existing rules, has not created the problems described at the federal level.

COMMENT: Most federal EAs do not indicate the alternatives that were considered. This is required under NEPA. (29)

RESPONSE: MEPA requires analysis of alternatives when there are significant impacts or unresolved conflicts. Subsection (3)(f) requires a discussion of reasonable alternatives in the EA.

COMMENT: In (3)(f), alternatives must be analyzed if they are "reasonably available" and "prudent to consider." In the federal rules, alternatives must be considered only if conflicts remain over alternative uses of available resources. This latter concept should be substituted for the former

because the range of alternatives required in the proposed rule is too expansive. (22)

RESPONSE: The need for and extent of the alternatives analysis required by (3)(f) varies according to the factors listed in (2) and use of the term "prudent to consider." The analysis requirement is therefore not as expansive as the commenter suggests.

COMMENT: The terms "reasonably available" and "prudent to consider" in (3)(f) are redundant. The latter should be stricken. (27)

RESPONSE: The terms are not redundant in the situation in which there is no unresolved conflict regarding alternatives. Although an alternative may be reasonably available, it may not be prudent to expend resources describing and analyzing it.

COMMENT: In subsection (3)(g), the words "committed to and" should be deleted. (2)

RESPONSE: The deletion has been made. See response to comment on Rule III(3)(b).

COMMENT: At the federal level, checklist EAs are too generalized, discuss only local impacts, and do not adequately describe the project or local environment. They rarely indicate the nature of contacts with other agencies. (29)

RESPONSE: The agencies are not aware of similar abuses at the state level. Agencies should have discretion to tailor their review to the project and this has been retained in (3)(i).

COMMENT: Subsection (3)(j) should be amended to require the agency to find (a) that it took a hard look at the problem; (b) that it identified the relevant areas of concern; (3) that it made a convincing case that the expected impacts were not significant; and (4) that it has convincingly established that changes were sufficient to reduce the impacts to a minimum. (16)

RESPONSE: The recommended language contains standards that federal courts use in reviewing an agency's decision not to prepare an EIS. Agencies must implement MEPA so as to withstand challenge under judicial review standards. However, these standards change from time to time. It is therefore not appropriate for the agencies to put these standards in their rules.

COMMENT: Subsection (3)(j) requires a finding on the need for an EIS in every EA. Under federal procedures, a FONSI is documented either separately or in combination with an EA and/or decision document. That flexibility should be incorporated into these rules. (22)

RESPONSE: Historically, the state agencies have not used a separate document and see no need to authorize one.

COMMENT: The second sentence of (4) should be deleted so that the agency can tailor its scoping process to the nature of

the proposed action. In many cases, scoping may be merely an in-house exercise. (22)

RESPONSE: The second sentence is not intended to apply to in-house scoping on simple EAs. It applies only to instances in which the agency initiates a formal, public process.

COMMENT: To provide a logical flow of ideas, section (4) should be renumbered (2) and moved. (28)

RESPONSE: Section (4) has been incorporated into (1).

COMMENT: The scoping process in (4) should be made mandatory for EAs that find all significant impacts to be mitigated below the level of significance. This ensures public involvement. (5,8,11,16)

RESPONSE: In Rule VI(4) the express right to notice, comment, and meeting or hearing has been added for those EAs. This gives the public the right to comment on the scope of these EAs. Because determining the scope of some EAs, even some finding significant impacts mitigated, is not complex or controversial, institution of that process has been left discretionary with the agencies.

RULE VI

COMMENT: Section (3) should contain an objective standard to trigger public participation rather than leaving it to the whim of the agency. (4) Section (3) appropriately gives the agencies discretion to tailor public review to the effect of the proposal. A rigid formula should not be incorporated. (2)

RESPONSE: Section (4) has been amended to provide notice, comment period, and either a public meeting or public hearing. The agency has the obligation and the latitude to structure other public involvement to the situation.

COMMENT: In (4), the word "extensive" should be deleted. (2)

RESPONSE: The rule has been amended to specify what public involvement is required. The word "extensive" has therefore been deleted.

COMMENT: A number of commenters suggested that (4) be amended by adding all, some, or one of the following requirements for an EA that finds significant impact(s) reduced below the level of significance: legal notice and press release, public hearing, public meeting or public hearing, a 30 day public comment period; broader dispersion of EAs. The commenters felt that these provisions are necessary to ensure their right to participate in the decisions of the agencies. (5,6,7,8,9,11,13,14,16,18,23,26)

RESPONSE: The rule has been amended to require public comment, meeting or hearing, and notice. This specifically guarantees public involvement while allowing the agency to select methods appropriate to the situation. This is a guarantee not contained in the current rules.

COMMENT: In (4), the meaning of "no further" is unclear. Also, the second sentence would require "extensive public involvement" when no significant residual impacts are anticipated. The agency should be given more flexibility to determine the level of public involvement. (22)

RESPONSE: The term "no further" refers to the right to public inspection in (2). The agencies have determined to retain and further specify the public involvement required because of the possibility of significant impact unless proper mitigation is required.

COMMENT: Section (5) should be amended to require the agencies to maintain computer lists of completed EAs. EAs for projects that would require an EIS but for mitigation should be noted. The agencies should be required to forward these lists to interested parties and businesses, lists of which the agencies should also be required to keep. (16)

RESPONSE: The public notice, comment, and hearing or meeting requirements contained in (4), as amended, would be as effective, more efficient, and less likely to result in delay and litigation that could result from unintentional omission of interested persons from the list.

COMMENT: The rules should specify specific levels and time frames for review so that reviewing agencies are given sufficient time for review. (29)

RESPONSE: A rule that would apply to all situations would be too general to provide much guidance because of the diversity of deadlines and situations.

COMMENT: A requirement that no comment period may exceed 20 days should be added. (28)

RESPONSE: In some instances, a 30 day comment period may be justified. The agency should retain the flexibility to match the comment period to the situation.

RULE VII

COMMENT: This rule does not clearly specify the process to be followed for joint state-federal EISs. It is recommended that language be added that for federal-lead joint EISs, the state scoping process for the state portion of the EIS follow the federal time schedule. (28)

RESPONSE: Joint EISs are one document. The scoping process is a joint one that is conducted according to a time schedule agreed to by the lead state and federal agencies.

RULE VIII

COMMENT: The need for a summary for other than long EISs is questioned. (22)

RESPONSE: Work effort on these summaries is minimal compared to benefits they provide.

RULE IX

COMMENT: An EIS should contain a list of the laws that apply to a project. Does (2) call for this list? (19)

RESPONSE: The term "a description of their responsibility for the proposed action" requires the agency to describe the laws administered by other agencies that are applicable to the project.

COMMENT: In (3), the description of the affected environment should be focused on affected environmental conditions. (22)

RESPONSE: The comment is well-taken because the agency-proposed language does not limit the discussion of aspects of the existing environment that are not affected. Language similar to that in 40 C.F.R. 1502.15 has been added. Also, the term "significantly" has been deleted because it implies that a geographical area that is affected, but that is not significantly affected, need not be described at all.

COMMENT: The present MEPA rule on contents of a DEIS require description of "additional or secondary impacts at the local or regional level." This has been omitted from Rule IX and should be inserted. (14)

RESPONSE: This wording was omitted because it was redundant in the present rules. Subsection (4)(b) in the proposed rules also covers these impacts. The recommended language would also be redundant in the proposed rules.

COMMENT: Section (4) should require that the EIS display baseline data generated to assess water quality, wildlife, air quality, and socio-economics, spell out specific monitoring programs that will be used to gauge impacts, and define what standards will be used to define degradation. (5,19, 29)

RESPONSE: Displaying baseline data would add prohibitively to the volume of the EIS, render it encyclopedic in violation of Rule VIII, and be of marginal benefit to the reader. This data is public information and available in the agency's office.

Monitoring programs are part of the permit requirements. The monitoring plan may not be known when the draft EIS is prepared. Even if it is known at that time, it is often subject to revision before permit issuance.

Subsection (4)(a) requires discussion of the factors listed in Rule V(3)(d). Among those is water quality. Therefore, where appropriate, discussions of the potential for violation of the nondegradation requirements would be included.

COMMENT: In (4), emphasis on cumulative and secondary impact inflames emotional controversy. (3)

RESPONSE: Case law requires analysis of secondary and cumulative impacts. The commenter's recommendation that these impacts be evaluated scientifically is noted.

COMMENT: There should be added a requirement that, if a cost-benefit analysis is done, it should be incorporated by reference or appended to the EIS. (14, 23)

RESPONSE: The requirement has been added in (4)(f).

COMMENT: Section (9) should be eliminated because the public has a tendency to disregard the other alternatives. (2)

RESPONSE: Inclusion of the preferred alternative, if any, can assist the public in commenting. A member of the public who is dissatisfied with the preferred alternative may focus attention on his or her preferred alternative.

COMMENT: Section (9) would be clearer if "on the proposed action" were eliminated. (22)

RESPONSE: It has been deleted.

COMMENT: In (10) and (11), for consistency, the word "draft" should precede "EIS."

RESPONSE: The additions have been made.

RULE X

COMMENT: For clarity, Rule X should be restructured to present the steps in order. (2)

RESPONSE: The rule has been restructured.

COMMENT: In (2), "EIS" should follow "final" at the end of the sentence. (2)

RESPONSE: The addition has been made.

COMMENT: The documentation and notice requirements of this rule could be incorporated into Rule XVIII. (22)

RESPONSE: Although Rules X, XI, and XVIII could be combined, they are being kept separate for reader convenience.

RULE XI

NOTE: In reviewing this proposed rule, it became apparent that the phrase "on the proposed action" in (5) is redundant, and that phrase has therefore been deleted.

COMMENT: The opening sentence should specifically exempt adoption of the draft EIS as a final from Rule XI if that is the intent. (2)

RESPONSE: The exemption has been added.

COMMENT: Section (5) indicates that inclusion of the proposed decision, preferred alternative, or recommendation is mandatory. This conflicts with Rule XVIII(2). (2)

RESPONSE: Rule XVIII(2) has been amended to remove the conflict.

RULE XIII

COMMENT: Added to section (2) should be a requirement that the agency inform the public as to the justification for that decision. (28)

RESPONSE: The suggestion reflects current practice. The language has been added.

RULE XIV

COMMENT: The meaning of (3) is unclear. The second sentence appears to be repetitive. (2)

RESPONSE: The section has been rewritten.

COMMENT: The second sentence of (5) appears to require unnecessary effort in explaining why the agency does not agree with unadopted portions of an existing EIS. (2)

RESPONSE: Clarifying language has been added.

COMMENT: In federal NEPA rules, the term "adoption" refers to an existing EIS. "Incorporation by reference" refers to other materials. The terminology in Rule XIV should be conformed to federal terminology to facilitate preparation of federal-state EISs. (22)

RESPONSE: References to "incorporation by reference" have been deleted.

COMMENT: In (3), "requested" should be "required." (22)

RESPONSE: Pursuant to another comment, the rule has been rewritten without either term.

RULE XV

COMMENT: This rule should be amended to encourage joint state-federal preparation of EAs and EISs. (22)

RESPONSE: The recommended provision is in Rule XVI.

RULE XVII

COMMENT: The programmatic review concept has not fared well in federal court recently. The philosophy of this rule should be shifted to "Large Scale Analyses Covering Various Statewide Permitting Actions." This analysis would strive for site specificity and would be the primary MEPA vehicle to which most permitting actions could be tiered. (22)

RESPONSE: State agency experience in preparing programmatic reviews over the past fifteen years has been that these documents can serve a useful purpose under the types of actions contemplated in Rules XVII (1) and (2). We concur that most programmatic reviews are not site specific enough to fully support individual permit actions and will need to be supplemented with more site specific EAs or EISs that both reference the programmatic review and where necessary supplement this review with additional analysis.

COMMENT: A programmatic environmental assessment would be a nightmare. (13) All programmatic reviews should be at the EIS level. (14)

RESPONSE: For programs the components of which are similar and do not involve significant impacts, a programmatic EA is appropriate.

COMMENT: Section (2) addresses situations in which the programmatic is discretionary. The "whenever required by statute" language should therefore be removed from (2) and placed in (1). (2)

RESPONSE: Section (2), as written, merely recognizes other statutory requirements. It is not meant to, and could not, supersede those requirements.

COMMENT: Rules XVII and XVIII should be reversed in order. The rules prior to XVII discuss the EIS process. The record of decision follows the EIS. (28)

RESPONSE: While the order suggested in the comment makes sense, so does the present order because programmatic reviews can be in EIS format. The order therefore has not been changed.

RULE XVIII

COMMENT: The first sentence, which appears to make inclusion of the proposed decision or preferred alternative discretionary, in (2), is inconsistent with Rule XI(5). (2)

RESPONSE: Section (2) has been made consistent with Rule XI(5).

RULE XXIII

COMMENT: The fourth sentence in (1) should be amended so it is clear that a hearing is not required for every EIS. (2)

RESPONSE: When read in conjunction with (3), (1) clearly does not require a hearing in all instances.

COMMENT: There is a punctuation problem in the last sentence of (1). (2)

RESPONSE: The problem has been corrected.

COMMENT: Section (3) should be amended to apply to an EA as well as an EIS. (8,16)

RESPONSE: Rule VI(4) has been amended to include the right to a public meeting or hearing on EA prepared pursuant to Rule III(4). For other EAs, rule VI(1) requires public involvement commensurate with the complexity and seriousness of the issues. Public involvement is therefore adequately required. Because Section (3) does not refer to EAs, the reference to EAs in Section (6) has been deleted.

COMMENT: There should be added to section (3) a subsection (d) allowing the applicant to request a hearing. (2)

RESPONSE: The addition has been made.

COMMENT: The need for section (3) is questioned. Agencies should be given the flexibility to determine the need for a hearing on a case-by-case basis. (22)

RESPONSE: This provision is being retained to implement the Constitutional and statutory right of the public to participate in significant agency decisions.

RULES XXIV, XXV, AND XXVI

COMMENT: In XXIV(2) and XXVI(2), for conformity with MEPA, "costs to compile the statement and "costs of compiling an EIS" should be "costs of gathering data and information to compile the EIS" because this is the language used in MEPA. (12)

RESPONSE: The rules have been amended to reflect the statute.

COMMENT: The term "costs of gathering data and information to compile the EIS" should be defined. The definition should exclude the cost of scoping, impact evaluation, analysis of alternatives or mitigation, and writing or printing of the EIS. (12) Another commenter recommended that the costs of compilation, publication, and distribution of the EIS be specifically included. (16)

RESPONSE: The former definition substantially limits the activities subject to the fee bill. The definition suggested by the second commenter is significantly more expansive than the first commenter's definition. The agencies have therefore determined that no definition should be adopted without submitting it for public comment in a rulemaking proceeding.

COMMENT: The fee assessment rules should be amended to require a phased fee assessment process. Up front payment virtually ensures that the entire fee will be used or overrun. Phased assessment, based on a work plan with monthly mileposts would allow applicants to monitor progress, question expenditures, and retain capital until it is needed. (12) If EIS preparation will take more than six months, a quarterly work and payment schedule should be implemented. (28)

RESPONSE: The agencies have the discretion to allow applicants to pay on an installment basis, both under existing rules and under the proposed rules. This practice is followed in certain instances. However, because of the different circumstances that arise, agencies should have the discretion to require up-front payment or allow installment. For this reason, no amendment has been made.


COMMENT: The second sentence in XXIV(3) is confusing and should be rewritten. (28)

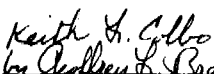
RESPONSE: It has been rewritten.


4. The agencies have assigned the following numbers to the rules:

<u>Rule</u>	<u>Agriculture</u>	<u>Commerce</u>	<u>FWP</u>	<u>Highways</u>	<u>BNRC</u> <u>DNRC</u>
I	4.2.312	8.2.302	12.2.428	18.2.235	36.2.521
II	4.2.313	8.2.303	12.2.429	18.2.236	36.2.522
III	4.2.314	8.2.304	12.2.430	18.2.237	36.2.523
IV	4.2.315	8.2.305	12.2.431	18.2.238	36.2.524
V	4.2.316	8.2.306	12.2.432	18.2.239	36.2.525
VI	4.2.317	8.2.307	12.2.433	18.2.240	36.2.526
VII	4.2.318	8.2.308	12.2.434	18.2.241	36.2.527
VIII	4.2.319	8.2.309	12.2.435	18.2.242	36.2.528
IX	4.2.320	8.2.310	12.2.436	18.2.243	36.2.529
X	4.2.321	8.2.311	12.2.437	18.2.244	36.2.530
XI	4.2.322	8.2.312	12.2.438	18.2.245	36.2.531
XII	4.2.323	8.2.313	12.2.439	18.2.246	36.2.532
XIII	4.2.324	8.2.314	12.2.440	18.2.247	36.2.533
XIV	4.2.325	8.2.315	12.2.441	18.2.248	36.2.534
XV	4.2.326	8.2.316	12.2.442	18.2.249	36.2.535
XVI	4.2.327	8.2.317	12.2.443	18.2.250	36.2.536
XVII	4.2.328	8.2.318	12.2.444	18.2.251	36.2.537
XVIII	4.2.329	8.2.319	12.2.445	18.2.252	36.2.538
XIX	4.2.330	8.2.320	12.2.446	18.2.253	36.2.539
XX	4.2.331	8.2.321	12.2.447	18.2.254	36.2.540
XXI	4.2.332	8.2.322	12.2.448	18.2.255	36.2.541
XXII	4.2.333	8.2.323	12.2.449	18.2.256	36.2.542
XXIII	4.2.334	8.2.324	12.2.450	18.2.257	36.2.543
XXIV	4.2.335	8.2.325	12.2.451	18.2.258	36.2.544
XXV	4.2.336	8.2.326	12.2.452	18.2.259	36.2.545
XXVI	4.2.337	8.2.327	12.2.453	18.2.260	36.2.546


5. The authority of the agencies to repeal and adopt these rules is contained in sections 2-3-103, 2-4-201, and 75-1-202, MCA. The rules implement sections 2-3-104 and 75-1-201, 202, 203, 205, 206, and 207, MCA.


 Keith A. Kelly, Director
 Department of Agriculture


 Keith H. Golbo, Director
 Department of Commerce


Richard L. Johnson, Deputy Director
Department of Fish, Wildlife
and Parks; and Acting Secretary,
Montana Fish and Game Commission


Gary Wicks, Director
Department of Highways


Larry Faspender, Director
Department of Natural Resources
and Conservation and for the
Board of Natural Resources and
Conservation

Certified to the Secretary of State December 12, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

In the matter of the amendment) NOTICE OF AMENDMENT AND
of rules pertaining to educa-) REPEAL OF RULES PERTAINING
tional requirements, licensure,) TO THE PRACTICE OF NURSING
conduct, disciplinary pro-)
cedures, and standards and the)
repeal of rules pertaining to)
general welfare, reports, and)
definitions)

TO: All Interested Persons:

1. On July 28, 1988, the Board of Nursing published a notice of public hearing on the proposed amendment and repeal of the above-stated rules on page 1629, 1988 Montana Administrative Register, issue number 14.

2. The hearing was held on August 24, 1988, at 10:00 a.m., in the conference room of the Department of Commerce in Helena, Montana, where written and oral comments were received.

3. The Board has amended ARM 8.32.305, 8.32.402, 8.32.413, 8.32.504, 8.32.901, 8.32.902, 8.32.903, 8.32.904, 8.32.905, 8.32.906, 8.32.907, 8.32.910, 8.32.911, 8.32.913 and 8.32.1002 and repealed ARM 8.32.912, 8.32.914 exactly as proposed. The Board has amended ARM 8.32.909 as proposed but with the following changes:

"8.32.909. FACULTY (1) There shall be a sufficient number of qualified faculty to meet the purposes and **objectives** objectives of the nursing program.

(2) All nursing faculty members, including part-time and substitute nursing faculty in all areas of the nursing education program, shall hold at least a master's degree in nursing from an approved accredited program, or a master's degree in public health or a doctorate in nursing, have preparation for teaching in their respective area of responsibility and shall be licensed as registered nurses in Montana. An exemption to the requirement for a master's degree in nursing may be granted to faculty hired prior to 1977. Exempted faculty members must have a master's degree in a related field which included advanced nursing courses or have additional graduate level nursing education.

(a) through (4)(g)(iv) will remain as proposed.

Auth: 37-8-202, MCA Imp: 37-8-202, 37-8-301, 37-8-302, MCA

4. Of the six persons in attendance at the hearing, Anna M. Shannon, RN, DNS, Dean of the College of Nursing at Montana State University, Bozeman, Montana, read a written statement into the record and then submitted the written statement. A letter from James F. Ahrens, President, Montana Hospital Association, was filed on September 1, 1988 and one written comment was received after the comment period. A summary of

the comments received and the Board's responses thereto are as follows:

COMMENT: Anna M. Shannon, representing the College of Nursing, Montana State University, directed her comments to ARM 8.32.909(2) and suggested the first sentence in this section still shows the potential for misinterpretation. It seemed to her the following areas need clarification and further specification:

1. All nursing faculty members teaching nursing courses in the required, approved program, including . . . registered nurses in Montana.

2. Teaching personnel, such as preceptors, in the required (as contrasted with elective) course work shall meet this standard. She commented that the second sentence of (2) was troublesome in the area of public health nursing, as a master's preparation for public health nursing has, for most of our history, been offered in, and preferred by, schools of public health. For the standard, she suggested that it read that the person have a master's in nursing, or, if the master's were not in nursing (excluding public health nursing), that the person hold a doctorate in nursing.

RESPONSE: The Board believes that graduate preparation provides the essential knowledge base necessary to teach in a nursing education program and develops one's ability to translate that knowledge to students in the didactic and clinical practice settings. Based on this belief, the Board is of the opinion that master level educated persons are necessary for both elective and required courses, to provide quality nursing education. The Board concurs with the comments regarding the graduate degree in public health nursing. The proposed amendments to ARM 8.32.909(2) have been modified to reflect the suggested changes.

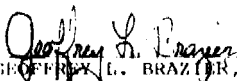
COMMENT: In its written comment, the Montana Hospital Association objected to the proposed change in ARM 8.32.909(2) governing faculty requirements, that any faculty member (full or part time) must have at least a master's degree in nursing. The Association did not object to the quality of the standards per se, but objected to the timing of the issue in view of the perceived current shortage of nurses in Montana. Concern was expressed that the proposed rule, by making faculty requirements more stringent, further contributes to the shortage of nurses in our state. The Montana Hospital Association requested that implementation of this amendment be postponed until January, 1991 to allow all the nursing schools in Montana time to determine whether or not they can hire qualified faculty under the proposed requirements and to allow the schools to experience one more legislative session in order to seek additional funding for the nursing programs in the state.

RESPONSE: The Board does not concur with the Montana Hospital Association's request to delay implementation of the proposed

rule until 1991. The Board has determined that part-time and substitute faculty need masters preparation and believes that, if implementation is delayed, the quality of the nursing programs will suffer. If, indeed, there is a nursing shortage which will make it difficult for the schools to meet the standard, the schools need to be encouraged to attempt to meet it now. The Board believes this amended rule is necessary in order to adequately prepare practitioners of nursing for today and for the future.

5. No other comments or testimony were received.

BOARD OF NURSING
DONNA J. SCHRAMM, R.N., M.N.
PRESIDENT

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 12, 1988.

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

In the matter of the adoption)	NOTICE OF THE TRANSFER,
of new and amended rules)	ADOPTION OF NEW
governing unemployment)	AND AMENDED RULES
insurance)	GOVERNING UNEMPLOYMENT
)	INSURANCE, AND THE REPEAL
)	OF CERTAIN RULES, IN TITLE
)	24, CHAPTER 11, SUBCHAP-
)	TERS 1, 2, 3, 4, 5, 6,
)	7, AND 8 OF THE
)	ADMINISTRATIVE RULES
)	OF MONTANA

TO: All Interested Persons:

1. On October 13, 1988, the Department of Labor and Industry published a notice of proposed revision of unemployment insurance rules, Title 24, Chapter 11, Subchapters 1, 2, 3, 4, 5, 6, 7, and 8, Administrative Rules of Montana. This notice appeared at page 2162 of the Montana Administrative Register, issue no. 19. The time for public comment was originally set to close on November 11, 1988. However, the comment period was extended to November 18, 1988 upon request of the Montana Inn Keepers Association.

2. The Department has repealed ARM 24.11.304, 24.11.308-311, 42.11.401-410, 24.11.411, 24.11.413, 24.11.415-435, 24.11.601, 24.11.603, 24.11.703, 24.11.706, 24.11.806, 24.11.807, and 24.11.809 as proposed.

3. The department has adopted the following rules as proposed:

Proposed Rule	ARM CITE
RULE I	24.11.102
RULE VIII	24.11.325
RULE IX	24.11.335
RULES XI-XIII	24.11.331-333
RULES XV-XIX	24.11.441-445
RULE XXI	24.11.446
RULE XXIII	24.11.451
RULE XXIV	24.11.458
RULE XXVI	24.11.452
RULE XXVII	24.11.453
RULE XXVIII	24.11.460
RULE XXX	24.11.462
RULES XXXII-XXXIV	24.11.466-468
RULE XXXV	24.11.470
RULE XLI	24.11.616
RULE XLIII	24.11.814

RULE XLIV 24.11.815

4. In assigning ARM numbers to the new rules adopted by the department, the department decided to transfer some existing rules to new ARM cites for the sake of clarity. The department has transferred the following old rules to the following new ARM cites:

Old ARM cite	New ARM cite
24.11.301	24.11.315
24.11.302	24.11.317
24.11.306	24.11.319
24.11.303	24.11.320
24.11.305	24.11.336
24.11.307	24.11.337
24.11.436	24.11.465
24.11.412	24.11.475
24.11.414	24.11.480
24.11.602	24.11.608

5. The department has adopted the amendments to the following rules as proposed: ARM 24.11.201, 24.11.305, 24.11.307, 24.11.414, 24.11.501, 24.11.502, 24.11.503, 24.11.505, 24.11.506, 24.11.704, 24.11.705, 24.11.707, 24.11.708, 24.11.801, 24.11.802, 24.11.805.

6. The department adopts the amendments and rules as proposed, with the following changes and ARM cites:

24.11.101 DIVISION ORGANIZATION

(1) and (2) same as proposed rule.

(3) The address for the department's main office in Helena is: P.O. Box 1728, Helena, MT 59625 59624. The phone number for the Helena office is: (406) 444-3555.

(4) same as proposed rule except that the Lewiston Job Service has the following address:

Lewiston Job Service Office
324-W--Broadway 300 1st Ave. N.
Lewiston, MT 59457

RULE II(24.11.202) DEFINITIONS

(1)-(3) same as proposed rule

(4) "Employer" means an employer that is subject to payment of unemployment insurance contributions as defined in section 39-51-202, MCA, and an employing unit engaged in employment as defined in section 39-51-203, MCA. Such an employer is known as the "covered" or "subject" employer for unemployment insurance tax purposes.

(5) and (6) same as the proposed rule

(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, but does not include penalty and

interest.

24.11.301 (24.11.315) APPEAL OF DEPARTMENT DETERMINATIONS

(1) and (2) same as proposed rule
(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 either in person or by mail.

RULE III (24.11.316) TRANSFER OF FILES TO APPEALS BUREAU

(1) same as proposed rule
(2) Upon receiving a notice to appeal a department determination or redetermination on tax matters, the contributions bureau sends the notice a copy of relevant evidence in the administrative record to all interested parties and to the appeals bureau, but retains the administrative file.

24.11.302 (24.11.317) NOTICE OF HEARINGS

(1) A hearing is MUST BE scheduled as soon as practical.
(2) Written notice of the a tax hearing or pre-hearing conference is MUST BE mailed to all interested parties, including the department's representative, at least 20 days before the hearing or conference.
(3) Written notice of a benefits hearing must be mailed to all interested parties at least 10 days before the hearing.
(4) The A hearing notice complies MUST COMPLY 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.

RULE IV (24.11.318) TELEPHONE HEARINGS

(1) same as proposed rule
(2) An in-person hearing or conference may be scheduled in Helena if a party requests in writing such a hearing at least 10 5 days before the scheduled telephone hearing.
(3) At least 5 days before 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) and (c) same as proposed rule
(4) Telephone numbers may be updated by either party at any time prior to hearing.

24.11.303 (24.11.320) HEARING PROCEDURE --- BENEFIT DETERMINATIONS

(1)-(3) same as proposed rule

(4) If any party ~~to any appeal~~ fails to appear at the hearing, and no ~~good cause for~~ EMERGENCY JUSTIFYING 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 ONLY for good cause EMERGENCIES 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.~~

RULE V (24.11.328) 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 ~~appellant~~ presents testimony and evidence first, followed by the ~~department~~ respondent, and any interested party.

(2) remains the same as proposed

(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) remains the same as proposed

RULE VI (24.11.326) DISCOVERY IN TAX HEARINGS

(1) remains the same as proposed

(2) The appeals referee may ~~fix~~ set the time, place and method of discovery by conference, prehearing order, or otherwise. The appeals referee may enter appropriate orders for violations of discovery orders ~~fixing discovery procedures.~~

(3)-(5) remain the same

(6) Discovery procedures may not be appropriate in many cases. If formal discovery by the parties is considered necessary by the appeals referee, the above procedures may be used.

RULE VII (24.11.327) MOTIONS IN TAX HEARINGS

(1) and (2) remain the same as proposed

(3) A party opposing the motion ~~has 10 days from the filing of the motion to respond, unless the appeals referee directs otherwise~~ must have a reasonable time to respond to the motion.

RULE X (24.11.329) BECAUSE FAILURE TO APPEAR AT A TAX HEARING

(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) remains the same as proposed

24.11.307(24.11.319) DISQUALIFICATION

(1) remains the same as proposed

~~(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) should be renumbered to (2), but is otherwise the same as the proposed rule

RULE XIV (24.11.440) DEFINITIONS

(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 the first day of the calendar week with the filing of in which an initial valid claim is filed.

(3) same as proposed rule

RULE XX (24.11.471) ELIGIBILITY REVIEW PROGRAM

(1) same as proposed rule

(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 denial of benefits.
disqualification

RULE XXII (24.11.450) NON-MONETARY DETERMINATIONS AND REDETERMINATIONS---NOTICE

(1) same as proposed rule

(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)-(6) same as proposed rule

RULE XXV (24.11.454) 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, and if the claimant is otherwise eligible. The general test of whether the employment relationship has been severed is whether the claimant is available for other employment.

(2) and (3) same as proposed rule

RULE XXVIII(24.11.460) DISQUALIFICATION FOR MISCONDUCT

- (1) same as proposed rule
- (2) The term misconduct does not necessarily 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.

RULE XXIX (24.11.461) SPECIFIC ACTS OF MISCONDUCT

- (1)(a)-(c) same as proposed rule
- (d) repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;
- (1)(f)-(g) same as proposed rule

RULE XXXI(24.11.457) LEAVING WORK WITHOUT WITH 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) (b) the claimant attempted to correct the problem in the work environment; and~~
 - ~~(d) (c) the claimant informed the employer of the problem and gave the employer a reasonable opportunity to correct it.~~
- (2)-(3) same as proposed rule

24.11.436 (24.11.465) DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE

- ~~(2) (1) "Strike" defined:--A For purposes of this rule,~~
a A strike is a concerted cessation of work by employees of an establishment in an effort to obtain desirable terms from an employer.
- (2)-(7) same as proposed rule

24.11.504 CLAIMS FOR BENEFITS

- (1) same as proposed rule
- (2) Claims ~~shall be~~ are filed in accordance with according to agent Sstate 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, IF THE CLAIMANT SHOWS GOOD CAUSE FOR THE DELAY. ~~the liable~~

~~State shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, later. 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.~~

(2)(b) same as proposed rule

24.11.602 (24.11.608) 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 RATE based on section 39-51-1212, MCA. (See Chart on page 24-621)~~

RULE XXXVII (24.11.606) EXPERIENCED-RATED EMPLOYERS

(1)-(3) same as proposed rule

(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 an employer with past due taxes or reports.

(5)(a)-(c) same as proposed rule

(d) the average taxable wages for the last three fiscal years;

(5)(e) and (f) same as proposed rule

(g) the employer's taxable wage base for the current year.

(6)-(8) same as proposed rule

RULE XXXVIII (24.11.607) EMPLOYERS ELECTING TO REIMBURSE THE TRUST FUND

(1) same as proposed rule

(2) To qualify for reimbursement, the non-profit employer must:

(a)-(c) same as proposed rule

(3)(a) and (b) same as proposed rule

(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 rate based on section 39-51-1212, MCA.

RULE XXXIX (24.11.610) TRANSFER OF EXPERIENCE-RATING RECORD TRANSFER

(1) same as proposed rule

(2) (a) Except as otherwise provided in this rule, a form for transferring the experience-rating record (UI-272) ~~and a registration packet are~~ is 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 record is automatically transferred from the predecessor employer to the successor employer if the predecessor employer had a deficit rate and the ownership or management of the successor entity is substantially the same as that of the predecessor entity. Such a record includes the amount of contributions paid, benefits charged, and taxable wages reported. 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) same as proposed rule

RULE XL (24.11.613) CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS---CHARGEABLE EMPLOYERS

(1) same as proposed rule

(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 was fired for misconduct or quit without good cause attributable to employment. The explanation of the separation must contain specific details of the separation, including copies of any supporting documents.

(2)(b) and (c) same as proposed rule

(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 is for informational purposes only since any appeal must be made from the "Potential Benefit Charge Notice" and shows:

(3)(a)-(c) same as proposed rule

24.11.701 RECORDS TO BE KEPT BY EMPLOYER

(1)(a)(i)-(vi) same as proposed rule

(vii) The method of payment:

(A) If he whether the employee is given paid on a salary or commission, or paid on an hourly, or by-piece basis his the wage-rate and the period covered by such rate;
(B) If he the employee is paid on a fixed daily basis, his the employee's daily rate and the customarily scheduled days per week prevailing in the establishment for his occupation; AND

(ix) (C) The method by which his wages are computed, if he is paid on a piece rate or other variable pay basis, the method used to compute the wages; and

(x) (viii) 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) same as proposed rule

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 necessary for the collection of the tax in accordance with ARM-24.11.701.

(2)-(4) same as proposed rule

24.11.803 REPORTING OF 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 employer 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:

<u>Qtr.</u>	<u>Total Wages</u>	<u>Total Wages</u>	<u>Taxable</u>	<u>Excess</u>
	<u>Paid in Qtr.</u>	<u>Paid to Date</u>	<u>Wages</u>	<u>Wages</u>
<u>First</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>none</u>

Second	5,000	10,000	5,000	none
Third	5,000	15,000	2,600 2,800	2,400 2,200
Fourth	5,200	20,200	000	5,200
<hr/>				
TOTAL	20,200	20,200	12,600 12,800	7,400

In this example, the ~~\$12,600~~ \$12,800 taxable wage base for the 19889 calendar year was reached in the third quarter with ~~\$2,600~~ \$2,800 as taxable and ~~\$2,400~~ \$2,200 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) and (4) should be renumbered to (2) and (3) but are otherwise the same as the proposed rule

24.11.804 DUE DATE 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.

24.11.808 WAGES

(1) same as proposed rule

~~(e) (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)-(6) remain the same except must be renumbered to (2)-(5)

~~(7) (6) Payments MADE FROM AN EMPLOYEE'S GROSS REMUNERATION into deferred compensation or cafeteria plans and other similar plans are wages reportable for the period in which the compensation was earned.~~

~~(8) (7) Payments distributed to corporate officers or shareholders IN LIEU OF REASONABLE COMPENSATION FOR SERVICES PERFORMED are wages, even though designated as profits or dividends.~~

(9) same as proposed except renumbered to (8)

~~(10) (9) 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 A WRITTEN schedule agreed upon by the employee and the employer.~~

RULE XLII(24.11.813) 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~~ compared with the customary wages for such services in the locality.

(2)-(4) same as proposed rule

(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 rental payments made with respect to these items are considered wages.

RULE XLVI(24.11.821) 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~~ The following factors must be considered to determine whether control exists:

(1)(a)-(c) same as proposed rule

(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.~~ A combination of these factors may indicate control or the right to control. The burden of proof is on the employer employing unit to show a lack of control, and the existence of an independent contractor relationship.

RULE XLVII(24.11.825) DETERMINATION OF INDEPENDENT CONTRACTOR --- INDEPENDENTLY ESTABLISHED BUSINESS (1) 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 shall be considered to determine if an independently established business exists. An independently established business may exist if the worker:~~

(1)-(10) remain the same but must be renumbered to (a)-

(j)

(a)-(d) remain the same but must be renumbered to (i)-

(iv)

(11) and (12) remain the same but must be renumbered

(k) and (l)

(2) The above factors are weighed and evaluated depending on the circumstances of each case. A combination of these factors may indicate that the individual is

customarily engaged in an independently established business. The burden of proof is on the employing unit to show that the individual is engaged in an independently established business.

RULE XLVIII (24.11.840) RELEASING PROPERTY SUBJECT TO DEPARTMENT LIEN

- (1)(a) same as proposed rule
- (1)(b) the employer pays to the department an amount, determined by the department, that is not less than the value of the department's interest in the property subject to the lien;
- (1)(c)-(d) same as proposed rule
- (2) same as proposed rule

7. Mary McCue representing the Administrative Code Committee commented that some of the authority sections were wrong in the proposed rules. She noted that the only sections granting rulemaking authority are sections 39-51-301 and 39-51-302, MCA. The committee further commented that:

- (1) many of the older rules had incorrect cites to authority;
- (2) references to 39-51-202 and 39-51-2407 as authority sections were incorrect; and
- (3) references to section 39-51-2403, MCA, in the tax hearing rules should be deleted.

The department concurs with the committee's comments. The department has changed incorrect authority cites in 24.11.101, 24.11.201, 24.11.301, 24.11.302, 24.11.303, 24.11.305, 24.11.306, 24.11.307, 24.11.412, 24.11.414, 24.11.436, 24.11.501 through 24.11.506, 24.11.701, 24.11.702, 24.11.704 through 24.11.708, 24.11.801 through 24.11.805, and 24.11.808 to sections 39-51-301 and 39-51-302, MCA.

The cites to section 39-51-202, MCA, in ARM 24.11.101 and 24.11.201 were typographical errors and have been changed to 39-51-302, MCA. The authority cite in ARM 24.11.305 has been changed to 24.11.302. The references to section 39-51-2407, MCA, have been deleted and replaced with sections 39-51-301 and 39-51-302, MCA, where appropriate. Also, the references to section 39-51-2403, MCA, in the tax hearing rules have been deleted.

Several cites to implemented statutes were also incorrect. The cite in 24.11.201 has been changed to section 2-4-204, MCA. The cites in 24.11.436 of implemented statutes have all been deleted except for section 39-51-2305, MCA. The cite in 24.11.602 has been changed to section 39-51-1212, MCA. The cite in 24.11.802 has been changed to section 39-51-1301, MCA.

8. The following comments were made on the substance of the proposed rules and general revisions:

(a) Hearing Rules:

COMMENT: Chad Smith representing the Montana Chamber of Commerce and Mary McCue commented that the language in ARM 24.11.302 was in the active tense and should be directive. They also had the same comment on ARM 24.11.306, stating that this rule shows an inherent conflict of interest to have the appeals referee rule on the disqualification. Chad Smith also sought preemptory challenges of appeals referees.

RESPONSE: The department concurs that 24.11.302 should be in the directive. The department further concurs that proposed amendments to 24.11.306 incorporated an inherent conflict of interest. The rule has been changed so that disqualification procedures are governed solely by section 2-4-611, MCA.

The department does not concur that preemptory challenges should be allowed in unemployment insurance hearings. Federal regulations require the department to issue its decision on benefits cases within 30 days from filing of the appeal. This time limit could not be met if each side had a challenge as a matter of right.

COMMENT: Don Judge of the Montana AFL-CIO commented that in proposed Rule XII many similarly situated individuals may be harmed if the department determines that such individuals are independent contractors.

RESPONSE: Rule XII is expressly couched in terms of "employee" and not "independent contractors". Only similarly situated "employees" are affected by a final decision that an individual is an "employee." Since the rule does not address "similarly situated independent contractors," the department does not anticipate that other employees may be harmed by an independent contractor determination.

COMMENT: The federal office overseeing unemployment insurance commented that the proposed hearing rules may be too complicated for many individuals.

RESPONSE: The department concurs that the hearing process should be informal. This was the objective of the proposed rules---to have informal proceedings with guarantees of due process. The department changed proposed Rule VI to note that this discovery rule may be necessary only if the case warrants such procedures.

COMMENT: Roger Tippy commented that Rule V implies a presumption of regularity in the department's decisions, improperly creating a "preponderance of the evidence"

standard and that Rule XI while it mirrors section 39-51-2403, should contain a "no-deference principle."

RESPONSE: Rule V has been changed to clarify that the appellant, not just an employer, has the burden of presenting the case to the appeals referee. Further, the department has deleted the "preponderance of the evidence" standard as suggested by Mr. Tippy. Section 39-51-2403, MCA, expressly sets the standard of review of a department's determination and Rule XI properly reflects that standard.

COMMENT: Mary McCue commented that proposed Rule X with the catch phrase "DEFAULT" does not really describe a default situation.

RESPONSE: The department concurs and changed the rule accordingly.

(b) Benefits Rules:

COMMENT: Chad Smith for the Montana Chamber of Commerce commented that proposed Rule XXIV on self-employment permits a claimant to earn self-employment income and still draw benefits if he is available for work and if the self-employment is not his "principal income". If the claimant earns more than the allowable amount, he should be ineligible.

RESPONSE: The purpose of this proposed rule is to elucidate when self-employment is a principal occupation and whether the claimant is nevertheless available for work. It does not supersede the provisions of section 39-51-2101, MCA, denying benefits to a claimant who earns twice his weekly benefit amount in any week.

COMMENT: Chad Smith and Mary McCue commented that (2)(b) of Rule XXVIII is confusing and should be deleted because a single negligent act may be so serious as to constitute misconduct.

RESPONSE: The department concurs that a single serious negligent act may constitute misconduct and has amended the rule. Further, subsection (2)(b) does not negate the provisions in (1)(d), so that a serious isolated instance of negligence may nevertheless constitute misconduct.

COMMENT: Mary McCue suggested that the language in Rule XXIX (1)(d) was confusing in that it seemed to only include absences for which an employee could give prior notice but failed to do so.

RESPONSE: The department concurs and the rule was amended

accordingly.

COMMENT: Chad Smith recommended on proposed Rule XXXI that (1)(b) should be deleted; (1)(c) and (1)(d) should be combined; (2)(c) should be deleted; and all but the first sentence of (3) should be deleted.

RESPONSE: The department concurs that (1)(b) of Rule XXXI should be stricken. This provision related to good personal cause which was taken out of the statutes.

The department does not agree that (1)(c) and (d) should be combined. The employer does not always have control over a problem in the work environment. If subsections (c) and (d) were combined it would not cover a situation that could be corrected by the employee but was not necessarily under the employer's control. An example is someone who works in a meat packing plant, develops arthritis and can no longer perform services in a chilled environment. A second example is a lumbermill worker who is allergic to sawdust or a grain elevator operator who is allergic to dust.

The department does not concur that (2)(c) should be deleted. While (1)(a) may broadly cover leaving for medical reasons, subsection (2)(c) clarifies the problem and requires a medical statement to support leaving work for medical reasons. The federal government mandates the consideration of a claimant's health and safety in determining suitable work.

The department does not concur that all but the first sentence of subsection (3) should be deleted. This rule further clarifies section 39-51-2302(3), MCA, that specifically sets the standard for requalification of benefits by attending an accredited educational institution.

COMMENT: Chad Smith commented that Rule XXXII on waiver of overpayments should be deleted, and that Rule XXXIV on fraudulent overpayments should be amended to provide that fraudulent claims "must" be referred to the county attorney. He suggested that the decision to prosecute should be made by the county prosecutor and not by the administrative agency.

RESPONSE: The department does not concur in the comments made on Rules XXXII and XXXIV. Section 39-51-3206, MCA, expressly authorizes the waiver of overpayments if recovery of benefits would be against equity and good conscience. Rule XXXII describes department procedures in applying this standard.

Section 39-51-3201, MCA, expressly describes administrative penalties in the case of fraudulent overpayments. The department does not believe it would be feasible or reasonable to refer every case dealing with

fraudulent overpayments to county attorneys. In 1987, the department began 407 fraudulent overpayment cases ranging from \$100 to \$4000. Such a volume would overwhelm many county attorneys if all cases were referred to them.

The department does refer some cases that involve payments fraudulently received for 4 or more weeks, or involving amounts over \$400. The department has developed a system and the expertise to deal with these cases effectively and efficiently. This expertise is used in referring appropriate cases to county attorneys.

COMMENT: Chad Smith commented that the most significant area of concern for the Montana Chamber of Commerce was ARM 24.11.436. He stated there was no need for the rule in that it attempts to circumvent the 1985 amendments to section 39-51-2305, MCA.

If the rule is retained, Mr. Smith suggested the following changes: amending the definition of strike to include only strikes to force an employer to conform to state or federal law; to limit the employer's failure to conform as the sole cause of the strike; to delete (3) entirely; and exclude from the class of claimants in (4) claimants with other disqualifying facts involved.

With the above amendments, Mr. Smith recommended deleting the remainder of the proposed rule.

RESPONSE: The department agrees that the definition of strike should be amended, but not as restrictively as Mr. Smith suggests. The definition has been kept broad so as to apply to the all of section 39-51-2305 rather than just subsection (3).

The department does not agree that the rule should require proof that the employer's failure to conform was the sole cause of the strike. Proximate cause establishes a sufficient burden since the employer's failure to conform need only be one factor in causing the strike.

The department agrees that subsection (4) should not include striking claimants with other disqualifying facts, but does not agree that an amendment is necessary. If a claim involves other facts that would disqualify a striker, then that claimant is disqualified for those reasons.

The department believes that the rule is necessary to set the standards of proof, allow class claims, and establish a procedure for cases arising under section 39-51-2305. However, this area is being further investigated by the department and the department hopes to have a separate set of rules dealing with strikers' benefits.

(c) Tax Rules

COMMENT: Mary McCue suggested that the proposed language in ARM 24.11.702 was too broad in allowing the department to

request any information from an employer.

RESPONSE: The department concurs and amended the rule so that an employer need only supply information necessary for the collection of the tax.

COMMENT: Bonnie Tippy representing the Montana Inn Keepers Association criticized the department's procedures in implementing these rules, claiming that the sweeping scope of some of the changes warranted a longer comment period and contending that the department is trying to hurry these changes through the process.

RESPONSE: Comment period was extended by one week at the request of the Inn Keepers Association. At the hearing, the hearings officer asked if this was a sufficient time for an extension and all indications at the hearing were that the comment period was sufficiently lengthened.

The department does not believe the proposed rules encompass "sweeping" changes. While many of the rules have been rewritten for clarity's sake, the procedures reflected in the rules represent standard department procedures familiar to most employers. For this reason, it was assumed that an extensive comment period would not be necessary or warranted. For this reason, also, the department did not receive extensive public comment on the proposed changes.

The previous set of rules contained archaic references to divisions that no longer exist and methods superceded by statute. The purpose of the proposed revision was to bring the rules in line with current statutory and case law, as well as federal guidelines.

COMMENT: The Inn Keepers Association commented that tips and gratuities should not be included in the definition of wages. Mary McCue also asked whether gratuities should be included since it is not compensation from the employer.

RESPONSE: The purpose of the proposed rule on tips is to make Montana law conform with federal law. Prior to January 1, 1986, the previous rule on tips conformed with the Federal Unemployment Tax Act (FUTA). However, after January 1, all tips reported to the employer are taxable for FUTA purposes. By conforming with FUTA, the department hopes to achieve easier reporting methods for the employer as well as allowing the employer to take the full 5.4% credit on Form 940.

In addition, an employee's benefits are based on the employee's total earnings. The statutory definition of wages does not require that such wages come directly from the employer. Tips are "remuneration for personal services" and as such part of the an employee's total earnings. Tips frequently comprise a large portion of an employee's

earnings and many times are considered by the employer in calculating employee's wages.

COMMENT: The Inn Keepers Association and Mary McCue questioned whether ARM 24.11.808(6) accurately reflected the statutory requirements for sick pay in section 39-51-201(18), MCA.

RESPONSE: The department believes that the rule accurately reflects the requirements in 39-51-201(18), MCA. The 1987 amendments to this section were intended to bring Montana law in conformance with federal law under FUTA. FUTA provides that third party sick pay is reportable. Section 39-51-201(18), MCA, provides that only those payments made under a workers' compensation law are excluded from "wages." All other payments for sick leave are taxable.

COMMENT: Chad Smith commented on Rule XLVI recommending that the second sentence of subsection (1) should be deleted, subsection (1)(b) is too broad, subsections (d), (h), (i), (j), and (l) may be considered overall but not independently and that the second sentence of (2) should be deleted.

RESPONSE: The department agrees that the factors should be considered together and has amended the rule accordingly. In light of the amendments, the department believes all of the proposed factors should be retained.

COMMENT: Chad Smith suggested that the language introducing the factors in Rule XLVII is advisory and that mandatory language should be added.

RESPONSE: The department concurs and amended the rule to make the language mandatory.

COMMENT: Roger Tippy objected to Rules XLVI and XLVII insofar as they imply that the receipt of an independent contractor certificate from the Workers' Compensation Division under ARM 24.29.706 would not be conclusive for purposes of unemployment insurance.

RESPONSE: The Unemployment Insurance Division proposed legislation in 1987 for the consolidation of independent contractor determinations in the department. Since passage of this legislation, section 39-51-310, MCA, the Unemployment Insurance Division and the Workers' Compensation Division issue joint decisions on the independent contractor issue. The proposed rules are intended to establish uniformly applied criteria for the department.

The Unemployment Insurance Division is opposed to an independent contractor exemption certificate because the

award or denial of an exemption is based solely on an application form which is completed before any services are actually performed. The Division maintains that it is not possible to determine whether control exists in fact until after services are performed, even if the contract indicates otherwise.

9. The department has made some changes in the proposed rules that were not in response to public comment.

ARM 24.11.101 was changed to update information. Rule II was changed to clarify the definitions of "employer" and "tax". 24.11.301 was changed for grammatical reasons. Rule III was changed to further clarify the process used by the contributions bureau in tax appeals. 24.11.302 was changed to shorten the required notice period from 20 days to 10 days. This change was made because of the federal mandate that benefits cases be decided within 30 days of filing the appeal. Rule IV was changed to allow for the federal 30-day requirement in benefits cases and to allow for the updating of telephone numbers prior to hearing.

24.11.303 was changed to allow continuance in benefits cases only in emergency situations. This change was made because of the federal mandate to issue decisions on benefits cases within 30 days. Rule VII was changed to allow a party a reasonable time to respond to motions. The proposed rule would not have allowed such time.

Rule XIV was changed to make the definitions conform to statutory provisions. Rule XX was changed because the word "disqualification" was inappropriately used. Rule XXII was changed to delete references to forms that are subject to change.

24.11.504 was changed in order to reflect uniformity for handling late claims. Rule XXXIX was changed to more accurately reflect statutory language in section 39-51-1219, MCA, and to clarify what type of information is automatically transferred from a predecessor to a successor employer. Rule XL was changed to clarify the process for appealing the experience rate assigned to an employer. 24.11.701 was changed to clarify that commissions must be reported and to take out references to the claimant as "he".

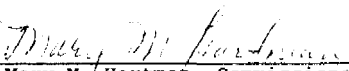
24.11.803 was changed to update the table describing excess wages. 24.11.808 was changed to delete reference to strikers' pay because the department intends to address this issue more completely at a later date. In 24.11.808, subsection (7) was changed to clarify that payments must be made from the employee's remuneration, (8) was changed to restrict the type of payments to corporate officers that may be considered wages, and in (10) a word was added that had been inadvertently deleted.

Grammatical changes were made in Rule XLII. Rule XLVIII(1)(b) was changed to refer only to that property in which the department has an interest. In order to obtain a

lien release, an employer need not pay the entire value of the secured property, but only the amount of the department's interest in the property.

10. These rules shall be effective January 1, 1989.

11. The authority of the department to repeal, amend, and adopt the proposed rules is derived from sections 39-51-301 and 39-51-302, MCA, and the rules implement sections 39-51-101 through 39-51-3207, MCA.



Mary M. Hartman, Commissioner
Department of Labor and
Industry

Certified to the Secretary of State on December 12, 1988.

BEFORE THE STATEHOOD CENTENNIAL OFFICE
OF THE STATE OF MONTANA

In the matter of the Amendment)	NOTICE OF ADOPTION OF A
of A.R.M. 30.2.205 and)	NEW RULE AND AMENDMENT
Adoption of a New Rule)	OF A.R.M. 30.2.205
Relating to Centennial Grants)	

TO: All Interested Persons:

1. On November 10, 1988, the Statehood Centennial Office published notice of hearing on the proposed adoption of a new rule and amendment of ARM 30.2.205 concerning Centennial grants at page 2360 of the 1988 Montana Administrative Register, issue number 21.

2. The Office had adopted the new rule as proposed and has designated it ARM 30.2.209. The Office has adopted the proposed amendments to ARM 30.2.205 with the following changes.
30.2.205 APPLICATION REVIEW PROCEDURE (1) same as proposed rule.

(2) Whenever the office receives a grant application for a project or program that is primarily of local or county-wide significance OR OF SIGNIFICANCE TO A PAIR OR GROUP OF COUNTIES and is to occur within a county that has received a grant or a portion of a grant pursuant to Rule I, the office may refer the application to the commissioners of that county. The office need not further process any application so referred. To implement this county grant program, the office may defer until the first quarter of 1989 consideration of any grant application received on or before November 10, 1988 if the office determines that the project or program for which the grant is sought is primarily of local or county-wide significance OR OF SIGNIFICANCE TO A PAIR OR GROUP OF COUNTIES.

(3) through (7) same as proposed rule.

Auth. 2-89-106, MCA IMP: 2-89-105, 2-89-107 MCA

3. No adverse comments were received at the public hearing. The Office received in the mail a number of comments supporting the rule change.

In addition, McCone County Centennial 89ers objected to the requirement in 30.2.205(2) that grant applications can be referred only to counties that have received grants. They interpreted this provision to mean that a county can receive a grant only if some organization in the county had previously received a grant. The language in ARM 30.2.205(2) applies to individual and organizational grant applicants, not to county applications. The language in question provides that the Office may refer individual and organizational applications to the county only if the county has applied for and received a grant pursuant to Rule I. A change in 30.2.205(2) is therefore not necessary.

The Gardiner 89ers suggested that the Office provide guidelines for the counties to use in making local grants. The Office has determined not to include these guidelines in order to allow the counties to have maximum discretion in funding local celebrations. The rules as proposed do, however, contain

a requirement that the counties may make grants only to sanctioned persons or organization.

James Haughey suggested that there be added to 30.2.205(2) language providing that the Office may return to the counties applications that are of significance to a pair or group of counties to give the Office flexibility in those situations. The suggested language has been added.

4. The authority for the new rule and rule amendments is 2-89-106, MCA. The new rule and amendments implement 2-89-105 and 2-89-107, MCA.

W. Gordon McOmber
W. Gordon McOmber
Lieutenant Governor

Certified to the Secretary of State December 12, 1988

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE ADOPTION OF THE
of ARM 42.15.116 relating to)	AMENDMENT of ARM 42.15.116
Income Taxes and the ADOPTIONS)	relating to Income Taxes and
of Rule I (42.15.315) relating)	the ADOPTIONS of Rule I
to Income Tax Returns and Rule)	(42.15.315) relating to
I (42.15.428) relating to)	Income Tax Returns and Rule
Income Taxes - Passive Loss.)	I (42.15.428) relating to
)	Income Taxes - Passive Loss.

TO: All Interested Persons:

1. On November 10, 1988, the Department of Revenue published notice of the proposed amendment of ARM 42.15.116 relating to Special Net Operating Loss Computation at page 2368; notice of proposed adoption of Rule I (42.15.315) relating to Income Tax Returns at page 2364 and Rule I (42.15.428) relating to Income Taxes - Passive Loss at page 2366 of the 1988 Montana Administrative Register, issue no. 21.

2. A public hearing was held for the two new rules and no one appeared at these hearings or presented comments. No comments were received regarding the amendment to ARM 42.15.116 either.

3. Therefore, the Department has amended ARM 42.15.116 as proposed and adopted rule I (42.15.315) and rule I (42.15.428) as proposed.


DAVID W. WOODGERD, Director
Department of Revenue

Certified to Secretary of State 12/12/88.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
of ARM 1.2.419 regarding)	1.2.419 - FILING, COM-
scheduled dates for the Montana)	PILING, PRINTER PICKUP AND
Administrative Register)	PUBLICATION FOR THE MAR

TO: All Interested Persons.

1. On October 27, 1988, the office of the Secretary of State published a notice of proposed amendment of the rule regarding the scheduled dates for the Montana Administrative Register on page 2272 of the Montana Administrative Register, Issue No. 20.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.


VERNER BERTELSON
Secretary of State

Dated this 12th day of December, 1988

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of application)
of the MISSOULA COMMUNITY)
HOSPITAL, now COMMUNITY)
MEDICAL CENTER, a Montana) Case No. 8801003410
non-profit corporation for)
declaratory ruling as to the)
applicability of Part III,)
Chapter II, Title 49 to its)
requirement for employment)
in the position of orderly.)

Missoula Community Hospital (Hospital) has petitioned the Human Rights Commission (Commission) to declare an exception to the sex discrimination provisions of the Montana Human Rights Act. The petition was filed on September 4, 1987. The Hospital seeks a determination as to whether an exception should be granted for the purpose of hiring males only as orderlies. Following notice to interested parties and notice to the general public, a hearing was conducted on January 13, 1988 and a briefing schedule was established.

The Hospital appeared through its attorney, Ms. Candace C. Fetscher, and through Hospital representatives. The Montana Human Rights Division (Division) intervened as an interested party and appeared through its attorney Mr. James W. Zion. Comments were received from Montana State University College of Nursing, the Montana Hospital Association and the ACLU of Montana. Having considered those comments, the briefs and submissions of counsel, the complete record including the transcript of the hearing and exhibits, Hospital's exhibits 1, 2, 3, 6, 7, 8, and the Division's exhibit A, the hearing examiner now makes the following:

I.

FINDINGS OF FACT

1. A petition for declaratory ruling was filed by the Hospital on September 4, 1987.
2. Margery H. Brown, Chair of the Commission, issued a notice of hearing on November 4, 1987.
3. Twenty potentially interested persons and organizations were identified, and they were given notice of the hearing by means of first class mail.
4. The general Montana public was given notice of the hearing by means of publication in the Montana Administrative Register, (Issue 21, p. 2060), a news release regarding the date and subject of the hearing was prepared and distributed to the press on November 4, 1987.
5. A pre-hearing conference was conducted on January 5, 1988 at 10:00 a.m. At the conference, the petitioner and the Division consented to an informal hearing pursuant to §§2-4-603, 2-4-604, Montana Codes Annotated 1987 (MCA).
6. An informal hearing was conducted on January 13, 1988.

7. The Hospital is a non-profit corporation doing business in Missoula, Montana. It is an employer of nurses, orderlies, and other employees.

8. The Hospital is an acute care facility serving a substantial portion of Western Montana, with 115 licensed beds, 24 of which are designated to constitute the special care unit (SCU).

9. The Hospital has seen a considerable growth in its SCU in the last 6 years. In 1982 the SCU patient-count was 5 to 6 patients. At the date of hearing the patient-count was 20 to 22.

10. The SCU nursing station is central to those patients' rooms. There is a fair degree of communication between the orderlies and the nurses in charge of the SCU.

11. In response to the increased demand of this unit the Hospital has added staff with rehabilitative expertise. There are currently four physicians in the special care unit whose speciality is physical medicine and rehabilitation. The SCU staff seeks to rehabilitate patients with chronic disabilities, congenital or acquired, such as patients with spinal cord injury, traumatic head injury, and cognitive and physical disabilities after other diseases. Generally, all of these patients experience a significant handicapping condition that can never be fully resolved.

12. About 75% of the four specialist's patients are located in the SCU. The other 25% of these patients are located in other units of the Hospital, and are, generally, alumni of the SCU.

13. Patients in the SCU remain in the unit longer than patients located in other units of the Hospital. These patients receive specialized care for weeks or months at a time. They are treated to achieve the highest level of independent living possible.

14. Most of the patients in the SCU are cognitively impaired by virtue of the fact that they have sustained a brain injury. Some SCU patients are not cognitively impaired, but may otherwise have sustained major neurological or handicapping conditions.

15. The cognitively impaired patients often exhibit very inappropriate, agitated behaviors, and sexual disinhibition. Intimate care can be perceived by these patients as erotic or sexual in nature.

16. The Hospital treats more male cognitively impaired and head injured patients than female patients in these categories.

17. In addition to muscular paralysis, the SCU patients often experience disruption of bowel and bladder control, which may necessitate special interventions such as bladder catheterization.

18. Bladder catheterization must be performed with most of these patients because the neurologic injury has made the patient incapable of voluntarily emptying his or her bladder. A male bladder catheterization is performed by initially

choosing a tube that would best fit in the urethra of the patient's penis. This is necessary to prevent injury to the urethra. The patient lies on his back and the person performing the catheterization stands above him. One drape is placed just under the patient's penis to create a generally sterile area. The second drape has a hole in the middle and it is placed over the penis so that the penis is surrounded by the drape. The catheterization tube is then well lubricated. The person performing the catheterization takes the penis in one hand and does not let go until the procedure is completed. The foreskin of the penis is pulled back and kept pulled back throughout the procedure. The penis is then thoroughly prepared for the catheterization with sponges. The person performing the catheterization squeezes under the glans penis to straighten the curve in the penis. The catheter is placed in the penis. Generally, resistance to the catheter will be felt as a result of the muscle at the junction between the penis and scrotum. The person performing the catheterization must time the completion of the catheterization to coincide with the weakening of this muscle. The catheter is then placed a couple of inches into the patient's bladder past the point of the free flow of urine. The hand that was on the penis now moves to the catheter to stabilize the catheter. The catheter balloon is inflated and the patient's penis is generally taped to his abdomen or his leg. The purpose of taping is to avoid injury to the penis.

19. There are techniques to prevent erections during catheterization, such as icing the penis or grasping it very tightly.

20. Male bladder catheterization requires, on the average, 15 to 20 minutes to accomplish. The process can take up to one hour. This can be an uncomfortable and even painful procedure.

21. Whenever possible, the Hospital staff retrains the bladder to operate as normally as possible. Therefore, catheterization can take place 4 to 6 times a day. This is called intermittent catheterization. Because indwelling catheterization can be a significant source of infection and may eventually cause kidney damage, intermittent catheterization is preferable, whenever possible and appropriate.

22. Presently, all orderlies on the staff of the Hospital have had previous experience and training in performing male bladder catheterizations. In addition they are required to view a videotape discussion of the male anatomy and physiology and proper catheterization techniques, potential complications and general catheterization care. They are trained by Hospital staff or orderlies and the charge nurse on duty. They observe a catheterization and are required to do a return demonstration. They are then further observed performing their next three live catheterizations. The Hospital provides its orderlies more training than many of the Hospital's RN's

receive in nursing school. The Hospital provides its orderlies adequate training to perform male bladder catheterization.

23. The performance of such intimate care as intermittent catheterization can pose a number of problems for newly disabled people.

24. In the case of head injuries, the victims, who are often male, are disoriented, confused, easily agitated, and disinhibited. The performance of an intermittent catheterization by a female on a male head injury patient may pose serious complications for both the patient and the nursing staff. The patient may become very agitated, resistive, or combative during these necessary interventions. This could endanger the patient's medical status, and, possibly, the nurse's physical safety. In other cases, the intervention is perceived incorrectly by the head injured patient as sexual in nature. Arousal combined with disinhibition, may elicit inappropriate behavior unnecessarily. The management of such situations is difficult. Where gender of the care provider has been observed to be problematic for a head injury patient, it is important that a care giver of the appropriate sex be available for performing such medically necessary intimate care like intermittent catheterizations.

25. In the performance of intimate care, embarrassment, anxiety, and concerns about sexuality can complicate the adjustment process and produce problems which are avoided if the patient has a choice over who performs medically necessary treatments.

26. The staff psychologists of the Hospital feel it imperative in cases of head injuries, and strongly advisable in other cases, to consider the gender of the care giver to meet rehabilitative goals.

27. A male orderly at the Hospital observed that female nurses had problems with some patients that he did not have because of his gender.

28. Female nurses can be trained to perform these procedures in a highly professional, competent manner, however, the Hospital must also take into account the physiological and privacy concerns of its patients, particularly as those concerns affect the medical status of the patient and the patients' rehabilitation process.

29. The Hospital's nursing staff is composed principally of registered nurses (RN) and licensed practical nurses (LPN). In addition, the Hospital utilized orderlies for the purposes of assisting the nurses throughout the Hospital, as directed. Unlike nurses, orderlies are not assigned specific patients. They are administratively attached to the SCU nursing unit. They are, however, called into other nursing units to perform intimate male care as requested or required. This intimate care includes genital area shaving and scrubbing, bladder catheterization, and clean up of patients who have wet themselves or their beds.

30. Four to six hours of an orderlies eight hour shift consists of such care for male patients. Over 50% of the

orderlies work day consists of providing intimate care and bladder catheterization for male patients.

31. The Hospital is bound by a collective bargaining agreement. Any nurse in the Hospital has the opportunity to bid on employment positions. The positions are decided based upon experience and job performance, and then by seniority. The Hospital does not have the flexibility to pick and choose which nurses will be present on a given shift.

32. Two to 3% of the labor pool from which the Hospital takes applicants for employment consists of male nurses. Therefore, the RN and LPN population at the Hospital has been predominately female.

33. In the last two years, the Hospital has had 150 RNs or LPNs apply for employment, of these, 13 have been male. Of the present staff of 266 RNs and LPNs, 7 are male. They are assigned specific duties in specific units. This fact, and the existence of the collective bargaining agreement prevents the Hospital from assigning male nurses to perform male bladder catheterization and other intimate care in the SCU or elsewhere in the Hospital.

34. In the case of a cognitively impaired male patient, or where the physician has determined the patient is not responding well to the sex of the care-giver and, given the patients' privacy rights, persons of both genders must be available to perform intimate care and catheterization.

35. In some instances, same sex caretakers are necessary to perform intimate care and bladder catheterization, in other instances, opposite sex care-takers are preferred.

36. Males who were once patients in the Hospital testified they preferred same-sex care-takers. One patient had been on the SCU and testified that he, as a young, once very active male, preferred that during his process of rehabilitation, a male perform intimate care and bladder catheterization to protect his dignity and right of privacy.

37. Both genders should be available to provide intimate care and bladder catheterization for non-cognitively impaired, but severely disabled patients. Concerns about the performance of intimate care, embarrassment and anxiety can complicate the adjustment process and produce problems which would be otherwise avoidable if the patient had a choice over who performed such medically necessary treatment.

38. The Hospital's patients who are cognitively intact and not severely disabled, who are located in other areas of the Hospital, should also be entitled to exercise the option of a male or a female care-giver to perform intimate patient care and bladder catheterization.

39. In order for the Hospital to provide such care for its patients, the Hospital must have the alternative of male orderlies to perform intimate patient care to supplement the predominant female nursing staff.

40. A patients' right to personal dignity and personal privacy may be preserved by the availability of male orderlies.

41. The Hospital must attempt to provide reasonable alternatives for intimate patient care by furnishing intimate care-givers of both genders, whenever possible.

42. The Hospital has unsuccessfully attempted to use female orderlies and found it could not meet its patients needs when it tried to use female orderlies.

43. It is economically infeasible for the Hospital to staff each shift with both a male orderly and a female orderly. Such staffing would be duplicative.

44. The Division's proposed findings of fact, if not incorporated into the hearing examiner's findings of fact, are either not supported by the evidence presented at hearing, unnecessary, immaterial or redundant in light of the issues and record presented for review.

45. The Hospital's proposed findings of fact, if not incorporated into the hearing examiner's findings of fact, are either not supported by the evidence presented at hearing, unnecessary, immaterial or redundant in light of the issues and record presented for review.

Based upon these findings of fact the hearing examiner makes these:

II.

CONCLUSIONS OF LAW

1. The Montana Human Rights Commission has jurisdiction over the parties and subject matter of this petition for a declaratory ruling pursuant to §49-2-401, MCA.

2. Proper notice of the pendency of this petition and the hearing has been given by means of notice which was mailed to potentially interested persons, the press, and published in the Montana Administrative Register.

3. Section 49-2-103, and Section 49-2-402, MCA state: It is an unlawful discriminatory practice for . . . an employer to refuse employment to a person [or] to bar him from employment because of his . . . sex when the reasonable demands of the position do not require . . . [a] sex distinction . . . §49-2-303(1) (a), MCA.

Any grounds urged as a reasonable basis for an exception shall be strictly construed. §49-2-402, MCA.

4. In the case of Stone v. Belgrade School District, Mont., 703 P.2d 136 (1984), the Montana Supreme Court decided that sex was a bona fide occupational qualification (B.O.F.Q.). The Montana Supreme Court used the test which was developed in the area and ultimately accepted by the U.S. Supreme Court. Dothard v. Rawlingson, 433 U.S. 321, 97 S.Ct. 2725, 53 L.Ed.2d 786 (1977).

The test has three prongs:

a. Whether the essence of the business operation would be undermined by not following the hiring practice;

b. Whether the employer has reasonable cause to believe, meaning, a factual basis for believing, that substantially all

excluded persons would be unable to perform the tasks of the job, both safely and efficiently; and

c. Whether the employer could not reasonably rearrange job responsibilities or engage in alternative practices to minimize a clash between privacy interests and the fundamental principals barring discrimination in employment.

The Montana Supreme Court held that an "employer can discriminate on the basis of gender when the reasonable demands of the position require sex discrimination." Stone 703 P.2d at 141.

5. Similarly, in a recent case, a U.S. District Court decided that the male gender is a BFOQ for hospital orderlies. The court found that the essence of the duties of the position as orderly would be undermined by having a female perform intimate care and bladder catheterization on patients who preferred a male to protect and preserve their dignity and right of privacy. Jones v. Hinds General Hospital, 44 FEP Cases 1076, (1987).

6. The essence of the business operation of the Hospital would be undermined by not hiring males only to perform male bladder catheterizations and intimate care for patients whose express or observed behavior requires that a male be available to perform such care. Stone 703 P.2d at 140.

7. The Hospital has reasonable cause to believe, that it is a factual basis for believing, that substantially all women would be unable to perform safely and efficiently the intimate care tasks this job involves and allow the exercise of patient choice and protect patient privacy. Id. 705 P.2d at 140.

8. The Hospital could not reasonably rearrange job responsibilities or engage in alternative practices so as to minimize the clash between the privacy rights of its patients and the fundamental principals which bear upon discrimination in employment. Id., 702 P.2d at 140, Citing Gunther v. Iowa State Mens Reformatory et. al. 612 F.2d 1079 at 1096, 64 L.Ed, 2d 825 (8th Cir. 1980).

9. Due to the unique nature of the position of orderly at Missoula Community Hospital, the male gender is a bona fide occupational qualification for the position of orderly at Missoula Community Hospital. Stone 702 P.2d at 140.

10. Hiring males only as orderlies by Missoula Community Hospital constitutes a distinction permitted by §49-3-103, MCA.

11. Section 49-2-404, MCA is not applicable to this case.

Based upon these findings of fact and conclusions of law these proposed orders are made:

III.

ORDER

1. The application of the Missoula Community Hospital for a declaratory ruling is hereby GRANTED, subject to the following provisions, terms and conditions.

2. Since the initiation of this petition the Missoula Community Hospital has changed its name, and the caption in this matter, as well as the orders, shall include the name, COMMUNITY MEDICAL CENTER.

3. Upon the finding that male orderlies are necessary to provide intimate care to male patients, and that care cannot be provided by female staff members due to considerations of medical necessity and privacy, the Hospital or Medical Center may hire male orderlies to perform those functions. The hiring of only males as orderlies shall be tied to legitimate staffing needs, and such practice shall be allowed only to the extent no other reasonable alternative exists and to the extent male nurses are not available to provide intimate care services.

4. The petitioner may print, circulate, or cause to be printed or circulated, statements, advertisements, publications or employment applications with respect to the hiring of male orderlies permitted by this order which express a limitation, specification, or discrimination as to hiring only males as orderlies as an exception to the prohibition contained in §49-2-303(c), MCA. Any employment agency may make referrals upon the same basis as an exception to the prohibition contained in §49-2-303(d), MCA.

This order provides that, under the circumstances, the need to hire males is a bona fide occupational qualification, and advertisers or others may rely upon the terms of this order in accepting employment advertisements or other items for publication.

5. The petitioner should take care to ascertain the preference of its patients for privacy before assignment of an orderly or nurse. This can be accomplished by observation and notation of a staff member of the express or implied preference of that patient, including verbal and non-verbal indications.

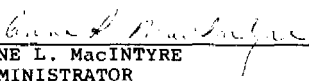
6. This exemption shall exist only so long as the reasonable grounds therefor remain in existence and the Hospital is unable to provide accommodation for sex-neutral hiring practices for the position of male orderly at Missoula Community Hospital.

7. The Hospital shall file a copy of this declaratory ruling with the Secretary of State for publication in the Montana Administrative Register pursuant to §2-4-501, MCA and pay any filing or publication fees required.

DATED this 25th day of October, 1988.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By:



ANNE L. MACINTYRE
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State December 12, 1988.

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 September 30, 1988. This table includes those rules adopted during the period September 30, 1988 through December 31, 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 September 30, 1988, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1988 Montana Administrative Register.

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