

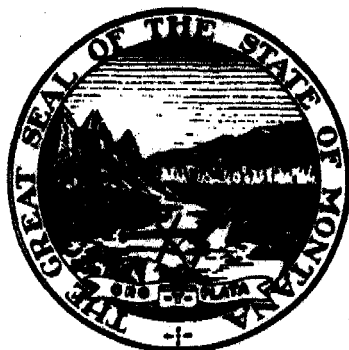
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JUL 15 1988  
OF MONTANA

# MONTANA ADMINISTRATIVE REGISTER

1988 ISSUE NO. 13  
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PAGES 1292 - 1605  
INDEX COPY



JUL 15 1938

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE TEACHERS' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF PROPOSED
of a new rule relating to )	ADOPTION AND AMENDMENT
creditable service for absence) )	OF RULES RELATING TO THE
without pay and amendment of )	TEACHERS' RETIREMENT
Rules 2.44.403, 2.44.510 and )	SYSTEM
2.44.511 for the purpose of )	
clarifying redeposits of )	NO PUBLIC HEARING
amounts withdrawn; earnings )	CONTEMPLATED
after retirement and the )	
recalculation of benefits )	
using termination pay relating) )	
to the Teachers' Retirement )	
System )	

TO: All Interested Persons.

1. On August 26, 1988, the Teachers' Retirement Board proposes to adopt a rule to implement the provisions of 19-4-402, allowing the Board to grant no more than one month's creditable service to a member absent without pay and requiring the member to make contribution to the retirement system to qualify this service. On this date, the Board also proposes to amend ARM 2.44.403, 2.44.510 and 2.44.511 to define the sequence in which previous withdrawals must be redeposited; to clarify that the average normal annual salary increases granted to the teaching personnel by each employer are to be used in the calculation of the amount a retiree may earn after retirement and to implement provisions to recalculate retirement benefits when a reactivated member retires for the second time after having used termination pay in the calculation of the original benefit.

2. The proposed rule provides as follows:

RULE I CREDITABLE SERVICE FOR ABSENCE WITHOUT PAY (1)  
Not more than 1 month's creditable service shall be awarded in any school year for 1 or more continuous months of absence without pay. To qualify this service, a member shall contribute to the retirement system, upon his return to contributing membership service, an amount equal to the combined employee and employer contributions which would have been made had he not been absent, based on his compensation at the commencement of his absence.

(2) Service credit shall be determined based upon his monthly FTE at the commencement of his absence. (Auth: Sec. 19-4-201 MCA; IMP, 19-4-402 MCA;)

3. Rule I is proposed to be adopted in order to establish procedures under which members may be awarded creditable service for absence without pay, whereby members will be required to contribute the employee and employer

contributions that would have been made had they not been absent.

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

2.44.403 REDEPOSIT OF AMOUNTS WITHDRAWN (1) If a member wishes to redeposit previous withdrawals, it is necessary that the most recent of all previous withdrawals be redeposited first. (Auth: Sec. 19-4-201 MCA; IMP, 19-4-602 MCA;)

2.44.510 ADJUSTMENT OF BENEFITS(1)A retired member, employed as a teacher in Montana, upon receiving salary or other compensation in an amount in excess of one-third of his average final compensation, plus the average of the normal annual salary increases for the teaching personnel of the employer that employed the member or one third of the median average final compensation for members retired during the preceding fiscal year shall be removed from retirement beginning the month in which he earns an aggregate amount which is greater than one-third of the above, and for each month thereafter that he continues to teach.

(2) The employer shall deduct from the member's earnings in excess of one-third of his final average compensation or one-third (whichever is greater) of the median average final compensation, an amount determined by the current rate of employee contribution. The employer shall also pay an amount based on the member's earnings in excess of the greater of one-third of his average final compensation or one-third of the median salary of those members retired during the preceding fiscal year at the current rate of employer contribution. (Auth: Sec. 19-4-201 MCA; IMP, 19-4-804 MCA;)

2.44.511 REINSTATEMENT OF BENEFITS (1) Upon completion of employment, a previously retired member who was subsequently reemployed for a period of less than one (1) year and was removed from retirement, may have his retirement reinstated beginning with the month following the termination of his employment. The reinstated retirement benefit will be that which he would have been entitled to receive had he not returned to employment.

(2) Upon completion of a minimum of one (1) year's service as an active member and upon ceasing teaching, a previously retired member may have his retirement reinstated. His retirement benefit will be based on the then current retirement provisions.

(3) When a reactivated member retires for the second time the additional benefit provided by the termination pay used in the calculation of the original benefit shall be added at the time of the second retirement, after benefits have been recalculated without giving consideration to the previous termination pay.

(Auth: Sec. 19-4-201 MCA; IMP, 19-4-302 and 19-4-804 MCA;)

5. These rules are proposed to be amended in order to clarify the sequence in which previous withdrawals must be redeposited; to clarify that the amount a retiree may earn after retirement is based on the average salary increases for teaching personnel of the employer that last employed the retiree and because the additional benefit provided by the termination pay has been adequately funded under either option I or option II when the member originally retired and it is important that this additional benefit be considered in the recalculation of the retirement benefit when a reactivated member retires for the second time.

6. Interested parties may submit their data, views or arguments concerning the proposed adoption or amendments in writing to David L. Senn, Administrator, Teachers' Retirement System, 1500 Sixth Avenue, Helena, MT 59620-0139, no later than August 12, 1988.

7. If a person who is directly affected by the proposed 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 David L. Senn, Administrator, Teachers' Retirement System, 1500 Sixth Avenue, Helena, MT 59620-0139, no later than August 12, 1988.

8. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,110 persons based upon the number of active and retired members in the Teachers' Retirement System covered under these rules per the 1987 actuarial valuation.

9. The authority of the Board to make the proposed rules is based on section 19-4-201 MCA, and the rules implement 19-4-302, 19-4-402, 19-4-602, and 19-4-804 MCA.



David L. Senn, Administrator  
Teachers' Retirement System

Certified to the Secretary of State July 5, 1988.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
FINANCIAL DIVISION

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of a rule pertaining ) OF 8.80.307 DOLLAR AMOUNTS  
to dollar amounts to which ) TO WHICH CONSUMER LOAN RATES  
consumer loan rates are to be ) ARE TO BE APPLIED  
applied )

NO HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 15, 1988, the Financial Division proposes to amend the above-stated rule.

2. The proposed amendment of 8.80.307 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2353, Administrative Rules of Montana)

8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

Authority	Stated Amount	Changed Designated Amount
Section 32-5-201 (4)	\$1,000.00	\$1,100.00 \$1,300.00
<del>Section 32-5-301 (13)</del>	<del>\$99.00</del>	<del>\$99.00</del>
	<del>\$500.00</del>	<del>\$550.00</del>
	<del>\$1,000.00</del>	<del>\$1,100.00</del>
	<del>\$7,500.00</del>	<del>\$8,250.00</del>
Section 32-5-302 (3)	\$ 300.00	\$--330.00 \$ 390.00
	\$1,000.00	\$1,100.00 \$1,300.00
	\$2,500.00	\$2,750.00 \$3,250.00
Section 32-5-306 (7)	\$ 300.00	\$--330.00 \$ 390.00
Auth: 32-5-104, MCA	Imp: 32-5-104, MCA	

REASON: Section 32-5-104, MCA requires that certain dollar amounts in Title 32, Chapter 5 be changed from time to time in response to changes in one of the U.S. Consumer Price Indexes. The dollar amount changes are to be announced by rule. The reference Consumer Price Index has changed a sufficient amount to require amendments to Rule 8.80.307.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Financial Board, 1520 East 6th, Room 50, Helena, Montana 59620, no later than August 11, 1988.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments

13-7/14/88

MAR Notice No. 8-80-2

he has to the Financial Board, 1520 East 6th, Room 50, Helena, Montana, 59620, no later than August 11, 1988.

5. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a public 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 2 based on the licensees in Montana.

FINANCIAL DIVISION  
KEITH L. COLBO, PRESIDENT

BY:

  
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 5, 1988.

**STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MILK CONTROL**

In the matter of proposals	)	NOTICE OF PUBLIC HEARING ON
for a statewide pooling	)	A PROPOSED STATEWIDE POOLING
arrangement with a quota	)	ARRANGEMENT: POOLING RULES
plan as a method of payment	)	
of milk producer prices	)	DOCKET #86-88

**TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-302, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:**

1. On Friday, August 19, 1988 at 9:00 a.m. or as soon thereafter as interested persons can be heard, a public hearing will be held at the Sheraton Inn, Aaronson room, 400 10th Avenue South, Great Falls, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to a petition filed by Montana Dairymen's Association (MDA) and twenty-three grade 'A' licensed producers. For reference of who signed the petition, please refer to said petition.

3. The said petition and attachments are too voluminous to reproduce or describe in detail in this notice. Copies of the documents mentioned in paragraph two (2) are available for inspection during regular business hours, at the offices of the Department of Commerce, Milk Control Bureau, 1520 East 6th Avenue, room 50, Helena, MT 59620-0512. Copies will be provided upon request with payment of copying charges. Requests for copies should be made to the department by visiting or writing the address given in this paragraph or by telephoning (406)444-2875.

4. The petition submitted by MDA and twenty-three producers asks the board to adopt new rules calling for the pooling of the revenue from all sales of grade 'A' milk by milk producers in Montana to, or through, distributors regulated under the authority of the State of Montana as a method of payment of producer prices under terms described in material submitted with and attached to said petition.

The said petition also proposes that the distributions of pool monies to milk producers be made based on a quota arrangement which is described in material submitted with and attached to the petition.

That petition also contemplates that additional housekeeping and administrative rules be adopted or implemented by the bureau. Such additional housekeeping and

administrative rules, if any, will be the subject of separate proceedings which will be separately noticed.

5. The petition was submitted pursuant to sections 81-23-302 and 2-4-315, MCA. The proceedings are contemplated in subsections 81-23-302 (14), MCA, in particular.

6. The rationale given for the proposal submitted by MDA and the twenty-three licensed grade 'A' producers is to ensure an adequate supply of milk for all consumers by stabilizing the milk industry in Montana.

7. The petitioners contemplate making a motion at said hearing to incorporate by reference the entire record from the proceedings in Docket #80-87 as part of the record in this proceeding.

8. Specific factors which the board will take into consideration in these proceedings will include, but not be limited to, the following:

A. Production and marketing practices which have historically prevailed statewide. (This is an express requirement of subsection 81-23-302(14), MCA.)

B. Possible impact of the proposal upon individual producers supplying individual distributor plants.

C. Possible impact of the proposal upon the adequacy of the supply of milk within the state.

D. Possible impact upon the quality of milk available to consumers.

E. Possible impact upon wholesale and retail prices of milk.

F. Possible impact upon the ability of Montana producers to supply Montana's market requirements.

G. Possible attraction of supplies of milk from neighboring states.

H. Possible impacts upon the supplies of milk in individual plant pools.

9. In its consideration on the merits of the petition, the board takes official notice as facts within its own knowledge of the following:

TABLE I

Producer prices in adjacent and surrounding areas - April 1988

	CLASS I PRICE	CLASS II PRICE	CLASS III PRICE	BLEND PRICE
Oregon-Washington	12.55	10.64	10.33	11.20
Puget Sound-Inland	12.45	10.64	10.33	11.12
S.W. Idaho-E. Oregon	12.10	10.49	10.33	10.64
Western Colorado	12.60	10.49	10.33	11.81
Great Basin	12.50	10.49	10.33	11.54
Eastern Colorado	13.33	10.49	10.33	12.18
Rapid City	12.65	10.33		11.59
North Dakota	12.09	10.49	10.33	10.49
Montana	13.60	10.61	9.01	11.68



TABLE II

Supplies of milk which are available in surrounding areas - April 1988

	CLASS I UTILIZATION	CLASS II UTILIZATION	CLASS III UTILIZATION
Oregon-Washington	74,927,404	14,277,088	101,540,846
Puget Sound-Inland	83,335,591	19,489,389	135,371,945
S.W. Idaho-E. Oregon	11,849,271	6,895,397	58,039,484
West & East Colorado	62,339,000	17,184,000	27,539,000
Great Basin	64,658,000	10,373,000	61,159,000
Western North Dakota	7,776,162	520,029	3,793,423

TABLE III

Blend prices that would have been paid producers under petitioners' proposal for May 1988.

	AT 3.50% ACTUAL BLEND PRICE RC'D	AT 3.50% ACTUAL BLEND POOLING PRICE RC'D	NET INCREASE OR DECREASE
BH Milk Producers	\$11.33	\$11.59	+ .26
Clover Leaf Dairy	\$12.86	\$11.59	-1.27
Country Classic	\$11.21	\$11.59	+ .38
Equity Supply Co.	\$11.89	\$11.59	- .30
Meadow Gold	\$11.70	\$11.59	- .11
Safeway Stores	\$11.97	\$11.59	- .38
Vita Rich Dairy	\$11.99	\$11.59	- .40
	-----	-----	-----
Average of Plants	\$11.59	\$11.59	.00

TABLE IV

Disparity of blend prices paid individual producers and differences in transportation rates for May 1988 include the following examples:

	BLEND PRICE PAID PER CWT BEFORE FREIGHT	FARM-TO-PLANT HAUL CHARGED PER CWT	NET BLEND PRICE PAID PER CWT AFTER FREIGHT
BH Milk Producers	\$11.30	\$ .86	\$10.44
Clover Leaf Dairy	\$12.75	\$ .75	\$12.00
Country Classic	\$10.99	\$ .71	\$10.28
Equity Supply Co.	\$11.79	\$ .38	\$11.41
Meadow Gold	\$11.51	\$ .82	\$10.69
Safeway Stores	\$11.75	\$ .65	\$11.10
Vita Rich Dairy	\$11.74	\$1.42	\$10.32
	-----	-----	-----
Average of Plants	\$11.40	\$ .79	\$10.61

TABLE V

Costs of transporting milk in ARM 8.86.301(9):

<u>DISTANCE IN MILES</u>	<u>MAXIMUM FREIGHT ALLOWANCE</u>
25 to 50	\$ .25
51 to 75	.40
76 to 100	.50
101 to 150	.64
151 to 200	.85
201 to 250	1.06
251 to 300	1.28
301 to 350	1.49

10. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau no later than August 15, 1988.

11. Geoffrey L. Brazier, Esq., 1424 Ninth Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full board will sit in convened session at the hearing.

12. Authority for the board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302(14), MCA.

13. If the board finds that the evidence adduced at this hearing warrants the establishment of a statewide pool, after adoption of the order, it is required by section 81-23-302(14), MCA, to submit the pooling arrangement to a referendum conducted among all affected producers, producer-distributors and distributors.

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross  
WILLIAM E. ROSS, Bureau Chief

Certified to the Secretary of State July 5, 1988.

**STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MILK CONTROL**

In the matter of a proposal	)	NOTICE OF PUBLIC HEARING ON
to establish a Meadow Gold	)	A PROPOSED QUOTA PLAN FOR
Quota plan as a method of	)	MEADOW GOLD PRODUCERS:
distributing the proceeds	)	MEADOW GOLD QUOTA PLAN
to producers	)	
	)	DOCKET #87-88

**TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT  
(SECTION 81-23-302, MCA, AND FOLLOWING), AND ALL INTERESTED  
PERSONS:**

1. On Friday, August 19, 1988 at 1:00 p.m. or as soon thereafter as interested persons can be heard, a public hearing will be held at the Sheraton Inn, Aaronson room, 400 10th Avenue South, Great Falls, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to a petition submitted by Mr. Garry Bond on behalf of Meadow Gold Dairies, Inc. with processing plants located in Montana at Billings, Great Falls, Kalispell and Missoula.

3. The said quota petition and attachments are too voluminous to reproduce or describe in detail in this notice. Copies of the documents mentioned in paragraph two (2) are available for inspection during regular business hours, at the offices of the Department of Commerce, Milk Control Bureau, 1520 East 6th Avenue, room 50, Helena, MT 59620-0512. Copies will be provided upon request with payment of copying charges. Requests for copies should be made to the department by visiting or writing the address given in this paragraph or by telephoning (406)444-2875.

4. The petition submitted by Meadow Gold Dairies, Inc. asks the board to adopt new rules calling for a "quota plan" as a method of payment of producer prices for Meadow Gold Dairies.

5. The petition is submitted pursuant to sections 81-23-302(13), MCA and 2-4-315, MCA.

6. The rationale given for the proposal submitted by Garry Bond for Meadow Gold Dairies, Inc. is to implement a plan to control surplus production and to encourage milk production during the time when it is most needed.

7. Specific factors which the board will take into consideration in these proceedings will include but not be limited to the following:

a) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes both statewide and within the Meadow Gold system in Montana.

b) Possible impacts of the proposal upon individual producers supplying individual plants.

c) Possible impacts of the proposal upon the adequacy of the total supply of milk to each Meadow Gold plant.

d) Possible impacts upon the ability of producers to supply each plant's total requirements.

e) The effects, if any, of transportation costs on the available supply of milk to the consuming public.

8. In its consideration of the merits of the petition, the board takes official notice as facts within its own knowledge of the following:

TABLE A

Pounds of Class III Milk Available statewide and for Meadow Gold Dairy Plants -- For Period February 1, 1988 Through May 31, 1988

<u>Year 1988</u>	<u>MEADOW GOLD DAIRY TOTAL PRODUCT LBS</u>	<u>STATEWIDE TOTAL PRODUCT LBS</u>
February	2,086,270	5,040,298
March	2,596,288	5,807,264
April	3,210,582	7,570,442
May	3,737,679	8,773,604

In addition the board takes official notice that:

a) the cost of moving surplus milk in the Meadow Gold plants for the months of April and May 1988 was \$.1551 per CWT;

b) 50% of the total cost to move surplus milk is incurred by the producer and 50% by the selling plant;

c) the cost of \$.95 per running mile is a maximum in determining allowable mileage cost to allocate to producers.

9. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau no later than August 15, 1988.

10. Geoffrey L. Brazier, Esq., 1424 Ninth Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full board will sit in convened session at the hearing.

11. Authority for the board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302(13), MCA.

-1303-

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross  
WILLIAM E. ROSS, Bureau Chief

Certified to the Secretary of State July 5, 1988.

13-7/14/88

MAR Notice No. 8-86-27

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MILK CONTROL

In the matter of proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of Rule 8.86.301 ) A PROPOSED AMENDMENT OF RULE  
(8)(f) as it relates to the ) 8.86.301(8)(f)  
transportation of class III )  
milk ) PRICING RULES  
)  
) DOCKET #88-88

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT  
(SECTION 81-23-302, MCA, AND FOLLOWING), AND ALL INTERESTED  
PERSONS:

1. On Friday, August 19, 1988 at 3:00 p.m. or as soon thereafter as interested persons can be heard, a public hearing will be held at the Sheraton Inn, Aaronson room, 400 10th Avenue South, Great Falls, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held in response to a petition filed by Mr. Garry Bond on behalf of Meadow Gold Dairies.

3. The petition proposes amending ARM 8.86.301(8)(f) as follows. (full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1) . . .

(8) . . .

(f) Producers who are producing in excess of their assigned quota under a board adopted quota plan shall be paid for milk in excess of their assigned quota based upon the sales price of that milk less all freight and other costs related to its movements and sale.

(9) . . ."

4. The reason given for the proposed action is to control Meadow Gold's excess surplus production.

5. The petition was submitted pursuant to sections 81-23-302 and 2-4-315, MCA.

6. Petitioners have the burden of proving that the proposed change is necessary to control Meadow Gold's excess surplus production.

7. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either

orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East 6th Avenue, Room 50, Helena, MT 59620-0512 no later than August 15, 1988.

8. Geoffrey L. Brazier, Esq., 1424 Ninth Avenue, Helena, Montana has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the Montana Board of Milk Control will sit in convened session at the hearing.

9. Authority for the board to take the action and adopt the rules as proposed is in sections 81-23-103, 81-23-104 and 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross  
WILLIAM E. ROSS, Bureau Chief

Certified to the Secretary of State July 5, 1988.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of amendment	)	NOTICE OF PUBLIC HEARING ON
of Rules 11.9.105 and	)	THE PROPOSED AMENDMENT OF
11.9.107 pertaining to	)	RULES 11.9.105 AND 11.9.107
eligibility for residential	)	PERTAINING TO ELIGIBILITY
alcohol and drug treatment	)	FOR RESIDENTIAL ALCOHOL AND
payments	)	DRUG TREATMENT PAYMENTS

TO: All Interested Persons

1. On August 3, at 10:00 a.m., a public hearing will be held in the conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of Rules 11.9.105 and 11.9.107 pertaining to eligibility for residential alcohol and drug treatment payments.

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

11.9.105 ELIGIBILITY FOR SERVICES Subsection (1) remains the same.

(a) The juvenile has been adjudicated as a youth in need of care pursuant to Title 41, chapter 3, MCA, a youth in need of supervision or a delinquent youth pursuant to Title 41, chapter 5, MCA, or has admitted acts sufficient to adjudicate him a youth in need of supervision or a delinquent youth through the consent adjustment process pursuant to Title 41, chapter 5, part 4, MCA; and

Subsections 1(b) through (2) remain the same.

AUTH: Sec. 41-3-1103, MCA; AUTH Extension, Sec. 113. Ch. 609, L. 1987, Eff. 10/1/87  
IMP: Sec. 41-3-1103

11.9.107 DETERMINATION OF INDIGENCY (1) Any juvenile will be determined indigent if his parents' or guardians' meet income does not exceed the financial eligibility requirements for the aid to families with dependent children program which are set forth in ARM 46.10.401 through 403, 46.10.406, and 46.10.505 through 513 by more than 200 percent.

Subsection (2) remains the same.

AUTH: Sec. 41-3-1103, MCA; AUTH Extension, Sec. 113. Ch. 609, L. 1987, Eff. 10/1/87  
IMP: Sec. 41-3-1103

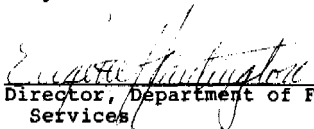


3. Rationale: The current rules only allow the payment for residential alcohol and drug treatment to indigent youths who have been adjudicated youths in need of care, youths in need of supervision or delinquent youths. Often, however, youths that are charged with alcohol-related offenses are not adjudicated. Rather they are handled by consent adjustments. The rule amendments would allow these youths to apply for residential alcohol and drug treatment payments.

The payments for residential alcohol and drug treatments are available only to indigent youths. The rule amendments increase the indigency guidelines. The department is expending the amount budgeted slower than anticipated so eligibility can be expanded to cover more youths.

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 Family Services, P.O. Box 8005, Helena, Montana 59604, no later than August 11, 1988.

5. The Office of Legal Affairs, Department of Family Services has been designated to preside over and conduct the hearing.

  
\_\_\_\_\_  
Director, Department of Family  
Services

Certified to the Secretary of State July 5, 1988.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of	)	AMENDMENT OF ARM 12.6.901
ARM 12.6.901	)	ESTABLISHING A 10 HORSEPOWER LIMIT ON CARPENTER LAKE

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On August 15, 1988, the Montana Fish and Game Commission proposes to amend ARM 12.6.901 to establish a 10 horsepower limit on Carpenter Lake in Lincoln County.

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

12.6.901 WATER SAFETY REGULATIONS (1) through (1)(b)(i) remain the same.

(ii) other waters of the state as follows:

Hill County: Beaver Creek Reservoir

Fallon County: South Sandstone Reservoir

Lincoln County: Carpenter Lake

(c) through (2) remains the same.

AUTH: 87-1-303, 23-1-106(1), MCA

IMP: 87-1-303, 23-1-106(1). MCA

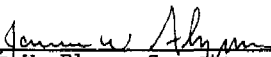
3. This rule is being amended for the reason that the lake is too small for large powerboats and is not suited for water recreation other than fishing. The amendment must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective as required by Section 87-1-303, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Eileen Shore, Staff Attorney, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than August 11, 1988.

5. If a person who is directly affected by the proposed amendment 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 Eileen Shore, Staff Attorney, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than August 11, 1988.

6. If the Commission receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who are directly affected by the proposed amendment; by a

governmental subdivision or agency, by the Administrative Code Committee, or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of the hearing will be published in the Montana Administrative Register.

  
James W. Flynn, Secretary  
Fish and Game Commission

Certified to the Secretary of State July 5, 1988.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING
amendment of ARM 12.5.301 )	ON THE PROPOSED AMENDMENT
	OF ARM 12.5.301 REGARDING
	THE LISTING OF CRAYFISH AS
	NONGAME WILDLIFE IN NEED OF
	MANAGEMENT.

TO: All interested persons

1. On the following dates, at the locations given, the Department of Fish, Wildlife and Parks will hold public hearings to amend ARM 12.5.301 to list three species of crayfish as nongame species in need of management.

(1) August 4, 1988, 7:00 o'clock p.m., at Sanders County Courthouse, Thompson Falls, Montana.

(2) August 5, 1988, 7:00 o'clock p.m., at Department Headquarters, 1420 East Sixth, Helena, Montana.

(3) August 8, 1988, 7:00 o'clock p.m., at Department Headquarters, 1125 Lake Elmo Drive, Billings, Montana.

12.5.301 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, MCA, et seq. Management regulations for these species will be issued annually by the department:

No species listed  
Crayfish - Pacifasticus spp.  
Orconectes spp.

AUTH: 87-5-105

IMP: 87-5-105

3. This rule is being amended to list crayfish as "nongame species in need of management." A recently developed market and the resultant harvest of these currently unprotected animals threatens to drastically reduce their numbers and continued contribution to aquatic ecosystems in certain important Montana fisheries. The problem is particularly acute in Noxon Reservoir where the commercial harvest has been most extensive. The crayfish population in Noxon Reservoir recently exploded and this population explosion is thought to be a principle factor contributing to an also expanding population of largemouth bass and yellow perch. Moreover, crayfish are a principle food source for brown trout, burbot and largemouth bass. These fish species may also be on the increase in Noxon Reservoir. The exploding population of crayfish in Noxon is probably a result of a stabilized water level in the reservoir. The stabilized flow is the result of negotiations by the

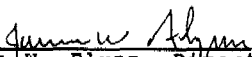
Department of Fish, Wildlife, and Parks with Washington Power. The anticipation was that stabilized flows in the reservoir would improve the sports fisheries. Commercial crayfish operations are therefore benefiting from the fruits of fisheries management efforts and at the same time are jeopardizing the continued success of those efforts. In addition, the extent of the market for this limited resource presents a possibility that the harvest will expand statewide and harm other fisheries unless the harvest is controlled.

There is currently no regulation of crayfish harvest in Montana, and crayfish are not covered by the commercial fishing statutes. Designating crayfish as "nongame species in need of management" will operate to render the taking of crayfish illegal until suitable regulations can be developed that will prevent over-harvest. After suitable harvest regulations are implemented, commercial harvest can proceed subject to the regulations.

The amendment must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective as required by Section 87-1-303, MCA.

4. 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 Fred Robinson, Staff Attorney, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than August 16, 1988.

5. Fred Robinson has been designated to preside over and conduct the hearing.

  
James W. Flynn, Director  
Montana Department of Fish,  
Wildlife, and Parks

Certified to the Secretary of State July 5, 1988.

BEFORE THE WORKERS' COMPENSATION DIVISION  
OF THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In The Matter of Rules	)	NOTICE OF PUBLIC HEARING
Regarding Attorney Fees	)	ON THE PROPOSED REPEAL
in Workers' Compensation	)	OF ARM 24.29.3801 AND
Claims.	)	ADOPTION OF A NEW RULE

TO: ALL INTERESTED PERSONS

1. On Thursday, August 18, 1988, at 10:00 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed repeal of Rule ARM 24.29.3801 and adoption of a new rule concerning attorney fee regulation by the Division of Workers' Compensation.

2. The rule proposed for repeal is ARM 24.29.3801 (1987) which was declared to be invalid by the District Court of the Eighteenth Judicial District in Gallatin County on May 17, 1988, for failure of the rule to provide for a variance from the maximum fee limits set in the rule.

3. The new proposed rule provides:

NEW RULE I. ATTORNEY FEE REGULATION

(1) This rule is promulgated under the authority of Sections 39-71-203 and 39-71-613, MCA, to implement regulation of the fees charged to claimants by attorneys in workers' compensation cases as provided in Section 39-71-613, MCA.

(2) An attorney representing a claimant on a workers' compensation claim shall submit to the division within thirty days of undertaking representation of the claimant, in accordance with section 39-71-613, MCA, on forms supplied by the division, a contract of employment stating specifically the terms of the fee arrangement. An attorney substituting for another attorney previously representing a claimant must submit a new contract conforming with this rule within thirty days of undertaking representation of the claimant. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the administrator of the division of workers' compensation or his designee. The administrator or his designee shall return the contract to the attorney along with a notification that the contract has been approved or disapproved.

(3) Except as provided in subsection (7), an attorney representing a claimant on a workers' compensation claim who plans to utilize a contingent percentage fee arrangement to establish the fee with the claimant, may not charge a fee above the following amounts:

(a) For cases that have been settled without an order of the workers' compensation judge or the supreme court, twenty percent (20%) of the amount of compensation payments the claimant receives due to the efforts of the attorney.

(b) For cases that go to a hearing before the workers' compensation judge or the supreme court, twenty-five percent (25%) of the amount of additional compensation payments the claimant receives from an order of the workers' compensation judge or the supreme court due to the efforts of the attorney.

(4) The fee schedule set forth in subsection (3) does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate not exceeding \$75.00 per hour, but the total fee charged may not exceed the schedule set forth in subsection (3) except as provided in subsection (7). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.

(5) The following benefits shall not be considered as a basis for calculation of attorney fees:

(a) The amount of medical and hospital benefits received by the claimant unless the workers' compensation insurer has denied all liability, including medical and hospital benefits, or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.

(b) Benefits received by the claimant with the assistance of the attorney in filling out initial claim forms only.

(c) Any undisputed portion of impairment benefits received by the claimant based on an impairment rating.

(d) Benefits initiated or offered by the insurer when such initiation or offer is supported by documentation in the claimant's file and has not been the subject of a dispute with the claimant.

(e) Any other benefits not obtained due to the actual, reasonable and necessary efforts of the attorney.

(6) Nothing prevents an attorney from charging a fee below the fee guidelines set forth in subsections (3) and (4). An attorney may reduce the attorney's fee from what was originally established in the approved fee contract without the further approval of the division.

(7) For good cause shown, the division may approve a variance providing for fees in excess of the guidelines of fees as set forth in subsections (3) and (4).

(a) To obtain approval of a variance, an attorney has the burden of providing clear and convincing evidence of entitlement to a greater fee by documenting the following factors in regard to the specific claimant and the specific case:

(1) The anticipated time and labor required to perform the legal service properly.

(ii) The novelty and difficulty of legal issues involved in the matter.

(iii) The fees customarily charged for similar legal services.

(iv) The possible total recovery if successful.

(v) The time limitations imposed by the client or circumstances of the case.

(vi) The nature and length of the attorney-client relationship.

(vii) The experience, skill and reputation of the attorney.

(viii) The ability of the client to pay for the legal services rendered.

(ix) The risk of no recovery.

(x) The market value of the lawyer's services at the time and place involved.

(b) If a variance requested under (7)(a) is not approved, an attorney may request that the administrator or his designee review the matter and issue his order of determination pursuant to procedures set forth in ARM 24.29.201, et seq.

(8) Attorneys' compensation shall be determined by the approved fee arrangement and shall be paid out of the funds received in settlement or recovery or other funds available to the claimant. Upon the occurrence of a hearing before the workers' compensation court or the supreme court, the workers' compensation court shall have exclusive jurisdiction for the award of attorneys fees on the claim against the insurer or employer which shall be credited to the fee due from the claimant.

(9) In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claim, upon request of either the claimant or the attorney or upon notice of any party of a violation of Section 39-71-613, MCA, or this rule, the administrator or his designee shall review the matter and issue his order resolving the dispute pursuant to procedures set forth in ARM 24.29.201, et seq. The fee contract shall clearly identify the rights granted by this subsection.

(10) The division retains its authority to regulate the attorney fee amount in any workers' compensation case even though the contract of employment fully complies with Section 39-71-613, MCA, and this rule.

(11) If an attorney violates a provision of Section 39-71-613, MCA, this rule, or an order fixing an attorney's fee, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

4. The rationale for repealing ARM 24.29.3801 (1987) is that it was declared invalid by a District Court as noted above.

5. The rationale for adopting New Rule I is to establish reasonable limits on and procedures to regulate



the attorney fees which may be charged a workers' compensation claimant by his attorney. The rule sets forth those benefits on which an attorney fee may be based. The rule also provides for a procedure by which an attorney may apply for a variance from the limits established in the rule to conform with the District Court's order noted above. The adoption of this rule is authorized by section 39-71-203, MCA, and implements section 39-71-613, MCA.

6. The Division maintains a file of the data, information, and research underlying development of this rule. Interested parties may inspect this file by contacting Hiram Shaw, Chief, Insurance Compliance Bureau, Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601.

7. Steven J. Shapiro, Chief Legal Counsel of the Division acting as Hearing Examiner, will preside over and conduct the hearing.

8. Interested parties may submit their data, views or arguments concerning these changes either orally or in writing at the hearing. Written arguments, views or data may also be submitted to Steven J. Shapiro, Chief Legal Counsel, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than August 18, 1988.

  
ROBERT J. ROBINSON  
Administrator

CERTIFIED TO THE SECRETARY OF STATE: July 5, 1988.

BEFORE THE DEPARTMENT OF STATE LANDS  
AND THE BOARD OF LAND COMMISSIONERS  
OF THE STATE OF MONTANA

In the Matter of the	)	NOTICE OF PUBLIC
Amendment of ARM 26.4.301	)	HEARING ON
through 26.4.306, 26.4.308,	)	AMENDMENT, REPEAL, AND
26.4.310 through 26.4.327,	)	ADOPTION OF STRIP MINE
26.4.401 through 26.4.413,	)	RULES
26.4.501 through 26.4.505,	)	
26.4.507, 26.4.510,	)	
26.4.514 through 26.4.518,	)	
26.4.520 through 26.4.524,	)	
26.4.601 through 26.4.609,	)	
26.4.621 through 26.4.626,	)	
26.4.631 through 26.4.652,	)	
26.4.701 through 26.4.703,	)	
26.4.711,	)	
26.4.713 through 26.4.714,	)	
26.4.716 through 26.4.721,	)	
26.4.723 through 26.4.726,	)	
26.4.728,	)	
26.4.730 through 26.4.733,	)	
26.4.751,	)	
26.4.761 through 26.4.763,	)	
26.4.801 through 26.4.802,	)	
26.4.804 through 26.4.806,	)	
26.4.811, 26.4.815, 26.4.821,	)	
26.4.823 through 26.4.825,	)	
26.4.831 through 26.4.833,	)	
26.4.901 through 26.4.904,	)	
26.4.907,	)	
26.4.911 through 26.4.912,	)	
26.4.1001 through 26.4.1014,	)	
26.4.1101 through 26.4.1119,	)	
26.4.1121, 26.4.1125,	)	
26.4.1129,	)	
26.4.1131 through 26.4.1137,	)	
26.4.1141 through 26.4.1148,	)	
26.4.1201 through 26.4.1210,	)	
26.4.1212 through 26.4.1215,	)	
26.4.1221 through 26.4.1228,	)	
26.4.1231 through 26.4.1232,	)	
26.4.1234 through 26.4.1242,	)	
26.4.1246 through 26.4.1254,	)	
26.4.1260 through 26.4.1263,	)	
26.4.1302, 26.4.1303, and	)	
26.4.1309;	)	
the repeal of ARM 26.4.307,	)	
26.4.309, 26.4.506, 26.4.508,	)	
26.4.509, 26.4.511, 26.4.512,	)	
26.4.513, 26.4.712, 26.4.715,	)	
26.4.722, 26.4.727, 26.4.729,	)	
26.4.734, 26.4.735, 26.4.803,	)	
26.4.807, 26.4.812, 26.4.813,	)	

26.4.814, 26.4.816, 26.4.822, )  
and 26.4.1015; )  
and the adoption of NEW )  
RULES I through XIII, )  
concerning the regulation of )  
strip and underground coal )  
and uranium mining. )

TO: All Interested Persons:

1. On August 16, 1988, at 7:00 P.M., a public hearing will be held in the Yellowstone Room, Student Union Building, Eastern Montana College, Billings, Montana, to consider the amendment of ARM 26.4.301 through 26.4.306, 26.4.308, 26.4.310 through 26.4.327, 26.4.401 through 26.4.413, 26.4.501 through 26.4.505, 26.4.507, 26.4.510, 26.4.514 through 26.4.518, 26.4.520 through 26.4.524, 26.4.601 through 26.4.609, 26.4.621 through 26.4.626, 26.4.631 through 26.4.652, 26.4.701 through 26.4.703, 26.4.711, 26.4.713 through 26.4.714, 26.4.716 through 26.4.721, 26.4.723 through 26.4.726, 26.4.728, 26.4.730 through 26.4.733, 26.4.751, 26.4.761 through 26.4.763, 26.4.801 through 26.4.802, 26.4.804 through 26.4.806, 26.4.811, 26.4.815, 26.4.821, 26.4.823 through 26.4.825, 26.4.831 through 26.4.833, 26.4.901 through 26.4.904, 26.4.907, 26.4.911 through 26.4.912, 26.4.1001 through 26.4.1014, 26.4.1101 through 26.4.1119, 26.4.1121, 26.4.1125, 26.4.1129, 26.4.1131 through 26.4.1137, 26.4.1141 through 26.4.1148, 26.4.1201 through 26.4.1210, 26.4.1212 through 26.4.1215, 26.4.1221 through 26.4.1228, 26.4.1231 through 26.4.1232, 26.4.1234 through 26.4.1242, 26.4.1246 through 26.4.1254, 26.4.1260 through 26.4.1263, 26.4.1302, 26.4.1303, and 26.4.1309; the repeal of ARM 26.4.307, 26.4.309, 26.4.506, 26.4.508, 26.4.509, 26.4.511, 26.4.512, 26.4.513, 26.4.712, 26.4.715, 26.4.722, 26.4.727, 26.4.729, 26.4.734, 26.4.735, 26.4.803, 26.4.807, 26.4.812, 26.4.813, 26.4.814, 26.4.816, 26.4.822, and 26.4.1015; and the adoption of New Rules I through XIII.

2. The rules proposed to be repealed are found on pages 26-468, 26-469, 26-529, 26-530, 26-531, 26-593, 26-594, 26-596, 26-598, 26-599, 26-600, 26-624, 26-628, 26-630, 26-631, and 26-658 of the Administrative Rules of Montana. The proposed amendments modify the current strip and underground mine rules found in ARM Sub-chapters 3 through 13, Chapter 4, Title 26. New Rules I, II, VI through IX, XII, and XIII do not replace or modify any existing rule currently found in the Administrative Rules of Montana. New Rules III through V, X, and XI modify existing requirements in ARM Sub-chapters 5, 6, 10, and 11, Chapter 4, Title 26.

3. The proposed new rules and existing as proposed to be amended provide as follows:

26.4.301 DEFINITIONS The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and ~~the rules adopted thereunder~~ sub-chapters 3 through 13 of this chapter:

~~(1) "Access roads" means those roads leading from a public roadway to the mine complex.~~

(1) "Abandoned mine land reclamation fund" means the fund defined in 26.4.1231(1).

(2) "Abandoned" is defined in 82-4-203 and 26.4.1231(1).

~~(2)(3)~~ (3) Remains the same.

~~(3)(4)~~ (4) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or microbiological or weathering processes, form acids ~~that may create acid drainage.~~

~~(4)(5)~~ (5) Remains the same.

(6) "Active mining operation" means an operation at which mining and reclamation activities are regularly occurring on an ongoing basis. See also "inactive mining operation."

~~(5)(7)~~ (7) "Adjacent area" means land located outside the permit area or mine plan area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by strip or underground mining and reclamation operations.

(8) "Administratively complete application" means an application that contains information addressing application requirements in 82-4-222, 82-4-231, and sub-chapters 3 through 13 and all information necessary to initiate processing and public review.

~~(6)(9)~~ (9) "Agricultural activities or farming" means, with respect to alluvial valley floors, use of any tract of land for the production of plant or domestic animal life where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or ~~floor~~ flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

~~(7)(10)~~ (10) Remains the same.

(11) "Alluvial valley floor" is defined in 82-4-203.

(12) "Alternate reclamation" is discussed in 82-4-232.

(13) "Amendment" means any change in the mine or reclamation plan that results in expansion or decrease of the operation's permitted boundaries, excluding incidental boundary changes. See also "major revision," "minor revision," and "incidental boundary change."

~~(8)(14)~~ (14) "Approximate original contour" means that surface configuration achieved by backfilling and grading of ~~the mined~~ disturbed areas so that the reclaimed area, including any terracing or access roads, closely resembles the general

surface configuration of the land prior to mining disturbance and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and refuse piles eliminated. Permanent water impoundments may be permitted where the department determines that they are in compliance with Rule 26.4.504.

(15) "Aquifer" is defined in 82-4-203.

(16) "Area of land affected" is defined in 82-4-203.

~~(9)~~ (17) Remains the same.

~~(10)~~ (18) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(19) "Bench" is defined in 82-4-203.

~~(11)~~ (20) "Best technology currently available" or "BTCA" means equipment, devices, systems, methods, or techniques which that will:

(a) Remains the same.

(b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which that are currently available anywhere as determined by the department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with ~~all applicable rules pursuant to the Act~~ 26.4.639 and 26.4.642.

(c) Within the constraints of the Act and sub-chapters 3 through 13, the department has the discretion to determine the best technology currently available on a case-by-case basis.

~~(12)~~ (21) Remains the same.

(22) "Coal conservation plan" is defined in 82-4-203.

(23) "Coal preparation" and "coal preparation plant" are defined in 82-4-203.

~~(13)~~ (24) "Collateral bond" means an indemnity agreement in a sum certain that is payable to the department, executed by the permittee, and which ~~is~~ supported by the deposit with the department of cash, negotiable bonds of the United States, state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the U.S.

~~(14)~~ (25) Remains the same.

(26) "Community or institutional building" is defined in 26.4.1132(1)(d).

~~(15)~~ --"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops--

(27) "Contamination" means, with respect to soils, the

addition to, deposition or spillage on, or mixing with soil of any substance or material that by its chemical nature adversely affects the quality of the soil or impairs its properties to support plant establishment and growth.

(28) "Contour strip mining" is defined in 82-4-203.

(29) "Cover" is the area of ground covered by the aerial (above ground) plant parts. Cover is usually expressed as absolute cover, relative cover, foliar cover, canopy cover, and/or basal cover.

(30) "Cultural resources" means any historic, archaeological, or other cultural site. Significant sites, at a minimum, include all sites eligible for or listed on the National Register of Historic Places.

(31) "Cumulative hydrologic impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation operations on the hydrologic balance.

(32) "Cumulative hydrologic impact area" means the area, including the permit and mine plan area, within which impacts to the hydrologic balance resulting from the proposed operation may interact with the impacts of all previous, existing and anticipated mining on surface and ground water systems. "Anticipated mining" includes all operations with pending applications and all operations required to meet diligent development requirements for leased federal coal for which there is actual mine-development information available.

(33) "Degradation" means, in reference to soils, to decrease the physical quality of soil materials by adversely affecting the tilth, texture, structure, porosity, hydraulic conductivity, available water capacity, and other relevant physical properties as a result of compaction by heavy equipment, introducing other materials to or mixing them with soil, or other factors.

~~(16)~~ (34) "Disturbed area" means an area where from which vegetation, topsoil, spoil, overburden, fill, or mineral is removed or upon which vegetation, soil, overburden, spoil, fill, sediment, water, processing waste, underground development waste, or ~~noncoal waste~~ garbage or other debris is placed by strip or underground mining and reclamation operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance is released.

~~(17)~~ (35) through ~~(19)~~ (37) Remains the same.

(38) "Emergency" is defined in 26.4.1231(2).

~~(20)~~ (39) Remains the same.

~~(21)~~ (40) "Essential hydrologic functions" means ~~the role of~~, with respect to an alluvial valley floor in, the collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

(a) through (d) Remains the same.

(41) "Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain, in accordance with 26.4.308 and 26.4.501, in non-steep slope areas may not be considered excess spoil. See Rule IV.

(42) "Extreme danger" is defined in 26.4.1231(4).

(43) "Farm" is defined in 26.4.325(3).

(44) "Federal coal regulatory authority" means the federal agency responsible for administration of the Surface Mining Control and Reclamation Act of 1977 (P. L. 95-87).

~~(22)~~ (45) Remains the same.

(46) "Fragile lands" is defined in 26.4.1141(1).

~~(23)~~ (47) Remains the same.

~~(24) -- "General area" means with respect to hydrology, the topographic and ground water basin surrounding a mine plan area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water systems and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basin.~~

~~(25) (48) "Ground water" means subsurface water or underground streams that fills available openings in rock or soil materials to the extent that they are considered water saturated contained in the unsaturated and saturated zones.~~

~~(26) -- "Haul roads" means those roads leading from the tipple, processing, or mine complex areas onto or through areas that have been mined or are being mined.~~

~~(27) (49) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow or a naturally occurring drainage where side slopes of the existing hollow or drainage measured at the steepest point are greater than 20% or the average slope of the profile of the hollow or drainage from the toe of the fill to the top of the fill is greater than 10%. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area. (See 26.4.520(14).)~~

~~(50) "Higher or better use" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowners or the public than the premining land uses.~~

~~(28) (51) "Highwall" means the face of exposed overburden and mineral in an open-cut or strip mining operations or for entry to underground mining operations.~~

~~(52) "Historic lands" is defined in 26.4.1141(2).~~

~~(29) (53) "Historically used for cropland" means:~~

~~(a) lands that have been used for cropland for any 5~~

years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing, through resale, lease or option, ~~the conduct of~~ strip or underground coal mining and reclamation operations; or

(b) Remains the same.

~~(30)~~ (54) "Hydrologic balance" means the relationship between the quality and quantity of water in the hydrologic regime with respect to inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir, under all seasonal conditions. It encompasses, but is not limited to, the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

(55) "Hydrologic consequences" means the projected results of proposed strip or underground mining operations that may reasonably be expected to alter, interrupt, or otherwise affect the hydrologic balance. The consequences may include, but are not limited to, effects on stream channel conditions and the aquatic habitat on the permit area and adjacent areas.

~~(31)~~ (56) "Hydrologic regime" means the entire state of water movement in a given area. ~~It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.~~

(57) "Imminent danger to the health and safety of the public" is defined in 82-4-203.

~~(32)~~ (58) "Impoundment" means a basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, slurry, sediment, ~~or~~ waste or other liquid or semi-liquid material.

~~(33) -- "Interim regulatory program" means the departmental program for regulation of strip or underground mining operations pursuant to the act and the emergency rules (Title 26, Chapter 2, Subchapter 10, ARM) which became effective as emergency rules on March 31, 1978 and as permanent rules on July 27, 1978 and which expired on the date of the secretary's approval of Montana's permanent regulatory program pursuant to P.L.R. 95-87.~~

(59) "Inactive mining operation" means an operation where:

(a) the permit has been suspended for a period of 2 or more months,

(b) neither mining nor reclamation activity has ever occurred,

(c) the department has been informed that operations are temporarily suspended pursuant to 26.4.521, or

(d) permanent cessation of operations has occurred pursuant to 26.4.522, but bond has not yet been released.

(60) "Incidental boundary change" means a change in the permit boundary in which a few acres, generally less than ten,



insignificant in impact relative to the entire operation, are added to or subtracted from the permit area for the purposes of associated disturbance, but not for mining. For administrative purposes, an incidental boundary change is considered a minor revision.

~~(34)~~ (61) "Intermittent stream" means a stream or reach of a stream that is below the local water table for at least some part of the water year, and obtains its flow from both surface runoff and ground water discharge.

~~(35)~~ (62) Remains the same.

(63) "Irreparable damage to the environment" means any damage to the environment, in violation of the Act or subchapters 4 through 12 of this chapter, that cannot be corrected by actions of the applicant.

~~(36)~~ (64) "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative alternate land use which that is subject to approval by the department.

(a) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land that is used for facilities in support of cropland farming operations which and is adjacent to, or an integral part of, these operations is also included in this category.

(b) "Pastureland Special use pasture" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or that has been seeded or interseeded to native, introduced, or a combination of native and introduced forage species of limited diversity that provides special or seasonal use for livestock on a more intensively managed basis than that which would occur if the land was grazing land as defined below. Special use pasture may include the occasionally cutting of the forage species and cured for livestock feed. Land that is used for facilities in support of pastureland special use pasture which and is adjacent to, or an integral part of, the use is also included.

~~(c) "Grassland"~~ "Grazing land" means land, including both grasslands and forest lands, where the indigenous vegetation is actively managed for grazing or browsing by a combination of livestock and wildlife or occasional hay production. Land that is used for facilities in support of such operations which and is adjacent to, or an integral part of, these operations is also included.

~~(d) "Forestry" means use or management of land for the long-term production of wood, wood fiber, or wood derived products.~~ "Commercial forest land" means land producing or being managed to produce stands of industrial wood that will be utilized as such. Commercial forest land must also produce or

be managed to produce in excess of 20 cubic feet per year of industrial wood. Currently inaccessible and inoperable areas are included, except where such areas are small and unlikely to become suitable for production of industrial wood in the foreseeable future. Land that is used for facilities in support of forest harvest and management operations which and is adjacent to, or an integral part of, these operations is also included.

(e) "Residential" means use of land for single- and multiple-family housing, mobile home parks, ~~and~~ or other residential lodgings. Land that is used for facilities in support of residential operations which and that is adjacent to, or an integral part of, these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) "Industrial/Commercial" means use of land for:

(i) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities, such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land that is used for facilities in support of these operations which and is adjacent to, or an integral part of, such operations is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities; or

(ii) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land that is used for facilities in support of commercial operations which and is adjacent to, or an integral part of, these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) "Recreation" means use of land for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for which specific design or access is provided for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) "Fish and wildlife habitat" means water or land used wholly or partially in the production, protection or management of species of fish or wildlife.

(i) "Developed water resources" means use of land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

~~(j) -- "Undeveloped land" means land with no current use or management. It includes land that has never been developed, or, if previously developed, land that has been allowed to return naturally to an undeveloped state.~~

~~(37) (65)~~ "Major revision" means any change in the mining or reclamation plan which that:

~~(a) -- results in a significant change in the postmining~~

contour map;

(b) (a) through (d) (c) Remains the same.

(e) (d) results in a change which that may affect the reclaimability of the area or the hydrologic balance on or off of the permitted area.

(38) (66) "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by strip or underground coal mining operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining to degrade or reduce by strip or underground coal mining or reclamation operations, the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities. (See also 26.4.301(9), (61) and (124).) The term "material damage" may be applied to values other than those associated with alluvial valley floors.

(39) (67) "Mine plan area" means the area of land and water within the boundaries of all permit areas during the entire life of the strip or underground mining operation. At a minimum, it includes all areas which that are or will be affected during the entire life of those operations. Other terms defined elsewhere in this subchapter which relate closely to mine plan area are:

(a) through (b) Remains the same.

(c) "adjacent area," which may surround or extend beyond the area of land affected, permit area, or mine plan area. (See also 82-4-203.)

(68) "Mineral" is defined in 82-4-203.

(69) "Minor revision" means any change to the mine and reclamation plan not meeting the criteria for amendment or major revision.

(40) -- "Moist bulk density" means the weight of soil (oven dry) per unit volume. -- Volume is measured when the soil is at field moisture capacity (1/3-bar moisture tension). -- Weight is determined after drying the soil at 105°C.

(41) (70) Remains the same.

(71) "Natural hazard lands" is defined in

26.4.1141(3).

(42) (72) Remains the same.

(73) "Occupied dwelling" is defined in 26.4.1132(1) (b).

(74) "Operation" is defined in 82-4-203.

(75) "Operator" is defined in 82-4-203.

(76) "Other treatment facilities" means, with respect to 26.4.639(23), any chemical treatments (such as flocculation) or mechanical structures (such as clarifiers) that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or

runoff outside the permit area.

~~(43)~~ (77) Remains the same.

(78) "Overburden" is defined in 82-4-203.

~~(44)~~ (79) "Perennial stream" means a stream or part reach of a stream that flows continuously during all of the calendar water year as a result of ground water discharge or surface runoff. The term does not include intermittent streams or ephemeral streams.

~~(45)~~ (80) "Permanent diversion" means a diversion that remaining remains after a strip or underground mining and reclamation operation is completed which and that has been approved for retention by the department and other appropriate state and federal agencies.

(81) "Permanent impoundment" means an impoundment that is approved by the department and other appropriate state and federal agencies for retention as part of the postmining land use.

~~(46)~~ (82) "Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the department. This area shall includes, at a minimum, all areas which are or will be affected by the strip or underground mining and reclamation operations during the term of the permit.

~~(47)~~ (83) "Person having an interest which is or may be adversely affected or person with a valid legal interest" shall includes any person:

(a) through (b) Remains the same.

~~(48)~~ (84) "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations rules, "precipitation event" also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

(85) "Previously mined area" means land on which coal mining operations were previously conducted, except those lands upon which such operations were conducted pursuant to and in compliance with a permit issued under the Montana Strip and Underground Mine Reclamation Act.

~~(49)~~ (86) "Prime farmland" means those lands which are defined in 7 CFR 657, as amended, and 82-4-203, but and which must have also been "historically used for cropland" as that phrase is defined above in 26.4.301(53).

~~(50)~~ (87) Remains the same.

~~(51) -"Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation operations on the hydrologic regime.~~

~~(52) -"Probable hydrologic consequence" means the projected result of proposed strip or underground mining operations which may reasonably be expected to change the quantity or quality of the surface and ground waters, the depth to ground water, the surface or ground water flow, timing and pattern, the stream channel conditions, and the aquatic habitat on the permit area and adjacent areas.~~

~~(53)~~ (88) Remains the same.

(89) "Prospecting" is defined in 82-4-203.

(90) "Public building" is defined in 26.4.1132(1)(c).

~~(54)~~ (91) Remains the same.

(92) "Public park" is defined in 26.4.1132(1)(e).

~~(55) "Ramp roads" means those roads leading from the pit into the haul road.~~

~~(56)~~ (93) "Rangeland" means, with respect to alluvial valley floors, land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannas, such as prairies, and juniper savannas, such as brushlands shrublands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

~~(57)~~ (94) "Recharge capacity" means the ability of the solid soils and underlying other earth materials to allow precipitation and runoff to infiltrate and percolate to the zone of saturation.

(95) "Reclamation" is defined in 82-4-203.

~~(58)~~ (96) "Recurrence interval" means the average interval of time in which a precipitation event is expected to occur once on the average (in years) between events equaling or exceeding a given magnitude. For example, the a 10-year, 24-hour precipitation event would be that is a 24-hour precipitation event expected to occur, that is equalled or exceeded on the average, once in every 10 years.

~~(59)~~ (97) "Reference area" means a land unit maintained under approved management for the purpose of measuring vegetation ground cover, productivity production, density, utility, and plant species diversity that is produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area as determined by premining inventories.

~~(60) "Regional director" means the director of the region-V, office of surface mining, or the regional director's representative.~~

(98) "Remining" is defined in 82-4-203.

~~(61)~~ (99) Remains the same.

~~(62)~~ (100) "Road" means a surface right-of-way for purposes of travel by land vehicles used in prospecting or strip or underground mining or reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access, haul, and ramp roads constructed, used, reconstructed, improved or maintained for use in prospecting or strip or underground mining operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways that are used for part of the road construction procedure, which

that are promptly replaced by roads associated with the prospecting or mining operation, ~~which~~ and that are located in the identical right-of-way as the pioneer or construction roadway.

(a) "Access road" means a road leading from a public roadway to the mine complex.

(b) "Haul road" means a road leading from the tipple, processing, or mine complex areas onto or through areas that have been mined or are being mined.

(c) "Public road" is defined in 26.4.1132(1)(f).

(d) "Ramp road" means a road leading from the pit into the haul road.

~~(63)~~ (101) Remains the same.

~~(64)~~ "Secretary" means the secretary of the interior or the secretary's representative.

~~(65)~~ (102) "Sediment" means undissolved organic or inorganic material greater than 0.45  $\mu$  microns in size transported or deposited by water.

~~(66)~~ (103) "Sedimentation pond" means a primary sediment control structure designed, constructed and maintained in accordance with Rule 26.4.639 and ~~including~~ includes, but is not limited to, a barrier, dam, or excavated depression which slows down runoff water to allow sediment to settle out. ~~A sedimentation pond shall~~ The term does not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, ~~to the extent that where~~ such secondary sedimentation structures drain to a sedimentation pond.

~~(67)~~ (104) "Significant, imminent environmental harm to land, air or water resources" means:

(a) An "environmental harm" is an adverse impact on land, air, or water resources. ~~which~~ These resources include, but are not limited to, plant and animal life.

(b) An environmental harm is "imminent", if a condition, practice, or violation exists ~~which that--~~:

(i) is causing such harm; or

(ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under ~~section~~ 82-4-251.

(c) Remains the same.

(105) "Soil" means "topsoil" as defined as 82-4-203.

~~(68)~~ (106) "Soil horizon" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The ~~three~~ major types of soil horizons are described in issue 1 - revision of chapter 4 (as revised in May 1981) of the 1951 Soil Survey Manual, U.S. department of agriculture, soil conservation service, June 9, 1981, Washington, D.C.: This manual is available for inspection at the department of state lands, Capitol Station, Helena, Montana 59620, and at the national, state, and local offices of the soil conservation service.

~~(a) the A horizon which is the uppermost mineral layer. It is the layer of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;~~

~~(b) the B horizon which is the layer that typically is immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons;~~

~~(c) the C horizon which is the deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.~~

~~(69)(107)~~ "Soil survey" means field and related investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey, which is based on procedures and standards in the following U.S. department of agriculture, soil conservation service publications: National Soils Handbook, Soil Taxonomy (Handbook 436), and Soil Survey Manual. These documents are on file and available for inspection at the main office of the department of state lands, Capitol Station, Helena, Montana 59620, and at the national, state, and local offices of the U.S. soil conservation service.

~~(70)(108)~~ Remains the same.

~~(71)(109)~~ "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the configuration of the mass, or by otherwise modifying physical, biological, or chemical properties, such as providing a protective surface coating.

~~(72)(110)~~ "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated a subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:

(a) through (e) Remains the same.

(111) "Subsidence" is defined in 82-4-203.

(112) "Substantial legal and financial commitments" is defined in 26.4.114(4).

(113) "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

~~(73)(114)~~ through ~~(74)(115)~~ Remains the same.

~~(75)(116)~~ "Suspended solids or nonfilterable residue" (expressed as milligrams per liter), means organic or inorganic materials carried or held in suspension in water which that are retained by a standard glass fiber filter in the procedure outlined by the environmental protection agency's regulations for waste water and analyses (40 CFR 136).

~~(76)(117)~~ "Temporary diversion" means a diversion of a stream or overland flow which that is used during prospecting or strip or underground mining or reclamation operations and not approved by the department to remain after reclamation as part of the approved postmining land use.

(118) "Temporary impoundment" means an impoundment, including sedimentation pond, used during mining or reclamation operations, but not approved by the department to remain as part of the postmining land use.

~~(77)~~ (119) "Test pit" means an excavation for prospecting by means other than drilling. Materials obtained from a test pit are used for test purposes or for the purpose of developing a market and not for direct economic profit.

~~(78)~~ (120) Remains the same.

~~(79)~~ (121) "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by prospecting or strip or underground mining operations, which and that contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(122) "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct strip or underground mining operations under a permit issued by the department. See 26.4.412 and 26.4.413.

~~(80)~~ (123) "Unconsolidated streambed deposits holding streams" means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of valleys which contain perennial or other streams with channels, that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

(124) "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

~~(81)~~ (125) "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed that have not been agronomically altered by farming, seeding, interseeding, or other means, to increase production over the native condition and that are not intensively managed as irrigated or subirrigated pastures.

(126) "Unwarranted failure to comply" is defined in 82-4-203.

~~(82)~~ (127) Remains the same.

~~(83)~~ (128) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20% or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10%.

(129) "Valid existing rights" is defined in 26.4.1132(1).

~~(84)~~ (130) Remains the same.

~~(85)~~ (131) "Waste" means, earth materials, which that are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from the mineral product have been generated as a result of mining and are not marketed by the operator, and are. The term includes earth



materials that are slurried or otherwise transported from processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of the mineral. (86) (132) Remains the same.

(133) "Willful violation" means an act or omission that violates the Act, sub-chapters 3 through 13 of this chapter, or any permit condition and that is committed by a person who intends the result which actually occurs. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-203 MCA.)

26.4.302 FORMAT AND SUPPLEMENTAL INFORMATION (1) Information set forth in the application ~~shall~~ must be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the department.

(2) All tests, analyses or surveys carried out pursuant to these rules ~~and regulations shall~~ must be performed or certified by a qualified person using scientifically valid techniques approved by the department.

(3) All chemical and physical laboratory analyses ~~shall~~ must be conducted by a laboratory using departmentally approved and standardized procedures. The operator shall ~~collect~~ make available to the department quality assurance information or duplicate or split samples, ~~at a frequency determined as~~ required by the department.

(4) All technical data submitted in the application ~~shall~~ must be accompanied by:

(a) names and addresses of persons or organizations ~~which~~ that collected and analyzed such data;

(b) through (c) Remains the same.

(5) An application for a strip mining permit ~~shall~~ must be made on forms provided by the department.

(6) For applications to mine areas containing federal coal, ~~10~~ nine copies of all applications, maps, reports or other informational data ~~shall~~ must be required submitted. ~~Three~~ Four copies ~~shall~~ must be sent to the department and ~~7~~ five to the ~~regional director~~ federal coal regulatory authority. For applications to mine areas not containing federal coal, ~~three~~ four copies of all applications, maps, reports, and other informational data ~~shall~~ must be submitted to the department, unless otherwise approved by the department.

(7) All maps depicting detail ~~will~~ must be at a scale of 400 feet to the inch, or other scale as approved by the department. Maps depicting general conditions such as property ownership, ~~will~~ must be at a scale of ~~1000~~ 1,000 feet to the inch. Maps depicting the general surface conditions of large areas such as the location of prospecting drill holes ~~will~~ must be on a current 7.5 minute U.S. geological survey map or equivalent.

(8) Remains the same.

(9) Whenever used in the application, referenced materials must either be provided to the department by the

applicant or be readily available to the department. When provided, relevant portions of referenced published materials must be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.  
(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.303 LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION Each application ~~shall~~ must contain the following information:

(1) the permanent and temporary post office addresses of the applicant, including phone number;

(2) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highway;

(3) the names and addresses of legal and equitable owners of record, lessees, ~~or~~ and purchasers of-record under contract for deed of the surface of the area of land to be affected by the permit and the owners of record and purchasers under contract for deed of all surface area within one-half mile of any part of the affected area;

(4) the names and addresses of the present owners of record and purchasers under contract for deed of all subsurface minerals in the land to be affected;

(5) the names and addresses of any persons who are engaged in strip or underground mining on behalf of the applicant and any person who will conduct such operations should the permit be granted;

(6) a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(a) names and addresses of every officer, partner, director, or other person performing a function similar to a director to the applicant;

(b) name and address of any person who is a principal shareholder of the applicant; and

(c) names under which the applicant, partner, ~~or~~ principal shareholder or any entity owned or controlled by the applicant previously operated a strip or underground coal mining operation in the United States within the 5 five years preceding the date of application;

(7) if any owner, holder, purchaser, or operator, identified under (1) through (5) of this rule, is a business entity other than a single proprietor, the names and addresses of ~~their~~ its respective principals, officers, and resident agents;

(8) a statement of any current or previous coal mining permits in the United States held by the applicant subsequent to 1970 and by any person identified in (6)(c) of this rule, and of any pending permit application to conduct strip or underground coal mining and reclamation operations in the United States. The information ~~shall~~ must be listed by permit

or application number and identify the regulatory authority for each of those coal mining operations;

(9) the name of the proposed mine and the mine safety and health administration identification number for the mine and all sections, if any;

(10) a list of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit;

(11) a statement of whether the applicant or any person associated with the applicant holds or has held any prospecting or uranium operating permits under the Act and an identification of those permits;

(12) a certified statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, is in compliance with 82-4-251 and, if known, whether every any officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251, and whether any of the foregoing parties or persons have ever had a strip mining or underground mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip mining or underground mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached including:

(a) identification number and date of issuance of the permit or date and amount of bond or similar security;

(b) identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

(c) the current status of the permit, bond, or similar security involved;

(d) the date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) the current status of these proceedings;

(13) a listing of each violation notice received by the applicant, or any subsidiary, affiliate or persons controlled by or under common control with the applicant, in connection with any strip or underground coal mining operation during the 3-year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation pertaining to air, water and other matters of environmental protection. The application ~~shall~~ must also contain a statement regarding each violation notice, including:

(a) the date of issuance and identity of the issuing regulatory authority, department, or agency;

(b) a brief description of the particular violation alleged in the notice;

(c) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation,

including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;

(d) through (14) Remains the same.

~~(15)--where the private mineral estate to be mined has been severed from the private surface estate, the following information for lands within the permit area:~~

~~(a)--a copy of the written consent of the surface owner to the extraction of mineral by strip or underground mining methods; or~~

~~(b)--a copy of the document of conveyance that grants or reserves the right to extract the mineral;~~

(15) (a) Whenever the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit:

(i) a copy of the written consent of the surface owner for the extraction of mineral by the mining method proposed by the applicant;

(ii) a copy of the conveyance that expressly grants or reserves the right to extract mineral by those methods; or

(iii) if the conveyance does not expressly grant the right to extract the mineral by the mining methods proposed by the applicant, documentation that under Montana law the applicant has the legal right to extract the mineral by the proposed mining methods;

(b) Nothing in this section may be construed to authorize the department to adjudicate property rights disputes;

(16) a statement of available information on whether the proposed permit area is within an area designated unsuitable for strip coal mining operations or under study for designation in an administrative proceeding and if the applicant claims the exemption based on substantial legal and financial commitments made before January 4, 1977, and information supporting the applicant's claim;

(17) if strip mining within 300 feet of an occupied dwelling is proposed, the waiver of the owner of the dwelling;

(18) a statement of the anticipated or actual starting and termination date of each phase of strip mining and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit;

(19) either a certificate of liability insurance or evidence that the self-insurance requirements of section 82-4-222(5) are satisfied (See also 26.4.1125);

(20) a list of all other licenses and permits needed by the applicant to conduct the proposed strip mining. This list shall must identify each license and permit by:

(a) type of permit or license;

(b) name and address of issuing authority;

(c) through (d) Remains the same.

(e) an identification by the name and address, of the public office where the applicant will simultaneously file a copy of the application for public inspection;

(21) Remains the same.

(22) a copy of the newspaper advertisement of the application and proof of publication as required in Rule 26.4.303401.

(23) Through (b) Remains the same.

(c) after May 3, 1978, and prior to ~~the approval of the state's permanent regulatory program by GSN pursuant to Public Law 95-87~~ April 1, 1980.

(d) after April 1, 1980, and before [the effective date of these rule amendments]. This map must designate the areas from which coal removal had not commenced as of [the effective date of these rule amendments]. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-222.)

26.4.304 BASELINE INFORMATION: ON ENVIRONMENTAL RESOURCES The following environmental resources information ~~shall~~ must also be included as part of an application for a strip or underground mining permit:

(1) Remains the same.

(2) a listing, location and description of ~~the all~~ archaeological, historical, ethnological and cultural resources and values of the proposed mine plan and adjacent area. ~~Such resources and values shall~~ must be located and identified on accompanying maps. Sites listed on, eligible for, or potentially eligible for the National Register of Historic Places must be so identified. Published ~~informational~~ research or other information must be referenced, and copies of referenced reports must be made available to the department upon request;

(3) Remains the same.

(4) a narrative explanation or other data showing ~~that~~ whether the permit area ~~does not~~ possesses special, exceptional, critical, or unique characteristics as defined in section 82-4-227 and ~~that whether~~ surrounding land ~~does not~~ possesses special, exceptional, critical or unique characteristics that would be adversely affected by mining;

(5) all hydrologic and geologic data necessary to evaluate baseline conditions, probable hydrologic consequences and cumulative hydrologic impacts of mining, and to develop a plan to monitor water quality and quantity pursuant to 26.4.314(3) and 82-4-222. Such data must be generated in accordance with 26.4.645 (2) and (3) and 26.4.646 (1), (1)(a), (3), (5), and (6). Existing baseline data, with departmental approval, may supplement data collected by the applicant. If the information necessary to provide the description is not available from the appropriate state and federal agencies, the applicant may gather and submit this information to the department as part of the permit application. The application must not be deemed complete until this information is made available in the application;

(6) hydrologic and geologic descriptions pursuant to section (5) above including:

~~(5)(a)~~ (a) a narrative and graphic account of groundwater hydrology, including but not limited to;

(1) the lithology, thickness, structural controls, hydraulic conductivity, transmissivity, recharge, storage and discharge characteristics, extent of aquifer, production data ~~(if there is production)~~, and water quality analyses and other relevant aquifer characteristics for each aquifer within the mine plan area and adjacent areas; ~~and to assure protection of off-site water supplies, potential and developed, the report shall include:~~

~~(a)~~ (ii) a listing of all known or readily discoverable wells and springs located within 3 miles ~~down dip~~ downgradient from the permit area ~~to be mined~~ and within 1 mile ~~of the area to be mined~~ in all other directions unless a hydrologic boundary justifies a lesser distance;

~~(b) -- a description of alternative water supplies to be undisturbed by mining that could be developed to replace water supplies diminished in quality or quantity by mining activities;~~

~~(6) -- hydrologic data necessary to monitor water quality and quantity shall be available upon request by the department. Such data will be generated using departmentally approved and standardized procedures;~~

(b) a narrative and graphic account of surface water hydrology within the mine plan area and adjacent areas, including but not limited to:

(i) the name, location, and description of all surface water bodies such as streams, lakes, ponds, springs, or impoundments; and

(ii) descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality, including but not limited to:

(A) minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams; and

(B) water quality data to identify the characteristics of surface waters discharging into or receiving flows from the proposed mine plan area, including total suspended solids; total dissolved solids; specific conductance; pH, alkalinity, and acidity; total and dissolved iron; total manganese; major cations (Ca, Mg, Na, K); and major anions ( $SO_4$ ,  $CO_3$ ,  $HCO_3$ ,  $NO_3$ , Cl);

(c) a description of alternative water supplies, not to be disturbed by mining, that could be developed to replace water supplies diminished or otherwise adversely impacted in quality or quantity by mining activities so as not to be suitable for the approved postmining land uses; and

(d) such other information that the department determines is relevant.

(7) (a) a detailed description of all overburden and mineral materials (all materials other than soil) that will be handled during mining or backfilling operations. The description shall must include:

(i) those materials down to and including the deeper of either the stratum immediately below the lowest seam to be

mined or any aquifer below the lowest seam to be mined that may be adversely impacted by mining;

(ii) all physical, chemical, water infiltration, artificial weathering, and plant growth data necessary to identify those materials that are potentially acid--and alkali-producing, acid-forming, sodic, saline, toxic, toxic-forming, unstable, erodible or otherwise undesirable with respect to use as plant rooting media, landscape stability, aquifer reestablishment, postmining ground and surface water quantity and quality both on and off site, and postmining land use;

(iii) lithologic and geophysical logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring. The requirement for geophysical logs may be waived if the applicant demonstrates, and the department finds in writing, that other equivalent information is available in an acceptable form and has been provided by the applicant;

(iv) a narrative addressing the suitability or unsuitability of the materials to be handled for reclamation purposes. This narrative must address or reference the data, characteristics of materials and aspects of reclamation described in section (6), paragraphs (ii) and (iii) of this subsection (a), and 26.4.322(2) (a) (iii); and

(v) additional studies or information determined by the department to be useful or necessary to evaluate the application;

(b) All all laboratory work in this regard will must be conducted by a laboratory using departmentally approved and standardized procedures in accordance with 26.4.302(3);

(8)--surface water information including:

(a)--the name of the watershed which will receive water discharges;

(b)--the location of all surface water bodies such as streams, lakes, ponds, and springs;

(c)--the location of any water discharge into any surface body of water;

(d)--descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed mine plan and adjacent areas;

(e)--minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variances; and

(f)--water quality data to identify the characteristics of surface waters in discharging into, or which will receive flows from surface or ground water from permitted areas within the proposed mine plan area, sufficient to identify seasonal variations, showing:

(i)--total dissolved solids in milligrams per liter;

----- (ii)--total suspended solids in milligrams per liter;

----- (iii)--acidity;

----- (iv)--pH in standard units;

~~----- (v) -- total and dissolved iron in milligrams per liter;~~  
~~----- (vi) -- total manganese in milligrams per liter; and~~  
~~----- (vii) -- such other information as the department determines is relevant;~~

~~(9) -- the extent to which the proposed strip mining operations may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed mine plan or adjacent areas for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources;~~

~~(10) (8)~~ Remains the same.

(b) the average direction and velocity of prevailing winds; and

(c) through (d) Remains the same.

~~(11) (9)~~ vegetative surveys as described in 82-4-222(2)(k) of the Act, which ~~shall~~ must include:

(a) ~~a vegetative map (11-400)~~ at a scale of 1 inch equals 400 feet, acceptable to the department, which delineates community types based on two ~~(2)~~ or more dominant species, which ~~are species which~~, by their structure, number, or coverage, have the greatest functional influence on the type;

(b) a narrative describing the community types within the proposed permit area and within any proposed reference areas, ~~by~~ and listing associated species and discussing environmental factors controlling or limiting the distribution of species. Current condition and trend ~~shall~~ must be discussed for each community type or portion thereof if significant differences exist within a type; and

(c) a range site map; and

(d) a description of field and laboratory methods to be used during vegetative surveys that must be derived in consultation with the department, must be approved prior to initiation, and must comply with 26.4.726;

~~(12) (10)~~ a narrative of the results of a wildlife survey. The operator shall contact the department soon enough before planning the wildlife survey to allow the department to consult state and federal agencies with fish and wildlife responsibilities to determine the scope and level of detail of information required in the survey to help design a wildlife protection and enhancement plan. At a minimum, the a wildlife survey, which shall must include:

(a) a listing of the fish and wildlife species (including, but not limited to, birds, mammals, fishes, reptiles, and amphibians) species utilizing the permit area, including any species on the rare threatened and endangered species list prepared by the U.S. bureau of sports fisheries and wildlife fish and wildlife service (threatened wildlife of the United States), and any other species identified through agency consultation as requiring special protection under state or federal law;



(b) Remains the same.

(c) a description of season or seasons of use and habitat use by each species must be noted along with a discussion description of winter concentration areas, fawning or calving areas, nesting or brooding areas and spawning areas in the area-affected habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, reproduction and wintering areas, and other habitats identified through agency consultation as requiring special protection under state or federal law;

(d) an aerial reconnaissance photographic survey of the area to be affected, if required by the department, a wildlife habitat map for the entire wildlife survey area including habitat types that are discussed in subsection (c) above, and 26.4.751(7) through (9); and

(e) the wildlife survey shall include an area 2 miles coverage of the proposed permit area plus an area around it in all directions from the permit area. The extent of the total area to be surveyed must be determined through consultation with the department and must be large enough to include those species whose home ranges extend beyond the permit boundary; The survey shall only include the proposed mine plan area for species whose home ranges do not extend beyond the proposed mine plan area. The department may modify the 2 mile requirements if the applicant cannot gain access to portions of the 2 mile area. However in all cases the information required by (a) through (d) must be furnished. Also included shall be a wildlife habitat map for the entire wildlife survey area;

(11) a soil survey according to standards of the National Cooperative Soil Survey and the department describing all major soils being present on the proposed permit area and their suitability for revegetative reclamation purposes. The soil survey shall must include the following information:

(a) description, sampling, and analysis of soil horizons soils in sufficient detail to identify the soil series, phases, and mapping units present including: within the area of operations and to determine the depths to which all identified soils should be salvaged;

(i) series and phase descriptions;

(ii) mapping unit (complex and consociation) descriptions;

(iii) descriptions of representative soil pedons; and

(iv) results of chemical and physical analyses of soil horizon samples. Each horizon sample shall be analyzed by a laboratory, using departmentally approved and standardized procedures. Each horizon sample must be analyzed in accordance with 26.4.302(3) for the following pH, particle size distribution (texture), and other parameters that must be determined in consultation with the department;

(i) the pH;

(ii) the salt hazard (electrical conductivity);

(iii) sodium adsorption ratio; and

~~(iv) particle-size-analysis-(texture);~~

(b) a soils map acceptable to the department. The scale ~~shall~~ must be 1 inch equals 400 feet unless otherwise altered or approved by the department. Enlarged aerial photographs may be used as a map base. The map or photograph ~~shall~~ must include:

(i) the soil mapping units, ~~present-and~~ their boundaries, ~~The operator shall indicate within the various soil mapping units the depth to which he proposes to strip topsoil~~ a legend of the soil mapping units and the estimated salvage depths of soils within each mapping unit, consistent with the information submitted under 26.4.313(4);

(ii) soil sample sampling map locations ~~correlated to soil type and horizon testing; and~~

(c) further soil studies or information ~~if required~~ determined by the department to be useful or necessary to evaluate the application;

~~(11)~~ (12) Remains the same.

(a) a map and supporting narrative of the uses of the land existing at the time of the filing of the application. ~~if~~ if the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land ~~shall~~ must also be described;

(b) a narrative of land capability and productivity, which that analyzes the land-use description under (a) above in conjunction with other environmental resources information required under this subsection. The narrative ~~shall~~ must provide analyses of:

(i) Remains the same.

(ii) the productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity ~~shall~~ must be determined by yield data or estimates for similar sites based on current data from the U.S. department of agriculture, state agricultural universities, or appropriate state natural resources or agricultural agencies;

(iii) a statement of whether the proposed mine plan permit area has been previously mined, and, if so, the following information, if available:

(A) the type of mining method used;

(B) the coal seams or other mineral strata mined;

(C) the extent of coal or other minerals removed;

(D) the approximate dates of past mining; and

(E) the uses of the land;

(iv) ~~the application shall contain a description of the~~ existing land uses and land use classifications under local law, if any, of the proposed mine plan and adjacent areas.

(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.305 MAPS (1) The application ~~shall~~ must contain maps including the following information:

(a) through (b) Remains the same.

(c) the boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(d) the boundaries of all areas proposed to be affected over the estimated total life of the proposed ~~strip~~ mining operations, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought, and any cropline of the mineral to be mined;

(e) the names and locations of roads, buildings, facilities, cemeteries, oil and gas wells, pipelines, utility lines and corridors, and deep strip or underground surface mining mines on the permit area and within 1,000 feet of such area;

(f) through (h) Remains the same.

(i) any land within the proposed mine plan area and adjacent area ~~which~~ that is within the boundaries of any units of the national system of trails or the wild and scenic rivers system, including study rivers designated under section (5) (a) of the Wild and Scenic Rivers Act;

(j) Remains the same.

~~(k) -- buildings, utility corridors and facilities to be used;~~

~~(k)~~ (k) through ~~(m)~~ (l) Remains the same.

~~(m)~~ (m) each mineral storage, cleaning and or loading area and each topsoil, spoil, coal waste, and noncoal waste garbage or other debris storage area;

~~(n)~~ (n) through ~~(q)~~ (q) Remains the same.

~~(r) each facility to be used to protect and enhance fish and wildlife and related environmental values the location of proposed postmine revegetation communities and proposed fish, wildlife, and related environmental enhancement features;~~

~~(s)~~ (s) Remains the same.

~~(t)~~ (t) the location of each sedimentation pond, and permanent water impoundment in accordance with Rule 26.4.315 and the location of each fill area for the disposal of excess spoil in accordance with Rule 26.4.308;

~~(u)~~ (u) the date on which each map was prepared and the north point; a legend indicating the items shown on the map, the scale, and the contour interval; the township, range, and section numbers; grid coordinates based upon the 1000-meter universal transverse mercator system;

~~(v)~~ (v) the final surface and underground water drainage plan on and away from the area of land affected. This plan ~~shall~~ must indicate the directional and volume of flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

~~(w)~~ (w) Remains the same.

~~(x)~~ (x) the surface location lines of any geologic cross sections ~~which~~ that have been submitted; and

~~(y)~~ (y) the location and extent of subsurface water, if

encountered, and the names and location of surface water bodies, including springs, constructed or natural drains, and irrigation ditches, within the proposed mine plan and adjacent areas.

(2) Maps ~~shall~~ must be prepared in accordance with the following procedures:

(a) ~~m~~Maps, plans, and cross-sections required under ~~(i)-(m)-(n)-(p)-(r)-(t)-and-(u)~~ subsections (l), (m), (o), (s), and (t) of section (1) above ~~shall~~ must be prepared by, or under the direction of and certified by a qualified registered professional engineer, registered land surveyor, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture, except that:

(i) through (ii) Remains the same.

(b) ~~e~~Each map ~~shall~~ must be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification ~~shall~~ must be signed and notarized in affidavit form. The department may reject a map as incomplete if its accuracy is not so attested.

(c) All detail on maps must be clearly legible.

(3) ~~m~~Maps other than those outlined in (1) and (2) above necessary to meet the requirements of this rule or other rules adopted pursuant to the ~~act~~ Act ~~shall~~ must also be certified as in subsection (2) (b) and submitted. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

#### 26.4.306 BASELINE INFORMATION: PRIME FARMLAND INVESTIGATION

(1) The application shall must contain the results of a prime farmland investigation developed in consultation with the U.S. soil conservation service to determine whether lands within the proposed mine-plan permit area may be are prime farmlands as defined in 26.4.301. The investigation shall be conducted under the following criteria:

~~(1) (2) the land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations: If the lands in question have not "historically been used for cropland" as that term is defined in 26.4.301, the applicant must submit a request for a negative determination for these lands with documentation supporting this request.~~

~~(a) -- the land has not historically been used as cropland;~~

~~(b) -- the slope of the land is 10 percent or greater;~~

~~(c) -- the land is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less;~~

~~(d) -- other factors exist, such as a very rocky surface, or the land is frequently flooded, during the growing season, more often than once in 2 years, and the flooding has reduced crop yields; or~~

~~----(e)---on-the-basis-of-a-soil-survey-of-lands-within-the-mine-plan-area, there are no soil map units that have been designated prime farmland by the U.S. soil conservation service;~~

~~(2) (3) if the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of paragraph (1) above. If the lands in question have historically been used for cropland, the applicant shall, in consultation with the Montana state office of the U.S. soil conservation service, determine if any soils, characterized and described in accordance with ARM 26.4.304(11), on these lands meet the criteria of prime farmlands as contained in 7 CFR 657;~~

~~(3) if the investigation indicates that lands within the proposed mine plan area may be prime farmlands, the applicant shall contact the U.S. soil conservation service to determine if the relevant soils as described and mapped under Rule 26.4.304(13) have been designated as prime farmlands.~~

~~(a) Whenever a determination is made that the soil survey of lands within the proposed mine plan permit area contains identifies soils map units which have been designated as that meet the criteria of prime farmlands, the applicant shall indicate the reasons for this determination and shall include materials in the submit an application, showing compliance in accordance with Rule 26.4.324.~~

~~(b) When a the soil survey for lands within the proposed mine plan permit area does not contain identify soils map units which have been designated that meet the criteria for designation as prime farmland after review by the U.S. soil conservation service, the applicant shall submit a request for negative determination for non-designated these lands with the permit application establishing compliance with paragraph (1) above reasons supporting this conclusion. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)~~

26.4.307 GEOLOGIC AND HYDROLOGIC INVESTIGATION This rule is proposed to be repealed and can be found on page 26-468 of the ARM.

26.4.308 RECLAMATION AND OPERATIONS PLAN Each application shall must contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area, including at a minimum, the following:

(1) a narrative description of the type and method of mining procedures and proposed engineering techniques, anticipated annual and total production of mineral, by tonnage, and the major equipment to be used for all aspects of those operations; ~~which also includes:~~

~~(a) a narrative and cross sections showing the plan of highwall reduction, including the limits of buffer zone;~~

~~(b) a narrative description of the derivation of the bulking factor (swell) used by the applicant in calculation of~~

spoil volumes, generation of post-mining contour maps, and machine efficiency studies; -- Calculations used in the derivation shall be included;

(c) -- a map showing the post-mining topography which the applicant proposes to meet at the time of final bond release. The map shall be keyed to cross section or set of cross sections, drawn to scale, depicting the removal of overburden and mineral and the replacement of the swelled spoil such as to demonstrate that the postmining contour map can be achieved;

(d) -- a description of the program for early detection of grading problems which would result in final graded topography not congruent with the postmining contour map; -- Upon detection of such a grading problem, the permittee shall notify the department in writing within ten working days; -- The notification shall contain at a minimum a preliminary proposal for measures to remedy the problem;

(2) a narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for post-mining land use as specified in ~~Rule 26.4.801~~ 26.4.762);

(a) Remains the same.

(b) overburden and topsoil handling and storage areas and structures;

(c) Remains the same.

(d) spoil, and noncoal waste, garbage, and other debris removal, handling, storage, transportation, and disposal areas and structures;

(e) through (g) Remains the same.

(3) (a) a description of measures to be employed to ensure that all debris, acid, toxic, acid-forming, and toxic-forming materials, materials constituting a fire hazard, and otherwise undesirable materials, are properly disposed of;

(b) a description of the contingency plans which have been developed to preclude sustained combustion of materials constituting a fire hazard;

(4) a description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), and other applicable air and water quality laws and regulations and health and safety standards, or a copy of a valid permit issued under these laws; and

(5) a plan to prevent the establishment of, or to control, noxious weeds on all lands within the proposed permit area until phase IV bond release, in accordance with the Noxious Weed Management Act, 7-22-2102 through 7-22-2153, as amended. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.309 PLAN FOR EXISTING STRUCTURES This rule is proposed to be repealed and can be found on page 26-469 of the ARM.

26.4.310 BLASTING PLAN (1) Each application shall must contain a blasting plan for the proposed permit area. The

plan must explaining how the applicant intends to comply with the requirements of Rules 26.4.621 through 26.4.626 and 26.4.1260 through 26.4.1263, and including must include the following:

~~(1)(a)~~ Remains the same.  
~~(2)(b)~~ description of procedures and plans generally used for recording and retention of information on the following during blasting:

~~(a)(i) through (a)(iv)~~ Remains the same.  
~~(v)~~ a description of procedures and plans for recording of ~~(b)(i) through (b)(iv)~~ above and retention of those records;

~~(3)(c) through (4)(d)~~ Remains the same.  
~~(5)(e)~~ description of plans for recording and reporting to the department the results of preblasting surveys, if required; and

~~(6)(f)~~ description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed; and

~~(g)~~ a general description of structures to be protected and a discussion of design factors to be used to protect the public and to meet the applicable airblast, flyrock, and ground vibration standards in 26.4.624.

(2) For underground mines the department may, on a case-by-case basis, waive those requirements of (1)(a) through (1)(g) above that cannot be applied. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.311 AIR POLLUTION CONTROL PLAN (1) For all strip mining operations with projected production rates exceeding 1,000,000 tons of mineral per year, the application shall must contain an air pollution control plan which that includes the following:

(a) through (b) Remains the same.

(2) For all other strip mining operations, the application shall must contain:

(a) through (b) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.312 FISH AND WILDLIFE PLAN (1) Each application shall must contain a fish and wildlife plan, consistent with Rule 26.4.751 which that provides:

(1)(a) a statement of how the plan will minimize disturbances and adverse impacts on fish, and wildlife, and related environmental values during strip mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable, and how the plan will comply with the Endangered Species Act of 1973, as amended. The plan shall must apply, at a minimum, to species and habitats identified in 26.4.304(10)(a) and (10)(c), and must cover the mine-plan permit area and portions of adjacent areas as determined by the department pursuant to Rule 26.4.304(12), (10)(e). Nothing herein shall may be construed to weaken the requirement of section 82-4-233(1)(a);

~~(2)(b)~~ if the applicant states that it will not be practicable, in accordance with paragraph (1) above, to achieve a condition ~~which~~ that clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed, a statement ~~shall be provided~~ which establishes documenting, to the satisfaction of the department, why it is not practicable to achieve such a condition; and

(c) a statement explaining how the applicant will utilize impact control measures, management techniques, and annual monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

(i) threatened or endangered species of plants or animals listed by the U.S. secretary of interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) and their critical habitats;

(ii) species such as eagles, migratory birds, other animals protected by state or federal law, and their habitats, and any other species identified through the consultation process pursuant to 26.4.304(10); and

(iii) habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

(2) Upon request, the department shall provide the fish and wildlife resource information required in 26.4.304(10), 26.4.312, and 26.4.751, as well as any other rule dealing with fish and wildlife, to the U.S. fish and wildlife service regional or field office for review. This information must be provided within 10 days of receipt of the request. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.313 PERMIT-AREA-INFORMATION RECLAMATION PLAN Each reclamation plan ~~shall~~ must contain a description of the reclamation operations proposed, including the following information ~~for the proposed permit area:~~

(1) a detailed timetable for the completion of each major step in the reclamation plan;

(2) a detailed estimate of the cost of reclamation of the proposed operations ~~required~~ that will ~~to~~ be covered by a performance bond with supporting calculations for the estimate;

(3) a plan for backfilling, ~~soil~~ stabilization, compacting, and grading, ~~with contour maps or cross-sections that show the anticipated final surface configuration~~ of the proposed permit area. The plan for backfilling ~~shall~~ must show contain:

(a) a description of the final location of all overburden and parting materials in the fill. Diagrams must be included, as necessary;

(b) a narrative and cross-sections showing the plan of highwall reduction, including the limits of buffer zone consistent with the performance standards of 26.4.501 and



26.4.514. An operator may propose alternate plans other than highwall reduction if the restoration will be consistent with the purposes of 82-4-232(7) and 26.4.821 through 825;

(c) a narrative description of the derivation of the bulking factor (swell) used by the applicant in calculation of spoil volumes and generation of postmining contour maps. Calculations used in the derivation must be included;

(d) a map showing the postmining topography that the applicant proposes to meet at the time of final bond release. This map must be prepared to reflect the performance standards. The map must be keyed to a cross-section or set of cross-sections, drawn to scale, and depict the removal of overburden and mineral and the replacement of the swelled spoil to demonstrate that the proposed postmining contours can be achieved; and

(e) a plan for the early detection of grading problems that would result in a final graded topography not consistent with the approved postmining contour plan. Upon detection of such a grading problem, the permittee must notify the department, in writing, within ten working days. The notification must contain at a minimum a preliminary proposal for measures to remedy the problem;

(4) a plans for removal, storage, and redistribution of topsoil, overburden, and other materials, in accordance with 26.4.501 to 26.4.522, and 26.4.701 to 26.4.703.

(a) These plans must include or reference other narratives in the application documenting how the information on the characteristics of the overburden and coal (26.4.304(7)) and soils (26.4.304(11)), was utilized in developing the plans.

(b) Using the soil survey information (see 26.4.304(11)), the applicant shall propose estimated salvage depths for each lift of each soil component (series or phase) of each soil mapping unit.

(c) The application must also include figures with supporting calculations showing:

(i) total acreages and volumes of salvageable soil of each lift from each soil component of each soil mapping unit; and

(ii) the anticipated thickness(es) of soil redistribution for each lift, and in total, on the area of land affected after regrading;

(5) a plan narrative of the method for revegetation including, but not limited to, descriptions a discussion of:

(a) through (b) Remains the same.

(c) introduced species to be used, if any, and documentation of the desirability and necessity of using the introduced species to achieve the approved postmining land use;

(d) methods to be used in planting and seeding;

(e) approximate, normal, annual seeding and planting dates;

(f) mulching techniques the use of nurse or cover crop and mulching techniques;

(g) soil tillage, amendments or other management techni-

gues to assist in vegetative establishment;

(h) vegetation monitoring to be implemented to identify conditions during the period of liability;

(e)(i) measures proposed to be used to determine the success of revegetation; and

(f)(j) a plans for determining quality, fertility, and thickness of soil and for determining quality of regraded spoil testing plan for the purpose of evaluation of evaluating the results of topsoil the handling of soils, overburden, wastes, and other materials and for evaluating reclamation procedures related to revegetation; and

(k) the types of major equipment to be used in the above operations;

(6) -- a description of the measures to be used to maximize the use and conservation of the coal resource;

(7) -- a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of;

(8) -- a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(9)(6) a description, including appropriate cross-sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area in accordance with sub-chapter 9 and 26.4.1005; and

(10) -- a description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards or a copy of a valid permit issued under these laws;

(7) a narrative explaining reclamation of facilities and sites identified under 26.4.308(2). (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

#### 26.4.314 PLAN FOR PROTECTION OF THE HYDROLOGIC BALANCE

(1) Each reclamation and operation plan shall permit application must contain a detailed description, with supported by appropriate maps, data, and other graphics cross-section drawings, of the measures to be taken during and after the proposed mining activities, in accordance with subchapters 4 through 9 of this chapter, to ensure the protection of minimize disturbance of the hydrologic balance on and off the mine plan area and to prevent material damage to the hydrologic balance outside the permit area in accordance with sub-chapters 4 through 9 of this chapter. The measures must minimize disturbance of the hydrologic balance sufficiently to sustain the approved postmining land use and the performance standards of sub-chapters 5 through 12 and must provide protection of:

(a) the quality of surface and ground water systems, both within both the proposed mine plan and adjacent areas, from the

adverse effects of the proposed strip or underground mine operations;

(b) Remains the same.

(c) the quantity of surface and groundwater both within both the proposed mine plan area and adjacent areas from adverse effects of the proposed mining activities, or to provide alternative sources of water in accordance with Rule 26.4.304(5), (6), and Rule 26.4.6478, where the protection of quantity cannot be ensured.

(2) The description ~~shall~~ must include:

(a) Remains the same.

(b) a plan for the treatment, where required, of surface and groundwater drainage from the area to be disturbed by the proposed operations, and proposed quantitative limits on pollutants in discharges subject to Rule 26.4.633, or other applicable state or federal laws. The plan ~~shall~~ must include design specifications, drawings, method of operation and control, and quality of discharge of the treatment facilities;

(c) Remains the same.

(d) a plan for monitoring the collection, recording, and semi-annual reporting of ground and surface water quality and quantity data collected and analyzed in accordance with Rule 26.4.304(5), (6), 26.4.645 and 26.4.646. The description shall

(3) The application must also include a determination pursuant to (1) and (2) above of the probable hydrologic consequences of the proposed strip mining operation, on the proposed mine plan area and adjacent areas, with respect to the hydrologic regime balance, and the quantity and quality of water in surface and groundwater systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the department. This determination must:

(a) be based on appropriate information on environmental resources addressed in 26.4.304 and other relevant information;

(b) list all probable hydrologic impacts of the proposed mining operation;

(c) explain to what extent each hydrologic impact can be mitigated by measures taken pursuant to sections (1) and (2) above; and

(d) provide a summary of the probable hydrologic consequences of the proposed mining operation.

(4) Whenever this determination in section (3) indicates that adverse impacts to the hydrologic balance on or off the permit area may occur, the department may require submission of supplemental information to evaluate such impacts and to evaluate plans for remedial and long-term reclamation activities.

(5) The department shall provide an assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface and groundwater systems in the cumulative impact area. The cumulative hydrologic impact assessment must be sufficient to determine, for purposes of a permit decision, whether the proposed

operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The department may allow the applicant to submit data and analyses relevant to the cumulative hydrologic impact assessment with the permit application. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.315 PLAN FOR PONDS AND EMBANKMENTS (1) Each application ~~shall~~ must include a general plan for each proposed sedimentation pond and water impoundment within the proposed mine plan areas.

(a) Each general plan ~~shall~~ must:

(i) be prepared by, or under the direction of, and certified by a qualified registered professional engineer, ~~or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture~~ experienced in designing impoundments;

(ii) through (v) Remains the same.

(b) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the mine safety and health administration, 30 CFR 77.216(a), ~~shall~~ must:

(i) be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, and surveying, and landscape architecture. The certifying engineer must have experience designing impoundments;

(ii) through (iv) Remains the same.

~~(c)~~ (c) Each detailed design for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) ~~shall~~ must:

(i) be prepared by, or under the direction of, and certified by a qualified registered professional engineer, ~~or registered land surveyor~~ The certifying engineer must have experience in designing impoundments;

(ii) through (iv) Remains the same.

(2) Sedimentation ponds, whether temporary or permanent, ~~shall~~ must be designed in compliance with the requirements of Rule 26.4.603 and 26.4.639. ~~Each plan shall, at a minimum, comply with the requirements of~~ Impoundments meeting the criteria of 30 CFR 77.216(a) must comply with the requirements of 30 CFR 77.216-1 and 77.216-2, and must be submitted to the mine safety and health administration, ~~30 CFR 77.216-1 and 77.216-2.~~

(3) Permanent ~~and temporary~~ impoundments ~~shall~~ must be designed to comply with Rule 26.4.642 and the requirements of the mine safety and health administration, 30 CFR 77.216-1 and 77.216-2.

(4) Dams and reservoirs impounding 50 acre-feet or more either singly or in series within the same watershed, may require a construction and operating permit as required in the Dam Safety Act. For purposes of the Dam Safety Act, capacity is measured to the crest of the dam. Operators must contact the department of natural resources and conservation to determine what requirements must be met. (AUTH: Sec. 82-4-

204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.316 STRIP OR UNDERGROUND MINING NEAR UNDERGROUND MINING (1) For strip or underground mining operations within the proposed permit area to be conducted within 500 feet of an active or abandoned underground mine, the application ~~shall~~ must describe the measures to be used to comply with 82-4-227(8) and 26.4.516. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.317 DIVERSIONS (1) Each application ~~shall~~ must contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with the Act and ~~Rules 26.4.636 and 26.4.637~~ 26.4.635 through 26.4.637. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.318 PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES (1) For any public parks, ~~or~~ historic places, or other significant cultural resources identified in 26.4.304(2) that may be adversely affected by the proposed operations, each plan ~~shall~~ must describe the measures to be used to minimize or prevent these impacts, the timing and tracking of these measures relative to the disturbance schedule, and to how the applicant will obtain approval of the department and other agencies as required in Rule 26.4.1131. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.319 RELOCATION OR USE OF PUBLIC ROADS Each application ~~shall~~ must describe, with appropriate maps and cross-sections or other proof required by the department, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under ~~Rules 26.4.1134 and 26.4.1135 and 26.4.1136~~, the applicant is seeking approval of:

- (1) Remains the same.
- (2) relocating or closure of a public road. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.320 PLANS FOR DISPOSAL OF EXCESS SPOIL (1) Each application ~~shall~~ must contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to Rule 26.4.520. These plans ~~shall~~ must describe the geotechnical investigation, design, construction, operation, maintenance, and removal (if appropriate) of the site and structures in accordance with state and federal statutes and rules (see also 30 CFR 816.71 and 816.73).

(2) Each application ~~shall~~ must contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (a) through (d) Remains the same.

(e) a stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data ~~shall~~ must be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) ~~if~~ If rock-toe buttresses or key-way cuts are required, the application ~~shall~~ must include the following:

(a) the number, location, and depth of borings or test pits ~~which shall be~~ determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) engineering specifications utilized to design the rock-toe buttress or key-way cuts, which ~~shall~~ must be determined in accordance with (2)(e) of this rule. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.321 TRANSPORTATION FACILITIES PLAN Each application ~~shall~~ must contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description ~~shall~~ must include a map, appropriate cross-sections, and the following:

(1) through (2) Remains the same.

(3) a description of measures to be taken to obtain approval of the department for alteration or relocation of a natural drainageway; and

(4) a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert for approval by the department under Rule ~~26-4-604~~ 26.4.605 (3) (a) (i). ~~r-and~~

~~(5) -- a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed mine plan area.~~ (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.322 COAL CONSERVATION PLAN (1) An application for a permit to ~~strip~~ mine coal must include a coal conservation plan to allow determination of whether failure to conserve coal may occur.

(2) The plan ~~shall~~ must include:

(a) the results of all test borings, ~~cross-sections~~ evaluations, observations, and analyses, including the following:

(i) Remains the same.

~~(ii) a map showing elevations and locations of test borings and coal sampling~~ a narrative identifying the total reserves in the permit area along with a description of the method of calculation;

~~(iii) geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the area to be mined or otherwise affected. The cross-sections shall must depict the thickness and geological character of all known strata, beginning with the topsoil and going to and including the lowest coal seam which can be extracted using the most~~

~~modern strip mining equipment available. Data shall be accumulated to a depth of 200 feet or greater depth as required by the department including the stratum immediately below the lowest of all the potentially economically minable coal seams or the stratum containing any aquifer below this seam that may be adversely impacted by mining, whichever is deeper. (See 26.4.304(5) and (7));~~

(iv) a map showing elevations and locations of test borings and coal sampling;

(v) upon request by the department, isopach maps of overburden, interburden, and all coal seams proposed to be mined;

(vi) an analysis and summary of the chemical properties of all coal seams encountered to be disturbed including the content of sulfur (organic and inorganic), trace mineral elements, sodium (as Na<sub>2</sub>O), moisture, and ash as well as the British thermal unit (B.T.U.) content per pound;

(vii) through (ix) Remains the same.

(x) location and dimensions of existing areas of spoil, waste, and non-coal waste garbage and other debris disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(b) a description of the location, quantity, and quality of all coal to be left unmined, accompanied by a detailed explanation of the reasons why the coal will not be mined. This explanation shall must include coal which that is to be left unmined in order to comply with the act Act as well as that coal which is to be left unmined because of the method of operation or because the coal is not ~~strippable~~ minable or marketable; and

(c) where applicable, a range diagram type drawing showing any coal fenders to be left in place, and a detailed narrative description of the changes in the mine plan which that would be necessary to recover the same and any potential effects of such changes.

(3) through (iv) Remains the same.

(v) the plan for the removal and transportation of ~~minerals~~ coal; and

(vi) the anticipated plan of mining for a 2-year period;

(b) through (4) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.323 GRAZING PLAN (1) Unless alternate reclamation that does not involve grazing is proposed, an outline of the grazing management plan proposed for reclaimed areas must be submitted with the application. ~~detailed range and grazing management plans shall be submitted with the application.~~ Prior to livestock grazing, the applicant shall submit a detailed range and grazing management plan that describes how the reclaimed area will be managed, taking into consideration the premine utilization of the area. The plan must be approved

by the department prior to initiating grazing pursuant to 26.4.718. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.324 PRIME FARMLANDS: SPECIAL APPLICATION REQUIREMENTS (1) ~~This rule applies to any person who conducts or intends to conduct strip mining operations on prime farmlands. Areas where mining is authorized under permits issued prior to August 3, 1977, are exempt from the prime farmland reconstruction standards.~~

(2) (1) If land within the proposed permit area is identified as prime farmland under Rule 26.4.306, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum must contain the following:

(a) ~~a soil survey of the permit area according to the standards of the national cooperative soil survey, in accordance with the procedures set forth in U.S. department of agriculture handbooks 436 (Soil taxonomy, 1975) and 19 (Soil Survey Manual, 1951), and in accordance with this rule.~~

(i) ~~These publications are hereby incorporated by reference as they exist on the date of adoption of this part. They are on file and available for inspection at the Helena office of the department, and the national, state, and local offices of the U.S. soil conservation service.~~

(ii) (a) the soil survey requirements listed under 26.4.304(1) and also including: The soil survey shall include

(i) a description of the original undisturbed soil profile and mapping unit(s) of containing each prime farmland soil; showing

(ii) the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops; and

(iii) the bulk densities of each soil horizon for each prime farmland soil;

(b) the proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with Rules 26.4.811 through 26.4.816;

(c) ~~the moist bulk density of each major horizon of each prime farmland soil in the permit area. The moist bulk density shall be determined by laboratory tests of samples taken from within the permit area according to procedures set forth in soil survey laboratory methods and procedures for collecting soil samples (soil survey investigations report no. 1, U.S. department of agriculture, soil conservation service, 1972). Other standard on-site methods of estimating moist bulk density may be used where these methods correct for particle size distribution and moisture content and are approved by the soil conservation service or the department. In lieu of laboratory data from samples taken within the permit area, the department may permit use of moist bulk density values representing the soil series where such values have been established by the soil conservation service;~~



~~(d)~~ (c) the location of areas to be used for the separate stockpiling of the soil and plans for soil stockpile stabilization before redistribution;

~~(e)---if applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizons, to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management;~~

~~(f)~~ (d) plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of to restore an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions;

~~(g)~~ (e) plans that demonstrate that the proposed method of reclamation will achieve vegetation to satisfactorily comply with Rules 26.4.815 through 26.4.825, as applicable;

~~(h)~~ (f) available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining disturbance as existed before mining disturbance;

(g) if the use of other soils or materials is proposed, documentation, such as agricultural school studies or other scientific data from comparable areas, demonstrating that the use of these soils or materials, instead of the A, E, B, or C horizons of the prime farmland soils, can achieve soil productive capacities in accordance with 82-4-232(3)(a) and (b). Any proposals to use said substitutes must document compliance with 26.4.703, if applicable;

~~(i)~~ (h) A description of the reference area(s) of prime farmland with the same soils, slopes, and other pertinent characteristics and that lie outside of the area proposed for disturbance but in the immediate vicinity of the proposed mining operation, that will be used in determining revegetation success of mined and reclaimed prime farmland. If reference areas in the vicinity of the mining operation are not present, the applicant shall describe reference areas more distant from the proposed operation. In all cases, reference areas must be selected and used in accordance with 26.4.815(2) in determining revegetative success of disturbed and reclaimed prime farmlands;

(i) if reference areas in accordance with (h) above are not found at all, a demonstration as to how a target yield will be utilized in determining revegetation success in accordance with 26.4.815(2); and

(j) vegetative productivity prior to disturbance in

accordance with 26.4.304(12)(b)(ii).

~~(j) -- actual or current estimated yields under a high level of management for each soil map unit from the USDA for each crop to be used in determining success of revegetation. These yield values or estimates shall be used by the department as target levels for determining success of revegetation, if areas of prime farmland outside of the area proposed for disturbance are not available for comparison purposes. The target yield may be adjusted by the department in consultation with the secretary of agriculture before approval of the permit application;~~

~~---(k) -- in all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as non-mined land of the same soils in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to (2)(a) of this rule.~~

~~(3)(2) Before any permit is issued for areas that include prime farmlands, the department shall consult with the secretary of agriculture Montana state office of the U.S. soil conservation service.~~

~~(4)(3) A permit for the mining and reclamation of prime farmland may be granted by the department, if it first finds, in writing, upon the basis of a complete application, that:~~

~~(a) the permit incorporates as specific conditions the contents of the plan submitted under paragraph (2) section (1) of this subsection rule after consideration of any revisions to that plan suggested by the secretary of agriculture Montana state office of the U.S. soil conservation service under subsection (3) pursuant to section (2) of this rule;~~

~~(b) the applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as comparable non-mined prime farmland in the surrounding area under equivalent levels of management; and~~

~~(c) the proposed operations will be conducted in compliance with the applicable requirements of Rules 26.4.811 through 26.4.816 or 26.4.825. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)~~

26.4.325 COAL MINING OPERATIONS ON AREAS OR ADJACENT TO AREAS INCLUDING ALLUVIAL VALLEY FLOORS: SPECIAL APPLICATION REQUIREMENTS

(1) This rule applies to each person applicant who conducts or intends to conduct strip coal mining and reclamation operations in, adjacent to or under a valley holding a stream in the arid or semi-arid regions.

(2)(a) Before applying for a permit applicants who propose to conduct, or before conducting strip coal mining and reclamation operations within a valley holding a stream or in a location where the proposed permit area or adjacent area includes any stream in an the arid or semi-arid area, region of Montana, may request the department to make an alluvial valley floor determination with respect to that valley floor, as an initial step in the permit application process. The applicant

shall ~~either affirmatively demonstrate, and the department shall determine, based on available data, or field studies submitted by the applicant, or a combination thereof, the presence or absence of an alluvial valley floor or submit to the department the results of a field investigation of the proposed mine plan area and adjacent area.~~ The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the department, after consultation with the applicant, to enable the department to make an evaluation regarding the existence data and data analyses to demonstrate the presence or absence of the probable an alluvial valley floor in the proposed mine plan area, or adjacent area and to determine which areas, if any, The department may require more detailed study in order to allow the department additional data collection and analyses or other supporting documents, maps, and illustrations in order to make a final the determination, regarding the existence of an alluvial valley floor. Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the department, shall must include an appropriate combination, adapted to site-specific conditions, of:

(i) Remains the same.  
 (ii) mapping of all lands included in the area in accordance with ~~subsection~~ section (2) of this rule and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture croplands and undeveloped rangelands exist and accompanied by measurements of vegetative productivity and type;

(iii) through (iv) Remains the same.  
 (v) documentation, based on representative sampling, that areas identified in ~~subsection~~ section (2) of this rule are, or are not, flood irrigable, based on streamflow water quality, water yield, soils measurements, and topographic characteristics;

(vi) Remains the same.  
 (b) Based on the investigations conducted under ~~paragraph~~ subsection (2) (a), the department shall make a written determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The department shall determine that an alluvial valley floor exists if it finds that:

(i) through (ii) Remains the same.  
 (A) the existence of current flood irrigation in the area in question ~~or its historical use;~~  
 (B) the capability of ~~an~~ the area to be flood irrigated, based on typical regional agricultural practices, historical flood irrigation, stream-flow, water yield, soils, water quality, and topography; or  
 (C) subirrigation of the lands in question, derived from

the groundwater system of the valley floor-; and

(iii) the valley does not meet the definition of upland areas in 26.4.301.

(c) If the department determines in writing that an alluvial valley does not exist pursuant to subsection (2) (b), no further consideration of this rule is necessary;

(3) (a) (i) If land within the proposed permit area or adjacent area is identified as Whenever an alluvial valley floor is identified pursuant to (2) (b) above, and the proposed coal mining operation may affect an this alluvial valley floor or waters that supply the alluvial valley floors, the applicant shall submit a complete application for the proposed mining and reclamation operations, to be used by the department, together with other relevant information, including the information required by sub-section (2) of this rule, as a basis for approval or denial of the permit may request the department, as a preliminary step in the permit application process, to separately determine the applicability of the statutory exclusions set forth in paragraph (3) (a) (ii) above. The department may make such a determination based on the available data, may require additional data collection and analyses in order to make the determination, or may require the applicant to submit a complete permit application and not make the determination until after the complete application is evaluated.

(ii) An applicant need not submit the information required in subparagraphs (3) (c) (i) (B) and (C) of this section and the department is not required to make the findings of subparagraphs (3) (f) (i) (A) and (B) of this section when the department determines that one of the following circumstances, heretofore called statutory exclusions, exist:

(A) The premining land type is undeveloped rangeland that is not significant to farming;

(B) Any farming on the alluvial valley floor that would be affected by the coal mining operation is of such small acreage as to be of negligible impact on the farm's agricultural production. Negligible impact of the proposed operation on farming is based on the relative importance of the affected vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production over the life of the mine; or

(C) The circumstances set forth in 26.4.802(3) exist.

(iii) For the purposes of this section, a "farm" is one or more land units on which agricultural activities are conducted. Agricultural activities or farming are generally considered to occur on a combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to coal mining operations.

(b) If the department determines that the statutory exclusions are not applicable and that any of the required findings of paragraph (3) (i) of this section cannot be made,

the department may, at the request of the applicant:

(i) determine that mining is precluded on the proposed permit area and deny the permit without the applicant filing any additional information required by this section; or

(ii) prohibit coal mining and reclamation operations in all or parts of the area to be affected by mining.

(c) (i) If land within the permit area or adjacent area is identified as an alluvial valley floor and the proposed coal mining and reclamation operation may affect an alluvial valley floor, or waters supplied to an alluvial valley floor, the applicant shall submit a complete application for the proposed coal mining and reclamation operation to be used by the department together with other relevant information as a basis for approval or denial of the permit. If an exclusion in paragraph (a)(ii) of this section applies, then the applicant need not submit the information required in subparagraphs (c)(ii)(B) and (C) of this section.

(ii) The complete application shall must include detailed surveys and baseline data required by the department for a determination of:

~~(i)(A)~~ (A) the characteristics of the alluvial valley floor which that are necessary to preserve the essential hydrologic functions during and after mining throughout the mining and reclamation process;

~~(ii)--the significance of the area to be affected to agricultural activities;~~

(B) whether the operation will avoid during mining and reclamation the interruption, discontinuance, or preclusion of farming on the alluvial valley floor;

~~(iii)(C) whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or groundwaters that supply the alluvial valley floor;~~

~~(iv)--the effectiveness of proposed reclamation with respect to requirements of the act, and applicable rules, and~~

(D) whether the reclamation plan is in compliance with requirements of the Act, this chapter, and regulatory program; and

~~(v)(E) whether the proposed specific environmental monitoring system will provide sufficient information required to measure compliance with Rules 26.4.801 through 26.4.806 during and after mining and reclamation operations.~~

~~(b)(d)~~ (d) Information required under this subsection shall must include, but not be limited to:

(i) through (ii) Remains the same.

(iii) surveys and data required under subsection section (3) for areas designated as alluvial valley floors because of their flood irrigation characteristics shall also include, at a minimum, surface hydrologic data, including streamflow, runoff, sediment yield, and water quality analyses describing seasonal variations over at least 1 full year, field geomorphic surveys and other geomorphic studies;

(iv) surveys and data required under subsection section

(3) for areas designated as alluvial valley floors because of their subirrigation characteristics, ~~shall also include~~, at a minimum, geohydrologic data including observation well establishment for purposes of water level measurements, groundwater contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations over at least 1 full year, and physical and chemical analysis of overburden to determine the effect of the proposed mining operations on water quality and quantity;

(v) plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley floors unless the premining land ~~use type~~ has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and groundwater systems that supply alluvial valley floors;

(vi) maps showing farms and ranches that could be affected by the mining and, if any farm or ranch includes an alluvial valley floor, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm or ranch's total agricultural activity including an economic analysis; and

(vii) Remains the same.

~~(e)~~ (e) The surveys required by ~~paragraph-subsection section~~ (3) ~~should~~ must identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics ~~which~~ that support the essential hydrologic functions and ~~which~~ that must be evaluated in a complete application include, but are not limited to:

(i) through (ii) (A) Remains the same.

(B) porosity, permeability, waterholding capacity, saturated thickness and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water bearing zones found beneath the valley floor; and

(C) through (iv) Remains the same.

(f) (i) The findings of subparagraphs (f) (ii) (A) and (B) of this section are not required with regard to alluvial valley floors which meet any of the exclusions of paragraph (3) (a) (ii) of this rule.

(ii) No permit or permit revision application for coal mining and reclamation operations may be approved by the department unless the application demonstrates and the department finds, in writing, on the basis of information set forth in the application, that:

(A) the proposed operations will not interrupt, discontinue, or preclude farming on an alluvial valley floor;

(B) the proposed operations will not materially damage the quantity or quality of water in surface and underground water systems that supply alluvial valley floors; and

(C) the proposed operations will comply with 26.4.801

through 26.4.806 and the other applicable requirements of the Act and the regulatory program. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.326 AUGER MINING: SPECIAL APPLICATION REQUIREMENTS

Any application for a permit for operations ~~covered by this subsection shall~~ using auger mining methods must contain, in the mining and reclamation plan, a description of the auguring methods to be used and the measures to be used to comply with ~~Rule 26-4-631~~ 26.4.831 through 26.4.833. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222.)

26.4.327 COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED AT OR NEAR THE MINE SITE NOR WITHIN THE MINE A MINE PERMIT AREA: SPECIAL APPLICATION REQUIREMENTS (1) This rule applies to any person who ~~conducts or~~ intends to ~~conduct strip coal mining operations utilizing~~ operate a coal preparation plant, processing plants or support ~~facilities~~ facility not located within a permit area of a specific mine. Any person who intends to operate such a processing plant or support facility ~~must~~ shall obtain a permit from the department in accordance with the requirements of this rule sub-chapter and sub-chapter 8.

(2) Any application for a permit for operations covered by this rule ~~shall~~ must contain in the mining and reclamation plan, specific plans, including descriptions, maps, and cross-sections of the construction, operation, maintenance, and removal of the preparation plant, processing plants and associated support ~~facilities~~ facility. The plan ~~shall~~ must demonstrate that those operations will be conducted in compliance with this ~~rule~~ sub-chapter and sub-chapter 8. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-222.)

26.4.401 NOTICE-AND FILING OF APPLICATION AND NOTICE

(1) An applicant for an operating permit, a test pit prospecting permit, a renewal of an operating permit or test pit prospecting permit, a major revision to an operating permit or test pit prospecting permit, or an amendment (other than an incidental boundary revision) to add acreage to an operating permit or a test pit prospecting permit shall file the application with the department's main office in Helena and the federal coal regulatory authority.

(2) The department shall determine whether an application is administratively complete within 90 days of receipt and shall immediately notify the applicant in writing of its determination. If the department determines an application is not administratively complete, the notice must list the specific items not adequately addressed in the application. Any items not listed in the notice are presumed to be addressed. If the department determines that the application is administratively complete, the notice must also advise the applicant whether an environmental impact statement must be prepared.

(3) Upon receipt of notice of the department's determination of administrative completeness, (i)--An the applicant for an operating permit or prospecting permit for test pits shall place an advertisement in a local newspaper of general circulation in the locality of the proposed strip or underground mining operations activity at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the permit application is filed with the department. The advertisement shall must contain, at a minimum, the following information:

- (a) the name and business address of the applicant;
- (b) a map or description, which shall must:
  - (i) clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
  - (ii) for all applications except major revision applications, clearly show or describe the exact location and boundaries of the proposed permit area and state the acreage of that area;

(iii) state the names of the U.S. geological survey 7.5- or 15-minute quadrangle map(s) which that contains the area shown or described, if one is available; and

- (iv) if a map is used, indicate the north point;
- (c) the location where a copy of the application is available for public inspection under subsection-(3) section (6) of this rule;

(d) the name and address of the department and the fact that written comments, objections, or requests for informal conferences on the application may be submitted by any person with an interest that is or may be adversely affected to the department within 30 days following the last advertisement of the application; and



(e) if an applicant seeks a permit to mine conduct mining operations within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, a concise statement describing the public road, the particular operations within the 100 feet or the particular part to be relocated, or closed, where the any relocation or closure is to occur, and the duration of the operations or relocation;

(f) if an alternate reclamation plan is submitted, a brief description of the plan; and

(g) if an extension of time to commence mining is sought, the length of extension applied for. (See 26.4.406).

(4) For filing and public notice procedures for bond release applications, see 26.4.1112.

~~(2)~~ (5) (a) Upon receipt of an application for a permit, immediately upon issuance of a determination of administrative completeness, the department shall issue written notification of:

(i) the applicant's intention to mine a particularly described tract of land proposed activity and a description of the boundaries and location of the proposed activity;

(ii) Remains the same.

(iii) where a copy of the application may be inspected; and

(iv) the applicant's alternate reclamation plans, if any; and

~~(iv)~~ (v) where the fact that comments or objections to on the application and requests for informal conference may be submitted and the address to which they may be submitted.

(b) The written notifications ~~shall~~ must be sent to:

(i) federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities, and fish and wildlife and historic preservation agencies, the USDA soil conservation service state office, the US army corps of engineers, district engineer, and the national park service;

(ii) through (iv) Remains the same.

~~(3)~~ (6) Upon receipt of the department's determination of administrative completeness, the The applicant shall make a full copy of his or her the complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the department with the recorder at the courthouse of the county where the mining is proposed to occur, or, if approved by the department, at another equivalent public office. If it is determined The department may approve filing at an equivalent public office if it determines that that office will be more accessible to local residents than the county court-house courthouse.

~~(b)~~ The applicant shall file the copy of the complete application by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the clerk and recorder or other approved public office at the same time the revision is sub-

mitted to the department. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 2, Ch. 289, L. 1985, Eff. 10/1/85; IMP, Sec. 82-4-222, 226, 231(4), 232, 233 MCA.)

26.4.402 SUBMISSION OF COMMENTS AND WRITTEN OBJECTIONS

(1)(a) The governmental entities specified in Rule 26.4.401(1)(5)(b) ~~above~~ may file written comments on permit applications with the department with respect to the effects of the proposed mining operations on the environment within their areas of responsibility. These comments must be submitted to the department within 30 days of receipt of written notice pursuant to paragraph Rule 26.4.401(2)(5).

(b) The department shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application ~~for a permit~~ under Rule 26.4.401(3)(6). A copy ~~shall~~ must also be transmitted to the applicant.

(2)(a) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority shall have the right to file written objections to an initial or revised application ~~for a permit~~ with the department within 30 days after the last publication of the newspaper notice required in paragraph Rule 26.4.401(1)(3).

(b) through (i) Remains the same.

(ii) file a copy for public inspection in the Helena and Billings offices of the department. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 2, Ch. 289, L. 1985, Eff. 10/1/85; IMP, Sec. 82-4-226, 231 MCA.)

26.4.403 INFORMAL CONFERENCE (1) Any person whose interests are or may be adversely affected by the ~~issuance of the permit decision on an application submitted pursuant to 26.4.401(1)~~, or the officer or head of any federal, state or local government agency or authority may, in writing, request that the department hold an informal conference on any that application ~~for a permit~~. The request ~~shall~~ must:

(a) Remains the same.

(b) state whether the requestor desires to have the conference conducted in the locality of the proposed ~~mining operations~~ activity; and

(c) be filed with the department not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under Rule 26.4.401(1)(3) above.

(2) Except as provided in subsection section (3) below, if an informal conference is requested in accordance with this rule, the department shall hold an informal conference within ~~a reasonable time~~ 30 days following the receipt of the request. The informal conference shall be conducted according to the following:

(a) ~~If~~ requested under (b) of this subsection section, it ~~shall~~ must be held in the locality of the proposed mining activity.

(b) ~~The~~ department shall advertise the date, time, and

location of the informal conference in a newspaper of general circulation in the locality of the proposed mine activity at least two consecutive weeks prior to the scheduled conference.

(c) ~~Remains-the-same.~~

(d) ~~The~~ conference ~~shall~~ must be conducted by a representative of the department, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record ~~shall~~ must be made of the conference proceeding, unless waived by all the parties. The record ~~shall~~ must be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond.

(3) If all parties requesting the informal conference stipulate ~~agreement~~ before the ~~requested~~ informal conference and to withdraw their request, the informal conference need not be held.

(4) The department shall notify the applicant and all parties to the informal conference of its decisions and the reasons therefor within 60 days of the informal conference. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 2, Ch. 289, L. 1985, Eff. 10/1/85; IMP, Sec. 82-4-226, 231 MCA.)

26.4.404 REVIEW OF APPLICATION (1) ~~(a)~~ The department shall review ~~the~~ each administratively complete application, written comments, written objections submitted, and records of any informal conference held, and determine the acceptability of the application within 120 days of its determination of administrative completeness. If the applicant significantly modifies the application before the acceptability determination, the department shall conduct a new review, including an administrative completeness determination, public notice, public review, and 120-day review period.

(2) (a) If the application is not acceptable, the department shall notify the applicant in writing, setting forth the reasons why it is not acceptable. The department may propose modifications, delete areas, or reject the entire application. All items not identified as unacceptable are presumed acceptable.

(b) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant within 120 days of date of receipt, except that if the revision constitutes a significant modification, the department shall conduct a new review, including an administrative completeness determination, public notice, and public review.

(3) If the department determines that the application is acceptable, the department shall:

(a) publish notice of its determination once a week for two consecutive weeks in a newspaper of general circulation in the locality of the proposed activity. The notice must state that any person with an interest that is or may be adversely affected may, within 10 days of the second published notice, file written objections or file written objections and request an informal conference within 10 days of the second published

notice; and

(b) if a written objection is filed and an informal conference requested, hold an informal conference in the locality of the proposed activity within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of the decision and the reasons therefor within 10 days of the informal conference.

(b)(4) Remains the same.

(5) The department shall assure that:

(a) cultural resource locations remain confidential; and

(b) a determination of effect is completed for all listed eligible cultural resource sites in accordance with 36 CFR 800.

(2)(6) If the department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued.

(3)(7) If the department determines that issuance of the permit is prohibited pursuant to section 82-4-227(11), the department may issue the permit upon a showing that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any strip or underground coal mining operations being conducted under a permit issued according to this subsection shall must be immediately terminated.

(4)(8) through (5)(9) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 2, Ch. 289, L. 1985, Eff. 10/1/85; IMP, Sec. 82-4-226, 231 MCA.)

26.4.405 FINDINGS AND NOTICE OF DECISION (1) The department shall prepare written findings approving or denying an application filed pursuant to 26.4.401(1) in whole or in part no later than 45 days from the date of the acceptability determination or from date of publication of the final environmental impact statement, whichever occurs later. However, whenever the application is for, or concerns, a permit subject to the federal lands program and the department's decision is to approve the application in whole or in part, the department shall issue its findings on the same day as the federal regulatory authority issues its findings if practical.

(2) Whenever the department has determined that it must prepare an environmental impact statement prior to a permit decision, the department shall complete the environmental impact statement within 365 days of its notice given pursuant to 26.4.401(2).

(3) If Whenever an informal conference is has been held, the department shall give its written findings and notice of decision to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(2)(4) If Whenever no informal conference has been held, the department shall give its written findings and notice of

decision to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

~~(3)~~ (5) Simultaneously with distribution of the written findings and notice of decision under (2) and (3) above, the department shall:

(a) give a copy of its findings and notice of decision to each person or government official who filed a written objection or comment with respect to the application; and

(b) publish a summary of the decision in a local newspaper of general circulation in the general area of the proposed project.

(6) The department may not approve an application submitted pursuant to 26.4.401(1) unless the application affirmatively demonstrates and the department's written findings confirm, on the basis of information set forth in the application or information otherwise available that is compiled by the department, that:

(a) the application is complete and accurate, that the applicant has complied with the act and rules, and that the applicant has demonstrated reclamation can be accomplished;

(b) the area is not being considered for or has not been designated as unsuitable for mining;

(c) the hydrologic consequences and cumulative hydrologic impacts will not result in material damage to the hydrologic balance outside the permit area;

(d) the applicant has paid all reclamation fees from previous and existing operations nationwide;

(e) the operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modifications of their critical habitats;

(f) the applicant has complied with applicable federal and state cultural resource requirements;

(g) the applicant has applied for any required air quality and water quality permits;

(h) approval of the application is not prohibited pursuant to 82-4-227(11) or that, if the applicant has existing violations, the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation;

(i) approval of the application is not prohibited pursuant to 82-4-227(12);

(j) if alternate reclamation is proposed, the requirements of 26.4.823 have been met;

(k) for mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted the documentation required under 26.4.303; and

(l) the applicant proposes to use existing structures in compliance with 26.4.309.

(7) Before any final determination that 82-4-227(12) prohibits approval of the application, the applicant is entitled to a contested case hearing.

(8) If the department decides to approve the applica-

tion, it shall require that the applicant file the required performance bond or provide other equivalent guarantee before the application is granted and, upon submission of bond or guarantee, the department shall grant the permit, revision, or amendment. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 2, Ch. 289, L. 1985, Eff. 10/1/85; IMP, Sec. 82-4-226, 231 MCA.)

26.4.406 NOTICE OF EXTENSION OF TIME TO COMMENCE MINING

(1) The department shall specifically set forth in the permit any extension of the 3-year limitation granted pursuant to section 82-4-221(1).

(2) A request pursuant to 82-4-221(1) for extension of time to commence mining is subject to the public notice requirements of 26.4.401 through 26.4.403.

(3) Whenever, after issuance of a permit, the permittee applies for an extension of time to commence mining, the permittee shall publish at least once a week for two consecutive weeks in a local newspaper of general circulation in the locality of the permit area, a notice of the application. The notice must include the items required in 26.4.401(3) and the following:

(a) the permit number;

(b) the grounds for the extension request. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-221 MCA.)

26.4.407 CONDITIONS OF PERMIT The following conditions accompany the issuance of each permit:

(1) through (2) Remains the same.

(3) The permittee shall pay all reclamation fees for coal produced under the permit;

(4) If the department issued the permit with a finding that issuance was not prohibited by 82-4-227(11) because the applicant was maintaining a good faith direct appeal and the initial judicial appeal authority denies a stay or affirms the violation, the permittee will immediately submit proof that the violation has been or is being corrected to the satisfaction of the regulatory agency or will cease operations; and

(5) Except as provided in 26.4.1107, the permittee shall maintain in effect at all times a bond in the amount approved by the department and that, upon failure of the permittee to maintain such bond coverage because of expiration or cancellation of bond, the permit is suspended and the permittee shall cease mining operations until substitute bond is filed with and approved by the department. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.408 REVIEW OF EXISTING PERMITS (1) The department shall review each operating permit issued during the term of the permit. This review ~~shall~~ must occur not later than the middle of the permit term.

(2) through (3) Remains the same.

(4) Any order of the department requiring revision or modification of permits ~~shall~~ must be based upon written

finding and ~~shall~~ must be subject to the provisions for administrative review provided in 26.4.413. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-237 MCA.)

26.4.409 PERMIT REVISIONS (1) A revision to a permit ~~shall~~ must be obtained:

- (a) for any changes in the operation as described in the original ~~application~~ permit and subsequent revisions thereof ~~and approved under the original permit~~; or
- (b) when required under Rule 26.4.408.
- (2) Remains the same.
- (3) An application for major revision:
  - (a) must comply with subchapter 3, as appropriate;
  - (b) is subject to the public notice and participation provisions of ~~subsection Rules 26.4.4013 through 26-4-407~~ 26.4.405; and,
  - (c) must include submittal of a new or updated probable hydrologic consequence determination, if determined necessary by the department for adequate permit review;
- (4) If impacts change, the department shall update the cumulative hydrologic impact assessment. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-221 MCA.)

26.4.410 PERMIT RENEWAL (1) Applications for renewals of a permit ~~shall~~ must be made at least 30/20, but not more than 60 150 days prior to the expiration date. Renewal applications ~~shall~~ must be on a form provided by the department, including, at a minimum, the following:

- (a) a statement of the name and address of the permittee, the term of the renewal requested, and the permit number; ~~and a description of any changes to the original application for a permit or prior permit renewal~~;
- (b) a copy of the newspaper notice and proof of publication of same under (2)(a) below ~~Rule 26-4-402(i) above~~; and
- (c) evidence that a liability insurance policy or adequate self-insurance will be provided by the applicant for the proposed period of renewal.

(2)(a) Applications for renewal ~~shall be~~ are subject to the requirements of public notification and participation contained in ~~Rule 26.4.4031~~ 26.4.4075.

(b) ~~If Whenever~~ an application for renewal of a permit includes a proposal to extend operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit ~~which~~ that addresses any new land areas ~~shall be~~ is subject to the full standards applicable to ~~new permit~~ applications pursuant to ~~82-4-220 82-4-225~~ and 26.4.411.

(c) If the operations authorized under the original permit were not subject to the standards contained in ~~section 82-4-227(3)(b)~~, because the permittee complied with the exceptions contained in ~~section 82-4-227(4)~~, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan for the original permit ~~shall~~ is not be subject to the standards

contained in ~~section~~ 82-4-227(3) (b).

(d) Before finally acting to grant the permit renewal, the department shall require any additional performance bond needed by the permittee to comply with ~~section~~ 82-4-225 and 82-4-232.

(e) Applications must include an update of ownership and control information and violation histories in accordance with 26.4.303.

(3) ~~Any No permit renewal shall may be-for-a-term-not-to~~ exceed the period of the original permit.

(4) (a) through (iv) Remains the same.

(A) any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the department might require; and

(B) adequate liability insurance will be provided;

(v) Remains the same.

(vi) the applicant has not agreed to comply with all applicable laws and rules in effect at the time of renewal; or

(vii) the renewal ~~is-subject-to is prohibited by the~~ denial provisions of 82-4-227, 82-4-234, and 82-4-251; or

(viii) the operation has been in a state of temporary cessation for six or more years.

(b) ~~In determining whether to approve or deny a renewal, the burden shall must be on the opponents of renewal.~~

(c) The department shall send copies of its decision to the applicant, to any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

(d) Any person having an interest which is or may be adversely affected by the decision of the department ~~shall have has~~ the right to administrative review pursuant to

26.4.413. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-221, 226 MCA.)

26.4.411 PERMIT AMENDMENT (1) Any ~~proposed~~ application to amend the permit by adding acreage, other than an incidental boundary ~~amendments are revision,~~ is subject to the same application, notice, and hearing requirements as an application for a new permit as required by 82-4-225. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-225 MCA.)

26.4.412 TRANSFER OF PERMITS (1) through (2) (a) Remains the same.

(i) obtaining transfer of the original bond;

(ii) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the department. If such an agreement is reached, the department may authorize for each previous successor and the original permittee the release of any remaining amount of bond



in excess of that required by the agreement; and or  
(iii) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; and

(b) through (i) Remains the same.

(ii) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent and a brief description of the proposed transaction; and

(iii) the same information as is required in sub-chapter 3 for applications for new permits for those activities.

(3) (a) The person applying applicant for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address of the department, and a statement indicating that written comments may be sent to the department within 15 days of publication of the notice.

(b) Any person whose interests are or may be adversely affected, including but not limited to, the head of any local, state or federal government agency may submit written comments or the application for approval to the department within 15 days of the publication of the newspaper notice described above.

(4) The department may, upon the basis of the applicant's compliance with the requirements of subsections sections (1), (2) and (3) of this rule grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:

(a) the person seeking approval is qualified under the Act and 26.4.405 to receive a permit and will conduct the operations covered by the permit in accordance with the Act and the rules adopted pursuant thereto;

(b) through (c) Remains the same.

(5) (a) The department shall notify the permittee, successors, commentors, and the federal coal regulatory authority of its findings and publish a summary of the decision in a newspaper of general circulation in the locality of the permit area.

(b) The successor shall immediately provide notice to the department of the consummation of the transfer, assignment, or sale of permit rights. Upon receipt of this notice, the department shall release the original permittee from all obligations not retained under section 2 above.

~~5~~ (6) Any successor in interest seeking to change the conditions boundaries of its operations or any of the terms or conditions of the original permit shall must:

(a) make application for a new permit amendment if the change involves conducting operations outside the original permit area; or

(b) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-238 MCA.)

26.4.413 ADMINISTRATIVE REVIEW (1) Within 30 days after the applicant or permittee is notified of the final decision of

the department concerning the application ~~for a permit, revision or renewal thereof,~~ submitted pursuant to 26.4.401 or an application for transfer, sale, or assignment of rights, ~~or application for prospecting test pit,~~ the applicant, permittee, landowner, or any person with an interest which is or may be adversely affected may submit a written request for a hearing on the reasons for the final decision. The request must contain the grounds upon which the requester contends the decision is in error.

(2) The department shall commence the hearing within 30 days of such request. For the purposes of the hearing, the department may order a site inspection. This The hearing shall be is a contested case hearing and no person who presided at an informal conference shall either preside at this hearing or participate in the decision thereon.

(3) through (4) Remains the same.

(5) Ex parte contacts between representatives of the parties before the hearing examiner and the hearing examiner ~~shall be~~ are prohibited.

(6) ~~Within 30~~ 20 days after the close of the record, the ~~hearing examiner department~~ shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the ~~hearing examiner department~~ with respect to the appeal.

(7) ~~The burden of proof at such hearing shall be is~~ on the party seeking to reverse the decision of the department. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-206, 221, 231, 226, 232 MCA.)

RULE I RECORDS RETENTION (1) Copies of all records, reports, maps, or other documents submitted to or generated by the department under the Act and rules must be made available to the public for at least 5 years after bond release and must be disposed of in accordance with Title 2, chapter 6, MCA, and supporting policy and procedures. Superseded application materials, withdrawn applications, and outdated maps which are not needed for the purpose of bond release application evaluation are not subject to these provisions. (AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-222, 232 MCA.)

RULE II CHANGE OF CONTRACTOR (1) The operator shall notify the department of any change in any contractor responsible for day-to-day operations at a permit area within thirty days of the time the obligation is created. When such a change has occurred without transfer of a permit or while a permit transfer is pending, the permittee shall submit the following:

(a) information required under 26.4.303 for the third party;  
(b) a statement acknowledging that the permittee is not relieved of any compliance responsibilities under the ~~a~~Act; and  
(c) a statement identifying a designated agent.

(2) If the department determines the third party has outstanding violations or unpaid penalties, the department shall suspend the permit until these problems are resolved. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222, 227, 238, 251 MCA.)

26.4.501 GENERAL BACKFILLING AND GRADING REQUIREMENTS

(1) ~~Backfilling and grading of the disturbed area shall~~ must be completed prior to removal of necessary reclamation equipment from the area of operation. If the operator for good cause shown cannot complete backfilling and grading requirements within the time limits set for current backfilling and grading, the department may approve a revised time table. Additional bonding may be required.

(2) ~~All final grading on the area of land affected shall be to the approximate original contour of the land. The final surface of the restored area need not necessarily have the exact elevations of the original ground surface. No final graded slopes shall be steeper than five horizontal to one vertical (4v:5h) unless otherwise approved in writing by the department. Overburden and parting materials which are not conducive to revegetation techniques, establishment, and growth must not be left on the top nor within eight feet of the top of regraded spoils nor at the surface of any other affected areas, unless the applicant demonstrates to the department's satisfaction that a lesser depth will provide for reclamation consistent with the act. The department may require that problem materials be placed at a greater depth.~~

(3) (a) ~~Backfilled material shall~~ must be placed to minimize erosion and sedimentation of undisturbed and reclaimed areas both on and offsite, water pollution, adverse effects on groundwater, minimize other off-site offsite effects, and to support the approved postmining land use.

(b) ~~Backfilled materials must be selectively placed and compacted wherever necessary to prevent leaching of acid, toxic, acid-forming or toxic-forming materials into surface or subsurface waters and wherever necessary to ensure the stability of the backfilled materials.~~

(c) ~~The method and design specifications of placing and compacting such materials must be approved by the department before the acid, toxic, acid-forming or toxic-forming materials are covered.~~

(4) (a) ~~In order to~~ To achieve the approximate original contour, the permittee shall transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Highwalls must be reduced or backfilled in compliance with Rule III or 26.4.515, as appropriate. Box-cut spoils or portions thereof must be hauled to the final cut if:

(i) ~~excessively large areas of the mine perimeter would be disturbed by proposed methods for highwall reduction or by regrading of box-cut spoils; or~~

(ii) ~~material shortages in the area of the final highwall or spoil excesses in the area of the box-cut area are likely to preclude effective recontouring.~~

(b) ~~Cut-and-fill terraces may be used only in those situations expressly identified in this rule and in compliance~~

with 26.4.502.

(c) The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraphs (b) and (e) below. Rule III and 26.4.515.

(b)(i) -- To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the department in accordance with site conditions, must be accurately measured and recorded. -- Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the mineral outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the department. -- Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the department to be representative of the premining configuration of the land. -- Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the areas to be disturbed. -- Slope measurements may be made from topographic maps showing contour lines having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(ii) -- After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the department. -- This grading must not be done so as to allow unacceptably steep slopes to be constructed.

(e) The final graded slopes shall not exceed either the approximate premining slopes as determined according to subparagraph (4)(b)(i) above and approved by the department or any lesser slope specified by the department based on consideration of soil, climate, or other characteristics of the surrounding area. -- Postmining final graded slopes need not be uniform.

(d) See also 26.4.504 and 26.4.505. (AUTH: Sec. 82-4-204, 205, 231, 232, MCA; IMP, 82-4-231, 232)

**RULE III FINAL GRADING REQUIREMENTS** (1)(a) All final grading on the area of land affected must be to the approximate original contour of the land. The final surface of the restored area need not necessarily have the exact elevations of the original ground surface. No final graded slopes may be steeper than five horizontal to one vertical (5h:1v) unless otherwise approved in writing by the department in which case steeper slopes must achieve a minimum long-term static safety factor of 1.3, not to exceed the angle of repose. See also 26.4.513.

(b)(i) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the department in

accordance with site conditions, must be accurately measured and recorded. Each measurement must consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the mineral outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the department. Where the area has been previously mined, the measurements must extend at least 100 feet beyond the limits of mining disturbances as determined by the department to be representative of the premining configuration of the land. Slope measurements must take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and must reflect geomorphic differences of the areas to be disturbed. Slope measurements may be made from topographic maps showing contour lines and having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(ii) After the disturbed area has been graded, the final graded slopes must be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the department. This grading must not be done so as to allow unacceptably steep slopes to be constructed.

(c) The final graded slopes may not exceed either the approximate premining slopes as determined according to paragraph (1)(b)(i) above and approved by the department or any lesser slope specified by the department based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform.

(2) The disturbed area must be blended with surrounding undisturbed ground to provide a smooth transition in topography.

(3) Final grading must be kept current with mining operations. To be considered current, grading and backfilling must meet the following requirements, unless exceptions are granted:

(a) On lands affected by area strip mining, the grading and backfilling may not be more than two spoil ridges behind the pit being worked unless otherwise approved by the department. Rough backfilling and grading must be completed within 180 days following coal removal. The department may grant additional time for rough backfilling and grading if the permittee demonstrates, through a detailed written analysis, that additional time is necessary; and

(b) Grading and backfilling of other types of subject excavations must be kept current as departmental directives dictate for each set of field circumstances. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

**26.4.502 CUT-AND-FILL TERRACES** On approval by the department, in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible

with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces ~~shall~~ must meet the following requirements:

(1) ~~The~~ width of the individual terrace bench ~~shall~~ may not exceed 20 feet, unless specifically approved by the department as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(2) ~~The~~ vertical distance between terraces ~~shall~~ must be as specified by the department to prevent excessive erosion and to provide long-term stability.

(3) ~~The~~ slope of the terrace out slopes ~~shall~~ may not exceed 1v:5h (20 percent). ~~Outslopes which~~ that exceed 1v:5h may be approved, if they have a minimum safety factor of more than 1.3 for any condition of load likely to be encountered, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. ~~In~~ no case may highwalls be left as part of terraces.

(4) ~~Culverts~~ and underground rock drains ~~shall~~ must be used in the terrace only when approved by the department.

(5) ~~Terraces shall~~ must be installed in such a way so as not to prohibit vehicular access or revegetation procedures ~~and~~.

(6) ~~Additional~~ surface manipulation procedures ~~shall~~ must be installed as required by the department. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-232 MCA.)

**26.4.503 SMALL DEPRESSIONS** (1) The requirement to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the department to minimize erosion, conserve soil moisture, or promote vegetation. These depressions ~~shall~~ must be compatible with the approved postmining land use and ~~shall~~ may not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section ~~shall~~ must have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, ~~shall~~ may not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments ~~shall~~ be governed by Rule 26.4.504 and by Rule 26.4.642. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-232 MCA.)

**26.4.504 PERMANENT IMPOUNDMENTS** Permanent impoundments meeting the requirements of 26.4.642 may be retained in mined and reclaimed areas, provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use and protection of the hydrologic balance are met. No impoundments ~~shall~~ may be constructed on top of areas in which excess materials are deposited pursuant to the provisions of Rule 26.4.520. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-232 MCA.)

26.4.505 BURIAL AND TREATMENT OF WASTE MATERIALS

(1) All exposed mineral seams remaining after mining shall must be covered with a minimum of 4 four feet of the best available non-toxic and non-combustible material.

(2) Acid, toxic, Acid-forming, toxic-forming, combustible, or any other undesirable waste materials identified by the department that are exposed, used, or produced during mining shall must be covered in accordance with 26.4.501(2) with a minimum of 8 feet of the best available non-toxic nontoxic and non-combustible noncombustible material. The method and site of final disposal must be approved by the department. If necessary, these materials shall must be tested to determine necessary mitigations to neutralize acidity, to nullify toxicity, in order to prevent water pollution and sustained combustion, and or to minimize adverse effects on plant growth and land uses. Where If necessary to protect against upward migration of salts or exposure by erosion, to provide an adequate depth for plant growth or to otherwise meet local conditions, the department may specify thicker amounts of cover using non-toxic noncombustible and nontoxic material, or, the use of special compaction and isolation techniques to prevent contact of these materials with groundwater. Acid, Acid-forming, toxic, or toxic-forming or other deleterious materials shall must not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(3) Whenever wastes are proposed for use as fill material, 26.4.510 is applicable.

(4) Wastes must not be disposed of in surface deposits or used in the construction of impoundments. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.506 REPLACEMENT AND DISPOSAL OF OVERBURDEN This rule is proposed to be repealed and can be found on page 26-529 of the ARM.

26.4.507 STORAGE AND FINAL DISPOSAL OF GARBAGE NON-COAL WASTES AND OTHER DEBRIS (1) Noncoal-wastes Garbage and other debris including, but not limited to, grease, lubricants, paints, flammable liquids, garbage trash, abandoned mining machinery, lumber and other combustibles generated during mining activities shall must be placed and stored or disposed of in a controlled manner in a designated portion of the permit area.

(a) Placement-and, storage, and disposal shall must ensure that leachate and surface runoff do not degrade surface or groundwater, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) All disposal sites must be routinely compacted, and suitable earth materials must be placed over garbage and other debris to a thickness in accordance with 26.4.501(2).

(2) At no time ~~shall~~ may any ~~solid-waste-material~~ garbage or other debris be deposited at ~~refuse embankments or~~ impoundment sites, nor ~~shall~~ may any excavation for solid waste garbage or debris disposal be located within eight feet of any coal outcrop or coal storage area.

(3) Municipal garbage may not be deposited within a permit area unless compliance with this rule and 26.4.510 is demonstrated.

(4) Notwithstanding any provision of this sub-chapter, any garbage or other debris meeting the definition of "hazardous" as found in section 3001 of P.L. 94-580, as amended, must be handled in accordance with that act and regulations adopted thereunder. (AUTH: Sec. 82-4-204 MCA; IMP. Sec. 82-4-231 MCA.)

26.4.508 DEPARTMENTAL APPROVAL OF FINAL WASTE DISPOSAL PLANS This rule is proposed to be repealed and can be found on page 26-529 of the ARM.

26.4.509 PREVENTION OF LEACHING This rule is proposed to be repealed and can be found on page 26-530 of the ARM.

26.4.510 USE DISPOSAL OF WASTE AND FLY ASH FOR FILL (1) ~~Before waste materials or fly ash from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are~~ may be used for fill material, the permittee must shall demonstrate to the department by hydrogeological means and chemical and physical analyses that use of these materials these materials are not acid, toxic, acid-forming, or toxic-forming and will not adversely affect public water quality, public health, or safety, or other environmental resources, and will not cause instability in the backfilled area. The operator may not use waste or fly ash for fill without prior approval by the department.

(2) Notwithstanding any provision of this subchapter, any waste materials meeting the definition of "hazardous" as found in section 3001 of P.L. 94-580, as amended, must be handled in accordance with that act and regulations adopted thereunder.

(3) Whenever waste is temporarily impounded:

(a) the impoundment must be designed and certified, constructed, and maintained in accordance with 26.4.506, 26.4.603, and 26.4.639 using current prudent-design standards; and

(b) the impoundment must be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

(4) Structures impounding coal waste must not be retained as a part of the approved postmining land use. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)



26.4.511 THICK OVERBURDEN This rule is proposed to be repealed and can be found on page 26-530 of the ARM.

26.4.512 BOX CUT SPOILS This rule is proposed to be repealed and can be found on page 26-530 of the ARM.

26.4.513 FINAL GRADING This rule is proposed to be repealed and can be found on page 26-531 of the ARM.

26.4.514 CONTOURING (1) All final grading, and preparation of ~~overburden~~ regraded surfaces, before replacement of ~~topsoil, and placement of topsoil shall~~ must be done along the contour, ~~unless otherwise approved by the department, to~~ minimize subsequent erosion and instability. If such grading, and preparation, or placement along the contour is hazardous to equipment operators, then grading, and preparation, ~~or placement~~ in a direction other than generally parallel to the contour may be used. In all cases, grading, and preparation, or placement shall must be conducted in a manner ~~which that~~ minimizes erosion and provides a surface for replacement of topsoil which that will minimize slippage. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.515 HIGHWALL REDUCTION (1) Highwalls ~~shall must~~ must be eliminated and the steepest slope of the reduced highwall ~~shall must~~ must be at the most moderate slope possible, but in no case greater than 20 degrees from the horizontal or at whatever slope is necessary to achieve a minimum static safety factor of 1.3. The department may specify a lesser slope whenever necessary to achieve postmining slope stability. Highwall reduction ~~shall must~~ must be commenced at or beyond the top of the highwall and sloped to the graded spoil bank.

(2) Highwall reduction alternatives may be permitted where the department determines that:

(a) they are compatible with the proposed postmining land use;

(b) they are stable, achieving a minimum static safety factor of 1.3; and

(c) they are in compliance with the applicable portions of 26.4.821 - 26.4.824 and 26.4.313(3). (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-232 MCA.)

26.4.516 ADJACENT STRIP AND UNDERGROUND MINING OPERATIONS (1) An operator who conducts a strip or underground mining operation adjacent to any ~~active or abandoned underground or strip mining operation, respectively,~~ shall must comply with the following:

(1)(a) A 500-foot barrier pillar of coal shall must be maintained between the strip and underground mining operations in any one seam. The department, the ~~M~~mine ~~S~~safety and ~~H~~health ~~A~~administration, and the ~~Montana Safety and Health-~~

Bureau division of worker's compensation, of the department of labor and industry, however, may approve a lesser distance after a finding by the department that mining at a lesser distance will result in:

(a) (i) through (c) (iii) Remains the same.

(2) (b) The vertical distance between strip and underground mining operations working separate seams shall must be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

(2) The operator must also comply with 26.4.632.

(AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.517 SLIDES AND OTHER DAMAGE (1) An undisturbed natural barrier, as approved by the department, shall must be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the department as is needed to assure stability. The barrier shall must be retained in place as needed to prevent slides and erosion.

(2) At-any-time Whenever a slide occurs which that may have a potential adverse affect on public property, health, safety, or the environment occurs, the person who conducts the strip or underground mining activities shall notify the department by the fastest available means and comply with any remedial measures required by the department. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.518 BUFFER ZONES (1) All mining activities, including highwall reduction and related reclamation, shall must cease at least 100 feet from a property line, permanent structure, unmineable or unreclaimable steep or precipitous terrain, or any area determined by the department to be of unique scenic, historical, cultural, or other unique value. If special values or problems are encountered, the department may modify buffer zone requirements.

(2) --The transition from undisturbed ground shall be blended with this disturbed area to provide a smooth transition in topography. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227 MCA.)

RULE IV THICK OVERBURDEN AND EXCESS SPOIL (1) Where thick overburden is encountered, all highwalls and depressions must be eliminated with spoil and suitable waste materials, unless otherwise approved by the department in accordance with 26.4.313(3) (b) and 26.4.821 - 26.4.824. The operator shall demonstrate that the volume of spoil and suitable waste materials is more than sufficient to restore the disturbed area to approximate original contour. Any excess spoil material must be disposed in accordance with 26.4.520. Thick overburden occurs where the final spoil thickness exceeds 1.2 times the sum of the overburden thickness and mineral thickness. Final

spoil thickness is the product of the overburden thickness times the bulking factor, which is to be determined for each mine area. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.520 DISPOSAL OF EXCESS SPOIL ~~(1)~~ Spoil not required to achieve the approximate original contour ~~shall~~ may be transported to and placed in a controlled (engineered) manner in a disposal area other than the mine workings or excavations. ~~only-if-~~ All of the following conditions, in addition to the other requirements of the act and this sub-chapter, ~~are~~ must be met:

~~(2)~~ (1) The disposal area ~~shall~~ must be within the permit area, and ~~they~~ it must be approved by the department as suitable for construction of fills and for reclamation and revegetation compatible with the natural surroundings.

~~(3)~~ (2) The disposal area ~~shall~~ must be located on the most moderately sloping and naturally stable areas available as approved by the department. Fill materials suitable for disposal ~~shall~~ must be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

~~(4)~~ (3) The fill ~~shall~~ must be designed using recognized professional standards, certified by a registered professional engineer, experienced in the design of earth and rock fills, to ensure stability and meet other applicable requirements of this sub-chapter, and approved by the department.

~~(5)~~ (4) Leachate and surface runoff from the fill ~~shall~~ must not degrade surface or ground waters or exceed the effluent limitations of Rule 26.4.633.

~~(6)~~ (5) The disposal area ~~does~~ must not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the excess spoil underdrains in such a manner that infiltration of the water into the spoil pile will be prevented.

(6) Underdrains must consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices, and approved by the department. The underdrain system must be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and must be protected from piping and contamination by an adequate filter. Rock underdrains must be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil-like material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains must be corrosion resistant and must have characteristics consistent with the long-term life of the fill.

(7) All organic material must be removed from the disposal area, and the topsoil must be removed, segregated, and redistributed or stockpiled according to the provisions of

Rules 26.4.701 through 26.4.703, before the excess spoil material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(8) Slope protection ~~shall~~ must be provided to minimize surface erosion at the site. Diversion design ~~shall~~ must conform with the requirements of ~~Rules-26-4-636~~ 26.4.635 through 26.4.637. All disturbed areas, including diversion ditches that are not riprapped, ~~shall~~ must be vegetated upon completion of construction.

(9) The spoil ~~shall~~ must be transported and placed in a controlled manner, in horizontal lifts not exceeding four feet in thickness, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure a long-term static safety factor of 1.5. Horizontal lifts exceeding four feet in thickness may be allowed if the design ensures stability, is certified by a registered professional engineer, and is approved by the department. The final configuration of the fill must be suitable for postmining land uses except that no depressions or impoundments ~~shall~~ may be allowed on the completed fill. Terraces ~~shall~~ must not be constructed unless approved by the department to prevent erosion and ensure stability.

(10)(a) The fill ~~shall~~ must be inspected for stability at least quarterly by a registered engineer or other qualified professional specialist under the direction of a registered engineer. The engineer or specialist must be experienced in the construction of similar earth and water structures. The above-described inspections must be made during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage and surface drainage systems, and proper placement and compaction of fill materials, and revegetation. The permittee shall provide a report by the registered engineer or other qualified professional specialist shall provide a certified report within two weeks after each inspection. The report must certify that the fill has been constructed as specified in the design approved by the department. A copy of the report shall must be retained at the mine site.

(b) "Critical construction periods" include, at a minimum:

(i) foundation preparation, including the removal of all organic material and soil;

(ii) placement of underdrains and protective filter systems;

(iii) installation of final surface drainage systems;

and  
(iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist must also be conducted during placement and compaction of fill materials.

(c) The qualified registered professional engineer shall promptly provide to the department a certified report discussing whether the fill has been constructed and maintained as designed and in accordance with the approved plan and this sub-chapter. The report must address indications of instability, structural weakness, and other hazardous conditions.

(d)(i) The certified report on the drainage system and protective filters must include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase must be certified separately.

(ii) Whenever excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with subsection (e) below, color photographs of the underdrain must be taken as the underdrain system is being formed.

(iii) The photographs accompanying each certified report must be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(e) The department may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, whenever the following additional conditions are met:

(i) The excess spoil must consist of at least 80 percent nontoxic-forming rock that does not slake in water and will not degrade to unconsolidated soil-like material. Whenever used, noncemented clay shale, clay spoil, unconsolidated or other nondurable excess spoil materials must be mixed with excess durable rock spoil in a controlled manner so that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the department, is not durable rock;

(ii) An earthquake safety factor of at least 1.1 must be used; and

(iii) Surface water runoff from areas adjacent to and above the fill must not be allowed to flow onto the fill and must be diverted into stabilized diversion channels designed to meet the requirements of 26.4.635 and 26.4.637 and to safely pass the runoff from a 100-year, 24-hour precipitation event. A copy of the report shall be retained at the mine site.

(11) Coal mine wastes and coal processing wastes shall may not be disposed of in excess spoil fillers--Such material will and may be disposed of in the mine excavations only upon the prior approval of the department. See 26.4.505, 26.4.510 and 26.4.520(13).

(12) The foundation and abutments of the fill shall must be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of

foundation materials shall must include the effect of underground mine workings, if any, upon the stability of the structure.

(13) Excess spoil, coal mine wastes and coal processing wastes may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and the mine safety and health administration upon the basis of a plan submitted under Rule 26.4.901(1)(b).

(14) Excess spoil shall must not be disposed of in valley fills or head-of-hollow fills.

(15) To achieve approximate original contour, the department may require that a ~~Any~~ spoil pile ~~or piles~~, or parts thereof, ~~may be required by the department to~~ be retained in an unreclaimed condition to be returned to the mine workings at a later date. ~~in order to achieve approximate original contour.~~ (AUTH: Sec. 82-4-204 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-231, 232 MCA.)

26.4.521 TEMPORARY CESSATION OF OPERATIONS (1) Each ~~person who conducts strip or underground mining activities~~ operator shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary ~~abandonment~~ cessation shall does not relieve a ~~person~~ operator of his obligation to comply with any the provisions of the approved permit.

(2) Before temporary cessation of mining and reclamation operations extend for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, ~~an persons who conducts strip or underground mining operations~~ operator shall submit to the department a notice of intention to temporarily cease ~~or abandon~~ mining and reclamation operations. This notice shall must include a statement of the exact number of acres ~~which that~~ will have been affected in the permit area, prior to such temporary cessation; the extent and kind of reclamation of those areas ~~which that~~ will have been accomplished; and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.522 PERMANENT CESSATION OF OPERATIONS (1) ~~A Persons~~ person who permanently ceases strip or underground mining operations permanently shall close or backfill and otherwise permanently reclaim all affected areas, in accordance with the act, rules adopted thereunder, and the permit as approved by the department.

(2) All surface or underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the department as suitable for the postmining land use or environmental monitoring, shall must be

removed and the affected land reclaimed.

(3) All backfilling and grading shall must be completed within ~~ninety~~-(90) days after the department has determined that the operation is completed ~~or that a prolonged suspension of work in the area will occur~~. Final pit reclamation shall must proceed as close behind the coal loading operation as the frequency and location of ramp roads, the use of overburden stripping equipment in highwall reclamation, and other factors may allow. Equipment needed for reclamation may not be removed from the site until reclamation is complete. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.523 COAL PROCESSING WASTE FIRES (1) Coal fires in coal processing wastes, storage piles and bins, or unmined or waste coal in mine pits fires shall must be extinguished by the ~~person who conducts the strip or underground mining operations~~ operator in accordance with a plan approved by the regulatory authority department and the mine safety and health administration. The plan shall must contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, ~~shall be~~ are involved in the extinguishing operations. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.524 SIGNS AND MARKERS (1) All signs required to be posted by the operator shall must be of a standard design throughout the operation that can be seen and read easily and shall must be made of durable material. Signs shall must not be placed where their visibility is reduced by parked vehicles, splashed mud, or other causes. The signs and other markers shall must be maintained during all operations to which they pertain and shall must conform to local ordinances and codes, where applicable.

(2) Signs identifying the mine area shall must be displayed at all points of access to the permit area from public roads and highways. Signs shall must show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits. Such signs shall must not be removed until after release of all bonds.

(3) The perimeter of the permit area shall must be clearly marked by durable and easily recognized markers or by other means approved by the department. Each marker must be visible from each adjacent marker, or markers must be joined by fencing or other durable means approved by the department. Such markers ~~will~~ must be so designed so that their visibility will not be reduced in general by operation of equipment, weather effects, and other normally occurring effects. The markers ~~shall~~ must be in place before the start of any mining activities.

(4) Buffer zones as defined in 26.4.518 may or may not be included within the permit area. If included within the permit

area, the boundaries of buffer zones ~~shall~~ must be marked in ~~a manner consistent with the perimeter markers along the interior boundary of the buffer zone, and shall be~~ separately and distinctly from perimeter markers wherever the boundaries of both do not coincide. Wherever the boundaries do coincide, only perimeter markers are necessary as described in (3) above.

(5) If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" ~~shall~~ must be displayed conspicuously along the edge of any blasting area that comes within 50 feet of any road within the permit area, or within 100 feet of any public road right-of-way. The operator shall also:

(a) conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes; and

(b) place at all entrances to the permit area from public roads or highways conspicuous signs ~~which~~ that state "Warning! Explosives in Use", ~~which and that~~ clearly explain the blast warning and all clear signals ~~that are~~ in use and ~~which~~ explain the marking of blast areas ~~and charged holes within the permit area.~~

(6) Where topsoil or other vegetation-supporting material is segregated and stockpiled, the stockpiled materials ~~shall~~ must be clearly marked. Markers ~~shall~~ must remain in place until the material is removed. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)



26.4.601 GENERAL REQUIREMENTS FOR ROAD AND RAILROAD LOOP CONSTRUCTION (1) Haul roads through permitted areas ~~shall be~~ are allowed provided that their presence does not delay or prevent recontouring and revegetation on immediately adjacent spoils, unless upon request of the applicant or permittee the department finds in writing that a delay in recontouring and revegetation of immediately adjacent spoils will result in better reclamation.

(2) ~~Roads shall meet the following requirements:~~

(a) ~~†††~~ No more than two ramp roads per mile of active pit being mined ~~shall~~ may be allowed. Fractional portions of ramp roads resulting from active pit lengths of uneven mileage ~~will~~ must be counted as an additional ramp road allowable. (Example: 2.1 (active pit mile length) x 2 (ramp roads/mile) = 4.2 (ramp roads) or 5 ramp roads allowable). The department may authorize an additional ramp road.

~~†††~~ (b) Ramp roads, beginning from the spoil edge of the pit being worked, ~~shall~~ must be engineered so as to exhibit an overall 7% ~~percent~~ grade, or steeper, until topping on graded spoils. As each new pit is excavated, the ramp roads ~~shall~~ must be regraded, as soon as possible, so as to remain at an overall 7% ~~percent~~ or steeper grade from the spoil side of the new pit. Ramp road renovation grading ~~shall~~ must allow for ~~topsoiling~~ and revegetative activities to proceed during prime revegetative seasons. Lesser slopes may be allowed if the department makes a written determination that 7% ~~percent~~ slopes would cause safety problems or hamper successful reclamation.

(b) (c) Access and haul roads ~~constructed shall~~ must be graded, constructed, and maintained ~~in accordance with the following requirements:~~ to incorporate appropriate limits for grade, width, surface material, surface-drainage control, culvert placement and size, and any necessary design criteria established by the department and must meet the following:

(i) ~~no~~ A sustained grade ~~shall~~ must not exceed 8% ~~percent~~ (4.69°) ~~r.~~

(ii) ~~t~~The maximum pitch grade ~~shall~~ must not exceed 12% ~~percent~~ (6.88°) for greater than 300 feet.

(iii) ~~t~~There ~~shall~~ must not be more than 300 feet of maximum pitch grade for each 1,000 feet.

(iv) ~~t~~The grade on switchback curves ~~shall~~ must be reduced to less than the approach grade and ~~shall~~ must not be greater than ~~ten percent~~ 10% (5.70°) ~~r.~~

(v) ~~c~~Cut slopes ~~shall~~ must not be more than 1v:1.5h in soils or 1v:0.25h in rock ~~r.~~

(vi) All grades referred to ~~shall be~~ are subject to a tolerance of plus or minus one-half degree of angular measurement. Linear measurements ~~shall be~~ are subject to a tolerance of 10% ~~percent~~ of measurement ~~r.~~

~~††††~~ (d) ~~a~~All cut and fill slopes resulting from construction of access roads, railroad loops, or haul roads

~~shall~~ must be ~~top~~resciled and revegetated, or otherwise stabilized, at the first seasonal opportunity. The provisions of Rule 26.4.604 for the prevention of contamination and degradation of ~~topsoil~~ shall must be observed, ~~and~~.

~~(viii)~~ (e) ~~Roads~~ shall must have horizontal alignment as consistent with the existing topography as possible, and shall must provide the alignment required to meet the performance standards of the rules regarding roads. The alignment shall must be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alignments shall must be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(3) To the extent possible using the best technology currently available, roads shall must not cause damage to fish, wildlife, and related environmental values and shall must not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area or otherwise degrade the quantity or quality of surface or ground water. Any such contributions shall must not be in excess of limitations of state or federal law.

(4) ~~No roads or~~ Roads and railroad loops shall must not be built with or surfaced with ~~refuse waste coal, or acid,~~ acid-producing, toxic, or toxic-producing materials.

(5) All appropriate methods shall must be employed by the operator to prevent loss of haul or access road surface material in the form of dust.

(6) Immediately upon abandonment of any road or railroad loop, the area shall must be ripped, plowed, scarified, and graded to approximate original contour, and ripped, subsoiled or otherwise tilled in accordance with the approved plan. ~~including hauling away and proper disposal of~~ If necessary, ~~embankment and fill materials, where necessary must be hauled away and disposed of properly.~~ All bridges and culverts shall must be removed and natural drainage patterns restored. The area shall must be ~~top~~resciled, conditioned and seeded in accordance with sub-chapter 7, and ~~adequate~~ measures must be taken to prevent erosion by such means as cross drains, dikes, water bars, or other devices. Such areas shall must be abandoned in accordance with all provisions of the ~~act~~ and of the rules adopted pursuant thereto.

(7) Upon completion of mining and reclamation activities, all roads shall must be closed and reclaimed unless retention of the road is approved as part of the approved postmining land use pursuant to Rule 26.4.762 and the landowner requests in writing and the department concurs that certain roads or specified portions thereof are to be left open for further use. In such event, necessary maintenance must be assured by the operator or landowner and drainage of the road systems must be controlled according to the provisions of Rules 26.4.601 through ~~26.4.609~~ Rule V. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.602 LOCATION OF ROADS AND RAILROAD LOOPS (1) The location of a proposed road or railroad loop shall must be identified on the site by visible markings at the time the ~~reclamation and~~ mining and reclamation plan is preinspected and prior to the commencement of construction. ~~No such~~ eConstruction ~~shall~~ must not proceed along dry coulees, or intermittent or perennial drainageways, unless the operator demonstrates that no off-site sedimentation will result, and all the requirements of this subchapter are met, or in wet, boggy, steep, or unstable areas.

(2) All roads, insofar as possible, ~~shall~~ must be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation or fish, wildlife, or related values and that will not be used for hauling. Other stream crossings ~~shall~~ must be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads ~~shall~~ must not be located in active stream channels ~~nor shall they or~~ be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph ~~shall be construed to~~ prohibits relocation of stream channels in accordance with Rules 26.4.631 through 26.4.637. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.603 EMBANKMENTS All embankments must be designed and certified by a registered professional engineer or registered land surveyor experienced in the design of earth and/or rock structures. Embankment sections ~~shall~~ must be constructed in accordance with the following provisions:

(1) ~~All vegetative organic material and topsoil shall~~ must be removed from the embankment foundation during construction to increase stability, and ~~no vegetative neither organic material or topsoil shall~~ nor soil may be allowed placed beneath or in any embankment.

(2) ~~Where~~ an embankment is to be placed on side slopes exceeding 1v:5h (11.30°), the existing ground ~~shall~~ must be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway ~~shall~~ must be a minimum of 10 feet in width and ~~shall~~ must extend a minimum of 2 feet below the toe of the fill.

(3) ~~Material~~ containing by volume less than 25% percent of rock larger than 6 inches in greatest dimension ~~shall~~ must be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) ~~where~~ Whenever the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in 12-inch layers impossible under (3) above, the embankment ~~shall~~ must be constructed in

uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers ~~shall~~ must not exceed 36 inches in thickness. Rock ~~shall~~ must not be dumped in final position, but ~~shall~~ must be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, and so that voids, pockets, and bridging ~~will be~~ are reduced to a minimum. The final layer of the embankment ~~shall~~ must meet the requirements of ~~sub-section~~ section (3).

(5) ~~e~~Each layer of the embankment ~~shall~~ must be completed, leveled, and compacted before the succeeding layer is placed. Loads of material ~~shall~~ must be leveled as placed and kept smooth. The successive layers ~~shall~~ must be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure ~~shall~~ must be continued until no visible horizontal movement of the embankment material is apparent.

(6) ~~e~~Embankment layers ~~shall~~ must be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration ~~shall~~ must be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural and foundation analysis ~~shall~~ must be performed to establish design standards for embankment stability appropriate to the site. Publications of the American association of state highway and traffic officers (AASHTO), including AASHTO T-99, T-180, ~~T-91~~, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, ~~shall~~ must be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles to be used. Compaction effort ~~shall~~ must be adequate to achieve the degree of compaction required. ~~No~~ A lift ~~shall~~ must not be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T-99, T-180, the modified AASHTO test, or other comparable specifications approved by the department ~~shall~~ must be used as guidelines for the determination of the maximum dry density for granular materials.

(7) ~~m~~Material ~~shall~~ must be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(8) ~~e~~Embankment slopes ~~shall~~ may not be steeper than 1v:2h (26.6°), except that ~~where~~ whenever the embankment material is a minimum of 85% percent rock, the department may allow slopes ~~shall not be steeper than up to~~ 1v:1.35h (36.5°) if it has been demonstrated to the department that embankment stability will result. Where rock embankments are constructed, they ~~shall~~ must meet the requirements of ~~sub-section~~ (4).

(9) ~~t~~The minimum safety factor for all embankments ~~shall~~ must be 1.5 under any condition of loading likely to occur, or

such higher factor as the department requires.

(10) The road surface ~~shall~~ must be sloped toward the ditch line at a minimum rate of one-quarter inch per foot of surface width, or crowned at a minimum rate of one-quarter inch per foot of surface width.

(11) All material used in embankments ~~shall~~ must be suitable for use under subsections (1) through (8). The material ~~shall~~ must be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or and any other material considered unsuitable by the department for use in embankment construction.

(12) ~~Topsoil~~ Soil or other suitable material as determined by the department ~~shall~~ must be placed on embankment slopes to aid in establishing vegetation or to minimize erosion or both. Material depth ~~shall~~ must be adequate to support vegetation or to prevent erosion or both. Measures in lieu of ~~topsoiling~~ and vegetation may be proposed to the extent that they can be shown to reduce erosion and prevent the degradation and contamination of topsoil and.

(13) Temporary erosion-control measures ~~shall~~ must be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.604 TOPSOIL REMOVAL (1) Before initiation of construction or reconstruction of a road, railroad loop, or an embankment for same, topsoil and other materials as determined described in under the provisions of this sub-chapter shall 26.4.603 and 26.4.639 must be removed from the area to be occupied by the road or loop and stored according to the provisions of Rule 26.4.701 through 26.4.7023.

(2) Topsoil shall must be stripped for a distance of 10 ten feet, or other distance as approved by the department, from the edge of any road, road ditch, loop, or embankment to prevent contamination and degradation of topsoil by road or embankment materials, by dust, or by cleaning operations. Any All measures necessary for the prevention of contamination and degradation of topsoil, such as proper maintenance of roads and ditches, shall must be undertaken by the operator. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

#### 26.4.605 HYDROLOGIC IMPACT OF ROADS AND RAILROAD LOOPS

(1) Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way ~~shall~~ must be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, diversions, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event ~~shall~~ may the contributions be in excess of requirements set by applicable state or federal law.

(2) Drainage ditches ~~shall~~ must be constructed on both sides of any through-cut, and the inside shoulder of a cut-fill section, with ditch relief cross-drains being spaced according to grade. Water ~~shall~~ must be intercepted before reaching a switch-back or large fill and ~~shall~~ must be drained off or released below the fill through conduits or in riprapped channels and ~~shall~~ may not be discharged onto the fill. Drainage ditches ~~shall~~ must be placed at the toe of all cut slopes formed by the construction of roads. Drainage structures ~~shall~~ must be constructed ~~in order~~ to cross a stream channel and ~~shall~~ must not affect the flow or sediment load of the stream unless otherwise approved by the department in writing for a site-specific situation. Ditches ~~shall~~ must be sloped sufficiently to allow them to drain.

(3)(a)(i) All access and haul roads ~~shall~~ must be adequately drained using structures such as, but not limited to, ditches, water barriers, cross-drains, and ditch-relief drainages. For access and haul roads that are to be maintained for more than six months, water-control structures ~~shall~~ must be designed with a discharge capacity capable of passing the peak runoff from a ~~ten~~ 10-year, 24-hour precipitation event without impounding water at the entrance. Culverts with an end area of greater than 35 square feet and bridges with a span of 30 feet or less ~~shall~~ must be designed to safely pass a 205-year, 24-hour precipitation event. All other bridges ~~shall~~ must be designed to safely pass the 100-year, 24-hour precipitation event or greater event as specified by the department. Drainage pipes and culverts ~~shall~~ must be constructed to avoid plugging or collapse and erosion at inlets and outlets. Trash racks and debris basins ~~shall~~ must be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Culverts ~~shall~~ must be covered by compacted fill to a minimum depth of 1 foot. Culverts ~~shall~~ must be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

(ii) With prior written approval of the department, culverts ~~shall~~ may be spaced at intervals of from 300 feet for roads of slope greater than 10% ~~percent~~ to 1,000 feet for level roads, depending on the road slope. The department shall require a lesser interval if necessary to prevent erosion and may allow a greater interval if erosion will not be increased.

(b) Natural channel drainageways ~~shall~~ must not be altered or relocated for road construction or reconstruction without the prior approval of the department in accordance with ~~Rules~~ 26.4.635 through 26.4.637. The department may approve alterations and relocations only if:

(i) through (iii) Remains the same.

(c) Drainage structures are required for stream channel crossings. Drainage structures ~~shall~~ must not affect the normal flow or gradient of the stream, or adversely affect fish

migration and aquatic habitat or related environmental values.

(d) Vegetation ~~shall~~ must not be cleared for more than the width necessary for road and associated ditch or road construction, to serve traffic needs, and for utilities. Such clearing must be done consistent with the requirements of 26.4.604(2). (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.606 SURFACING OF ROADS (1) Access and haul roads ~~shall~~ must be surfaced with a  ~~durable~~ material approved by the department, as durable for the anticipated weight, volume, and speed of traffic. Toxic- and acid-forming substances ~~shall~~ must not be used. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.607 MAINTENANCE OF ROADS (1) Access and haul roads ~~shall~~ must be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing, and replacement of paving materials, such that the required design standards of the roads ~~shall be~~ are met throughout the life of the operation.

(2) (a) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads ~~shall~~ must not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(b) The department may waive the maintenance requirements of (2)(a) above if it determines that:

(i) the operator cannot maintain structures indicated in (2)(a) above due to wet field conditions resulting from sudden runoff events;

(ii) obstructions to these structures will not result in environmental damage or imminent harm to the health and safety of the public; and

(iii) runoff and sediment are totally contained.

(3) Roads or embankments severely damaged by events such as floods, earthquakes, or equipment damage ~~shall~~ must not be used until reconstruction of damaged road or embankment elements. The reconstruction ~~shall~~ must be completed as soon as practicable after the damage has occurred. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.608 IMPACTS OF OTHER TRANSPORT FACILITIES Other transportation facilities within the area of land affected, including railroad spurs, sidings, surface ~~conveyer~~ conveyor systems, chutes, aerial tramways, pipelines, powerlines, and other transport facilities ~~shall~~ must be designed, constructed, reconstructed, maintained, and reclaimed to:

(1) control and minimize diminution or degradation of water quality and quantity;

~~(2) control and minimize diminution of water quality and quantity;~~

~~††~~ (2) through (4) (a) Remains the same.

(b) additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions ~~shall~~ must not be in excess of limitations of state or federal law. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.609 OTHER SUPPORT FACILITIES (1) Support facilities, including temporary and mobile facilities, required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, rock crushers, coal loading facilities, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, ~~shall~~ must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities ~~shall~~ must be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available:

(a) damage to fish, wildlife, and related environmental values; and

(b) additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions ~~shall~~ must not be in excess of limitations of state or federal law.

(2) All strip or underground mining operations ~~shall~~ must be conducted in a manner which that minimizes damage, destruction, ~~or~~ and disruption of services provided by oil, gas and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the department.

(3) No support facility may be constructed in a manner or located other than as indicated in the approved permit application or site approved by the department. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

RULE V PERMANENT ROADS (1) Permanent roads approved as a part of the postmining land use must be designed and built to minimize maintenance needs and to provide maximum control of erosion through ditching, seeding, and other appropriate measures approved by the department. (AUTH: Sec 82-4-204 MCA; IMP, Sec 82-4-231, 232 MCA.)

26.4.621 GENERAL REQUIREMENTS FOR USE OF EXPLOSIVES

(1) ~~Each person who conducts strip or underground mining operations~~ operator shall comply with all applicable state and federal laws in the use of explosives.

(2) Blasts that use more than 5 pounds of explosive or blasting agent ~~shall~~ must be conducted according to the sched-



ule required by Rule 26.4.623 of this rule.

(3) All blasting operations shall must be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall must possess a valid certification. See 26.4.1260 through 26.4.1263. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.622 PRE-BLASTING PREBLASTING SURVEY (1) (a) At least 30 days before initiation of blasting, the operator shall advise, in writing, all residents or owners of dwellings or other structures within one-half mile of the permit area how to request a preblasting survey.

(b) Any survey requested more than ~~10~~ ten days before the planned initiation of blasting must be completed by the operator before the initiation of blasting.

(c) On the request to the department by a resident or owner of a dwelling or structure that is located within one-half mile of any part of the permit area, the ~~person who conducts the strip or underground mining operations~~ operator shall must promptly conduct a pre-blasting preblasting survey of the dwelling or structure and promptly submit a report of the survey to the department and to the person requesting the survey. If a structure is renovated or added to, subsequent to a pre-blast preblasting survey, then upon request to the department a survey of such additions and renovations shall must be performed in accordance with this subsection.

(2) The survey shall must determine the condition of the dwelling or structure and document any pre-blasting preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall must be limited to surface condition and readily available data. Special attention shall must be given to the pre-blasting preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall must be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which that should be incorporated into the blasting plan to prevent damage. Copies of the report shall must be provided to the person requesting the survey and to the department. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the permittee and the department of the specific areas of disagreement. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.623 BLASTING SCHEDULE (1) (a) ~~Each person who conducts strip or underground mining operations shall~~ The operator shall publish a blasting schedule at least 10 days, but not

more than 20 days, before beginning a blasting program in which blasts that use more than 5 pounds of explosive or blasting agent are detonated. The blasting schedule ~~shall~~ must be published once in a newspaper of general circulation in the locality of the blasting site.

(b) Copies of the schedule ~~shall~~ must be distributed by mail to local governments and public utilities and by mail or delivered to each residence within one mile of the permit area described in the schedule. For the purposes of this subsection, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences ~~shall~~ must be accompanied by information advising the owner or resident how to request a pre-blasting preblasting survey.

(c) ~~The person who conducts the strip or underground mining operations shall~~ operator shall republish and redistribute the schedule by mail at least every 12 months.

(2)(a) A blasting schedule ~~shall~~ must not be so general as to cover the entire permit area or all working hours, but ~~shall~~ it must identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

(b) The blasting schedule ~~shall~~ must contain at a minimum:

(i) name, address and telephone number of the operator;

(ii) identification of the specific areas in which blasting will take place. Each specific blasting area described shall must be reasonably compact and not larger than 300 acres;

(iii) dates days and time periods when explosives are to be detonated. These periods ~~shall~~ must not exceed an aggregate of 4 hours in any one day;

(iv) methods to be used to control access to the blasting area;

(v) types of audible warnings and all-clear signals to be used before and after blasting; and

(vi) a description of unavoidable hazardous situations referred to in Rule 26.4.623(1)(b) 26.4.310(6) which that have been approved by the department for blasting at times other than those described in the schedule.

(3) (a) ~~Public notice of change to blasting schedules.~~ Before blasting in areas or at times not in a previous schedule, ~~the person who conducts the strip or underground mining operations operator shall~~ prepare a revised blasting schedule according to the procedures of this subsection (1). Where Whenever a schedule has previously been provided to the owner or residents under Rule 26.4.623(1) with information on requesting a pre-blast preblasting survey, the notice of change need not include information regarding pre-blast preblast surveys.

(b) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the department may require that the ~~person who conducts the strip or underground mining operations~~ operator to prepare a revised blasting schedule according to the procedures in paragraph subsection (a) above. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.624 SURFACE BLASTING REQUIREMENTS (1) All blasting ~~shall~~ must be conducted between sunrise and sunset- except that:

(a) through (b)(ii) Remains the same.

(iii) a complete written report of blasting at night is filed by the ~~person conducting the surface mining activities~~ operator with the department not later than 3 days after the night blasting. The report ~~shall~~ must include a description in detail of the reasons for the delay in blasting including why the blast could not be held over to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast record required by Rule 26.4.626.

(2) Blasting ~~shall~~ must be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the department in the permit application, where whenever operator or public safety require unscheduled detonation. Any deviation from the times announced must be reported to the department not later than 3 days after the unavoidable blast. A complete description of the unavoidable hazardous situation must accompany the report.

(3) Warning and all-clear signals of different character that are audible at all points within a range of one-half mile from the point of the blast ~~shall~~ must be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area ~~shall~~ must be notified of the meaning of the signals through appropriate instructions. These instructions ~~shall~~ must be periodically delivered or otherwise communicated in a manner which that can be reasonably expected to inform such persons of the meaning of the signals. ~~Each person who conducts strip mining operations~~ The operator shall maintain signs in accordance with Rule 26.4.524.

(4) Access to an area possibly subject to flyrock from blasting ~~shall~~ must be regulated to protect the public and livestock. Blasting ~~shall~~ must not eject flyrock onto property outside the permit area. Access to the area ~~shall~~ must be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the ~~person who conducts the mining operations~~ operator has reasonably determined:

(a) through (b) Remains the same.

(5)(a) Airblast ~~shall~~ must be controlled so that it does not exceed the values specified below at any dwelling, public

building, school, church, or commercial, public, or institutional structure, unless such the structure is owned by the person who conducts the strip or underground mining operations operator and is not leased to any other person. If a building owned by the person conducting mining operations operator is leased to another person, the lessee may sign a waiver relieving the operator from meeting the air-blast airblast limitations of this paragraph.

Lower Frequency limit of measuring system, <u>Hertz (Hz)</u> (+3dB)	Maximum level in <u>dB</u> decibels (dB)
0.1 Hz or lower - flat response . . . . .	<del>135</del> 134 peak.
2 Hz or lower - flat response . . . . .	<del>132</del> 133 peak.
6 Hz or lower - flat response . . . . .	<del>130</del> 129 peak.
C-weighted, slow response . . . . .	<del>109</del> 105 <u>C</u> peak dBC.
<u>If necessary to prevent damage, the department shall specify lower maximum allowable airblast levels than those above.</u>	

(b) In all cases, except the C-weighted, slow-response system, the measuring systems used shall must have a flat frequency response of at least 200 Hz at the upper end. The C-weighted system shall must be measured with a Type 1 sound level meter that meets the standard American national standards institute (ANSI) S1.4-1971 specifications. The ANSI S1.4-1971 is hereby incorporated by reference as it exists on the date of adoption of this rule April 1, 1980. Copies of this publication are on file with the department of state lands, Capitol Station, Helena, Montana 59620.

(c) The person who conducts blasting operator may satisfy the provisions of this section by meeting any of the four specifications in the chart in subsection (5)(a) above.

(d) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements, except as noted in (5)(a) above.

(6) Except where lesser distances are approved by the department, based upon a pre-blasting preblasting survey, seismic investigation, or other appropriate investigation, blasting shall must not be conducted within:

(a) 1,000 feet of any public, private or institution building used as a, including any dwelling, school, church, hospital, or nursing facility; and

(b) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines or any active or abandoned underground mine.

(7) If otherwise approved, a blast design, including measures to protect the above facilities, must be submitted which contains the information required in 26.4.310 and signed by a certified blaster.

~~++~~(8) Flyrock, including blasted material traveling along the ground, shall must not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under ~~subsection~~ (4) of this rule.

~~+~~(9) Blasting shall must be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

~~+~~(10) In all blasting operations, except as otherwise authorized in this ~~subsection~~, the maximum peak particle velocity shall must not exceed 1-inch-per-second the following limits at the location of any dwelling, public building, school, church, or commercial, public, or institutional structure-building:

Distance (D) from from the blasting site, in feet	Maximum allowable peak particle velocity (V max) for ground vibra- tion, in inches/ second	Scaled-distance factor to be applied without seismic monitoring (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

(a) Peak particle velocities shall must be recorded in 3 three mutually perpendicular directions. The maximum peak particle velocity shall be is the largest of any of the three measurements.

(b) The department ~~may~~ shall reduce the maximum peak velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

~~+~~(11) If blasting is conducted in such a manner as to avoid adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of ~~subsection (10) of this subsection~~ shall does not apply at the following locations:

(a) at structures owned by the ~~person conducting the mining activity operator~~, and not leased to another party; and

(b) at structures owned by the ~~person conducting the mining activity operator~~ and leased to another party, if a written waiver by the lessee is submitted to the department prior to blasting.

~~(11)~~ (12) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in ~~paragraph (12)(a)~~ section (13) of this rule. If the blasting is conducted in accordance with this equation, the peak particle velocity ~~shall be~~ is deemed to be within the ~~1-inch-per-second-limit~~ limits specified in section (10) above.

~~(12)(a)~~ (13) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula  $W = (D/60Ds)^2$  where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period; and D = the distance, in feet, from the blast to the nearest public building or structure, dwelling, school, church, or commercial or institutional building or structures, except as noted in section (11) above; and  $Ds$  = the scaled distance factor, using the values identified in section (10) above.

~~(b) -- For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:~~

<del>Distance, in feet</del>	<del>Maximum weight</del>
<del>(D)</del>	<del>in pounds (W)</del>
<del>300</del>	<del>25</del>
<del>350</del>	<del>34</del>
<del>400</del>	<del>44</del>
<del>500</del>	<del>69</del>
<del>600</del>	<del>100</del>
<del>700</del>	<del>136</del>
<del>800</del>	<del>178</del>
<del>900</del>	<del>225</del>
<del>1,000</del>	<del>278</del>
<del>1,100</del>	<del>336</del>
<del>1,200</del>	<del>400</del>
<del>1,300</del>	<del>469</del>
<del>1,400</del>	<del>544</del>
<del>1,500</del>	<del>625</del>

<del>Distance, in feet</del>	<del>Maximum weight</del>
<del>(D)</del>	<del>in pounds (W)</del>
<del>1,600</del>	<del>711</del>
<del>1,700</del>	<del>803</del>
<del>1,800</del>	<del>900</del>
<del>1,900</del>	<del>1,002</del>
<del>2,000</del>	<del>1,111</del>

-----2,500-----	-----1,736-----
-----3,000-----	-----2,500-----
-----3,500-----	-----3,403-----
-----4,000-----	-----4,444-----
-----4,500-----	-----5,625-----
-----5,000-----	-----6,944-----

(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.625 SEISMOGRAPH MEASUREMENTS (1) ~~Where~~ Whenever a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limits of ~~1-inch-per-second~~ 26.4.624(10) are not exceeded, the equation in Rule 26.4.624(13) (12) (a) need not be used. If that equation is not used by the ~~person conducting the mining operations operator~~, a seismograph record ~~shall~~ must be obtained for each shot.

(2) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. ~~In no case shall the~~ The department may not approve the use of a modified equation ~~where if the peak particle velocity of 1-inch-per-second would be for the limits specified in 26.4.624(10) are exceeded,~~ meeting a 95% statistical confidence level.

(3) The operator may use the ground vibration limits described in the blasting-level chart referenced in 30 CFR 816.67(d)(4) as an alternative to paragraphs (1) and (2) above, upon approval by the department.

(3)(4) The department may require a seismograph record of any or all blasts and may specify the location at which ~~such~~ the measurements are to be taken. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.626 RECORDS OF BLASTING OPERATIONS A record of each blast, including seismograph records, ~~shall~~ must be retained for at least 3 years and ~~shall~~ must be available for inspection by the department and the public on request. Blasting records must be complete and accurate at the time of inspection. The record shall must contain the following data:

- (1) through (3) Remains the same.
- (4) direction and distance, in feet, to the nearest dwelling, school, church, or commercial, public, or institutional building or structure either:
  - (a) through (18) Remains the same.
  - (19) seismographic and airblast records, where required, including:
    - (a) the calibration signal of the gain setting or certification of annual calibration ~~and;~~
    - ~~(a)(b)~~ (b) seismographic reading, including exact location of seismograph and its distance from the blast, airblast reading, dates and times of readings;

~~(b)~~ (c) Remains the same.

~~(e)~~ (d) name of the person and firm analyzing the seismographic record; and

(20) Reasons and conditions for each blast occurring outside the time frames published in the blasting schedule.  
(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.631 GENERAL HYDROLOGY REQUIREMENTS (1) The permittee shall plan and conduct mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from strip or underground mining and reclamation operations, both on and off-site and to prevent material damage to the prevailing hydrologic balance outside the permit area.

(2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels ~~shall~~ must be minimized such so that the postmining land use of the disturbed land is not adversely affected and applicable federal and state statutes and regulations are not violated.

(3) (a) The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize mining and reclamation practices that will prevent or minimize water pollution. Diversions of drainages ~~shall~~ must be used in preference to the use of water treatment facilities.

(b) through (4) Remains the same. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.632 PERMANENT SEALING OF DRILLED HOLES (1) When no longer needed for its intended use as approved by the department and if not transferred as a water well under Rule 26.4.6247, each exploration hole, other drilled hole, borehole, or well ~~shall~~ must be abandoned according to the procedures described in Rule 26.4.1005. Other exposed underground openings must also be abandoned in accordance with 26.4.1005 or, with department approval, be cased, sealed, or otherwise managed to prevent acid or other toxic drainage from entering the ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent areas. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.633 WATER QUALITY PERFORMANCE STANDARDS AND EFFLUENT (1) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, ~~shall~~ must be passed through a sedimentation pond or a series of sedimentation ponds treated by the best technology currently available (BTCA) before leaving the permit area.



~~Treatment facilities may be required by the department if required to meet the effluent limitations in subsection (6).~~ Additional BTCA practices treatment facilities may be required after commencement of the operation if conditions arise that were not anticipated at the time of the permit application.

(2) ~~Sedimentation ponds and treatment facilities shall control through BTCA practices must be maintained until the disturbed area has been restored, the revegetation requirements of Rules 26.4.711 and through 26.4.735~~ 26.4.733 have been met, the area meets state and federal requirements for the receiving stream, and evidence is provided that demonstrates that the drainage basin has been stabilized to the extent that it was prior to mining, assuming proper management.

~~(3) The department may grant exemptions from this requirement only when:~~

~~(a) the disturbed drainage area within the total disturbed area is small; and~~

~~(b) the permittee shows that sedimentation ponds are not necessary to meet the effluent limitations of subsection (6) below and to maintain water quality in downstream receiving waters;~~

~~(4) For purpose of this rule only, "disturbed area" shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this rule and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this rule shall be constructed in accordance with Rule 26.4.639 in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this rule;~~

~~(5) (3) Whenever the department determines that~~ Sedimentation ponds are BTCA, they required by this rule shall must be constructed in accordance with Rule 26.4.639 in appropriate locations before beginning any strip or underground mining operations in the drainage area to be affected.

~~(6) (4) Wherever the a sedimentation pond or series of sedimentation ponds is used so as to results in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current strip or underground mining operations, the permittee shall achieve the following effluent limitations: set forth below for all of the mixed drainage when it leaves the permit area.~~

~~(a) Discharges of water from areas disturbed by strip or underground mining operations shall must be made in compliance with all federal and state laws and regulations, and, at a minimum, the following numerical effluent limitations: including, but not limited to, those laws and regulations that apply to total iron, total manganese, total suspended solids, and pH.~~

Effluent limitations in milligrams per liter  
(mg/l) except for pH

Effluent characteristics <sup>1</sup>	Maximum allowable <sup>2</sup>	Average of daily values for 30 consecutive discharge days <sup>3</sup>
Iron, total <sup>5</sup>	7.0	3.5
Manganese, total <sup>3</sup>	4.0	2.0
Total suspended solids <sup>6</sup>	45	30

pH<sup>4</sup> ----- Within range of 6.0 to 9.0

<sup>1</sup> To be determined according to collection and analytical procedures adopted by the environmental protection agency's regulations for waste water analyses (40 CFR 136).

<sup>2</sup> Based on representative sampling.

<sup>3</sup> The manganese limitations shall not apply to untreated discharges which are alkaline as defined by the environmental protection agency (40 CFR 434).

<sup>4</sup> Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the department may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0, in order that the manganese limitations will be achieved.

<sup>5</sup> Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to 6.0 mg/l (maximum allowable) and 3.0 mg/l (average of daily values for 30 consecutive discharge days).

<sup>6</sup> The department will accept turbidity measurements to monitor T.S.S. if the permittee can demonstrate strong relationship between the two parameters.

(b) All discharges must register net positive alkalinity (total alkalinity must exceed total acidity). Wherever BTCA practices result in a point discharge, the discharge must meet applicable effluent limitations.

(4)(5) In accordance with 40 CFR 434, for certain constituents, A discharge from the disturbed areas is not subject to the effluent limitations of this rule or BTCA standards of 26.4.638 if:

(a) the discharge is demonstrated by the permittee to have resulted from a precipitation event equal to or larger than a 10-year, 24-hour precipitation event, or snowmelt runoff of equivalent volume; and

(b) the discharge is from facilities BTCA practices designed, constructed, and maintained in accordance with this applicable rule implementing the act: sections (1) through (4) and 26.4.639.

(c) In the event that a discharge from the disturbed area is so large that effluent limitations can not be reason-

ably met using BTCA, the department may use exceedence of historical background levels as a basis for determining the need for an enforcement action.

~~(8) (6) Adequate facilities shall~~ BTCA practices must be installed, operated, and maintained to treat any water discharged from the disturbed area ~~so that it to ensure~~ compliance with all federal and state laws and regulations and the limitations of this rule. ~~If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime-feeder or other automatic neutralization process approved by the department shall be installed, operated, and maintained. The department may authorize the use of a manual system, if it finds that:~~

~~(a) -- flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and~~

~~(b) -- timely and consistent treatment is ensured. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)~~

26.4.634 RECLAMATION OF DRAINAGES (1) Design of reclaimed drainages design shall must emphasize channel and floodplain dimensions that approximate the premining configuration and that will blend with the undisturbed drainage above and below the area to be reclaimed. The average stream gradient shall must be maintained with a concave longitudinal profile and the channel and floodplain shall must be designed and constructed to:

(a) establish or restore the channel to its natural meandering habit or characteristic pattern with a geomorphically acceptable gradient as determined by the department. The habits or characteristics of individual streams include their particular reactions to general laws related to stream work, whether or not streams have attained the conditions of equilibrium, and the stream channel morphology and stability;

(b) through (c) Remains the same.

(d) provide separation of flow between adjacent drainages and safely pass the runoff from a 24-hour precipitation event with a 100-year recurrence interval, or larger event as specified by the department, including emergency spillways of permanent impoundments;

(e) Remains the same.

(f) establish or restore the stream to include, where appropriate, a diversity of aquatic habitats (generally a series of riffles and pools) where appropriate, that approximates the premining characteristics; and

(g) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream in order to comply with Rules 26.4.711 through ~~26.4.735~~ 26.4.733.

(2) At least 120 days prior to reclamation of a drainage, the operator shall submit to the department detailed designs for the drainage or any modifications from the approved

design based on sound geomorphic and engineering principles. These designs must be certified by a qualified registered professional engineer meeting the performance standards and any design criteria set by the department. These designs must represent the state-of-the-art in reconstruction of geomorphically stable channels and must be approved by the department before construction begins. The operator shall notify the department when construction begins. The regraded drainage must not be resoled or seeded until it is inspected and approved by the department.

(2) (3) Alternate drainage reclamation techniques may be proposed in place of (1) (a), (1) (c), and the stream gradient and longitudinal profile requirements of subsection (1) and may be utilized if approved. The department may not approve alternate techniques unless they are as environmentally protective as the techniques they replace. No alternative to (1) (b), (d), (e), (f), or (g) may be proposed or accepted.

(4) Any permanent structure placed or constructed within a perennial or intermittent stream must be certified by a qualified registered professional engineer as meeting the performance standards and any design criteria specified by the department. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.635 GENERAL REQUIREMENTS FOR TEMPORARY AND PERMANENT DIVERSION OF OVERLAND FLOW, THROUGH FLOW, SHALLOW GROUND WATER FLOW, AND EPHEMERAL, INTERMITTENT, AND PERENNIAL STREAMS

(1) The department may require or approve a diversion of flow, if whenever: required or approved by the department, shall be constructed for the

(a) the purpose of diverting is to divert water away from disturbed areas, to minimize erosion, to reduce the volume of water requiring treatment and or to prevent or remove water from contact with acid- or toxic-forming materials; and

(b) the department finds that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream. (See also 26.4.633, 26.4.634, 26.4.651, and 26.4.751.)

(2) No A diversion shall be located so as to that increases the potential for landslides nor shall diversions be constructed or operated to or allows entry of diverted water into underground mines must not be created.

(3) Diversions shall must not be constructed to pass large flow events into an adjacent drainage channel that would result in excessive erosion in the natural channel. Water in excess of the design event shall must be conveyed in a stable manner to an appropriate treatment facility in order to meet effluent limitations before passing off the permit area.

(4) (a) Diversions shall must be designed, constructed, stabilized, and maintained in a manner which to prevents additional contributions of suspended solids to streamflow, and to runoff outside the permit area, to prevent material damage

to surface and ground water outside the permit area, and to assure the safety of the public to the extent possible, using the best technology currently available.

(b) Materials used to construct diversions must be approved as acceptable by the department prior to their use.

(5) The design and construction of all stream channel diversions and any related structures must be certified by a qualified, registered, professional engineer as meeting the performance standards and any design criteria set by the department.

(6) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with sub-chapter 5.

(7) Topsoil shall be handled in compliance with Rules 26.4.701 through 26.4.703. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

#### 26.4.636 SPECIAL REQUIREMENTS FOR TEMPORARY DIVERSIONS

(1) For overland flow, through flow, shallow groundwater flow, and flow from drainage basins of less than one square mile, diversion design shall must incorporate the following:

(a) A temporary diversions shall must be constructed to pass safely the peak runoff from a precipitation event with a 210-year, 24-hour recurrence interval, or a larger event as specified by the department.

(b) Channel lining shall must be designed using standard engineering practices to safely pass design velocities. Rip-rap Riprap shall must be maintained as needed following individual storm events.

(c) Freeboard shall must be as determined specified by the department, but no less than 0.3 feet. Protection shall must be provided for areas of transition in non-uniform flow and for critical areas such as curves and swales.

(d) When If the department determines that the area protected is a critical area as determined by the department, it may require that the design freeboard may be increased.

(e) Energy dissipators shall must be installed when necessary at in streams where exit velocity of the diversion is greater than that of the receiving stream.

(2) (a) Ephemeral or intermittent streams with drainage areas larger than one-~~1~~ 1 square mile and perennial stream flow from within the permit area may be diverted, if the diversions are approved by the department after making the findings called for in Rule 26.4.640 in accordance with 26.4.635 and 26.4.651 and if the diversions comply with this applicable rule in this chapter and other state and federal statutes and rules.

(b) When Whenever streamflow is allowed to be diverted, the stream channel diversion shall must be designed, constructed, and removed, in accordance with the following requirements:

(i) The longitudinal profile of the stream, the channel,

and the floodplain shall must be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall must not be in excess of requirements of state or federal law. Erosion control structures, such as channel lining structures, basins, and artificial channel roughness structures, shall may be used in diversions only when approved by the department as being necessary to control erosion.

(ii) ~~The~~ combination of channel, bank, and flood-plain configurations shall must be adequate to pass safely the peak runoff of a 10-year, 24-hour precipitation event for temporary diversions or larger events specified by the department. However, the capacity of the channel itself should must be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream ~~of~~ from the diversion.

~~(b) (c)~~ When no longer needed to achieve the purpose for which ~~they were~~ it was authorized, ~~all~~ a temporary diversion shall must be removed and the affected land regraded, resoiled, and revegetated, in accordance with Ssub-Chapter 5 and Rules 26.4.701 through ~~26.4.735~~ 26.4.733. At the time a diversion ~~are~~ is removed, downstream water treatment facilities previously protected by the diversion shall must be modified or removed to prevent over-topping or failure of the facilities. This requirement shall does not relieve the ~~person who conducts the strip or underground operation~~ operator from responsibility for maintenance of a water treatment facility otherwise required under ~~this applicable rule in this sub-~~ chapter or the permit. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

#### 26.4.637 SPECIAL REQUIREMENTS FOR PERMANENT DIVERSIONS

(1) Remains the same.

(2) All permanent diversions shall must meet the requirements of Rule 26.4.634 and 26.4.635. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.638 SEDIMENT CONTROL MEASURES (1) Appropriate sediment control measures shall must be designed, constructed, and maintained using the best technology currently available to:

(a) prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) meet the more stringent of applicable state or federal effluent limitations; ~~and~~

(c) minimize erosion to the extent possible; ~~and~~

(d) prevent, to the extent possible, the degradation and contamination of soil by spoil or other materials.

(2) Sediment control measures include practices carried out within ~~and~~ or adjacent to the disturbed area. The sedi-

mentation storage capacity of practices in and downstream from the disturbed area ~~shall~~ must reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Rules 26.4.711 through 26.4.735 ~~26.4.733~~;

(b) through (d) Remains the same.

(e) diverting runoff by using protected channels or pipes through disturbed areas ~~so as not to cause~~ eliminate additional erosion;

(f) through (g) Remains the same. (AUTH: Sec. 82-4-202, 204, MCA; IMP, Sec. 82-4-231, 232, 233, 234 MCA.)

26.4.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES (1) Sedimentation ponds, either temporary or permanent, shall may be used individually or in series and shall must:

(a) be constructed before any disturbance of the an area that will drain into the pond takes place; and

(b) be located as near as possible to the disturbed area, and out of major stream courses, unless another site is approved by the department; and shall

(c) provide a minimum an adequate sediment storage volume equal to:

(i) the accumulated sediment volume from the drainage area to the pond for a minimum of 3 years. Sediment storage volume shall must be determined using the universal soil loss equation, including gully erosion rates, and the sediment delivery ratio converted to sediment volume, information if applicable, or using either the sediment density method or other another empirical methods derived from regional sediment pond studies, if the method is approved by the department;

(ii) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount if required by the department;--The department may approve a sediment storage volume of not less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area, if the person who conducts the strip or underground mining operations, unless the operator affirmatively demonstrates that the sediment volume for any site-specific area is less, or demonstrates that sediment removed by other sediment control measures is equal to the will result in a reduction in the sediment storage volume load. A value greater than 0.035 acre-foot per acre must be used whenever the department determines it is necessary to contain a higher sediment yield. All ponds must be accurately surveyed immediately after construction in order to provide a baseline for future sediment volume

measurements; ~~or~~ and, as applicable,

(iii) through (2) Remains the same.

(3) (a) Sedimentation ponds ~~shall~~ must provide the required theoretical detention time adequate to meet effluent limitations described in 26.4.633 and for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event), plus the average inflow from the underground mine if applicable. "Theoretical detention time" is ~~defined as~~ the average time that the design flow is detained in the pond and is further defined as the time difference between the centroid of the inflow hydrograph and the centroid of the outflow hydrograph for the design event. Runoff diverted under Rules 26.4.635 through 26.4.637 away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and on site sediment control practices shall be considered. Sedimentation ponds ~~shall~~ must provide a theoretical detention time of not less than ~~twenty-four~~ 24 hours, or any higher amount required by the department, except as provided ~~under paragraphs (a) through (c) below.~~

~~(a) (b)~~ (b) The department may approve a theoretical detention on time of not less than 10 hours, ~~when if the person who conducts the strip or underground mining operations operator~~ demonstrates that:

(i) through (ii) Remains the same.

~~(b) (c)~~ (c) The department may approve a theoretical detention time of not less than 10 hours ~~when the person who conducts the strip or underground mining operations operator~~ demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

~~(c) (d)~~ (d) The department may approve a theoretical detention time of less than 24 hours ~~to any level of detention time, when if the person who conducts the strip or underground mining operations operator~~ demonstrates to the department that a chemical treatment process to be used:

(i) Remains the same.

(ii) is harmless to potentially affected biologic life and related environmental values.

~~(d) (e)~~ (e) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under subparagraphs subsections (a), (b), and (c), and (d) above shall must be included in the permit application.

(4) The water storage resulting from inflow ~~shall~~ must be removed by a ~~non-clogging~~ nonclogging dewatering device or a conduit spillway approved by the department and ~~shall must~~ have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device ~~shall must~~ not be located at a lower elevation than the maximum elevation



of the sedimentation storage volume.

(5) ~~Each person who conducts strip or underground mining operations~~ operator shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this rule ~~shall~~ does not relieve the operator ~~person~~ from of responsibility for compliance with applicable effluent limitations as contained in Rule 26.4.633.

(7) ~~There shall be no~~ must not be out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(8) Sediment ~~shall~~ must be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the design sediment storage volume. With the approval of the department, additional permanent storage may be provided for sediment and water above that required for the design sediment storage. ~~Upon the approval of the department for those cases where~~ If additional permanent storage is provided above that required for sediment under subsection (1) of this rule and the theoretical detention time is maintained, sediment removal, upon approval by the department, may be delayed until the remaining volume of permanent storage has decreased to 40% percent of the total sediment storage volume ~~provided the theoretical detention time is maintained.~~

(9) Embankments must be constructed in compliance with 26.4.603 and the requirements of this rule.

~~(9)~~ (10) An appropriate combination of principal and emergency spillways ~~shall~~ must be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the department. The elevation of the crest of the emergency spillway ~~shall~~ must be a minimum of 1-0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities ~~shall~~ must be approved by the department.

~~(10)~~ (11) The minimum elevation at the top of the settled embankment ~~shall~~ must be 1-0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1-0 1-foot minimum elevation requirement ~~shall~~ apply applies at all times, including the period after settlement.

~~(11)~~ (12) The constructed height of the dam ~~shall~~ must be increased a minimum of 5% percent over the design height to allow for settlement, unless it has been demonstrated to the department that the material used and the design will ensure against all settlement.

~~(12)~~ (13) The minimum top width of the embankment ~~shall~~ must not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

~~(13)~~ (14) The combined upstream and downstream side slopes of the settled embankment shall ~~may~~ not be less than 1v:5h:1v, with neither slope steeper than 1v:2h:1v. Slopes shall must be designed to be stable in all cases, even if flatter side slopes are required.

~~(14)~~ (15) Soil must be salvaged from ~~the~~ embankment foundation area ~~shall be cleared of all organic matter~~, pursuant to 26.4.701 through 26.4.703. ~~All other organic material must be removed, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.~~

~~(15)~~ (16) ~~The~~ Fill material shall must be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall ~~may~~ coal-processing or coal mine waste be used.

~~(16)~~ (17) The placing and spreading of fill material shall must be started at the lowest point of the foundation. The fill shall must be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this rule. Compaction shall must be conducted as specified in the design approved by the department.

~~(17)~~ (18) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall must be met:

(a) ~~An appropriate combination of principal and emergency spillways shall be provided to that will discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the department must be provided;~~

(b) ~~The embankment shall must be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by and a seismic safety factor of at least 1.2. The department may designate higher safety factors to ensure stability;~~

(c) ~~Appropriate barriers shall must be provided to control seepage along conduits that extend through the embankment; and~~

(d) ~~The criteria of the mine safety and health administration as published in 30 CFR 77.216 and 26.4.315 shall must be met.~~

~~(18)~~ (19) Each pond shall must be designed and inspected regularly during construction under the supervision of, and certified after construction by, a qualified registered professional engineer experienced in the construction of impoundments. After construction, inspections must be made and reports filed in the same manner as for dams and embankments under 26.4.642(8).

~~(19)~~ (20) The entire embankment, including the surrounding areas disturbed by construction, shall must be stabilized with respect to erosion by with a vegetative cover or other

means immediately after the embankment is completed in order to protect against erosion and sudden drawdown. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop ~~shall~~ must be repaired and revegetated in accordance with ~~Rules 26.4.711 through 26.4.735~~ 26.4.733.

~~(20)~~ (21) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), ~~shall~~ must be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications ~~shall~~ must be made to the department, in accordance with 30 CFR 77.216-3. With the approval of the department, dams not meeting these criteria (30 CFR 77.216(a)) ~~shall~~ must be examined four times per year. If an examination or inspection discloses that a potential hazard exists, the person who examined the impoundment must promptly inform the department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department must be notified immediately. The department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

~~(21)~~ (22) (a) Sedimentation ponds and other treatment facilities ~~shall~~ must not be removed:

(i) sooner than 2 years after the last augmented seeding within the drainage, unless otherwise approved by the department in compliance with 26.4.633 and evidence is provided that the drainage basin has stabilized to the extent that it was in the undisturbed state;

(ii) until the disturbed area has been restored, and the vegetation requirements of ~~Rules 26.4.711 through 26.4.735~~ 26.4.733 are met;

(iii) until the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream; and

(iv) until evidence is provided that demonstrates that the drainage basin has stabilized to the extent that it was in the undisturbed state.

(b) When the sedimentation pond is removed, the affected land ~~shall~~ must be regraded and revegetated in accordance with ~~Rules 26.4.711 through 26.4.735~~ 26.4.733 ~~unless the pond has been approved by the department for retention as being compatible with the approved postmining land use.~~

(c) If the department approves retention, the sedimentation pond ~~shall~~ must meet all the requirements for permanent impoundments of ~~Rules 26.4.642 and 26.4.650.~~

(23) (a) Other treatment facilities must be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the department based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of 26.4.633 will be met.

(b) Other treatment facilities must be designed in accordance with the applicable requirements of sections (1) through (21) of this rule.

(24) Runoff from areas above a structure impounding coal waste or runoff from the surface of the facility and that may cause instability or erosion of the impounding structure must be diverted into stabilized diversion channels designed to meet the requirements of 26.4.635 and 26.4.637 and designed to safely pass the runoff from a 100-year, 6-hour design-precipitation event.

(25) (a) Excavations that will impound water during or after the mining operation must have perimeter slopes that are stable and must not be steeper than 3h:1v or lesser slope determined by the department to ensure stability. Where surface runoff enters the impoundment area, the sideslope must be protected against erosion.

(b) Excavations must be certified initially by a qualified registered professional engineer. The department shall perform subsequent inspections. If any modifications are necessary, the department shall promptly notify the operator. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.640 DISCHARGE STRUCTURES (1) Discharge from sedimentation ponds, ~~permanent and temporary~~ impoundments, and diversions ~~shall~~ must be controlled by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures ~~shall~~ must be designed according to standard engineering-design procedures and be certified by a qualified, registered, professional engineer as meeting the performance standards of this sub-chapter and any design criteria specified by the department. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.641 ACID- AND TOXIC-FORMING SPOILS Drainage from acid- and toxic-forming spoil into ground and surface water ~~shall~~ must be avoided by:

(1) identifying, burying, and treating ~~where~~ whenever necessary, spoil ~~which~~ that, in the judgment of the department, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) preventing water from coming into contact with acid-forming or toxic-forming spoil in accordance with ~~sub-sections~~ 26.4.501(3), 26.4.504, 26.4.507, and other measures ~~as~~ required by the department; and

(3) burying or otherwise treating all acid-forming or toxic-forming spoil within 30 days after it is first exposed on the mine site, or within a lesser period required by the department. Temporary storage of the spoil may be approved by the department upon a finding that burial or treatment within 30 days is not feasible and will not result in any material

risk of water pollution or other environmental damage. Storage ~~shall~~ must be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored ~~shall~~ must be placed on impermeable material and protected from erosion and contact with surface water. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.642 PERMANENT AND TEMPORARY IMPOUNDMENTS (1) Permanent impoundments are prohibited unless constructed in accordance with 26.4.504 and authorized by the department upon the basis of the following a demonstration that:

(a) the quality of the impounded water ~~shall~~ will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards; and

(b) discharge of water from the impoundment ~~shall~~ will not degrade the quality of receiving waters to less than the water-quality standards established pursuant to applicable state and federal laws;

~~(c)~~ (c) the level of water ~~shall~~ will be sufficiently stable to support the intended use;

~~(d)~~ (d) adequate safety and access to the impounded water ~~shall~~ will be provided for proposed water users;

~~(e)~~ (e) water impoundments ~~shall~~ will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

~~(f)~~ (f) the design, construction, and maintenance of structures ~~shall~~ will achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the mine safety and health administration, 30 CFR 77-216~~(a)~~ 77.216(a) are contained in U.S. soil conservation service's ~~t~~Technical ~~r~~Release ~~n~~No. 60, "Earth Dams and Reservoirs," June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. soil conservation service's ~~p~~Practice ~~s~~Standard 378, "Ponds," October 1978. The technical release and practice standard are hereby incorporated by reference as they exist on March 13, 1979. Technical ~~r~~Release ~~n~~No. 60 and ~~p~~Practice ~~s~~Standard 378 are on file and available for inspection at the Helena office of the department of state lands, Capitol Station, Helena, Montana 59620;

~~(g)~~ (g) the spillways are sized of the impoundment ~~is to meet the requirements of 26.4.634(1)(d) and the impoundments are adequate for its their intended purposes; and~~

~~(h)~~ (h) the impoundment will be suitable for the approved postmining land use; and

(i) the impoundment will have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions and a seismic safety factor of at least 1.2.

(2) ~~Temporary impoundments of water in which the water is impounded by a dam shall~~ All impoundments must meet the design and performance requirements of ~~Rule 26.4.639~~ 26.4.603 and 26.4.639.

(3) ~~Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 3:1 or lesser slope determined by the department. Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.~~

(3) Excavations that will impound water must meet the requirements of 26.4.639(25).

(4) ~~Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site must be provided.~~

(5) ~~All embankments, of temporary and permanent impoundments, and the surrounding areas, and diversion ditches disturbed or created by construction, shall~~ must be graded, fertilized, seeded, and mulched to comply with the requirements of ~~Rules 26.4.711 through 26.4.735~~ 26.4.733 immediately after the embankment is completed, provided except that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop ~~shall~~ must be repaired and revegetated to comply with the requirements of ~~Rule 26.4.711.~~

(6) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) ~~shall~~ must be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer, in accordance with 30 CFR 77.216-3.

(7) All dams and embankments ~~shall~~ must be routinely maintained during the mining operations. Vegetative growth ~~shall~~ must be cut where necessary to facilitate inspection and repairs. Ditches and spillways ~~shall~~ must be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, ~~shall~~ must be removed and all other appropriate maintenance procedures followed.

(8) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.2-216(a) ~~shall~~ must be inspected and certified to the department by a qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and maintained to comply with the requirements of this section. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) ~~shall~~ must also be inspected and certified annually until bond release by either a qualified registered professional engineer or a registered land surveyor. These reports must be submitted to the department annually and the operator shall retain a copy of each report at or near the

minesite. Certification reports ~~shall~~ must include statements on:

(a) through (d) Remains the same.

(9) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments ~~shall~~ must be submitted to the department and ~~shall~~ must comply with the requirements of this sub-chapter. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the modification must not be initiated until the department shall approve the plans before modification begins.

(10) If an impoundment does not meet the requirements of ~~paragraphs sections~~ (7) (1) through 9 (6), the impoundment area ~~shall~~ must be regraded to approximate original contour and revegetated in accordance with 26.4.711 through 26.4.733. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.643 GROUNDWATER PROTECTION (1) Mining ~~shall~~ must be conducted to control the effects of mine drainage, from pits, cuts, and other mining activities and disturbances, ~~in such manner as to prevent or control~~ The permittee shall prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into groundwater flow systems and to prevent so that adverse impacts on such groundwater flow systems or and on approved postmining land uses are prevented.

(2) Backfilled materials ~~shall~~ must be placed to minimize adverse effects on groundwater flow and quality, to minimize off-site effects, and to support the approved postmining land use. The permittee ~~shall be~~ is responsible for performing monitoring according to Rule 26.4.645 to ensure that operations conform to this requirement. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.644 PROTECTION OF GROUNDWATER RECHARGE (1) The disturbed area ~~shall~~ must be reclaimed to restore the approximate ~~pre-mining~~ premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the groundwater system. The recharge capacity ~~should~~ must be restored to support the approved postmining land use, minimize disturbances to the prevailing hydrologic balance in the mine plan and adjacent areas, and provide a rate of recharge that approximates the ~~pre-mining~~ premining recharge rate. The permittee shall ~~be responsible for~~ monitoring according to Rule 26.4.645 to ensure operations conform to this requirement.

(2) The permittee shall ~~be responsible for~~ collecting data or conducting studies as requested by the department to ~~indicate that~~ determine whether the recharge capacity of the mined lands can be restored to the approximate ~~pre-mining~~ premining recharge capacity. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.645 GROUNDWATER MONITORING (1) Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater ~~shall~~ must be monitored in a manner approved by the department to determine the effects of strip or underground mining operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the mine plan and adjacent areas. When operations ~~are conducted in such a manner that~~ may affect the groundwater system, groundwater levels and groundwater quality ~~shall~~ must be periodically monitored using wells that can adequately reflect changes in groundwater quantity and quality resulting from such operations.

(2) Monitoring ~~shall~~ must:

(a) ~~include measurements from a sufficient number of wells and~~ physical and chemical analyses of aquifer, overburden, and spoil characteristics and the measurement of the quantity and quality of water in all disturbed or potentially affected geologic strata within and adjacent to the permit area. Affected strata are all those adjacent to or physically disturbed by mining disturbance and any aquifers below the base of the spoils that could receive water from or discharge water to the spoils. Aquifers that must be monitored include those where water level data indicate the potential for interaquifer comingling of groundwater between the aquifers and the spoil through the geologic units, unplugged drillholes, or fractures that connect the spoils with the underlying aquifers. Monitoring must be of sufficient frequency and extent to adequately identify ~~and, the strata beneath the lowest coal seam to be mined if water level data indicate a potential for the leakage of water through these strata that are adequate to~~ reflect changes in groundwater quantity and quality resulting from ~~these activities: mining operations; and~~ Monitoring ~~shall~~

(b) be adequate to plan for modification of strip or underground mining operations, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The department may require the permittee to ~~develop additional wells~~ expand the groundwater monitoring system if whenever a significant impact to the hydrologic balance of the permit and adjacent area is likely and the expanded monitoring is needed to adequately monitor the groundwater system. As specified and approved by the department, additional hydrologic tests, such as infiltration tests and aquifer tests, ~~shall~~ must be undertaken by the permittee to demonstrate compliance with this rule.

(4) Whenever an applicant demonstrates by the use of the probable hydrologic consequences determination (see 26.4.314) and other available information that a particular water-bearing stratum in the proposed permit or adjacent areas does not have a significant role in maintaining the hydrologic balance within the cumulative impact area, the department may waive monitoring of that stratum.

(5) Groundwater monitoring must proceed through mining



and continue until bond release. The department may allow modification of the monitoring requirements, except those required by the Montana pollutant discharge elimination system permit, including the parameters covered and sampling frequency, if the operator or the department demonstrates, using the monitoring data obtained under this paragraph, that:

(a) (i) the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area;

(ii) water quantity and quality are suitable to support approved postmining land uses; and

(iii) the water rights of other users have been protected or replaced;

(b) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under this rule, or

(c) with regard to monitoring related to an alluvial valley floor, monitoring of the essential hydrologic function of the alluvial valley floor is ensured under the modified program.

(6) Sampling and water quality analyses must be conducted according to the methodology in either the current 15th edition of "Standard Methods for Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434. Copies of these documents are available at the department's main office in Helena.

(7) Whenever monitoring reveals noncompliance with the permit, the Act, or the rules adopted thereunder, the permittee shall immediately take steps to minimize adverse effects. Those steps include, but are not limited to, accelerated or additional monitoring, abatement, and warning of all persons whose health or safety is in imminent danger. The permittee shall, within five days of discovery of noncompliance, notify the department of noncompliance and remedial measures taken.

(8) Results of groundwater monitoring activities must be reported to the department semiannually, and all monitoring data must be maintained on a current basis for inspection at the mine office. Any sample results indicating a permit violation must be reported to the department within 5 days of receipt of results. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.646 SURFACE WATER MONITORING (1) Surface water monitoring shall must be conducted in accordance with the monitoring program submitted under Rule 26.4.314 and approved by the department. ~~The department shall determine the nature of data, frequency of collection, and reporting requirements.~~ Monitoring shall must:

(a) Remains the same.

(b) in all cases in which analytical results of the sample collections indicate noncompliance with a permit condition

or when an applicable standard has occurred, result in the person who conducts the strip or underground mining operations operator notifying the department within 5 days of the noncompliance and of the remedial measures taken and complying with section (6) below. These remedial measures include, but are not limited to, accelerated or additional monitoring, abatement, and warning of all persons whose health and safety is in imminent danger. Where Whenever a violation of a Montana pollutant discharge elimination system (MPDES) permit effluent limitation noncompliance has occurred occurs, the person who conducts strip or underground mining operations operator shall forward the analytic results concurrently with the written notice of noncompliance;

~~(2)~~ (2) result in quarterly The operator shall submit semi-annual reports to the department, to include including analytical results from each sample taken during the quarter semester to the department. Any sample results which that indicate a permit violation ~~will~~ must be reported immediately to the department. ~~In those cases where~~ However, whenever the discharge for which water monitoring reports are required is also subject to regulation by a MPDES permit and where such that permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within 90 days or less of sample collection, the following alternative procedure shall be used:--The person who conducts the strip or underground mining operations the operator shall submit to the department on the same-time schedule as required by the MPDES permit or within 90 days following sample collection, whichever is earlier, a copy of the completed reporting form filed to meet MPDES permit requirements.

~~(2)~~ (3) Monitoring shall must be conducted at appropriate frequencies to measure normal and abnormal variations in concentrations.

~~(3)~~ (4) After disturbed areas have been regraded and stabilized according to this rule 26.4.501, the person who conducts strip or underground mining operations operator shall monitor surface water flow and quality. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements of this rule to minimize disturbance to the prevailing hydrologic balance, to demonstrate that the drainage basin has stabilized to the extent that it was in the its previous, undisturbed state, and to attain the approved postmining land use. These data may also provide a basis for approval by the department for removal of water quality or flow control systems and for bond release.

~~(4)~~ (5) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall must be properly installed, maintained, and operated and shall must be removed when no longer required.

~~(5)~~ (6) The permittee shall provide an analytical quality

control program including standard methods of sampling and analyses such as those specified in 40 CFR 136 and 434 or according to the methodology in the current 15th edition of "Standard Methods for the Examination of Water and Wastewater." Copies of these documents are available at the department of state lands, Capitol Station, Helena, Montana 59620.

(7) Surface water monitoring must proceed through mining and continue until bond release. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.647 TRANSFER OF WELLS (1) --An exploratory or monitoring well may only be transferred by the person who conducts strip or underground mining operations for further use as a water well with the prior approval of the department.

(2) --All flowing wells shall be permanently sealed unless approved by the department for other uses. The department may require a written request from a landowner who desires that a drill site be reclaimed as a well.

(3) --Upon an approved transfer of a well the transferee shall:

(a) --assume primary liability for damages to persons or property from the well;

(b) --plug the well when necessary and prior to abandonment of the well; and

(c) --assume primary responsibility for compliance with Rule 26-4-1005 and Rules 26-4-1101 through 26-4-1119.

(4) --Upon an approved transfer of a well the transferor shall be secondarily liable for the transferee's obligations under subsection (3) above until release of the bond.

(1) With prior approval of the department, the permittee may allow the surface owner to use an exploratory well or a monitoring well as a water well. To obtain departmental approval, the surface owner must submit a written request for transfer and evidence that the well has been completed in compliance with standards established by the board of water well contractors. The permittee remains responsible for proper management of the well and site until final bond release. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 231 MCA.)

26.4.648 WATER RIGHTS AND REPLACEMENT (1) The permittee shall replace the water supply of any owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from surface or underground source where if such supply has been affected by contamination, diminution, or interruption proximately resulting from strip or underground mine operation by the permittee. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-253 MCA.)

26.4.649 DISCHARGE OF WATER INTO UNDERGROUND MINES

(1) Surface and groundwaters shall not be discharged, diverted, or allowed to infiltrate into existing underground mine workings. (AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-231 MCA.)

26.4.650 POSTMINING REHABILITATION OF SEDIMENTATION PONDS, DIVERSIONS, IMPOUNDMENTS, AND TREATMENT FACILITIES

(1) ~~Before abandoning the permit area, the person who conducts the strip or underground mining operations operator~~ shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

(2) All temporary sedimentation ponds, diversions, impoundments and treatment facilities ~~shall~~ must be regraded to the approximate original contour and reclaimed prior to abandonment of the permit area. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.651 STREAM CHANNEL DISTURBANCES AND BUFFER ZONES

(1) No land within 100 feet of a perennial stream or intermittent stream or a stream reach with a biological community determined according to subsection section (3) below ~~shall~~ may be disturbed by strip or underground mining operations, nor may the stream itself be disturbed, except as approved in accordance with ~~Rules 26-4-635 26.4.634~~ through ~~26-4-635 26.4.637 and 26.4.751, unless the department specifically authorizes strip or underground mining operations closer to or through such a stream upon finding by the department that:~~

(a) ~~that the original stream channel function will be restored in accordance with 26.4.634 and 26.4.751; and~~

(b) ~~during and after the mining, the water quantity and quality and other environmental resources of the stream and the lands from the stream section within 100 feet of the stream strip or underground mining operations shall will~~ not be adversely affected.

(2) ~~The~~ Any area not to be disturbed ~~shall~~ must be designated a buffer zone and marked as specified in sub-chapter 5 26.4.524.

(3) A stream with a biological community ~~shall be is~~ determined by the existence in the stream ~~at any time~~ of an assemblage of two or more species of fish, amphibians, arthropods or molluscs ~~animals which that~~ are:

(a) through (c) Remains the same.

(d) These species must be longer than 2 millimeters at some stage of the part of their life cycle spent in the flowing water habitat. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232 MCA.)

26.4.652 WELLS AND UNDERGROUND OPENINGS: SAFETY

(1) Each exploration well, other ~~than drill or boreholes,~~ wells, and all other exposed underground openings ~~which have been identified~~ in the approved permit application ~~shall~~ area must be temporarily sealed before use and temporarily protected during use by barricades, fences, or other protective devices approved by the department. The permittee shall periodically inspect these devices and maintain them in good operating condition. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.701 REMOVAL OF TOPSOIL. (1) All trees and large shrubs that would interfere with the use of topsoil must be cleared before topsoil removal. All available topsoil shall be removed from the area of land affected before further disturbance occurs. The operator shall segregate surface soil material (A and possibly portions of underlying B and C horizons) from subsurface soil material (B and C horizons) in the salvage, stockpiling and redistribution of topsoil. Using the soil survey information required in Sub-Chapter 3, the operator shall recommend to the department the depths to which it feels each of the two soil lifts for each soil phase and mapping unit should be conducted. The operator shall then proceed in accordance with the department's recommendation. If the operator demonstrates to the satisfaction of the department that such segregation with regard to a specific soil phase or mapping unit is immaterial to the postmining productivity and stability of such soil, segregation shall not be required. Prior to any surface disturbance by the mining operation, and after the removal of vegetation that would interfere with soil removal and use, all soil suitable for reclamation use must be removed. Exceptions may be granted if the operator demonstrates to the satisfaction of the department that a site-specific disturbance would be insignificant and that soil loss, degradation, contamination, or impairment of quality would not occur.

(2) Topsoil removal shall precede each step of the mining operation. Topsoil The operator shall use a multiple-lift soil handling method consisting of the separate handling of surface soil (A, E, and possibly upper B or C horizons) and subsurface soil (underlying B and C horizons) during salvage, stockpiling, and redistribution, unless, for any particular soil component, the operator affirmatively demonstrates, and the department finds, that multiple lifts are not necessary to achieve reclamation consistent with the Act, rules and reclamation plan.

(3) The operator shall limit the area from which soil is removed at any one time to minimize wind and water erosion. The operator shall take other measures, as necessary and with departmental approval, to control erosion.

(4) Undisturbed soils must be protected from contamination and degradation and soil salvage operations will must be conducted in a manner and at a time that minimizes erosion, contamination, degradation, compaction, and deterioration of the biological, chemical, and physical properties of the topsoil. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-232 MCA.)

26.4.702 REDISTRIBUTION AND STOCKPILING OF TOPSOIL

(1) Topsoil shall must be immediately redistributed according to the requirements of subsections (4), (5), and (6) below on areas graded to the approved postmining configuration.

(2) The topsoil shall must be stockpiled if sufficient graded areas are not immediately available for redistribution. Stockpiles of salvaged topsoil stockpiles shall must be located

~~in an area where they will not be disturbed by ongoing mining operations and will not be lost to wind or water erosion or surface runoff. All unnecessary compaction, and contamination, and degradation of the stockpiles shall must be eliminated minimized; and, once stockpiled, the topsoil shall must not be rehandled until replaced on regraded disturbances areas, unless authorized by the department. The operator shall, during the first appropriate season, plant a non-noxious annual or perennial vegetative cover. Proposed stockpile locations shall be indicated on the map submitted as part of an application for a permit.~~

~~(3) Where the removal of vegetative material, topsoil or other material may result in erosion that may cause air or water pollution, the department shall limit the size of the area from which topsoil is removed at any one time and specify methods of treatment to control erosion of exposed overburden. Such other measures as the department may require or approve to control erosion shall also be taken.~~

~~(a) Inactive soil stockpiles must be seeded or planted with an effective cover of non-noxious, quick-growing, annual and/or perennial plants during the first normal period favorable for planting.~~

~~(b) Active stockpiles or stockpiles that will be used within 1 year do not require seeding. However, other measures must be taken as necessary to minimize erosion.~~

~~(4) In final grading, spoil surfaces Prior to soil redistribution, regraded areas shall must be deep-tilled, subsoiled, scarified or otherwise treated as required by the department to eliminate slippage zones that may develop between deposited topsoil and heavy-textured spoil surfaces potential at the soil/spoil interface, to relieve compaction, and to promote root and water penetration and permeability of spoils. This preparation must be done on the contour whenever possible and to a minimum depth of 12 inches. The operator shall take all measures necessary to assure the stability of topsoil on graded spoil slopes.~~

~~(5) Extreme The operator shall, care shall be exercised during and after redistribution, prevent, to the extent possible, to guard against spoil and soil compaction, protect against soil erosion, contamination, and degradation, and minimize the deterioration of the biological, chemical, and physical properties of the soil. during redistribution and thereafter.~~

~~(6) Topsoil shall must be redistributed in a manner and at a time that:~~

~~(a) achieves an approximate uniform thicknesses consistent with soil resource availability and appropriate for the postmining vegetation, land uses, contours, and surface water drainage systems; Soil replacement must be done on the contour, whenever possible.~~

~~(b) -- minimizes compaction and erosion of the spoil and topsoil and contamination of the topsoil; and~~

~~(c) -- minimizes deterioration of the biological, chemical,~~

and physical properties of the topsoil.

(7) -- In the case of abandoned roads, the roadbeds shall be ripped, disced, or otherwise conditioned before topsoil is replaced. -- The department may prescribe alternate conditioning and additional methods for the reclamation of abandoned roadbeds.

(8) (7) If necessary, redistributed topsoil shall must be reconditioned by discing, chiseling, subsoiling or other appropriate methods approved by the department. Soil reconditioning must be done on the contour, whenever possible. Gypsum, lime, fertilizer, or other amendments shall be added in accordance with Rule 26.4.718 or as stated in the approved reclamation plan. -- Rates of amendment application shall be determined by soil tests performed by a laboratory using standardized and departmentally approved procedures. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-232 MCA.)

#### 26.4.703 SUBSTITUTION OF OTHER MATERIALS FOR TOPSOIL

(1) Any application for permit or accompanying reclamation plan which that for any reason proposes to use materials other than, or along with, topsoil for final surfacing of spoil or other disturbances shall must document problems of topsoil quantity or quality. The following requirements must be met before use of material other than topsoil will be allowed:

(1) -- the permittee must demonstrate that the selected overburden materials or an overburden topsoil mixture is equally or more suitable for restoring land capability and productivity by the results of chemical and physical analyses. Using standardized and departmentally approved procedures, these analyses shall include determinations of pH, electrical conductivity, sodium absorption ratio, texture, net acidity or alkalinity, and such other analyses as required by the department. The department also may require that results of field site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

(2) -- the chemical and physical analyses and the results of field site trials and greenhouse tests are accompanied by certifications from a qualified laboratory and a qualified soil scientist or agronomist, respectively;

(3) -- the alternate material must be removed, segregated, and replaced in conformance with this section;

(4) -- the permittee must demonstrate that the alternate material will not contribute to nor cause pollution of surface or underground waters; and

(5) -- the permittee must demonstrate that the alternate material will support a diverse cover of predominantly native perennial species consistent with Rule 26.4.711.

(a) The operator shall demonstrate and the department shall find that the resulting medium is at least as capable as the soil of supporting the approved vegetation and postmining land use (see 26.4.304(7) and (11)).

(b) The medium must be the best available in the permit area to support vegetation.

(2) Soil substitutes must be handled consistent with 26.4.701 and 26.4.702. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-232 MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80.)

26.4.711 ESTABLISHMENT OF VEGETATION (1) A diverse, effective, and permanent vegetative cover of the same seasonal variety and utility as the vegetation native to the area of land to be affected must be established. This vegetative cover must also be and capable of meeting the criteria set forth in 82-4-233 ~~shall~~ and must be established on all areas of land affected except on ~~water areas and surface area of roads~~ surfaces and below the low-water line of permanent impoundments that are approved as a part of the postmining land use. Vegetative cover ~~will be~~ is considered of the same seasonal variety ~~when if~~ it consists of a mixture of species of equal or superior utility when compared with the natural vegetation during each season of the year. Reestablished vegetation must meet the requirements of applicable state and federal seed, poisonous and noxious plant, and introduced species laws and regulations. For areas designated prime farmland that are to be revegetated to a vegetative cover as previously described in this rule, the requirements of Rules 26.4.811 ~~through~~ and 26.4.815 ~~shall~~ must also be met. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.712 USE OF INTRODUCED SPECIES IN REVEGETATION This rule is proposed to be repealed and can be found on page 26-593 of the ARM.

26.4.713 TIMING OF SEEDING AND PLANTING (1) Seeding and planting of disturbed areas ~~shall~~ must be conducted during the first ~~normal~~ appropriate period for favorable planting after final seedbed preparation but ~~shall~~ may not ~~in no case~~ be more than 90 days after topsoil has been replaced, unless a variance is approved by the department. The ~~normal~~ appropriate period for favorable planting ~~shall be~~ is that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 234, 235 MCA.)

26.4.714 COVER CROPS AND MULCHING (1) ~~All disturbed areas which have been topsoiled will be seeded, as soon as practicable with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established.~~ As soon as practical, a mulch or a cover crop of small grains, grasses, or legumes, or both, ~~Mulch shall~~ must be used on all regraded and ~~topsoiled~~ areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil until an adequate, permanent cover is established. Mulch ~~shall~~ must be anchored to the soil surface where appropriate to ensure effective protection of the soil and vegetation. The mulch or the cover crop requirement, or both, may be suspended if the operator demonstrates to the department's satisfaction that they are not needed to control air



or water pollution and erosion. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.715 SELECTION OF SPECIES FOR WILDLIFE This rule is proposed to be repealed and can be found on page 26-594 of the ARM.

26.4.716 METHOD OF REVEGETATION (1) All revegetation ~~shall~~ must be in compliance with the approved reclamation plan and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels.

(2) An operator shall establish a permanent diverse vegetative cover of predominantly native species of the same seasonal variety and utility found on the premine area by drill or broadcast seeding or planting, by seedling transplants, by establishing sod plugs, or by other methods. All methods must have prior approval of the department. Revegetation must be capable of self-regeneration. All seeding shall must be done on the contour unless otherwise approved by the department. When grasses, shrubs, or forbs are seeded as a mixture, they may be drill seeded in separate rows at intervals specified in the standard soil conservation service (SCS) planting guidelines. ~~Such mixed seedings shall be done in this manner wherever necessary to~~ Mixed seedings must be conducted in a manner and at a time that will avoid deleterious competition of different vegetal types or to avoid seed distribution problems due to different seed sizes.

(3) The operator shall utilize seed and seedlings genotypically adapted to the area when available in sufficient quality and quantity. Seeding rates must be calculated on a pure live seed basis, and purity and germination percentages must be documented. An operator shall plant seed of a pure and viable nature. Unless otherwise approved by the department, seed shall be at least 90% pure. Seeding rates shall reflect purity and germination percentages.

(4) To the extent possible, the operator shall utilize seed mixes free of weedy or other undesirable species and shall utilize the best reclamation and land management techniques available to prevent establishment of noxious weeds on all disturbed and reclaimed areas. The operator shall control noxious weeds in accordance with the Noxious Weed Management Act (7-22-2101 through 7-22-2153, as amended). Specific control plans must be approved by the department.

(5) Introduced species:

(a) may be substituted for native species as part of an approved plan for alternate revegetation; or

(b) may be established as a part of the permanent diverse vegetative cover in compliance with 26.4.728(2). (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.717 PLANTING OF TREES (1) ~~Where~~ Whenever tree species are necessary to comply with 82-4-233, the permittee shall plant trees adapted for local site conditions and climate.

Trees ~~shall~~ must be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regeneration capabilities native to the area. If necessary to increase tree survival, the herbaceous cover may be delayed providing that measures are taken to control air and water pollution and erosion. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.718 SOIL AMENDMENTS AND OTHER MANAGEMENT TECHNIQUES

(1) Soil amendments ~~shall~~ must be used as necessary to supplement the soil and to aid in the establishment of a permanent vegetative cover as specified in the approved reclamation plan or as later deemed necessary by the department. ~~Soil amendment application rates shall be based on need as determined by soil analysis.~~

(2) An operator shall use any other means necessary to insure the establishment of a diverse and permanent vegetative cover, including ~~but not limited to~~ irrigation, management, fencing, or other ~~protective~~ measures as approved by the department. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.719 LIVESTOCK GRAZING (1) Livestock grazing may not take place on reclaimed land until the seedlings are established sufficiently for the reclaimed area to ~~and can~~ sustain managed grazing. The department, in consultation with the permittee and the landowner or in concurrence with the governmental agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing in compliance with 26.4.323 and 26.4.724. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.720 ANNUAL INSPECTIONS FOR REVEGETATED AREAS

(1) The department shall annually inspect seeded areas ~~at the end of the growing season~~ to determine germination, species diversity, ~~germination~~, and ~~seedling take~~ establishment. If the department determines that seedlings are unsuccessful in terms of good germination or establishment or permanence of the vegetation community, ~~or seedling take~~, the department shall ~~formally request the operator to investigate and determine the cause. The operator shall take immediate investigative action shall be taken by the operator at the request of the department~~ to determine the cause so that alternatives can be employed to establish the desired permanent vegetative cover at the next seasonal opportunity. The operator shall submit an investigative report ~~shall be submitted~~ along with a prescribed course of corrective action prior to the next growing season. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.721 ERADICATION OF RILLS AND GULLIES (1) When rills or gullies deeper than 9 inches form in areas that have been regraded and ~~topsoiled~~, the rills and gullies ~~shall~~ must be filled, graded, or otherwise stabilized and the area reseeded

or replanted. The department shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation. The department shall also specify time frames for completion of repair work and shall determine if the repair work will result in restarting the period of responsibility for reestablishing vegetation. (AUTH: Sec. 82-4-204 MCA; IMP, 82-4-233, 235 MCA.)

26.4.722 PROTECTION OF TOPSOIL STOCKPILES This rule is proposed to be repealed and can be found on page 26-596 of the ARM.

~~26.4.723 MONITORING The operator shall conduct periodic measurements of vegetation, soils, and water prescribed or approved by the department to identify conditions during the period of liability.~~ (1) The operator shall conduct periodic vegetation, soils, wildlife and other monitoring as prescribed or approved by the department.

(2) The data and a narrative interpretation thereof must be submitted on a schedule and in a manner approved by the department. Detail of the narrative interpretation must be determined in consultation with the department to demonstrate compliance with the Act and applicable rules in this chapter.

(3) If the data indicate that corrective measures are necessary, such measures must be proposed to the department. Upon departmental approval, the operator shall implement the corrective measures.

(4) The operator may request and the department may approve revision or discontinuation of a monitoring program, if it can be documented that adverse impacts have not occurred and are unlikely to occur or that mitigating measures have been effective.

(5) See also 26.4.645, 26.4.646 and 26.4.1129. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-233, 235 MCA.)

26.4.724 USE OF REFERENCE AREAS REVEGETATION COMPARISON STANDARDS (1) Reference areas must be established for each native plant community type or group of similar native community types found in the area to be disturbed by mining.

(2) Success of revegetation shall must be measured on the basis of comparison with unmined reference areas or by comparison with technical standards derived from historical data. These areas, standards, and methods of comparison must be approved by the department. The department may require that reference areas be used in conjunction with historical data technical standards to assess success of revegetation. ~~The department shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area. At least one reference area shall be established for each native community type found in the mine area. Two or more community types may be included in one reference area if examples of each type are typical of that community type~~ More

than one reference area or historical record ~~shall~~ must be established for vegetation types with significant variation due to edaphic factors, past management, size of the permit area, or other factors. Each reference area or area from which historical records are derived ~~shall~~ must be mapped at a scale of 1 inch:400 feet. permanently marked, including reference points for all sampling transects and plots. Locations of all sample points must be noted on 1 inch:400 feet scale maps submitted to the department. The applicant shall designate which reference areas or historical data records will be used for comparison to specific post mine vegetation communities.

~~(2) The success of revegetation on operations of less than 100 acres may be based on approved USDA or USDI technical guides, provided that this acreage is not a segment of a larger area proposed for mining.~~

(3) (a) Reference areas ~~shall~~ must be managed such that they are in at least a "good" ~~or better~~ range condition, as defined by the SCS. ~~When a good or better this required~~ range condition has been achieved, the reference area ~~will~~ must be grazed at ~~a proper~~ an approved level ~~(50% or less utilization)~~.

(b) Where the operator has an approved exclosed reference area, prior to February 3, 1978, grazing is not necessary on that reference area. In this case the success of revegetation ~~will~~ must be based on the ungrazed reference area. These operators shall initiate a study approved by the department ~~which that~~ will demonstrate that the revegetated areas are capable of withstanding grazing pressure.

(c) If past management of the reference area has resulted in a disclimax such that ~~a good or better the required~~ range condition cannot be attained, the department may approve use of ~~the this area in poorer condition,~~ may require designation of a different reference area, or may approve or require use of technical standards derived from historical data for determining success of revegetation.

(4) (a) ~~The reference area and the r~~Revegetated areas and reference areas, when appropriate, ~~will~~ must be grazed at a ~~proper~~ an approved level ~~(50% or less utilization)~~ for at least ~~the last two~~ 2 years of the liability during the last 5 years of responsibility for vegetative establishment.

(b) Vegetation measurements (exclusive of grazing) must be conducted on the reference areas and reclaimed areas (and on reference areas when appropriate) for at least the last 2 years of this period of responsibility.

(c) Grazing must be conducted in a manner and at a time that does not preclude acquisition of appropriate vegetation production, cover and diversity data. ~~Vegetation measurements these last two years will be on areas exclosed from grazing by agronomy cages or other systems approved by the department.~~

(5) Technical standards derived from historical data may be used as standards of comparison with revegetated areas with the following conditions:

(a) vegetative cover, production, diversity, density, and utility data (see 26.4.726) must be obtained from the premine

area or from an area approved by the department that exhibits comparable vegetative cover, production, diversity, density, and utility, as well as comparable management, soil type, topographic setting (slope, aspect, etc.), and climate, in comparison to those of the premine area;

(b) data must be generated for a sufficient time period to encompass the range in climatic variations typical of the premine or other appropriate area, or data generated from revegetated areas must be compared to historical data generated only during climatic conditions comparable to those conditions existing at the time revegetated areas are sampled; and

(c) historical records must be established for each native plant community or group of native communities that will be compared to specific reclaimed area plant communities.

(6) The success of revegetation on operations of less than 100 acres disturbance may be based on USDA or USDI technical guides whenever this acreage is not a segment of a larger area proposed for disturbance by mining. The applicant shall submit a detailed description of how the USDA or USDI technical guides will be applied to determine the success of revegetation.

(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-233, 235 MCA.)

#### 26.4.725 PERIODS OF RESPONSIBILITY AND EVALUATION

(1) The minimum period of responsibility for reestablishing vegetation under the performance bond begins when the canopy cover of seeded species is comparable to the approved standard after the last year of seeding, planting, fertilizing, irrigating, or other work activity related to final reclamation as determined by the department. "Comparable to the approved standard" is defined as not significantly less than the approved standard with 90 percent statistical confidence for herbaceous vegetation or 80 percent statistical confidence for trees, shrubs or half-shrubs. In no case will an area be considered comparable if it is less than 90% of the approved standard.

(2) The revegetated areas and their respective reference areas will be evaluated for at least two consecutive years prior to application for bond release and shall include the last two consecutive years of the bonding period. Application for final phase III bond release may not be submitted prior to the end of the tenth growing season. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-233, 235 MCA.)

26.4.726 VEGETATION PRODUCTION, COVER, DIVERSITY, DENSITY, AND UTILITY REQUIREMENTS (1) Standard and consistent field and laboratory methods must be used to obtain vegetation production, cover, diversity, density, and utility data, and to compare revegetated area data with reference area data and/or with historical record technical standards. Specific field and laboratory methods used, and schedules of assessments must be detailed in the application and must be approved by the department. Sample adequacy must be demonstrated. In addition to these and other requirements described in this rule, the department shall supply guidelines regarding acceptable field

and laboratory methods.

(2) The current vegetative annual production shall must be measured by clipping and weighing each morphological class on the revegetated area and the reference areas (morphological classes must be composited by native and introduced; annual grasses; perennial cool-season and warm-season grasses; annual, biennial, and perennial forbs; shrubs and half-shrubs). Vegetative cover must be documented for each species present on revegetated areas and on all other areas where a vegetation data base is required. At least 51% of the species present on the revegetated areas must be native species genotypically adapted to the area. A countable species must be contributing at least 1% of the cover for the area. ~~Weighted productivity shall be established for the reference areas for comparison to the revegetated area. Weighted productivity shall be determined for each of the following morphological classes: annual grasses, perennial grasses, annual, biennial, and perennial forbs, and shrubs. The production of each class on the revegetated area shall be comparable to the weighted production for that morphological class (except that if one class is composed of undesirable species for both wildlife and livestock, a lesser production in that class will be accepted if it is offset by production above the weighted productivity in another class). Weighted productivity is derived from the following formula:~~

WP=

$$\frac{(P\text{-type-1} \times A\text{-type-1}) + (P\text{-type-2} \times A\text{-type-2}) + \dots + (P\text{-type-n} \times A\text{-type-n})}{\text{Total area for all types}}$$

Where:

WP -- Weighted production of that morphological class

P -- Production of that morphological class on the reference area for that type

A -- Premise area of that type within the permit boundary

(3) The sampling techniques for measuring success must use a 90% statistical confidence interval. The following vegetation parameters for revegetated area data must be at least 90% of identically composited reference area data and/or technical standards derived from historical data:

(a) total vegetative production (totals derived from summation of morphological classes described in section (2) above);

(b) vegetative cover (in the following categories: annual grass; perennial cool-season and warm-season grasses; annual, biennial and perennial forbs);

(c) density (native and introduced species of trees, shrubs, and half-shrubs); and

(d) diversity of vegetation (calculated using all species).

(4) If one morphological class is composed of undesirable species for both wildlife and livestock, a lesser cover and production in that class may be accepted by the department if it is offset by a more desirable cover and production in another

class.

(5) Postmine vegetative cover and production and species composition must be of equal utility compared to those of the applicable reference area and/or historical record standard. Livestock performance must also be used to assess reclaimed areas as approved or prescribed by the department in compliance with 26.4.724 and as follows:

(a) Utility of revegetated areas with regard to livestock must be assessed by grazing of revegetated areas and results must be comparable to those on reference areas or to historic data. Grazing trials must be documented during the periods described in 26.4.724(4)(a).

(b) Methods used to assess postmine utility of revegetated areas must include a comparison of weight gains by livestock. Livestock weight gains on revegetated areas must be at least 90% of reference area or historical data weight gains.

(c) Utility data must be derived from groupings of vegetation communities that are determined by the department to be similar to the revegetated areas being grazed.

(d) Utility data must be generated in a manner and at a time approved by the department, as well as in compliance with 26.4.323 and 26.4.724.

(6) Distribution of plant species and morphological classes on reclaimed areas must provide for the approved postmine land use to the same or greater extent provided for premine and as compared to approved revegetation plans and reference areas or historical record standards, or both.

(7) The revegetated areas must meet the performance standards in sections (1) through (6) above for at least the last 2 years of the phase III bond period.

(8) The reestablished vegetation must meet the requirements of the Noxious Weed Management Act (7-22-2101 through 7-22-2153, as amended). (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-233, 235 MCA.)

**26.4.727 VEGETATION CANOPY COVER REQUIREMENTS** This rule is proposed to be repealed and can be found on page 26-598 of the ARM.

**26.4.728 PERMANENCE COMPOSITION OF VEGETATION** ~~During the last two years prior to phase III bond release the vegetation on the revegetated area must meet the following criteria:~~

(1) ~~It must be composed of at least 51% percent native species (based on richness and production and canopy cover data derived by in accordance with 26.4.726 and 26.4.733).~~

(2) ~~Introduced species may be present in a minority (less than 50% based on the richness and cover data) if it has been documented to the department's satisfaction that they have exhibited the ability to survive in the area through adverse climatic conditions, particularly drought. Introduced species must be as capable as native species of meeting the requirements of 26.4.711, 26.4.730, 26.4.751, and 82-4-233. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-233, 235 MCA.)~~

26.4.729 DIVERSITY OF VEGETATION This rule is proposed to be repealed and can be found on page 26-599 of the ARM.

26.4.730 SEASON OF USE (1) The vegetation revegetated area must furnish palatable forage in comparable quantity and quality during the same grazing period as the reference areas or technical standard derived from historic records. Palatability ~~will~~ must be based on the literature and proven by references. Quantity ~~will~~ must be based on production measurements described in 26.4.726. Methods used for evaluation must be consistent with those approved in relation to 26.4.726. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-233, 235 MCA.)

26.4.731 ANALYSIS FOR TOXICITY (1) Where toxicity to plants or animals ~~consumers~~ is suspected due to the effects of mining disturbance, the department may require comparative chemical analyses of the vegetation plants or animals, or both, on the revegetated areas and the reference areas. Alternatively, the department may require or approve a comparison of chemical analyses of plants or animals, or both, from the revegetated area with suitable standards. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-233, 235 MCA.)

26.4.732 VEGETATION REQUIREMENTS FOR PREVIOUSLY CROPPED AREAS (1) Where the premining vegetation was cropland, and it cannot be adequately determined what the precropping vegetation community was, the cropping acreage ~~will~~ must be considered to have the same potential to support the same native vegetation as other noncropped areas with the same edaphic and topographic characteristics. In consultation with the department, these edaphic and topographic characteristics must be used to insure compliance with 26.4.724. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-233, 235 MCA.)

26.4.733 ADDITIONAL MEASUREMENT STANDARDS FOR TREES, SHRUBS, AND HALF-SHRUBS (1) The species composition and stocking, ~~i.e., the number of stems per unit area~~, of trees, shrubs, and half-shrubs on the revegetated area shall must be used to determine the degree to which space is occupied by well distributed, countable trees, or shrubs comparable to the composition and density on the reference areas in accordance with 26.4.726 and 26.4.728.

(1)(2) ~~Root crown or root sprouts over 1~~ Only trees and shrubs that are greater than 1 foot in height, and only half-shrubs that are greater than 4 inches in height shall may be counted as one toward meeting when comparing the stocking requirements rates of the revegetated area with the reference areas or historical record standard for trees and shrubs. Where Whenever multiple stems occur, only the tallest stem shall be may be counted.

(2) ~~A "countable" tree or shrub means a tree or shrub that can be used in calculating the degree of stocking under~~



~~the following criteria:~~

~~(a) -- the tree or shrub must have been in place at least 2 growing seasons;~~

~~(b) -- the tree or shrub must be alive and healthy; and~~

~~(c) -- the tree or shrub must have at least one-third of its length in live crown;~~

(3) Each operator shall provide documentation that:

(a) density of woody plants established in the revegetated area is comparable to the density of live woody plants of the same life form of the approved reference areas or the approved historical record standard, with 90% statistical confidence, unless stocking at a lesser rate that better achieves the approved post mining land use is approved by the department;

(b) the cover of trees, shrubs and half-shrubs on the revegetated area meets the requirements of 82-4-233; and

(c) the species diversity, seasonal variety and the regenerative capacity of the vegetation of the revegetated area meet the requirements of 26.4.711, 26.4.717, 26.4.724, 26.4.726, and 26.4.751.

~~{3} (4) Rock areas, p~~ermanent roads and surface water drainage ways on the revegetated area shall do not require stocking. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-233, 235 MCA.)

#### 26.4.734 ADDITIONAL REQUIREMENTS FOR COMMERCIAL FORESTS

This rule is proposed to be repealed and can be found on page 26-600 of the ARM.

26.4.735 ADDITIONAL REQUIREMENTS FOR WOODY PLANTS OTHER THAN COMMERCIAL FORESTS This rule is proposed to be repealed and can be found on page 26-600 of the ARM.

26.4.751 PROTECTION AND ENHANCEMENT OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES ~~In addition to the requirements of section 82-4-231(3)-(5), an operator shall:~~ (1) No surface or underground mining operation may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the interior or which is likely to result in the destruction or adverse modification of designated critical habitat of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs, as a result of the mining operation. The operator shall promptly report to the department and the U.S. fish and wildlife service the presence in the permit area of any listed threatened or endangered species or critical habitat thereof of a threatened or endangered species listed by the secretary of the interior, any plant or animal listed as threatened or endangered by Montana, or any bald or golden eagle, of which that person the operator becomes aware and which was not previously reported to the department by that person. Upon notification, the department shall consult with appropriate state and federal fish and

wildlife agencies and shall thereafter identify whether and under what conditions the operator may proceed;

(2) In addition to the requirements of 82-4-231(10)(j), the operator shall:

(a) ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the strip or underground mining operations on the permit area are adequate to minimize collisions and electrocutions of raptors, waterfowl, and other wildlife species and are in accordance with the guidelines set forth in environmental criteria for electric transmission systems (USDI, USDA (1970), in Raptor Research Report No. 4 (1981), or in alternative guidance manuals approved by the department. Distribution lines shall must be designed and constructed in accordance with REA Bulletin 61-10, pPowerline eContacts by eEagles and eOther lLarge bBirds, or in alternative guidance manuals approved by the department. For informational purposes, these two documents are on file at the Helena office of the department;

(3b) locate and operate haul and access roads so-as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(4c) fence roadways where specified by the department to guide locally important wildlife to roadway underpasses. No Nnew barrier shall to wildlife movements may be created in known and-important-wildlife-migration-routes-unless otherwise approved by the department;

(5d) fence, cover, or use other appropriate methods to exclude wildlife from ponds which that contain hazardous concentrations of toxic-forming materials;

(6e) consult with appropriate state and federal fish and wildlife and land management agencies to ensure that reclamation will provide for habitat needs of various wildlife species in an equal or greater capacity than was provided prior to mining. sSpecial attention should must be given to inanimate elements such as rock outcrops, boulders, scoria rubble, dead trees, etc., which that may have existed on the surface prior to mining, and to plant species with proven nutritional and cover value for fish and wildlife. Plant groupings and water sources must be distributed to fulfill the requirements of fish and wildlife, and; such--elements-should-be-recreated-on-post-mined areas-to-provide-comparable-habitat-needs-for-wildlife vegge-tative cover may not be less than that required by the approved postmining land use;

(7f) restore, consistent with 82-4-233, or avoid disturbance to wetlands and other habitats of unusually high value for fish and wildlife, and, where practicable, enhance such habitats;

(8g) restore, consistent with 82-4-233, and in compliance with 26.4.702 through 26.4.733, or maintain avoid disturbance to natural riparian vegetation on the banks of streams, lakes, ponds, and other wetland areas and, where practicable, enhance such habitats;

(9h) afford protection to aquatic communities by avoiding

stream channels (see 26.4.651) in or by restoring stream channels as required in Rule 26.4.634;

(10i) through (11j) Remains the same. (AUTH: 82-4-204, 205 MCA; IMP, Sec. 82-4-227, 231 MCA.)

26.4.761 AIR RESOURCES PROTECTION (1) Each ~~person who conducts strip or underground mining operations~~ operator shall plan and employ department-approved fugitive dust control measures as an integral part of site preparation, coal mining and reclamation operations. The department shall approve the control measures appropriate for use in planning, according to applicable federal and state air quality standards, climate, existing air quality in the area affected by mining, and the available control technology.

(2) The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of the operation, and type of operation, ~~shall~~ must include, as necessary, but not be limited, to:

(a) periodic watering of unpaved roads, with the minimum frequency of watering approved by the department;

(b) chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust ~~palitatives~~ suppressants;

(c) through (r) Remains the same.

(s) restricting fugitive dust ~~a~~ at spoil and coal transfer and loading points with water sprays, negative pressure systems and baghouse filters, chemicals, or other practices; and

(t) Remains the same.

(3) ~~Where the department~~ Whenever it determines that application of fugitive dust control measures listed in subsection (2) is inadequate, the department may require additional measures and practices as necessary.

(4) Air monitoring equipment ~~shall~~ must be installed and monitoring ~~shall~~ must be conducted in accordance with the air monitoring plan required under Rule 26.4.311 and approved by the department. (AUTH: 82-4-204 MCA; IMP, Sec. 8-4-231 MCA.)

26.4.762 POSTMINING LAND USE (1) The postmining land use ~~shall~~ must be grazing land for livestock and wildlife grazing, fish and wildlife habitat, or both, as outlined in 82-4-233(1) and 26.4.301(64) unless ~~an alternate land-use~~ reclamation is approved under Rule 26.4.823. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-233 MCA.)

26.4.763 COAL CONSERVATION (1) Strip or underground mining operations ~~shall~~ must be conducted ~~so as~~ to prevent failure to conserve coal, utilizing the best appropriate technology currently available to maintain environmental integrity. The operator shall adhere to the approved coal conservation plan required in Rule 26.4.322. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.801 ALLUVIAL VALLEY FLOORS: PRESERVATION OF ESSENTIAL HYDROLOGIC FUNCTIONS AND PROTECTION OF FARMING

(1) Strip or underground coal mining operations shall must be conducted to preserve, throughout the mining and reclamation process, the essential hydrologic functions of alluvial valley floors not within a permit area. These functions shall must be preserved by maintaining those geologic, hydrologic and biologic characteristics that support those functions.

(2) Strip or underground coal mining and reclamation operations shall must be conducted to reestablish, throughout the mining and reclamation process, the essential hydrologic functions of alluvial valley floors within an area of land affected. These functions shall must be reestablished by reconstructing those geologic, hydrologic and biologic characteristics that support those functions.

(3) ~~The characteristics that support the essential hydrologic functions of alluvial valley floors are those in Rule 26.4.321(3)(c) and those other geologic, hydrologic, or biologic characteristics identified during premining investigations or monitoring conducted during the strip or underground mining operation.~~ Strip or underground coal mining operations must be conducted to ensure that the agricultural utility and the level of productivity of alluvial valley floors in affected areas are reestablished to premining levels. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227, 231 MCA.)

26.4.802 ALLUVIAL VALLEY FLOOR: PROTECTION OF FARMING AND PREVENTION OF MATERIAL DAMAGE

(1)(a) Strip or underground coal mining operations shall must not interrupt, discontinue, or preclude farming on alluvial valley floors, unless:

(i) the premining land use type is undeveloped rangeland which that is not significant to farming; or

(ii) the area of affected alluvial valley floor is small and provides or may provide negligible support for production from one or more farms.

(b) If environmental monitoring shows that a strip or underground coal mining operation is interrupting, discontinuing, or precluding farming on alluvial valley floors, the operation shall must cease until remedial measures are taken by the ~~person who conducts the operation~~ operator. The remedial measures shall must be approved by the department prior to the resumption of mining.

(2) Strip or underground coal mining and reclamation operations shall must not cause material damage to the quality or quantity of water in surface or underground water systems that supply alluvial valley floors. If environmental monitoring shows that the strip or underground coal mining operation is causing material damage to water that supplies alluvial valley floors, the mining operations shall must cease until remedial measures are taken by the operator. The remedial measures shall must be approved by the department prior to the

resumption of mining operations.

(3) ~~Subsections~~ Sections (1) and (2) of this rule do not apply to those lands which were identified in a reclamation plan approved by the department before August 3, 1977, for any strip or underground coal mining and reclamation operation that, in the year preceding August 3, 1977:

(a) through (b) Remains the same. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227, 231 MCA.)

26.4.803 ALLUVIAL VALLEY FLOORS: RESTORATION OF AGRICULTURAL CAPABILITIES This rule is proposed to be repealed and can be found on page 26-625 of the ARM.

26.4.804 ALLUVIAL VALLEY FLOORS: MONITORING (1) An environmental monitoring system ~~shall~~ must be installed, maintained and operated by the permittee on all alluvial valley floors during strip or underground coal mining and reclamation operations and continued until all bonds are released in accordance with ~~Rule~~ 26.4.1114. The monitoring system ~~shall~~ must provide sufficient information to allow the department to determine that:

(a) through (b) Remains the same.

(c) ~~The~~ The important characteristics supporting the essential hydrologic functions of the alluvial valley floor in the affected area have been reestablished after mining; ~~and~~

(d) Remains the same.

(e) Farming on lands protected under 26.4.802 is not being interrupted, discontinued, or precluded; and

(f) The operation is not causing material damage to the quantity or quality of water in the surface or underground systems that supply alluvial valley floors protected under 26.4.802.

(2) Monitoring ~~shall~~ must be performed at adequate frequencies, to indicate long-term trends that could affect agricultural use of the alluvial valley floors.

(3) Monitoring ~~shall~~ must be performed during operations to identify characteristics of the alluvial valley floor not identified in the permit application and to evaluate the importance of all characteristics requested by the department.

(4) All monitoring data collected and analyses thereof ~~shall~~ must routinely be made available to the department. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227, 231 MCA.)

26.4.805 ALLUVIAL VALLEY FLOORS: SIGNIFICANCE DETERMINATION (1) The significance of the impact of the proposed operations on farming ~~shall-be~~ is based on the relative importance of the vegetation and water of the grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the department as suitable for site-specific protection of agricultural activities in alluvial valley floors. The effect of the proposed operations on farming ~~shall-be-concluded-to-be~~ is "significant" if ~~they~~ the operations would remove from

production, over the life of the mine, a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227, 231 MCA.)

26.4.806 ALLUVIAL VALLEY FLOORS: MATERIAL DAMAGE DETERMINATION Criteria for determining whether a strip or underground coal mining operation will materially damage the quantity or quality of waters include, but are not limited to:

(1) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by specific conductance in millimhos, to levels above the threshold value at which crop yields decrease, as specified in Maas and Hoffman, "Crop Salt Tolerance--Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops," unless the applicant demonstrates compliance with ~~paragraph-(b)~~ section (2) below. Salt tolerances for agricultural crops have been published by E.V. Maas and G.J. Horrmann, in a paper entitled "Crop Salt Tolerance--Current Assessment" contained in the ~~J~~Journal of the ~~I~~rrigation and ~~d~~Drainage ~~D~~ivision, American society of civil engineers, pages 115 through 134, June, 1977. Table 1, giving threshold salinity values is presented on pages 22 through 125. For types of vegetation not listed in Maas and Hoffman as specified by the department, based upon consideration of observed correlation between total dissolved solid concentrations in water and crop yield declines taking into account the accuracy of the correlations. This publication is hereby incorporated by reference as it exists on March 13, 1979. The Maas and Hoffman publication is on file and available for inspection at the department of state lands, Capitol Station, Helena, Montana 59620;

(2) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of those incorporated by reference in ~~subsection (1) shall~~. These increases are not be allowed unless the applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases that will result in crop yield decreases;

(3) potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigated land compared to ~~pre-mining~~ premining conditions;

(4) through (5) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227, 231 MCA.)

26.4.807 ALLUVIAL VALLEY FLOORS: DEFINITION OF "FARM"  
This rule is proposed to be repealed and can be found on page 26-628 of the ARM.

26.4.811 PRIME FARMLAND: GENERAL REQUIREMENTS SOIL HANDLING ~~(1) -- A permit for strip or underground coal mining operations on prime farmland shall be obtained under section 82-4-221.~~

~~(2) (1) Operators who disturb prime farmlands shall comply with all applicable performance standards of Rules 26.4.701 through 26.4.703 shall be complied with by those operations described in subsection (1) above.~~

~~(2) Prime farmland soil removal and stockpiling operations must be conducted in compliance with 82-4-232(3) (a) and (b). The minimum thickness of soil materials to be removed for use in reconstructing prime farmland soils must be sufficient to meet the soil replacement requirements of section (3) below. Prime farmland soil materials must be handled separately from other soil materials, including salvage, stockpiling and redistribution, unless otherwise approved by the department upon a finding that the other soil materials with which the prime farmland soil would be combined meet the requirements of quality set forth in 82-4-232(3) (a) and (b).~~

~~(3) The minimum thickness of soil to be reconstructed for prime farmland must be 48 inches or a thickness equal to the depth to a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The department shall specify a depth greater than 48 inches wherever necessary to restore productive capacity. Soil horizons are considered inhibitory to root penetration if their physical or chemical properties restrict or prevent penetration by roots.~~

~~(4) Prime farmland soils must be removed, immediately redistributed or stockpiled, and reconstructed in a manner that results in a soil having equal or greater productive capacity than that which existed prior to disturbance. The A and E horizons or other suitable soil materials must be replaced as the surface soil layer to a thickness that will equal or exceed the thickness of this layer as it existed before disturbance. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227, 232 MCA.)~~

26.4.812 PRIME FARMLANDS: TOPSOIL REMOVAL This rule is proposed to be repealed and can be found on page 26-628 of the ARM.

26.4.813 PRIME FARMLANDS: TOPSOIL STOCKPILING This rule is proposed to be repealed and can be found on page 26-628 of the ARM.

26.4.814 PRIME FARMLANDS: TOPSOIL REPLACEMENT This rule is proposed to be repealed and can be found on page 26-628 of the ARM.

26.4.815 PRIME FARMLANDS: REVEGETATION (1) Each person operator who conducts strip or underground mining operations on prime farmlands shall, within the area identified as prime farmland before disturbance:

(a) randomly establish test plots which that will be

cropped until restoration of the premining productivity has met the requirements of this rule. The remainder of the area not used for test plots ~~shall~~ must be ~~reclaimed~~ revegetated consistent with the standards of Rules 26.4.711 through 26.4.7353. When restoration of the premining productivity has been demonstrated, the operator shall revegetate the test plots consistent with the standards of Rule 26.4.711 through 26.4.733; or ~~The operator may apply to reclaim the area as cropland subject to the requirements of Rule 26.4.825. The test plots or the reclaimed area if reclaimed in accordance with Rule 26.4.825 shall meet the following revegetation requirements during reclamation:~~

(b) crop the entire area of disturbed prime farmland until restoration of the premining productivity is demonstrated. The operator shall then:

(i) revegetate the entire area consistently with 26.4.711 through 26.4.733; or

(ii) permanently reclaim the area to cropland if application is made and approval is granted under the provisions of 26.4.821 through 26.4.825.

(2) All prime farmlands reclaimed either temporarily or permanently as cropland must meet the following revegetation requirements:

~~(1)(a) Following topsoil replacement, that person the operator shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with implement the revegetation and erosion-control plan approved by the department under Rule 26.4.300 26.4.324, and as follows:~~

(i) This plan must be carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity.

(ii) Nutrients, other soil amendments, and other management techniques such as irrigation must be applied as approved by the department and as necessary to be consistent with subsection (2)(d) of this rule.

(iii) The timing and mulching provisions of Rules 26.4.713 and 26.4.714 shall must be met.

~~(2)(b) Within a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading, the test plot or the portion of the permit areas to be reclaimed either temporarily or permanently to cropland which is prime farmland must be used for planted to the crops that have been approved under 26.4.324 and that are commonly grown, such as corn, soybeans, grain, hay, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. As appropriate, the crops may be grown in rotation with hay or pasture crops as defined for cropland consistent with Rule in 26.4.825(1). The department may approve a crop use of perennial plants for hay where this is a common long term use of prime farmland soils in the surrounding area;~~

(c) If row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest



rooting depth must be one of the reference crops;

(d) The level of management shall must be equivalent to that occurring on the comparison reference area(s) or on which the premining target yields are based pursuant to paragraph subsection (3)(e) below; and

(3)(e)(i) Revegetation success on prime farmlands shall must be determined upon the basis of a comparison of actual crop production on the disturbed area and the crop production on reference areas meeting the following requirements:

(A) Reference areas must consist of representative undisturbed prime farmland supporting the crops commonly grown on those prime farmlands proposed for disturbance;

(B) Reference areas must have with-the-same soils, slopes, and other pertinent characteristics in-the-immediate vicinity-of-the-mining-operation, comparable to those proposed for disturbance; and

(C) The location of reference areas and the yields from them that are used to determine revegetation success pursuant to (e)(i) must be determined with the concurrence of the Montana state office of the U.S. soil conservation service.

(ii) If such undisturbed prime farmland is not available for comparison purposes, comparison of production on the disturbed area shall must be made with the premining target yields approved by the department in-the-permit-in-accordance with Rule 26.4.329. As-a-minimum, and meeting the following standards shall-be met:

(A) Target yields for a given year must be determined on the basis of current yield records of representative local farms, with the concurrence of the Montana state office of the U.S. soil conservation service, or by the average county yields recognized by the U.S. department of agriculture;

(B) These yields must be adjusted as necessary by the Montana state office of the U.S. soil conservation service for local yield variation that is associated with differences between undisturbed prime farmland soil and all other soils that produce the crops of interest within the locale or the county;

(iii) Under either procedure in paragraphs (i) or (ii) above, crop production of the reference area or the target yield must be adjusted, as necessary, with the concurrence of the Montana state office of the U.S. soil conservation service, for:

(A) disease-, pest-, and weather-induced seasonal variations; or

(B) differences in specific management practices where the overall management practices of the crops being compared are equivalent;

(a)(f) average-annual-Crop production on disturbed prime farmland disturbed-by-mining shall-must be determined based upon a minimum of 3 consecutive crop years of data;

(i) for permanent cropland, these 3 years of data must include the last year of a minimum 10-year period of responsibility preceding the application for phase III bond release;

(ii) for temporary test plots, these 3 years of data must include the last year of a minimum 10-year period of crop production;

~~(b) -- adjustment for weather-induced variability in the annual mean crop production may be permitted by the department if target levels are used pursuant to this paragraph (c);~~

(g) crop production on the prime farmland reference area must be determined based upon a minimum of 3 consecutive crop years of data consistent with (f)(i) or (f)(ii) above, as appropriate; and

~~(c)(h) R~~ Revegetation on prime farmland shall be is considered successful when the level of crop production yield for each of the 5 3 years is equivalent to, or higher than, that on the comparison reference area or the predetermined target yield level of crop production. This equivalence must be shown at least at the 10% level of significance using statistically appropriate sampling techniques approved by the department in consultation with the Montana state office of the U.S. soil conservation service. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227, 232 MCA.)

26.4.816 PRIME FARMLANDS: ISSUANCE OF PERMIT This rule is proposed to be repealed and can be found on page 26-630 of the ARM.

26.4.821 ALTERNATE RECLAMATION: SUBMISSION OF PLAN

(1) Each operator who desires to conduct alternate reclamation pursuant to section 82-4-233(7) (and (8) for alternate revegetation) shall submit his plans to the department. The plan shall must contain appropriate descriptions, maps and plans which that show:

~~(a) through (d)~~ Remains the same.

~~(a)(i) is more or~~ at least as environmentally protective, during and after the proposed strip or underground mining operations, as nonalternate reclamation methods; and

~~(b)(ii)~~ Remains the same.

~~(c)(e)~~ that the applicant will shall conduct appropriate special monitoring, as determined required by the department, with respect to the alternate reclamation during the bonding period; this monitoring must be designed:

(i) to identify, as soon as possible, potential risks to the environment and public health and safety from use of the alternate reclamation; and

(ii) to evaluate the effectiveness of the alternate reclamation;

~~(f) through (g)~~ Remains the same.

(2) Each application for alternate reclamation is subject to public review requirements of sub-chapter 4 either as part of a new application or as an application for a major revision. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-232 MCA.)

26.4.822 ALTERNATE RECLAMATION: PUBLIC NOTICE OF PLAN

This rule is proposed to be repealed and can be found on page 26-631 of the ARM.

26.4.823 ALTERNATE RECLAMATION: APPROVAL OF PLAN AND REVIEW OF OPERATION (1) No permit or permit revision authorizing an alternate reclamation plan shall be issued, unless the department first finds, in writing, on the basis of a complete application and with the comments concurrence of the regional-director, federal coal regulatory authority that:

(a) through (c)(iii) Remains the same.

(2) The department shall consult with the Montana state office of the U.S. soil conservation service before approving alternate reclamation plans or revisions involving prime farmlands.

(3) After the permit review required in Rule 26.4.408 and consultation with the regional-director federal coal regulatory authority, the department shall require by order, supported by written findings, any reasonable revision or modification of the alternate reclamation provisions necessary to ensure that the operations involved are conducted to fully protect the environment and public health and safety. Any person who is or reasonably may be adversely affected by the order shall must be provided with an opportunity for an informal conference. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-232 MCA.)

26.4.824 ALTERNATE RECLAMATION: ALTERNATE POSTMINING LAND USES (1) If a land use other than ~~livestock and wildlife~~ grazing land or fish and wildlife habitat is proposed, areas of land affected shall must be restored in a timely manner to higher or better uses achievable under criteria and procedures of this rule.

(2) The premining uses of land to which the postmining land use is compared shall-be are those uses which that the land previously supported or could have supported, if the land had not been previously mined and had been properly managed.

(a) The postmining land use for land that has been previously mined and not reclaimed shall must be judged on the basis of the land use that existed prior to any mining. If the land cannot be reclaimed to the use that existed prior to any mining because of the mined condition, the postmining land use must be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(b) The postmining land use for land that has received improper management shall must be judged on the basis of the premining use of surrounding lands that have received proper management.

(c) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of post-mining postmining use to premining use shall must include a comparison with the use of the land prior to the change as well as its uses immediately preceding mining.

(3) Prior to the release of bond, the permit area shall

must be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved ~~alternative~~ alternate land uses.

(4) ~~Alternative~~ The department may approve alternate land uses ~~may be approved by the department~~ after consultation with the landowner or the land management agency having jurisdiction over the lands, if all of the following criteria are met:

(a) ~~t~~The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, state or federal land use policies and plans relating to the permit area. Demonstration of compatibility must include, but is not limited to:

(i) submission to the department within 60 days of notice by the department of a written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the department within 60 days of notice by the department and before strip or underground mining operations begin; and

(ii) obtaining Any required approval, including any necessary zoning or other changes required for land use by local, state or federal land management agencies, ~~is obtained and. This approval must remain~~ valid throughout the strip or underground mining operations.

(b) The operator shall submit to the department specific plans are prepared and submitted to the department which that show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be financed, developed, and achieved within a reasonable time after mining and how it will be sustained. These plans must be supported, if appropriate, by letters of commitment from parties other than the operator. The department may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation;

(c) ~~p~~Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the ~~person who conducts strip or underground mining operations~~ operator as appropriate, to provide the public facilities in a manner compatible with the plans submitted. ~~The letters shall be submitted to the department before mining operations begin;~~

(d) ~~specific and feasible plans are submitted to the department which show that financing, attainment and maintenance of the postmining land use are feasible and, if appropriate, are supported by letters of commitment from parties other than the person who conducts the operations;~~

(e) (d) Remains the same.

(f) (e) ~~t~~The proposed use will neither present actual nor probable hazard to public health or safety, nor will pose any actual or probable threat of water flow diminution or pollu-

tion.

~~(g)~~ (f) The use will not involve unreasonable delays in reclamation, and.

~~(h)~~ (g) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the department and after appropriate state and federal fish and wildlife management agencies have been provided a 60-day period in which to review and comment on the plan before mining operations begin.

(5) Where residential, public service, or industrial uses are proposed, the operator shall intersperse the affected lands with greenbelts of trees, shrubs, and herbaceous cover for wildlife use unless such greenbelts are inconsistent with the approved postmining land use. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-232 MCA.)

#### 26.4.825 ALTERNATE RECLAMATION: ALTERNATE REVEGETATION

(1) Where If the operator proposes to plant cereal crops or row crops alone or in rotation with hay or pasture crops, as an alternative revegetation plan the following minimum criteria must be met:

(a) ~~all soil types within the proposed alternate revegetation area should be at least capability class III, based on SCS criteria, prior to mining, and to be salvaged and redistributed to an equal depth and quality after mining.~~ The area proposed for reclamation to such crops must have a history of being cropped or cultivated for at least 5 of the 10 years prior to purchase, lease, or control of such land by the applicant. The department may allow deviations of the proposed postmining location from the premining location of the crops based on consideration of postmining topography or management plans.

(b) ~~the area proposed for crop use must be leveled to slope gradients of no greater than 5%.~~ Prior to mining, all soils within the proposed reclamation area must have been at least capability class IV, based on U.S. soil conservation service criteria;

(i) These soils must meet the criteria of subsections (1)(c) and (d) below, and must be salvaged, stockpiled and redistributed on the area proposed for reclamation pursuant to subsection (1)(a) above, and managed consistent with 26.4.701 to 26.4.702; or

(ii) Other soils or materials may be used if they meet the qualifications of and are handled in accordance with paragraph (1)(b)(i) above and are approved for such use by the department. Documentation of compliance with 26.4.703, if applicable, must be demonstrated.

~~(c) the area proposed for cropping must have a history of being cropped or cultivated for at least 5 of the 10 years prior to operator purchase, lease or control of such land;~~

(c) Soils proposed for use must have the following properties:

(i) loamy texture, as defined by the U.S. soil conservation service in the Soil Survey Manual, chapter 4 as revised May, 1981, pp. 4-56 and 4-57;

(ii) rock fragment (gravels, cobbles, and channers only) contents less than 20% in the first lift and less than 35% in the second lift;

(iii) after materials are replaced, no greater than moderate wind and water erosion hazards as determined by U.S. soil conservation service procedures; and

(iv) levels of electrical conductivity, sodium adsorption ratio, and plant available water-holding capacity meeting the criteria for class III soils according to the Land Capability Guide for Montana, U.S. soil conservation service, September 1, 1982.

(d) In all cases, soil materials must be selected and handled in such a way and redistributed to such a thickness and the underlying regraded spoil properties must be of sufficient quality such that the postmining productivity of the root zone is equal to or greater than that which existed before disturbance. The operator must comply with the following requirements:

(i) Soils must be replaced to a minimum thickness of 24 inches.

(ii) The root zone thickness must be consistent with the requirements of 26.4.501(2).

(e) Slope gradients must not exceed 8%.

(d)(f) There is sufficient normal precipitation on the area or The area must receive a minimum of 12 inches average annual precipitation, or there must be sufficient irrigation water available and committed to maintain crop production.

(e) -- the department may not release the reclamation phase FII bonds held on the area until the operator has affirmatively demonstrated that the land demonstrates equivalent productivity compared to crop yields on unmined croplands producing the same crop with the same soils, slopes, and other pertinent characteristics in the immediate vicinity of the mining operation using equivalent management practices. This equivalence in productivity shall be sustained for at least the 5 years immediately prior to bond release;

(f) -- if unmined croplands are not available for comparison purposes as discussed in (b)(c) above, target levels of production shall be established for bond release purposes. These target levels shall be based upon premining production levels of the area of land to be mined and subsequently reclaimed to the same cereal crops or as otherwise determined by the department; and

(g) The area must not be subject to flooding that would impair its suitability as cropland due to flood effects including, but not limited to, erosion, siltation, and inundation.

(h) The area must have a minimum of 90 frost-free days per year.

(i) If necessary to protect replaced soil materials from

wind and water erosion, or if necessary to enhance soil productivity, stability or the capacity for root penetration, a grass-legume mixture must be planted and maintained as determined by the department.

(j) Soil amendments must be added in accordance with 26.4.717.

(2) The department may not issue a permit for the reclamation of a disturbed area to row or cereal crops, if it determines that development of a saline seep on the proposed cropland area may occur, or that this area may function as a saline seep recharge area for lands downgradient.

~~(g)---the operator must submit to the department a firm written commitment by the operator, or by the postmining landowner, that sufficient crop management will be practiced after release of applicable performance bonds to assure that the proposed postmining cropland use will remain practical and reasonable.~~

(3) Revegetation success on areas reclaimed to cereal or row crops alone or in rotation with hay or pasture crops must be determined on the basis of a comparison of crop production on the disturbed area with the same crops on an undisturbed reference area or with target yields pursuant to the procedures and criteria of 26.4.815(2). The level of management on the reclaimed area must be equivalent to that on the reference area or on which the target yields are based.

~~(2)(4)(a) If an area is proposed for seasonal-range special use pasture or hayland production after mining, disturbance, that the area must have a history of being utilized for seasonal range special use pasture or hayland production for at least 5 years prior to operator lease, purchase or control. The department may allow deviations of the proposed postmining location from the exact premining location of the special use pasture or hayland whenever the applicant demonstrates that the proposed location is more appropriate for the approved postmining land use and is in an area in which the postmining landscape is more conducive to establishment of this alternate use.~~

(b) Introduced species may be used in accordance with 26.4.716. ~~Provided, that where an operator proposes to use introduced grass species for seasonal-range or hayland production where such did not exist prior to mining, the amount of land to be used for such purposes must not exceed that shown by the operator or post-mining landowner to be a necessary and essential part of an economically-feasible postmining agricultural operation.~~

~~The success of seasonal-range or hayland shall be based on reference areas of the same crop on comparable soils.--The production of the revegetated area must be comparable to the production of the reference area.--The time frames shall be the same as in Rule 26.4.713.~~

(c) Success of vegetation on special use pasture or hayland must be determined using the applicable criteria of 26.4.723 to 26.4.732.

~~(3)~~ (5) If the department determines that the operator's alternative alternate revegetation operation has not produced, under viable agricultural practices, adequate crop or forage production yields based on the production standards required in paragraph-(1)-(d) section (3) and subsection (5) (b) of this rule, or if the use of land for the production of crops or forage is causing accelerated or unacceptable levels of soil erosion or other deleterious effects as determined by the department, the operator shall reclaim the land to the standards provided for in section 82-4-233(1).

~~(4)~~ (6) Where cropland, special use pasture, or hayland is proposed to be the alternate postmining land use on-lands-diverted-from-a-fish-and-wildlife-premining-land-use, and the following is required:

(a) where Whenever appropriate for wildlife and crop management practices, the fields shall must be interspersed with trees, hedges, or fence rows throughout-the-harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(b) Wetlands shall must be preserved, restored, or created consistent with 26.4.751 rather than drained or otherwise permanently abolished.

~~(5)--Where-the-primary-land-use-is-to-be-residential, public-service, or industrial-land-use, primary-use-lands- shall-be-interspersed-with-greenbelts-trees-useful-as-food-and cover-for-birds-and-small-animals, unless-such-greenbelts-are inconsistent-with-the-approved-postmining-land-use. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-232 MCA.)~~

26.4.831 AUGER MINING: GENERAL REQUIREMENTS (1) Auger mining operations shall must comply with applicable strip mining performance standards. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-231, 232, 233 MCA.)

26.4.832 AUGER MINING: SPECIFIC PERFORMANCE STANDARDS

(1) Any auger mining associated with strip mining operations shall must be conducted to maximize recoverability of mineral reserves remaining after the mining operations are completed. Each person-the operator conducting auger mining operations shall leave areas of undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the department determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The department shall make such determination only upon presentation of appropriate technical evidence by the operator.

(2) Undisturbed areas of coal shall must be left in unmined sections which that:

(a) are a minimum of 250 feet wide at any point between each group of auger openings to the full depth of the auger hole;

(b) Remains the same.



(c) for multiple seam mining, ~~shall~~ have a width of at least 250 feet plus 50 feet for each subjacent workable coal seam. The centers of all unmined sections ~~shall~~ must be aligned vertically.

(3) ~~No~~ An auger hole ~~shall-be-made~~ must not be located closer than 500 feet in horizontal distance ~~to~~ from any abandoned or active underground mine workings, except as approved in accordance with Rule 26.4.516.

(4) If the operation involves stripping ~~and for the purpose of~~ stripping, the augering ~~shall~~ must follow the stripping by not more than ~~sixty~~ 60 days, ~~and final~~ and grading and backfilling ~~shall~~ must follow the augering by not more than 15 days, but in no instance ~~shall~~ may an area be left ungraded more than 1,500 feet behind the augering. The department may grant variances if the operator demonstrates that more time is needed, based on the sequence of the operation.

(5) In order to prevent pollution of surface and ground-water and to reduce fire hazards, each auger hole, except as provided in subsection (6) of this rule, ~~shall~~ must be plugged ~~so-as~~ to prevent the discharge of water from the hole and access of air to the coal, as follows:

(a) ~~e~~Each auger hole discharging water containing toxic-forming or acid-forming material ~~shall~~ must be plugged within 72 hours after completion by backfilling and compacting non-combustible and impervious material into the hole to a depth sufficient to form a water-tight seal, ~~or if possible. If sealing within 72 hours is not possible, the discharge shall~~ must be treated commencing within 72 hours after completion to meet applicable effluent limitations and water quality standards under Rule 26.4.633 until the hole is properly sealed; and

(b) ~~e~~Each auger hole not discharging water ~~shall~~ must be sealed as in ~~paragraph~~ subsection (5)(a) above to close the opening within 30 days following completion.

(6) An auger hole need not be plugged if the department finds that:

(a) ~~i~~Impoundment of the water ~~which~~ that would result from plugging the hole may create a hazard to the environment or public health or safety; and

(b) ~~d~~Drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of Rules 26.4.631 and 26.4.633.

(7) through (c) Remains the same.

(d) ~~s~~Subsidence resulting from auger mining may disturb or damage powerlines, pipelines, buildings, or other facilities or does not comply with the subsidence protection requirements of 26.4.901 and 26.4.911. (AUTH: Sec.82-4-204 MCA; IMP, Sec. 82-4-231, 232, 233 MCA.)

26.4.833 AUGER MINING: REQUIREMENTS FOR PERMIT (1) No permit ~~shall~~ may be issued for any operation ~~covered by this rule~~ that includes auger mining, unless the department finds, in writing, that, in addition to meeting all other applicable

requirements of rules adopted pursuant to the ~~act~~, the operations will be conducted in compliance with ~~this rule~~ 26.4.831 and 26.4.832. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231, 232, 233 MCA.)

RULE VI REMINING: APPLICABILITY (1) This rule and RULES VII, VIII, and IX apply only to operations which process coal mine waste materials resulting from "previously mined areas" as that term is defined in 26.4.301. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-203 MCA.)

RULE VII REMINING: APPLICATION AND OPERATING REQUIREMENTS (1) Remining must be conducted to maximize the recoverability of the mineral resource, while using the best control technology available to maintain or whenever possible, to improve environmental quality, and to maximize the postoperational land use potential.

(2) Remining permit applications and operations must comply with all applicable requirements and performance standards, as determined by the department, of sub-chapters 3-12 of this chapter.

(3) Coal mine and coal processing waste must be disposed of according to the following:

(a) The operator shall bury such waste in pits, shafts, adits, or other excavations that are either available on or near the site of the remining operation or that are constructed for the purpose of burial. This disposal and burial must be conducted in accordance with 26.4.501, 26.4.505, 26.4.510, and 26.4.520 as approved by the department; or

(b) If disposal in accordance with subsection (a) above is not technologically possible or cannot be done in compliance with the rules referenced in subsection (a) above, such as with respect to protection of groundwater quality, and this is affirmatively demonstrated in the application, the operator shall dispose of coal mine and coal processing waste in accordance with the standards of excess spoil disposal (26.4.520) and in accordance with the standards of 26.4.501, 26.4.505, and 26.4.510. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-221, 222, 231, 232 MCA.)

RULE VIII REMINING: ELIGIBILITY FOR ABANDONED MINE LAND STATUS (1) Areas within a remining permit area that will not be directly disturbed by remining activities remain eligible for abandoned mine land reclamation funding pursuant to 26.4.1233, if the proposed remining operation does not adversely affect existing or probable abandoned mine land reclamation plans and associated costs of reclamation related to such areas, and if this is documented in the application.

(2) Areas that will be directly disturbed by remining operations may remain eligible for abandoned mine reclamation funding pursuant to 26.4.1233, if the applicant demonstrates

that the approved remining and reclamation plan will not increase the overall reclamation costs of the site to the department. In so doing, the applicant may choose to adopt a reclamation plan for the site that is on file with the department, provided that the applicant demonstrates that this plan is in compliance with Rule VII. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-239, 242 MCA.)

RULE IX REMINING: BONDING (1) Bond must be submitted consistent with 82-4-223 and sub-chapter 11, except as noted below.

(2) If approval is granted for a remining and reclamation plan that does not adversely affect eligibility for abandoned mine land reclamation funding on the site pursuant to Rule VIII, the performance bond for the area must be the estimated additional cost to the department for reclamation (consistent with the approved plan) that would be above and beyond that which would be necessary for reclamation of the site prior to any remining operation. (AUTH: Sec. 82-4-204, 205 MCA; AUTH Extension, Sec. 4, Ch. 70, L. 1987, Eff. 10/1/87; IMP, Sec. 82-4-223 MCA.)

26.4.901 GENERAL APPLICATION AND REVIEW REQUIREMENTS

(1) In addition to appropriate material required under sub-chapter 3, ~~except Rule 26.4.310 thereof~~, any plan for underground mining ~~shall~~ must include the following:

(a) Remains the same.

(b) descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing ~~underground development~~ waste and excess spoil generated at surface areas affected by surface operations and facilities. Each plan ~~shall~~ must describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to ~~Rules 26.4.308 and 26.4.313, 26.4.320, 26.4.505, 26.4.510, and 26.4.520;~~

~~(c) -- a survey which shall show whether structures or renewable resource lands exist within the proposed permit and adjacent areas and whether subsidence if it occurred could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands;~~

(c) (i) A complete subsidence control plan for the proposed operation which must include:

(A) a map of the proposed underground workings;

(B) the proposed technique of coal extraction, such as longwall, room and pillar, hydraulic mining, or other methods;

(C) a description of the sequence and timing for the development of the underground workings;

(D) a description of the physical and geological conditions affecting the subsidence potential;

(E) an analysis of the amount and lateral extent of planned or controlled subsidence anticipated, using acceptable geotechnical practices, including specific methods proposed for the control of subsidence; and

(F) a survey which shows all structures and renewable resource lands within the permit area and adjacent areas, and whether subsidence, if it should occur, could cause material damage or diminish the reasonably foreseeable use of such structures or lands.

(ii) If the survey plan shows that no such structures or renewable resource lands exist, or that no such material damage or diminution could be caused in the event of mine subsidence, and if the department agrees with such conclusion, no further information need-to must be provided in the application under this paragraph. In the event the survey shows such structures or renewable resource lands exist, and that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the department determines that such damage or diminution could occur, the application ~~shall~~ must include a subsidence control plan which shall contain the following information:

~~(i) -- a detailed description of the mining method and other measures to be taken which may affect subsidence, including:~~

~~----- (A) -- the technique of coal removal, such as longwall min-~~

~~ing, room and pillar with pillar removal, hydraulic mining or other methods, and~~

~~----- (B) --- the extent, if any, to which planned and controlled subsidence is intended;~~

~~(i) (A) through (B) (II) Remains the same.~~

~~(C) (III) measures to be taken on the surface to prevent material damage or lessening of the value or the reasonably foreseeable use of the surface, including such measures as reinforcement of sensitive structures or features, installation of footers designed to reduce damage caused by movement, change of location of pipelines, utility lines, or other features, relocation of movable improvements to sites outside the angle-of-draw, and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage;~~

~~(ii) (B) a detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which that may occur, including one or more of the following:~~

~~(A) (I) Remains the same.~~

~~(B) (II) replacement of structures destroyed and water sources adversely affected by subsidence;~~

~~(C) (III) through (B) (IV) Remains the same.~~

~~(iv) (C) a detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as:~~

~~(A) (I) the results of pre-subsidence presubsidence surveys of all structures and surface features which that might be materially damaged by subsidence;~~

~~(B) (II) monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation;~~

~~(d) through (f) Remains the same.~~

~~(g) a description of the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on the active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling, including:~~

~~(i) a description of the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention retention of water underground, treatment of water if released to the surface; and~~

~~(ii) (i) Remains the same.~~

~~(h) a complete description, where applicable, of any hydraulic mining or transport system for coal, including:~~

~~(i) the source of the hydraulic medium;~~

~~(ii) methods for dewatering the coal;~~

~~(iii) methods for control or containment of water underground; and~~

~~(iv) treatment of water to be released at the surface, if any.~~

(2) The requirements of paragraphs subsections (1)(f), and (g), (h), and (i) shall also apply to pneumatic backfilling operations, except where the operations are exempted by the department from requirements specifying hydrologic monitoring. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222 MCA.)

26.4.902 APPLICATION REQUIREMENTS FOR IN-SITU IN SITU COAL PROCESSING OPERATIONS (1) Any An application for a permit for in-situ in situ coal processing operations covered by this rule shall must be made according to all requirements of Rule 26.4.901. In addition, the mining and reclamation operations plan for operations involving in situ processing operations shall must contain information establishing how those operations will be conducted in compliance with the requirements of Rule 26.4.907, including:

(a) through (d) Remains the same.

(2) No permit shall may be issued for in-situ in situ coal processing applications operations, unless the department first finds, in writing, upon the basis of a complete application, that the operation will be conducted in compliance with all requirements of Rules 26.4.903 through 26.4.907. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-222 MCA.)

26.4.903 GENERAL PERFORMANCE STANDARDS (1) In addition to all appropriate requirements of sub-chapters 54 through 8, and 10 through 13, except Rules 26.4.511 and 26.4.644 Rule IV, the following requirements apply to underground mining operations:

(a) Each exploration hole, other drill hole or borehole, shaft, well, or other exposed underground opening shall must be cased, lined, or otherwise managed as approved by the department to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area, and the safety and integrity of underground mines in the area, present and future. Each exploration hole, drill hole, or borehole, or well that is uncovered or exposed by mining operations within the permit area shall must be permanently closed sealed, in compliance with 26.4.1005, unless approved for water monitoring or otherwise managed in a manner approved by the department. Use of a drilled hole or monitoring well as a water well must meet the provisions of Rule 26.4.647. This rule does not apply to holes drilled and used for blasting in the area affected by surface operations.

(b) Each mine entry which, open to the surface, that is temporarily inactive, but has a further projected useful service under the approved permit application, shall must be protected by barricades or other covering devices, fenced, and posted with signs to prevent access into the entry and to identify the hazardous nature of the opening. These devices

~~shall~~ must be periodically inspected and maintained in good operating condition by the ~~person who conducts the underground mining operations operator.~~

(c) ~~e~~Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening ~~which that~~ has been identified in the approved permit application for use to return underground development waste, coal processing waste, ~~or~~ water to underground workings, or to be used to monitor groundwater conditions, ~~shall must~~ be temporarily sealed until actual use.

(d) ~~w~~When no longer needed for monitoring or other use approved by the department and upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, exploratory hole, entry way or other opening to the surface from underground ~~shall must~~ be capped, sealed, backfilled, or otherwise properly managed, as required by the department in accordance with ~~paragraphs subsections~~ (1) (a), (g), (h), and (i). Permanent closure measures ~~shall must~~ be designed to prevent access to the mine workings by people, livestock, fish, ~~and~~ wildlife, and machinery and to keep acid or other toxic drainage from entering ground or surface waters.

(e) ~~i~~In addition to the measures identified in Rules 26.4.631 through 26.4.646, the following practices are acceptable for minimizing water pollution in underground mines:

(i) through (iv) Remains the same.

(f) ~~i~~In addition to the requirements of Rule 26.4.633(1), any discharge of water from underground workings to surface waters ~~which that~~ does not meet the effluent limitations of Rule 26.4.633 ~~shall must~~ also be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area.

(g) ~~i~~In addition to the requirements of Rule 26.4.633(2), sedimentation ponds and treatment facilities ~~for that receive discharges from underground workings shall must~~ be maintained until ~~either~~ the discharge continuously meets the effluent limitations of Rule 26.4.633 without treatment or until the discharge has permanently ceased.

(h) ~~s~~Surface entries and accesses to underground workings, including adits and slopes, ~~shall must~~ be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

(i) through (i) (A) Remains the same.

(B) ~~the discharge will result in any changes in the prevailing hydrologic balance that are minimal and the approved postmining land uses will not be adversely affected; or,~~

(ii) (A) through (C) Remains the same.

(j) ~~f~~For a drift mine located in acid-producing or iron-producing coal seams, surface entries and accesses ~~shall must~~ be located in such a manner as to prevent any gravity discharge from the mine. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227, 231, 232, 233 MCA.)

26.4.904 IN SITU COAL PROCESSING OPERATION PERFORMANCE STANDARDS (1) ~~The person~~ An operator who conducts in situ ~~processing~~ coal processing operations shall comply with Rule 26.4.904 903.

(2) In situ coal processing operations ~~shall~~ must also be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(a) through (d) Remains the same.

(3) ~~Each person~~ An operator who conducts in situ coal processing operations shall follow ~~the approved~~ a plan approved pursuant to ~~paragraph~~ 26.4.902.

(4) ~~Each person~~ An operator who conducts in situ coal processing operations shall prevent flow of the process recovery fluid:

(a) through (b) Remains the same.

(5) ~~Each person~~ An operator who conducts in situ coal processing operations shall restore the quality of affected groundwater in the mine plan and adjacent areas, including groundwater above and below the production zone, to the approximate ~~pre-mining~~ premining levels or better, to ensure that the potential for use of the groundwater is not diminished.

(6) ~~Each person~~ An operator who conducts in situ coal processing operations shall monitor the quality and quantity of surface and groundwater and the subsurface flow and storage characteristics, in a manner approved by the department under Rules 26.4.645 and 26.4.646 to measure changes in the quantity and quality of water in surface and groundwater systems in the mine plan and adjacent areas. Air and water quality monitoring ~~shall~~ must be conducted in accordance with monitoring programs approved by the department as necessary according to appropriate federal and state air and water quality standards. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227, 231, 232, 233 MCA.)

26.4.907 IN SITU URANIUM PROCESSING OPERATION PERFORMANCE STANDARDS (1) With regard to the subsurface hydrologic effects of ~~in situ~~ in situ uranium mining, the operator shall comply with all rules of the Department of Health and Environmental Sciences, and the operator's bond shall ensure compliance with those rules. With regard to all other effects, the performance standards of this sub-chapter ~~shall~~ apply. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-227, 231, 232, 233 MCA.)

26.4.911 SUBSIDENCE CONTROL (1) Underground mining operations ~~shall~~ must be planned and conducted ~~so-as~~ to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and ~~so-as~~ to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. Nothing herein ~~shall be construed to~~ prohibits the standard method of room



and pillar mining.

(2) The A person engaged in underground mining operations shall comply with all provisions of the subsidence control plan prepared pursuant to Rule 26.4.901 and approved by the department.

(3) The A mining schedule shall must be distributed by mail to all owners of property and residents within the area above the underground workings and adjacent areas. The operator shall notify Each such person shall-be-notified by mail at least 6 months prior to mining beneath his or her property or residence. The notification shall must contain, as at a minimum:

(a) through (c) Remains the same.

(4) Upon request to the department by a resident or owner of a structure within the affected area, the operator shall promptly conduct a premining survey of the dwelling or structure as follows:

(a) Any survey requested more than 30 days before the planned initiation of said operations must be completed by the operator before the initiation of the operations.

(b) The survey must determine the condition of the dwelling or structure and document any premining damage. It should identify any physical features which could reasonably be affected by subsidence caused by mining. Special attention must be given to the premining condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of that water. Assessment of such features as pipes, cables, transmission lines, wells, or other water systems must be limited to the surface condition and relatively available data.

(c) If a structure is renovated or added to subsequent to a premining survey, then upon request to the department a survey of such additions or renovations must be performed.

(d) A written report of the survey must be prepared and signed by the person conducting the survey. Copies of the report must be provided to the person requesting the report and to the department. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the operator and the department of the specific areas of disagreement.

(4)(5) ~~Each person~~ An operator who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, with respect to each surface area affected by subsidence:

(a) Remains the same.

(b) purchase the damaged structure or feature for its fair market, ~~pre-subsidence~~ presubsidence value, and, after subsidence occurs shall, to the extent technologically and economically feasible, promptly restore the land surface to a condition capable of and suitable for supporting the purchased structure and other foreseeable uses it was capable of supporting before mining. ~~Nothing in this paragraph shall-be~~

~~deemed to~~ grants or authorizes an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining operations; or

(c) compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by ~~purchase~~ purchasing, prior to mining, of a noncancellable, premium-prepaid insurance policy or other means approved by the department, thereby assuring before mining begins that payment will occur; indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.

(6) Within a schedule approved by the department, the operator shall submit a detailed plan of the underground workings. The plan shall include maps and descriptions of significant features of the underground workings, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damages, areas of full extraction, and other information required by the department. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.912 BUFFER ZONES (1) Underground mining operations ~~shall~~ must not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, unless the department, on the basis of detailed subsurface information, determines that subsidence will not cause material damage to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the same and to prevent additional subsidence from occurring.

(2) Underground mining operations beneath any aquifer that serves as a significant source of water supply to any public water system ~~shall~~ must be conducted so as to avoid disruption of the aquifer and consequent exchange of groundwater between the aquifer and other strata. The department may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.

(3) Underground mining operations ~~shall~~ must not be conducted beneath or in close proximity to any public buildings, including, but not limited to, churches, schools, hospitals, courthouses, and government offices, unless the department, on the basis of detailed subsurface information, determines that subsidence from those operations would not cause material damage to these structures and specifically authorizes the mining operations.

(4) The department shall suspend underground mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments or permanent streams if it finds imminent danger ~~is found~~ to inhabitants of the urbanized areas, cities, towns, or communities. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227, 231 MCA.)

26.4.1001 APPLICATION REQUIREMENTS A person who intends to prospect for coal or uranium on land not included in a valid strip mining permit must obtain a valid prospecting permit from the department. An application for a prospecting permit ~~shall~~ must be made on forms provided by the department, and ~~shall~~ must be accompanied by the following information:

(1) the name, address, and telephone number of the applicant and, if applicable, the representative of the applicant who will be present at and be responsible for the prospecting;

(2) documentation that the proposed exploration program would not adversely affect any area possessing special, exceptional, critical, or unique characteristics as defined in 82-4-227. ~~The applicant shall promptly report the existence of such characteristics if in the course of prospecting he becomes aware of them;~~

(3) identification of any significant historical, archaeological, technological, and cultural values in the area to be affected and possible mitigating measures to be exercised should any of ~~the above~~ those values be encountered;

(4) a narrative description of the significant fish and wildlife species and habitats in the general area of operations, including rare and endangered species and critical habitats, as listed by the ~~bureau of sport fisheries~~ U.S. fish and wildlife service and other appropriate agencies, and written documentation from appropriate ~~fish and wildlife~~ management agencies that the proposed prospecting activity will not adversely affect such species;

(5) documentation that habitats of unique or unusually high value to fish and wildlife would not be disturbed;

(6) a narrative description of the local ~~scenic~~, topographic, ~~geological~~ and geologic formations, scenic values, and vegetation in the area to be affected;

(67) a prospecting map ~~which~~ that meets the following requirements:

(a) ~~The map shall~~ must be of sufficient size and scale to adequately show all areas to be prospected. ~~Standard~~ United States geological survey topographic quadrangle maps ~~shall~~ must be used as base maps, if available;

(b) ~~if~~ Whenever prospecting by test hole is proposed, the maps ~~shall~~ must include proposed locations, ~~size and the average proposed depth~~ of test holes. ~~Specific~~ locations for initial exploration shall be shown by quarter section, section, township, and ranger. ~~New~~ road construction for drill rig or seismic equipment access ~~shall~~ must be clearly indicated on the maps. ~~Permanent~~ roads, and roads that are to be abandoned, ~~shall~~ must be identified;

(c) ~~Each map shall~~ must contain ~~the following~~:

(i) proposed excavations or test cuts shown by location and size;

(ii) locations of streams, lakes, stockwater ponds, wells, ~~or~~ and springs that are known or readily discoverable proximate to prospecting operations:

(iii) the route taken by the person doing the prospecting to each drill site;

(iv) location of occupied dwellings and pipelines;

(v) a description and location of historic, topographic, cultural and drainage features;

(vi) the location of habitat of species described in paragraph (i)-(d) section (4) above; and

(vii) the name, and address, and phone number of surface owners and surface lessees of the land affected area;

(viii) ~~all maps must be certified as follows "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief, all the information required by Part 2, Chapter 4, Title 82, MCA."~~ The a certification shall be signed and notarized in affidavit form; in the same form required in 26.4.305(2)(b).

(78) a narrative description of the exploration program which shall as a minimum include including at a minimum:

(a) through (b) Remains the same.

(c) the size, depth, and number and location by legal description, of proposed drill holes and their size and depth (refer to map location); the depth(s) of any known subsurface groundwater occurring above the deepest projected depth of the exploration operation; the drilling medium used (air, water, mud, etc.); and the method of containing drilling fluids;

(d) Remains the same.

(e) a discussion of preventive and corrective measures that will be taken to guard against or correct water pollution problems that may develop with streams, lakes, stockwater ponds, wells or springs, that are known or readily discoverable and other measures proposed to be followed to protect the environment from adverse impacts as a result of the prospecting operations;

(f) a plan showing earth moving proposed for roads, disposal pits, and drill sites in the prospecting program in compliance with 26.4.1006(2) and 26.4.1009; and

(g) a drill hole marking technique that provides durable markers and that will allow the department to locate the drill hole for bond release inspection purposes;

(89) Remains the same.

(910) the source of the applicant's legal right to prospect for the mineral or minerals on the land affected by the permit, including a listing of all surface and subsurface estate owners. The listing shall must include the current mailing address and phone numbers of each party affected;

(101) an estimated timetable for conducting and completing each phase of exploration and reclamation;

(112) a description of the measures to be taken to comply with the performance standards of this rule sub-chapter; and

(13) the proposed postdisturbance land use. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-226 MCA.)

26.4.1002 INFORMATION AND MONTHLY REPORTS (1) In the event that Whenever the department must investigate possible

environmental damage or complaints which may occur as a direct result of prospecting activities, ~~in-the-permit-area~~, the applicant shall furnish sufficient information to the department to facilitate such investigation. Such information shall must include, but is not limited to, stratigraphic findings, test-hole geophysical and lithological logs and related data.

(2) A monthly report ~~shall~~ must be submitted for each successive 30 day period no later than the 15th of the following month, provided, however, that monthly reports need not be submitted for 30 day periods of inactivity. Reports ~~shall~~ must include, but are not limited to, the following information:

- ~~(a)--location of all holes drilled;~~
- ~~(b)--updated maps if holes have to be added, deleted or relocated;~~
- ~~(c)--any road construction;~~
- ~~(d)--current location of all drill rigs and test equipment; and~~
- ~~(e)--areas disturbed, graded and seeded.~~
- (a) the legal description (to nearest 10 acres) of each bore and core hole drilled, and drill hole identification numbers;
- (b) updated maps showing bore and core hole locations and identification numbers, as well as drill hole additions, deletions or relocations;
- (c) the date each hole was drilled, logged, and abandoned;
- (d) total depth and diameter of each hole drilled;
- (e) trade name and amount of abandonment material used on each drilled hole;
- (f) viscosity (in seconds/quart) of drilling medium before and after abandonment material was added;
- (g) results of additional mud, cement or concrete tests (i.e., gel strength, fluid loss or water-chemical analyses, etc.) completed for each hole drilled and abandoned;
- (h) depths of all encountered water-bearing zones for each hole drilled, including all artesian conditions;
- (i) depth of all lost circulation zones;
- (j) a detailed report of all prospecting holes converted to water or monitor wells including:
  - (i) water-bearing zone developed (depth, formation name, lithology);
  - (ii) type of material used to case, grout, seal and cap each well;
  - (iii) casing diameter; and
  - (iv) anticipated plans for the well;
- (k) mapped location of any surface disturbance such as road, disposal pit, or mud pit construction;
- (l) mapped location of areas seeded or otherwise reclaimed; and
- (m) anticipated location of activity in next reporting period.

(3) Transfer of a prospecting permit must meet the same requirements as for a mining permit in 26.4.412(1) and (2).  
(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-226 MCA.)

26.4.1003 RENEWAL OF PERMITS At least thirty (30) days, but not more than sixty (60) days prior to the anniversary date of the permit, the operator may submit an application for permit renewal to the department. This application shall must include: An application for renewal of a prospecting permit must be submitted by the permittee on forms provided by the department. The application must be submitted at least 120 but not more than 150 days prior to the anniversary date of the permit and must include:

(1) through (5) Remains the same.

(6) an updated map which that shows all revisions to the current permit. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-226 MCA.)

26.4.1004 ENVIRONMENTAL MONITORING (1) As prescribed or approved by the department, The person who conducts prospecting operations permittee shall, to the extent practicable, measure monitor important environmental characteristics of the prospecting area during prospecting to minimize ensure minimization of environmental damage to the area. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-226 MCA.)

26.4.1005 DRILL HOLES (1) Prospecting operations shall must be conducted to completely avoid: mixing of underground waters detrimental to-

(a) degradation or diminution of any existing or potential water supply; and

(b) adverse impacts to existing or potential mining operations. All prospecting holes shall must be abandoned in accordance with the following provisions immediately after geophysical loggings are complete unless the hole has been transferred as a water well in compliance with Rule 26.4.647 or--unnecessary delay is prohibited unless a delay is approved by the department.

(2) The operator shall use appropriate techniques to:

(a) prevent the escape of water, oil, or gas from all drill holes;

(b) prevent contamination of state all surface and ground waters, and prevent interaquifer mixing from oil or gas; and

(c) prevent aquifer contamination by surface drainage; and

(d) reclaim all surface impacts and prevent subsidence that may result from prospecting related activities.

(3) Any person who conducts prospecting operations Unless alternative procedures are approved or required by the department, the permittee shall use the following reclamation techniques: to plug all prospecting holes;

(a) and cuttings shall must be spread over the earth's

surface to a depth less than one-half inch or ~~cuttings may~~ be removed to a ~~pre~~ approved disposal pit. ~~no cuttings shall~~ must not be placed in the hole. ~~where proper~~ topsoil salvage and reclamation techniques ~~shall be used~~ consistent with Rules 26.4.501 and 26.4.701 through 26.4.703; must be used at the disposal pit;

~~(b) If the hole is cased, the casing shall be cut off at the ground surface on rangeland and two feet below the surface on cropland or pastureland.~~ Whenever a cased drill hole is not transferred to the affected landowner as a water well, the casing must be cut off at the surface on rangeland and 2 feet below the surface on cropland or pastureland;

~~(c) If the hole is not cased, drilled holes shall be abandoned.~~ Promptly after exploration on a site is completed, and unless otherwise approved by the department, all drill holes must be abandoned in accordance with the following:

~~(d)(i) Under circumstances where~~ Whenever circulation is lost to ~~reformation~~ the formation or artesian flowing conditions are encountered, a homogeneous cement mixture ~~shall~~ must be slurried into the hole from the bottom to the surface on rangeland, or to within 2 feet of the surface and topsoil placed in the remaining 2 feet on cropland or pastureland and on other lands;

~~(d)(ii) Where~~ Whenever circulation is not lost, ~~from the bottom to within 5 feet of the ground surface on rangeland and 7 feet of the surface on cropland with~~ a homogeneous fluid must be slurried into the hole from the bottom to within 5 feet of the surface on rangeland and to within 7 feet of the surface on cropland. The fluid must ~~containing~~ contain water of sufficient quality to insure that the proper performance of the plugging medium is not adversely affected, and a high quality sodium bentonite with no toxic nor degradable additives, with:

~~(i)(A) an A.P.I. (American Petroleum Institute) filtrate volume of not more than 12.0 cm cubic centimeters and a cake thickness not more than 3/32's of an inch~~ based on a 30-minute filtration test at 100 P.S.I. (pounds per square inch) and ambient temperature;

~~(i)(B) an A.P.I. 10-minute gel strength of not less than 20 lb./100 square feet; and~~

~~(C) a minimum density of 9 pounds per gallon.~~

~~(iii) A 5-foot cement plug will~~ must be placed in all holes that are plugged with bentonite from the top of the bentonite to the surface on rangeland and to 2 feet below the surface, with topsoil placed in the remaining 2 feet on cropland;

~~(d)(i) by marking each drill hole with a wooden stake.~~ Whenever the permittee encounters, or the permittee or the department anticipates encountering, drilling conditions such that the drill hole cannot be adequately plugged in accordance with the performance standards described in section (2) of this rule using procedures described in paragraphs (3)(c)(i) or (3)(c)(ii) above, or both procedures, the

permittee shall propose or the department shall stipulate an alternative plugging procedure. Alternative plugging procedures approved by the department, must be implemented promptly after exploration is completed on a site. The department may approve alternate plugging procedures only if it finds that the procedures required in paragraphs (3)(c)(i) or (3)(c)(ii) would not meet the requirement of subsection (a) and the alternative procedures would meet those requirements. Upon request of the department, the permittee must document why standard procedures would not be effective.

(11) Whenever the department, upon inspection of a drill hole, determines that the hole may not have been plugged in accordance with subsections (3)(a) through (3)(d) above or may not meet the standards of section (2), it shall notify the permittee in writing. Within 30 days of receipt of the notice, the permittee shall submit a mitigation plan. If the department finds that the proposed plan would not be effective, the department shall provide an opportunity for informal conference within 30 days. After the informal conference, the department shall either approve the proposed plan or order compliance with an amended plan. Upon approval, the permittee must implement the plan within a reasonable time set by the department.

(e) Each drill hole must be marked in the manner approved by the department in the application.

(4) If excavations, artificially flat areas, or embankments are created for or during prospecting, they must be promptly returned to approximate original contour after they are no longer needed for prospecting. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226 MCA.)

26.4.1006 ROADS (1) The permittee shall limit vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts prospecting operations to that absolutely the minimum that is necessary to conduct the exploration. Travel shall must be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting erosion of the land surface could result.

(2) Any new roads constructed for prospecting activities shall must meet the requirements of Rules 26.4.601 through 26.4.607.

(3) Existing roads may be used for exploration in accordance with the following:

(a) All applicable federal, state, and local requirements shall must be met.

(b) If Whenever the road is significantly altered, for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then Rule 26.4.1009 shall apply applies to all areas of the road which that are altered or which that result in such additional contributions, and.



(c) ~~if Whenever the road is significantly altered for exploration activities and will remain as a permanent road after exploration, shall ensure that the requirements of Rules 26.4.601 through 26.4.607 as appropriate are met for the design, construction, alteration, and maintenance of the road must meet the appropriate requirements of 26.4.601 through 26.4.607.~~

(4) Promptly after operations are completed, existing roads used during exploration shall must be reclaimed either:

(a) ~~to a condition equal to or better than their pre-prospecting condition, that which existed prior to the~~ exporation activities, or

(b) Remains the same. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

#### 26.4.1007 TOPSOILING SALVAGE, STORAGE AND REDISTRIBUTION

~~(1) Prior to earth moving or excavations of any type, the A and B horizons, or the darker colored root containing materials shall All soil handling must be conducted in compliance with 26.4.701 - 26.4.703. Prior to any surface disturbance, all soil suitable for reclamation use must be salvaged and stored in an area that will be undisturbed and not subject to excessive wind or water erosion. Exceptions may be granted if the operator demonstrates that the site-specific disturbance would be insignificant and that soil loss, contamination, or impairment of quality would not occur. The underlying subsoil materials shall, if necessary, be salvaged and stored in an area separate from A and B horizon materials. Immediately upon cessation of operations, the subsoil shall must be replaced with the surface left in a roughened condition. The A and B horizons shall then be replaced over the subsoil material in such a manner that the disturbed area blends smoothly with the adjacent undisturbed land surface.~~  
(AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

26.4.1008 REVEGETATION After soil has been replaced in disturbed areas, ~~have been topsoiled, they shall be planted at the first appropriate season to such appropriate legumes, forbs, grasses, shrubs, and trees as are necessary must be established unless otherwise approved by the department.~~ The revegetation must form a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of the land affected and be capable of:

- (1) prompt stabilization of the soil surface; and
- (2) self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of meeting the criteria set forth in 82-4-233(1)(a), (b), and (c). (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

26.4.1009 DIVERSIONS With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, test pits, and support facilities, no ephemeral, intermittent, or perennial stream ~~shall~~ may be diverted ~~during prospecting activities~~. Overland flow of water ~~shall~~ must be diverted in a manner that:

- (1) prevents erosion;
- (2) to the extent possible, using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff; ~~outside the exploration area and~~
- (3) complies with all other applicable state or federal requirements. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

26.4.1010 REMOVAL OF EQUIPMENT All equipment and facilities ~~shall~~ must be promptly removed from the exploration area promptly when it is no longer needed for exploration or reclamation, except for ~~that~~ equipment and facilities that the department determines may remain to:

- (1) provide additional environmental quality data;
- (2) reduce or control the on- and off-site effects of the the prospecting operations; or
- (3) facilitate future strip or underground mining operations by the person conducting the prospecting under an approved permit permittee. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

26.4.1011 HYDROLOGIC BALANCE (1) Prospecting ~~shall~~ must be conducted ~~in a manner which minimizes~~ to minimize disturbance of the prevailing hydrologic balance and ~~shall~~ must include appropriate sediment control measures, such as those listed in ~~Rule 26.4.637~~ 26.4.638 or sedimentation ponds which that comply with ~~Rule 26.4.638~~ the requirements of 26.4.639. The department may specify additional measures. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

26.4.1012 TOXIC- OR ACID-FORMING MATERIALS (1) Toxic- or acid-forming materials ~~shall~~ must be handled and disposed of in accordance with Rules 26.4.505 through 26.4.509.10. Additional measures may be specified by the department. (AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

26.4.1013 DRILLING If drilling is proposed, the prospecting plan ~~shall~~ must comply with the following:

- (1) ~~Drill sites shall~~ must not be constructed ~~in~~ within 100 feet of stream channelways (dry or flowing) or in an area where ~~cuttings or fluid drilling-related materials may enter each stream channelways~~. The department may grant site- or condition-specific exemptions to the 100-foot requirement;
- (2) ~~Excavations and dozer work shall~~ must be kept to a minimum. All reasonable efforts ~~will~~ must be made to locate

drill sites in areas where no dozer work is necessary.

(3) Portable mud pits shall must be used unless otherwise approved by the department, where feasible;

(4) Drilling mud and drill cuttings all other fluids shall must be confined to the site. Cuttings shall must be disposed of in accordance with Rule 26.4.1005(3)(a). and

(5) All refuse from drilling operations shall must be completely disposed of by burying or hauling to an approved landfill dump, unless the department approves an alternate method of disposal that will be as environmentally protective.

(AUTH: Sec. 82-4-204 MCA; IMP, Sec. 82-4-226, 231, 232, 233 MCA.)

26.4.1014 TEST PITS: APPLICATION REQUIREMENTS, REVIEW PROCEDURES, BONDING, AND ADDITIONAL PERFORMANCE STANDARDS

(1) In addition to all the other performance standards set forth in Rules 26.4.1005 through 26.4.1012, prospecting test pits shall must also comply with the following requirements:

(a) Test pits or other excavations shall must be located out of natural-flowing streams channels (dry or flowing) unless otherwise approved by the department.

~~(b) -- spoil shall not be placed in drainaways. -- The lower edge of spoil piles shall be placed well above the highwater flood level.~~

(eb) Applications, permits, bonds, exploration activities, and related procedures, reclamation plans, and reclamation relating to for excavations or test pits or excavations that are to produce test shipments of minerals, shall must comply with Sub-Chapters sub-chapters 3 and 5 through 10 and Rules 26.4.1101 through 26.4.1138 unless otherwise approved by the department.

(2) Public notice of the application for a test pit and opportunity to comment shall be provided as follows: An application for a test pit prospecting permit must contain an affidavit stating why the test pit extraction method is necessary and that the minerals are being extracted for testing purposes only.

~~(a) -- within such time as the department may designate, public notice of the filing of the application with the department shall be posted by the applicant at the courthouse or other public office designated by the department in the vicinity of the proposed test pit area;~~

~~(b) -- the public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the department at which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of the proposed test pit; and~~

~~(c) -- any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.~~

(3) An application for a test pit must include a time

table for the sampling and reclamation activities.

(4) Sub-chapter 4 is applicable to test pit prospecting permit applications and permits. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-226 MCA.)

26.4.1015 TEST PITS: PUBLIC NOTICE OPPORTUNITY TO COMMENT, AND DECISION This rule is proposed to be repealed and can be found on page 26-658 of the ARM.

RULE X BOND REQUIREMENTS FOR DRILLING OPERATIONS

(1) The department shall require bond in an amount equal to the estimated cost to the department for reclamation, restoration, and abatement work as committed to in the approved permit. Minimum bond on all active permits must not be less than \$200 per acre, with a minimum total of \$10,000. Bond must be submitted as described in 26.4.1101 through 26.4.1110, unless otherwise noted below.

(2) Separate bonds are required for each permit. Permits are issued on a county basis.

(3) Each drill site is considered to be 0.1 acre unless otherwise approved by the department.

(4) Bond must be retained for a minimum period of 5 years after initial reclamation of areas disturbed by prospecting activities. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 226 MCA.)

RULE XI BOND RELEASE PROCEDURES FOR DRILLING OPERATIONS

(1) Bond release may be requested at the following times:

(a) Partial release may be requested and granted after:

(i) downhole plugging is completed; and

(ii) backfilling and grading, pursuant to the approved plan is completed;

(b) Complete release may be requested and granted after:

(i) expiration of the responsibility period of 26.4.1015(4) and the remaining requirements of this sub-chapter have been met, or

(ii) when a well has been drilled, completed, and transferred in accordance with 26.4.647; or

(iii) a determination has been made by the department that sites remain undisturbed.

(2) The bond release application must be submitted in duplicate and must include:

(a) a completed application on forms provided by the department;

(b) copies of letters sent to surface owners and county commissioners in the county or consolidated government in which the prospecting occurred. The letters must notify those persons of the permittee's intent to seek release of performance bond. These letters must include the same information required in section (3) below;

(c) final updated, certified maps that include the precise location of each exploration disturbance and each permitted site that remains undisturbed. Maps must be of a

workable scale with topographic delineations equal to or better than those found on United States geological survey topographic maps;

(d) an affidavit of publication of the advertisement as required by section (3) below. The affidavit must be submitted within 60 days of the date of filing of the application; and

(e) a legal description (to within 10 acres) of each disturbance.

(3) At the time of filing an application for bond release, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement must:

(a) be placed in the newspaper at least once a week for 2 consecutive weeks;

(b) contain the name of the permittee, the permit number, and the date of issuance or renewal of the permit;

(c) describe the township, range, and section of the area where release is requested;

(d) describe the extent of disturbance, in acres, or for exploration drilling, the total number of drill holes;

(e) indicate total performance bond held and the amount of bond release requested;

(f) indicate whether reclamation was completed as approved with regard to surface and subsurface disturbances; and

(g) state that written comments, objections, and requests for public hearing may be submitted to the department within 30 days of the last date of publication of the notice, and provide the address of the department.

(4) Written objections, comments, and requests for an informal conference, may be filed by any affected person within 30 days following the last date of advertisement of the filing of the application. For the purpose of this rule, an "affected person" is:

(a) any person with a valid legal interest which may be adversely affected by bond release; or

(b) any federal, state or local government agency that:

(i) has jurisdiction by law with respect to any environmental, social, or economic impact involved; or

(ii) is authorized to develop and enforce environmental standards with respect to strip or underground mining operations.

(5) The department shall inspect and evaluate the reclamation for which bond release is requested within a reasonable period of time after receiving a complete application for bond release. Affected persons shall be given notice of such inspection and may participate in the inspection.

(6) Informal conferences may be requested in the same manner provided in 26.4.1113.

(7) Notice of decision must be made in the same manner as is required for operating permit bonds under 26.4.1114.

(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-226, 232, 235 MCA.)

26.4.1101 BONDING: DEFINITIONS For purposes of this rule, the following definitions ~~shall~~ apply:

(1) through (2) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1102 BONDING: DETERMINATION OF BOND AMOUNT The standard applied by the department in determining the amount of performance bond ~~shall be~~ is the estimated cost to the department if it had to perform the reclamation, restoration, and abatement work required of ~~a person who conducts strip or underground coal mining operations~~ an operator or a prospecting permittee under the Act, the rules adopted thereunder, and the permit, ~~and such additional work as would be required to achieve compliance with the general standards for revegetation in Rules 26.4.224 through 26.4.735 in the event the permittee fails to implement an approved alternative postmining land use plan within the two years required by Rule 26.4.728.~~ This amount ~~shall be~~ is based on, but not be limited to:

(1) the estimated costs submitted by the permittee in accordance with Rule 26.4.313 and, if applicable, costs estimated by using current machinery production handbooks and publications or other documented costs acceptable to the department;

(2) through (5) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1103 BONDING: PERIOD OF LIABILITY RESPONSIBILITY FOR ALTERNATE REVEGETATION (1) ~~If~~ Whenever the department approves a long-term intensive agricultural ~~post-mining~~ postmining land use in accordance with Rule 26.4.825, the applicable 10-year period of ~~liability~~ responsibility for vegetative reestablishment shall commences at the date of initial planting for such long-term intensive agricultural land use.

(2) The department may, upon a written finding, after approving a long-term intensive agricultural land use pursuant to Rule 26.4.825, grant an exception to the revegetation requirements of Rule 26.4.711 but shall not grant exception to the period of ~~liability~~ responsibility in this rule. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1104 BONDING: ADJUSTMENT OF AMOUNT OF BOND

(1) The amount of the performance bond ~~shall~~ must be adjusted by the department as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation changes, or when the cost of future reclamation, restoration or abatement work changes. The department shall notify the permittee of any proposed bond adjustment and provide the permittee an opportunity for an informal conference on the adjustment. The department shall review each outstanding performance bond at the time that permit reviews are conducted under ~~Rules 26.4.401 through 26.4.405~~ 26.4.408 through 26.4.410 and ~~re-evaluate~~ reevaluate those performance bonds in

accordance with the standards in Rule 26.4.1102.

(2) A permittee may request reduction of the required performance bond amount upon submission of evidence to the department proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the department to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. ~~The request shall be considered as a request for partial bond release in accordance with the procedures of Rule 26.4.1111.~~ Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of 26.4.1111. All other requests must be considered as a request for partial bond release in accordance with the procedures of 26.4.1111 - 26.4.1116.

(3) For bond adjustment requests on undisturbed land, the permittee shall submit a map of the area in question and shall revise the appropriate active permit maps. The department shall then conduct an inspection of the proposed area before responding to such requests.

(4) The amount of disturbance within a permit area must not exceed the amount bonded for. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1105 BONDING: FORM OF BOND The form for the performance bond shall must be as provided by the department. The department shall allow for either:

- (1) a surety bond; or
- (2) a collateral bond. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1106 BONDING: TERMS AND CONDITIONS OF BOND In addition to the requirements of section 82-4-223, surety bonds shall must be subject to the following requirements:

(1) ~~t~~The department shall may not accept surety bonds in excess of 10% percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant; and

(2) ~~t~~The department shall may not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided in paragraph section (a) of this subsection rule.

(3) The surety bond must provide a mechanism for the surety company to give prompt notice to the department and the permittee of any action alleging bankruptcy or insolvency of the surety or the permittee, or violation that would result in suspension or revocation of the license of the surety. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1107 BONDING: INCAPACITY OF SURETY Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage ~~in violation of 82-4-~~

223, and shall promptly notify the department in the manner described in the bond. discontinue strip or underground mining operations until new performance bond coverage is approved. The department, upon notification received through the procedures of this rule or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of 26.4.522 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1108 BONDING: CERTIFICATES OF DEPOSIT (1) The department shall may not accept an individual certificate for a denomination in excess of \$40,000 \$100,000, or maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.

(2) The department shall may only accept automatically renewable certificates of deposit.

(3) The department shall require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by Rule 26.4.1102.

(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank issuing the certificate. The department shall require banks issuing these certificates to waive all rights of setoff or liens against these certificates. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1109 BONDING: LETTERS OF CREDIT Letters of credit shall-be are subject to the following conditions:

(1) tThe letter may-only must be issued by a bank organized or authorized to do business in the United States.

(2) tThe letter must be irrevocable prior to a release by the department in accordance with Rule 26.4.1111.

(3) tThe letter must be payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with Rule 26.4.1112+7.

(4) The letter may must not be for an amount in excess of 10% percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(5) tThe department shall may not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided in Rule 26.4.1106.

(6) tThe department may provide in the indemnity agree-



ment that the amount ~~shall~~ must be confessed to judgment upon forfeiture, if this procedure is authorized by state law, ~~and.~~

(7) ~~The~~ department shall provide that:

(a) the bank shall give prompt notice to the permittee and the department of any notice received or action filed alleging the insolvency or bankruptcy of the bank or permittee, or alleging any violations of regulatory requirements which that could result in suspension or revocation of the bank's charter or license to do business;

(b) in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice the bank shall be given immediately give notice to the permittee and the department; and

(c) upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, or upon the inability of a bank to fulfill its obligation under the letter of credit for any reason, the permittee shall must be deemed to be without performance bond coverage in violation of section 82-4-223 and shall discontinue strip or underground mining operations until new performance bond coverage is approved and shall promptly notify the department. Upon notification received through the procedures of subsections (7)(a) and (b) or from the permittee, the department shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of 26.4.522 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1110 BONDING: REPLACEMENT OF BOND (1) The department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds if the liability ~~which~~ that has accrued against the permittee on the permit area is transferred to such replacement bonds.

(2) The department ~~shall~~ may not release existing performance bonds until the permittee has submitted and the department has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this ~~subsection shall~~ rule does not constitute a release of bond under Rule 26.4.1111. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1111 BONDING: BOND RELEASE APPLICATION CONTENTS

(1) The permittee or any person authorized to act on his behalf may file an application with the department for release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a reclamation phase as defined in Rule

26.4.1116 has been completed on the entire permit area or on an area approved under ~~section~~ 82-4-223 for the incremental filing for and release of bond liability.

(2) Applications ~~may only~~ must be filed at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed.

(3) The application ~~shall~~ must include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters ~~shall~~ must be sent before the permittee files the application for release.

(4) Within 30 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by Rule 26.4.1112. Such proof of publication ~~shall be~~ is considered part of the bond release application.

(5) Applicants for prospecting bond release shall comply with Rule XI. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1112 BONDING: ADVERTISEMENT OF RELEASE APPLICATIONS AND RECEIPT OF OBJECTIONS (1) At the time of filing an application for bond release, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement ~~shall~~ must:

(a) Remains the same.

(b) show the name of the permittee, ~~including~~ and the number and date of issuance or renewal of the permit;

(c) through (e) Remains the same.

(f) identify the portion of bond release, as described in 26.4.1116, applied for;

(g) describe the reclamation results achieved, as they relate to compliance with the Act, the rules adopted thereunder, and the approved mining and reclamation plan and permit; and

(gh) state that written comments, objections, and requests for public hearing or informal conference may be submitted to the department, and provide the address of the department, and the closing date by which comments, objections, and requests must be received.

(2) Written objections to the proposed bond release, ~~and~~ requests for an informal conference, and requests for public hearing may be filed with the department by any affected person within ~~thirty~~ (30) days following the last advertisement of the filing of the application. For the purpose of this rule, an affected person is:

(a) ~~any~~ a person with a valid legal interest which might be adversely affected by bond release; ~~and or~~

(b) the responsible officer or head of any federal, state or local government agency ~~which~~ that:

(i) through (ii) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1113 BONDING: INSPECTION OF SITE AND PUBLIC HEARING OR INFORMAL CONFERENCE (1) The Within 30 days, weather permitting, of receiving a complete bond release request pursuant to 82-4-232(6)(a), the department shall inspect and evaluate the reclamation work involved within a reasonable time period after receiving a complete application for bond release. The surface owner, or agent, or lessee shall be given notice of such inspection and may participate with the department in making the bond release inspection. Upon request of any person described in 26.4.1112(2), the department may arrange with the permittee to allow that person access to the permit area for the purpose of gathering information relevant to the proceeding.

(2) The department shall schedule a public hearing conference if written objections are filed and a public hearing conference is requested within 30 days of the last publication of notice of application. The public hearing must conference shall be held in the locality of the permit area for which bond release is sought.

(a) Notice of an informal conference shall a public hearing must be published in the Montana administrative register and in a newspaper of general circulation in the locality of the conference hearing at least two 2 weeks before the date of the conference hearing.

(b) The informal conference shall public hearing must be held within 30 days from the date of the notice.

(c) The requirements of the Administrative Procedure Act shall do not apply to the conduct of the informal conference public hearing.

(d) An electronic or stenographic record shall must be made of the conference hearing and the record maintained for access by the parties, until final release of the bond, unless recording is waived by all of the parties to the conference hearing.

(e) Without prejudice to the rights of an objector or the applicant, the department may hold an informal conference to resolve written objections. The department shall make a record of the informal conference unless the record is waived by all parties. The record must be accessible to all parties. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1114 BONDING: DEPARTMENTAL REVIEW AND DECISION ON BOND RELEASE APPLICATION (1) The department shall consider, during inspection, evaluation, informal conference, hearing and decision:

(a) through (b) Remains the same.

(c) whether pollution or of surface and subsurface water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of

abating any pollution.

(2) If no informal conference or public hearing has been held under Rule 26.4.1113, the department shall notify ~~within a reasonable time period~~ the permittee, ~~and any other interested parties~~ the surety, or other persons with an interest in the bond collateral who have requested notification of actions pursuant to the bond at the time the collateral was offered, and persons who filed objections in writing of its decision to release or not to release all or part of the performance bond or deposit. This decision must be submitted, in writing, within 60 days of filing of the bond release application.

(3) If there has been an informal conference or a public hearing held under Rule 26.4.1113, the notification of the decision ~~shall~~ must be made to ~~the permittee and all interested parties~~ persons listed in section (2) above and the parties to the conference or hearing within 30 days after conclusion of the conference or hearing. When both an informal conference and a public hearing have been held, the notification must be made within 30 days after the last proceeding.

(4) The notice of the decision ~~shall~~ must state the reasons for the decision, and, if the application is denied in whole or in part, must recommend any corrective actions necessary to secure the release, ~~and notify the permittee and all interested parties of their right to request a public hearing in accordance with Rule 26.4.1115.~~

(5) The department ~~shall~~ may not release the bond until it has given ~~to~~ the town, or city or other municipality nearest to, or the county in which the strip or underground mining and reclamation operation permit area is located, has received at least 30 days notice of the release by certified mail, and. If the permit area is not located in a town or city, notice must be sent to the county in which the permit area is located.

~~(b) -- the right to request a public hearing pursuant to Rule 26.4.1115 has not been exercised, or a final decision by the hearing authority approving the release has been issued pursuant to Rule 26.4.1115(2). (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)~~

26.4.1115 BONDING: PUBLIC HEARING ON BOND RELEASE DECISION (1) Following receipt of the decision of the department under ~~subsection (2) below~~ 26.4.1114, the permittee or any affected person may request a public hearing on the reasons for that decision. Requests for hearings ~~shall~~ must be filed within 30 days after the permittee and other parties are notified of the decision of the department under ~~subsection (2).~~

(2) The department shall inform the permittee, local government, and any objecting party of the time, date, and place of the hearing and publish notice of the hearing in the Montana administrative register, and in a newspaper of general circulation in the locality of the permit area twice a week for two 2 consecutive weeks before the hearing. The hearing

shall must be adjudicatory in nature and be held within 30 days of a reasonable time after the receipt of the request; in the town or city nearest the permit area, or in Helena at the option of the objector. The department may subpoena witnesses and printed materials and compel the attendance of witnesses and production of the materials at the hearing. A verbatim record of the hearing shall must be made and the transcript made available on the motion of any party or by order of the department. The decision of the hearing authority shall must be made within 30 days of the hearing. Parties seeking to reverse the decision or any part of the decision of the department which that is the subject of the hearing shall have the burden of presenting a preponderance of evidence, to persuade the hearing authority that the decision cannot be supported by the reasons given in notification of the department's decision. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1116 BONDING: CRITERIA AND SCHEDULE FOR RELEASE OF BOND (1) The department shall may not release any liability under portion of the performance bonds until it finds that the permittee has met the requirements of the applicable reclamation phase as defined in Rule 26.4.1113(2) this rule. The department may release portions of the liability-under performance bonds applicable to a permit following completion of reclamation phases on the entire permit area or on incremental areas within the permit area.

(2) Release of any portion of the performance bond does not relieve the operator of liability for any corrective action necessary to comply with the Act, sub-chapters 3 through 13 of this chapter, and the permit until final bond release.

(3) Subject to the limitations of sections (5) and (6) below, the maximum liability-under portion of the performance bonds-applicable-to-a-permit which that may be released at any time prior-to-the-release-of-all-acreage-from-the-permit-area on applicable areas is: shall-be-calculated-by-multiplying-the ratio-between-the-acreage-on-which-a-reclamation-phase-has-been completed-and-the-total-acreage-in-the-permit-area-times-the total-liability-under-performance-bonds-applicable-to-a-permit, times:

(a) 0.6 60% if reclamation phase I has been completed (but-not-an-amount-which-would-reduce-the-bond-level-below \$200/-acre)-or;

(b) 0.25 the amount associated with soil replacement activities, if reclamation phase II has been completed;

(c) the amount associated with revegetation activities, if reclamation phase III has been completed; and

(d) the remaining portion of the performance bond, if reclamation phase IV has been completed.

(34) Acres may be released from the permit area only after reclamation phase ~~III~~IV has been completed on applicable areas. The-maximum-performance-bond-liability-applicable-to-a permit-which-may-be-released-at-any-time-prior-to-the

~~completion of reclamation phase III on the entire permit area shall be calculated by multiplying the ratio between the acreage on which reclamation phase III has been completed and the total acreage in the permit area times the total liability under performance bonds applicable to a permit, times 0.15.~~

(45) The department ~~shall~~ may not release any liability under portion of a performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the department to complete the approved reclamation plan, achieve compliance with the requirements of the ~~a~~Act, the rules adopted thereunder, ~~or~~ and the permit, and abate any significant environmental harm to air, water, or land resources, or danger to the public health and safety which might occur prior to the release of all lands from the permit area. In all cases, the department shall retain performance bond in the amount of not less than \$200 per acre until reclamation phase IV (final) bond release has been granted.

(6) Where the permit includes an alternate postmining land use plan approved pursuant to Rule 26.4.823, the department shall also retain sufficient ~~liability~~ bond for the department to complete any additional work which would be required to achieve compliance with the general standards for revegetation in the event the permittee fails to implement the approved alternate postmining land use plan ~~within the two years required by Rules 26.4.724 through 26.4.735.~~

~~(5)~~ (7) For the purposes of these rules, reclamation phases are as follows:

(a) ~~Reclamation phase I shall be~~ is deemed to have been completed when the permittee completes backfilling, ~~topsoil replacement, regrading, and drainage control in accordance with the approved reclamation plan, and when all drill holes that are not approved to be retained as monitoring wells or that were not completely mined have been plugged in accordance with 26.4.1005; and~~

(b) ~~Reclamation phase II shall be~~ is deemed to have been completed when:

(i) ~~revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met~~ soil replacement and spoil and soil tillage have been completed in accordance with the approved reclamation plan;

(ii) ~~The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of the act, Rule 26.4.633, or the permit, and at least two growing seasons have elapsed since seeding or planting of the affected area;~~

(iii) ~~with respect to prime farmlands, soil productivity has been returned to the level of yield as required by Rule 26.4.815 when compared with non-mined prime farmland in the surrounding area as determined from the soil survey performed under the act and the approved plan;~~ soils are protected from accelerated erosion by the established vegetation;

(iv) the provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department, and noxious weeds are controlled;

(v) the reestablishment of essential hydrologic functions and agricultural productivity on alluvial valley floors has been achieved; and

(vi) with respect to prime farmlands, production has been returned to the level required by 26.4.815.

(c) Reclamation phase III shall be is deemed to have been completed when: the permittee has successfully completed all strip or underground mining operations in accordance with the approved reclamation plan, including the implementation of any alternative land use plan approved pursuant to Rules 26.4.821 through 26.4.825 and achieved compliance with the requirements of the act, the rules adopted pursuant thereto, the permit, and the applicable liability period under the act and rules adopted pursuant thereto.

(i) the applicable responsibility period (which commences with the completion of any reclamation treatments as defined in 26.4.725) has expired and the revegetation criteria in 26.4.711, 26.4.719, 26.4.724, 26.4.726 through 26.4.733, 26.4.815 and 26.4.825 are met;

(ii) a stable landscape has been established;

(iii) the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of the Act, 26.4.633, or the permit; and

(iv) the provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department.

(d) Reclamation phase IV is deemed to have been completed when:

(i) all lands within a drainage basin have been reclaimed in accordance with the phase I, II, and III requirements;

(ii) fish and wildlife and their habitats and related environmental values have been restored, reclaimed, or protected in accordance with the Act, the rules, and the approved permit;

(iii) with respect to the hydrologic balance, disturbance has been minimized and material damage has been prevented in accordance with the Act, the rules, and the approved permit;

(iv) alternative water sources to replace water supplies that have been adversely affected by mining and reclamation operations have been developed and are functional in accordance with the Act, the rules, and the approved permit;

(v) implementation of any alternate land use plan approved pursuant to 26.4.821-26.4.825 has been successfully achieved; and

(vi) all other reclamation requirements of the Act, rules, and the permit have been met. (AUTH: Sec. 82-4-204,

205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1117 BONDING: PROCEDURE FOR FORFEITURE In the event forfeiture of the bond is necessary, the department shall:

(1) send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if applicable, of the department's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;

(2) advise the permittee and surety, if applicable, of ~~any rights of appeal that may be available~~ any conditions under which forfeiture may be avoided, including, but not limited to:

(a) agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule that meets the conditions of the permit, the reclamation plan, and the regulatory program, and a demonstration that such party has the ability to satisfy the conditions; or

(b) completion by the surety of the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the department approves partial release under 26.4.1116, no surety liability may be released until successful completion of all reclamation under the terms of the permit, including applicable responsibility periods; and

(3) in the event forfeiture cannot be or is not avoided under section (2), proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this rule, for the amount forfeited; and.

~~(4) --if an appeal is filed, defend the action.~~ (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1118 BONDING: EFFECT OF FORFEITURE (1) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, ~~shall be~~ is a final decision by the department.

(2) The department may forfeit any or all bond deposited for an entire permit area. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation ~~shall must~~ extend to the entire permit area.

(3) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the permittee shall be liable for remaining costs. The department may complete or authorize completion of reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)



26.4.1119 BONDING: CRITERIA FOR FORFEITURE (1) A bond ~~shall~~ must be forfeited, if the department finds that:

(a) the permittee has violated any of the terms or conditions of the bond; ~~or~~

(b) the permittee has failed to conduct the strip or underground mining and reclamation operations in accordance with the ~~act~~, the rules adopted pursuant thereto, ~~or~~ the conditions of the permit, within the time required by the ~~act~~, the rules adopted pursuant thereto, ~~or~~ the permit; ~~or~~

(c) through (2) Remains the same.

(a) the permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court; ~~or~~

(b) a creditor of the permittee has attached or executed a judgment against the permittee's equipment, ~~or~~ materials, at the permit area or on the collateral pledged to the department; ~~or~~

(c) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223, 232, 235 MCA.)

26.4.1121 BONDING: EXEMPTION FOR STATE AGENCIES AND POLITICAL SUBDIVISIONS (1) The department may require agencies and political subdivisions of the state to file bonds for ~~non-test-pit~~ prospecting operations other than test pit prospecting operations.

(2) Agencies and political subdivisions of the state ~~must~~ shall file a bond that meets the requirements of ~~section 82-4-2233 and Rules 26.4.1101 through 26.4.1120~~ before the department may issue a mining permit or test pit prospecting permit. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-223 MCA.)

RULE XII NOTICE OF ACTION ON COLLATERAL BOND (1) The department shall give advanced notice of any action pursuant to a collateral bond to each person who has an interest in the collateral and who, in writing at the time the collateral was offered, requested notice of future action. (AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-232 MCA.)

26.4.1125 LIABILITY INSURANCE (1) Remains the same.

(2) The policy ~~shall~~ must be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations required under ~~this~~ the ~~act~~ and rules adopted pursuant thereto.

(3) The policy ~~shall~~ must include a rider requiring that the ~~insurer~~ insurer notify the department whenever substantive changes are made in the policy, including any termination or failure to renew. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.1129 ANNUAL REPORT (1) Each ~~operator or holder of a prospecting permit~~ permittee shall file copies of an annual

report with the department within ~~30 days of the anniversary date of each permit~~ a time period specified in 82-4-237 until such time as full bond is released.

(2) The annual report ~~shall~~ must include:

- (a) Remains the same.
- (b) the exact number of acres of land affected by the operation during the preceeding year and cumulatively;
- (c) the extent of backfilling and grading performed during the preceeding year and cumulatively;
- (d) the extent of vegetative reclamation (seeding or planting) performed during the preceeding year (in narrative and map form), including:

(i) through (v) Remains the same.

(vi) cumulative areas reseeded to date; and

(vii) cumulative acres of each phase of bond released to date;

(e) any information on vegetation cover and production required by rules relating to revegetation and alternate reclamation; and

(f) replaced soil depths and a map of all sites sampled;

(g) an inspection map depicting all approved surface features in or associated with the permit area, reproduced at a scale applicable for field use;

(h) a summary of actions taken to comply with state weed control laws;

(i) an updated cultural resource management table, including a list of sites mitigated and disturbed in the preceeding year and sites to be mitigated and disturbed in the coming year; and

~~ff~~ (j) any other relevant information required by the department.

(3) Maps must be certified in accordance with 26.4.305.

(AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-237 MCA.)

26.4.1131 PROTECTION OF PARKS AND HISTORIC SITES In addition to those areas upon which strip or underground mining is specifically prohibited pursuant to section 82-4-227, subject to valid existing rights, no strip or underground coal mining ~~shall~~ may be conducted, unless the operation existed on August 3, 1977:

(1) through (2) Remains the same. (AUTH: Sec. 82-4-024, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1132 AREAS UPON WHICH COAL MINING IS PROHIBITED: DEFINITIONS AND STANDARD FOR MEASUREMENT OF DISTANCES

(1) For the purpose of section 82-4-227 (13), the following definitions ~~shall~~ apply:

(a) through (ii) (B) Remains the same.

(iii) interpretation of the terms of the document relied upon to establish valid existing rights shall must be based upon applicable state statutes and case law concerning interpretation of documents conveying mineral rights, or where no applicable state laws exist, the usage and custom at the time

and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same strip or underground mining operations for which the applicant claims a valid existing right;

(iv) through (b) Remains the same.

(c) "~~p~~Public building" means any structure that is owned or leased by a public agency ~~or~~ and used principally for public business, meetings, or other group gatherings.

(d) through (e) Remains the same.

(f) "~~p~~Public road" means any thoroughfare open to the public for passage of vehicles; a street, road, or highway, and any related structure, that has been or will be built and maintained with appropriated funds of the United States; that has been or will be built and maintained with funds of the state of Montana or any political subdivision thereof; that has been or will be dedicated to public use; or that has been acquired by eminent domain or adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(g) Remains the same.

(2) For purposes of ~~section~~ 82-4-227(7), all distances ~~shall~~ must be measured horizontally. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1133 AREAS UPON WHICH COAL MINING IS PROHIBITED: PROCEDURES FOR DETERMINATION (1) Remains the same.

(2) (a) ~~Where the~~ Whenever a proposed operation would be located on any lands listed in ~~section~~ 82-4-227(7) or (13) (except for proximity to public roads) or Rule 26.4.1131, the department shall reject the application if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977.

(b) If the department is unable to determine whether the proposed operation is located within the boundaries or distances described of any of the lands in section 82-4-227(7) or (13) or Rule 26.4.1131, of any of the lands described in the same provisions of the Act and rules, the department shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, along with a request for response within 30 days. The department shall notify the national park service or the fish and wildlife service of any request for determination of valid existing rights pertaining to areas within their boundaries or areas under their jurisdiction and shall grant them 30 days from receipt of the notice to respond. The department, upon request by the appropriate agency, shall grant an additional 30 days for response. If no response is received within the response period or extension, the department may make its determination based on the information it has available. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1134 AREAS UPON WHICH COAL MINING IS PROHIBITED:  
PERMISSION TO MINE NEAR PUBLIC ROAD ~~Where-the~~ Whenever a proposed mining operation is to be conducted within 100 feet measured horizontally to the outside right-of-way line of any public road (except where mine access roads or haul roads join such right-of-way line), the department may permit mining to occur within 100 feet of the road if:

(1) through (3) Remains the same.

(4) a written finding based upon information received at the public hearing is made within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations ~~is made~~. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1135 AREAS UPON WHICH COAL MINING IS PROHIBITED:  
RELOCATION OR CLOSURE OF PUBLIC ROAD ~~Where-the~~ Whenever an applicant proposes to relocate or close a public road to facilitate strip or underground mining operations, the road may not be relocated or closed until:

(1) through (4) Remains the same.

(5) a written finding based upon information received at the public hearing is made within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations ~~is made~~. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1136 AREAS UPON WHICH COAL MINING IS PROHIBITED:  
WAIVER TO MINE NEAR DWELLING (1) ~~Where-the~~ Whenever a proposed strip or underground mining operation would be conducted within 300 feet measured horizontally of ~~to~~ any occupied dwelling, the applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. ~~The waiver acts as consent consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.~~

(2) A valid waiver is effective against subsequent purchasers who had actual or constructive knowledge of the waiver at the time of purchase. Constructive knowledge is presumed if the waiver has been properly filed with the county clerk and recorder or if mining has proceeded to within 300 feet prior to the date of purchase. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1137 AREAS UPON WHICH COAL MINING IS PROHIBITED:  
CONSULTATION WITH OTHER AGENCIES (1) ~~Where-the~~ Whenever a proposed mining operation may adversely affect any public park or any places included on the ~~n~~National ~~r~~Register of ~~h~~Historic

places, the department shall transmit to the federal, state, or local agencies with jurisdiction over or a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing a request for that agency's approval or disapproval of the operations within 30 days of receipt of the request. Upon receipt of a written request from the appropriate agency, the review period may be extended 30 days. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1141 DESIGNATION OF LANDS UNSUITABLE: DEFINITIONS

For purposes of section 82-4-228, the following definitions shall apply:

(1) "~~F~~fragile lands" means geographic areas containing natural, scientific or ~~esthetic~~ aesthetic resources, or ecologic relationships that could be damaged or be destroyed by strip or underground coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, national natural landmark sites, areas where mining may cause result in flooding, environmental corridors containing a concentration of ~~biologic~~ ecologic and aesthetic features, and areas of recreational value due to high environmental quality, and appropriate buffer zones adjacent to the boundaries of areas where strip or underground coal mining operations are prohibited under section 82-4-227 and Rule 26.4.1131.

(2) through (3) Remains the same.

(4) "~~S~~Substantial legal and financial commitments in a strip or underground coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example ~~would be~~ is an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1142 DESIGNATION OF LANDS UNSUITABLE: EXCEPTIONS

EXEMPTIONS The requirements of rules 26.4.1141 through 26.4.1148 do not apply to:

(1) through (3) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1143 DESIGNATION OF LANDS UNSUITABLE: EXPLORATION PROSPECTING ON DESIGNATED LANDS ~~Designation of any area as unsuitable for all or certain types of strip or underground coal mining operations pursuant to section 82-4-228 and Rules 26.4.1144 through 26.4.1147 does not prohibit coal prospecting~~

~~operations in the area, if conducted in accordance with the act, these rules and other applicable requirements.~~ (1) Prospecting operations on any lands designated unsuitable for strip or underground mining operations, pursuant to 82-4-228 and this sub-chapter, must be approved by the department under ~~Sub-Chapter~~ sub-chapter 10 ~~to~~ and must insure that exploration does not interfere with any value for which the area has been designated unsuitable for strip or underground coal mining. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1144 DESIGNATION OF LANDS UNSUITABLE; PETITION FOR DESIGNATION OR TERMINATION OF DESIGNATION (1) Any person having an interest which is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for strip or underground coal mining operations, or to have an existing designation terminated. A person having an interest which is or may be adversely affected shall demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(2) ~~A To~~ petition ~~for designation~~, to designate lands unsuitable must be in affidavit form. ~~The~~ only information that a petitioner need provide is:

(a) ~~the location and size of the area covered by the petition;~~ identification of the petition area, including its location and size, and a U.S. geological survey topographic map outlining the perimeter of the petition area;

(b) ~~allegations of facts and supporting evidence covering all lands in the petition area, that which would tend to establish that the area or a designated portion thereof is unsuitable for all or certain types of strip or underground coal mining operations, pursuant to specific criteria of 82-4-228, assuming that contemporary mining practices required under the Act would be followed if the area were to be mined. Each of the allegations of fact must be specific as to the type of mining operation, if known, and the portion of the petition area to which the allegation applies. Each allegation must be supported by evidence that tends to establish its validity;~~

(c) a description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests;

(d) Remains the same.

(e) identification of the petitioner's interest which is or may be adversely affected, including a statement demonstrating how the petitioner satisfies the requirements of section (1) of this rule.

(3) ~~A To~~ petition for termination of a designation must be in affidavit form. ~~The~~ only information that a petitioner need provide is:

(a) ~~the location and size of the area covered by the petition;~~ identification of the petition area, including its location and size and a U.S. geological survey topographic map outlining the perimeter of the petitioned area to which the

termination petition applies;

(b) allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on covering all lands for which the termination is proposed. Each of the allegations of fact must be specific as to the type of mining operation, if any, and to portions of the petition area and petitioner's interests to which the allegation applies. The allegations must be supported by evidence, not contained in the record of the designation proceedings, that tends to establish the validity of the allegations for the mining operation or portion of the petition area, assuming that contemporary mining practices required under the Act would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence must also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following basis:

(i) the nature or abundance of the protected resource or condition or other basis of the designation, if the designation was based on criteria found in section 82-4-228(2) (b); or

(ii) through (d) Remains the same.

(4) The department may request that the petitioner provide other information that is readily available to supplement petitions under section (2) or (3) above. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1145 DESIGNATION OF LANDS UNSUITABLE: NOTICE AND ACTION ON PETITION (1)(a) Within 30 days of receipt of a petition, the department shall notify the petitioner by certified mail whether or not the petition is complete under 26.4.1144(2) or (3).

(b) The department shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the department finds there are not any identified coal resources in that area, it shall return the petition to provide the petitioner with a statement of the findings.

(c) The department may reject petitions for designation or terminations of designations which are frivolous. Once the requirements of Rule 26.4.1144 are met, no party shall bear any burden of proof, but each accepted petition shall must be considered and acted upon by the department pursuant to the procedures of this rule.

(d) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the department shall determine if the new petition presents new allegations of facts. If the petition does not contain new

allegations of facts, the department ~~shall~~ may not consider the petition and shall ~~return-the-petition-to~~ provide the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(e) If the department determines that the petition or a portion thereof is incomplete or frivolous, it shall ~~return-the-petition-to~~ provide the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegation of harm lacks serious merit. The department is not required to process a petition that is incomplete, frivolous, or filed by a person who does not have an interest that is or may be adversely affected.

(f) The department shall notify the person who submits a petition of any application for a permit received which that contains a proposal to include any area covered by the petition.

(g) ~~Any~~ The receipt of any petitions ~~received~~ after the close of the public comment period on a permit application relating to the same mine plan area ~~shall~~ does not prevent the department from issuing a decision on that permit application. The department may ~~return~~ refuse to process any petition received thereafter ~~to~~ and shall provide the petitioner with a statement why the department cannot consider the petition. For the purposes of this rule, "close of the public comment period" ~~shall~~ means at the close of any informal conference held under Rule 26.4.4043, or, if no conference is requested, the close of the period for filing written comments and objections under Rule 26.4.402.

(2) (a) Promptly after receipt of the petition, the department shall notify the general public that a petition has been filed. The notice must be a newspaper advertisement in the newspaper providing the broadest circulation in the locale of the petition area. The notice must be published once a week for consecutive weeks. A similar notice must be placed in the Montana Administrative Register. The notice must include a request for submission of relevant information.

~~(a)(b)~~ Within ~~three~~ 3 weeks after the determination that a petition is complete, the department shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the department to have an interest in the property.

~~(b)(c)~~ ~~Within-three-weeks~~ Promptly after the determination has been made that a petition is complete, the department shall ~~notify-the-general-public-of-the-receipt-of-the-petition-and~~ request submissions of relevant information from the general public by a newspaper advertisement placed once a week for ~~two~~ 2 consecutive weeks ~~in-the-locale-of-the-area-covered-by-the-petition,~~ in the newspaper of largest broadest circulation in the ~~state~~ locale of the petition area,



and in the Montana Administrative Register.

(3) Until ~~three~~ 3 days before the department holds a hearing under ~~Rule 26.4.1146~~, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

(4) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1146 DESIGNATION OF LANDS UNSUITABLE: HEARINGS ON PETITION (1) Within 10 months after receipt of a complete petition, the department shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. ~~The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses.~~ The department may subpoena witnesses as necessary. The department shall allow cross-examination of expert witnesses, but other witnesses must not be cross-examined. The department shall make a verbatim transcript of the hearing.

(2)(a) through (iii) Remains the same.

(b) Notice of the hearing ~~shall~~ must be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

(3) through (5) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1147 DESIGNATION OF LANDS UNSUITABLE: DECISION ON PETITION (1) through (d) Remains the same.

(2) A final written decision ~~shall~~ must be issued by the department including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The department shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the ~~regional director~~ federal coal regulatory agency. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1148 DESIGNATION OF LANDS UNSUITABLE: DATA BASE AND INVENTORY SYSTEM (1) Remains the same.

(2) The department shall include in the system information relevant to the criteria in ~~section~~ 82-4-228(2), including, but not limited to, information received from the United States fish and wildlife service, the department of fish, wildlife, and parks, the state historic preservation officer, and the department of health and environmental sciences.

(3) through (b) Remains the same.

(4) The department shall:

(a) make the information and data base system available to the public for inspection free of charge and for copying at reasonable cost; and

(b) through (6) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227 MCA.)

26.4.1201 FREQUENCY OF INSPECTIONS (1) The department shall conduct an average of at least one partial inspection per month of each active mining operation per-month and, at least one complete inspection per calendar quarter of each active and inactive mining operation, ~~per-calendar-quarter~~ and such periodic partial or complete inspections of prospecting operations as are necessary to enforce the ~~a~~Act, the rules adopted pursuant thereto, and the ~~respective~~ permit. (AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-235, 237, 251 MCA.)

26.4.1202 METHOD OF INSPECTIONS (1) Inspections ~~shall~~ must occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays. Inspectors shall collect evidence of violations and promptly file with the department inspection reports adequate to determine whether violations exist.

(2) All regrading must be approved by the department for compliance with the approved postmining topography plan before ripping or other tillage of this regraded surface and soil replacement activities can begin on affected areas.

(a) The operator shall provide the department with as-built contour maps, cross-sections, drainage profiles, and other materials as appropriate of the regraded areas and shall notify the department when such areas are deemed ready by the operator for regraded surface tillage and soil replacement.

(b) The department shall review the written information required in subsection (a) above and shall perform an inspection of the affected regraded area within 30 days of notification by the operator.

(3) In addition to the requirements of 26.4.1201, the department shall inspect revegetation as required by 26.4.720. (AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-235, 237, 251 MCA.)

26.4.1203 AVAILABILITY OF INSPECTION REPORTS (1) The department shall make ~~ecopies~~ copies of all records, reports, inspection materials, and information obtained ~~shall~~ must be made immediately available to the public at the department office closest to the operation involved or by mail. See Rule I. (AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-235, 237, 251 MCA.)

26.4.1204 INSPECTIONS IN RESPONSE TO CITIZEN COMPLAINTS

(1) Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the ~~a~~Act, ~~this~~ the rules adopted pursuant thereto, or the permit, or that there exists a condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The identity of any person supplying information to the department relating to

a possible violation or imminent danger or harm ~~shall~~ must remain confidential with the department, if requested by that person, unless that person elects to accompany the inspector on the inspection.

(2) If the report or statement alleges facts that, if true, would constitute a prohibited condition, practice, or violation, and states the basis upon which the facts ~~as are~~ known or provides other corroborating evidence sufficient to give the department reason to believe that the prohibited condition, practice or violation exists, the department shall conduct an inspection to determine whether the condition, practice, or violation exists or existed. If the department conducts an inspection pursuant to ~~subsection~~ (1) above, it shall notify the person who requested the inspection as far in advance as practicable of when the inspection is to occur. The person who has provided the statement or report ~~shall~~ must be allowed to accompany the inspector. The person ~~shall be~~ is under supervision and control of the inspector while within the permit area. The person does not have a right to enter buildings or structures without the consent of the person in control of the building or without a search warrant.

(3) Remains the same.

(a) if an inspection was made, a description of the enforcement action taken, or, if no enforcement action was taken, an explanation of why no enforcement action was taken and notice of the person's right to informal review;

(b) if no inspection was made, an explanation of the reason why and notice of the person's right to informal review.

(4) The department shall give copies of all materials in section (3) within the time limits specified in that section to the person alleged to be in violation, except the name of the person supplying information must be removed unless disclosure of his or her identity is permitted under section (1). (AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-221 MCA.)

26.4.1205 INSPECTIONS IN RESPONSE TO NOTIFICATION BY THE OFFICE OF SURFACE MINING FEDERAL COAL REGULATORY AUTHORITY

(1) Whenever the department receives notice from OSM the federal coal regulatory authority that it has reason to believe that there exists a violation of the ~~a~~Act, the rules adopted pursuant thereto, or the permit, or a condition or practice that creates an imminent danger to the public or that is causing or can reasonably be expected to cause significant, imminent harm to land, air, or water resources, the department shall make an inspection, determine whether such a violation, condition, or practice exists, and it shall then take appropriate action to correct all such violations, conditions, or practices. ~~immediately for~~ if imminent dangerous health or safety or environmental conditions, practices, or violations and to the public or imminent harm to land, air, or water resources exists or may exist, the department shall take appropriate action immediately. It shall act within 10 days for of notice of other violations. (AUTH: Sec. 82-4-205 MCA;

IMP, Sec. 82-4-235, 237, 251 MCA.)

26.4.1206 NOTICES, ORDERS OF ABATEMENT AND CESSATION ORDERS: ISSUANCE AND SERVICE (1) The department shall issue a cessation order for each violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, for failure to comply with an order of abatement, and for conducting mining operations or prospecting without a permit. The department shall issue a notice of noncompliance for other violations.

(2) A notice of noncompliance, notice of violation, and statement of proposed penalty, ~~notice of noncompliance~~, or cessation order shall must be served upon the person to whom it is directed or his designated agent promptly after issuance by:

(a) tendering a copy of the notice or order at the operation to a designated agent, to the individual in charge of the operation or, if the designated agent or person in charge cannot be located at the operation, to any agent or employee at the operation;

(b) Remains the same.

(c) hand delivery of a copy of the notice or order to the permittee or his designated agent. Designation of an agent other than the agent named in the permit application permit for service of process may be made by filing with the department a written designation signed by the former designated agent.

(d) Service is complete upon tender of the document and is not incomplete because of refusal to accept.

(3) Whenever an abatement order has been complied with, the department shall inspect the abatement, and, if the abatement is satisfactorily completed, shall terminate the order of abatement. The termination must be issued onsite at the time of the inspection.

(4) If the notice of noncompliance or cessation order does not require an abatement, terminations of abatement need not be issued. Filing of an application for review does not operate as a stay of any order.

(5)(a) Except as provided in paragraph (ii) below, an abatement order must specify compliance within a reasonable period of time, not exceeding 90 days.

(b) The department may impose an abatement period of more than 90 days whenever:

(i) the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(ii) a valid judicial order as to which the permittee has diligently pursued all rights of appeal and as to which he has no other effective legal remedy precludes abatement within

90 days;

(iii) the permittee cannot abate within 90 days due to a labor strike;

(iv) climatic conditions preclude abatement within 90 days, or due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(v) abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977; and

(vi) the failure to abate has not been caused by a lack of diligence or intentional delay by the permittee.

(c) Whenever an abatement time in excess of 90 days is permitted, the department shall impose interim abatement measures to the extent necessary to minimize harm to the public or the environment.

(d) Whenever any of the conditions in subsection (5) (b) above exist, the permittee may request extension of the abatement period beyond 90 days. The department may not grant an extension for more time than is necessary for abatement. The permittee has the burden of establishing by clear and convincing proof that he is entitled to an extension. In determining whether or not to grant an abatement period exceeding 90 days, the department may consider any relevant written or oral information from the permittee or any other source. The department shall promptly and fully document in the file its reasons for granting or denying the request. The department's decision on an application for extension beyond 90 days is subject to hearing if a hearing is requested by a person with an interest that is or may be adversely affected in writing within 30 days of notice of the department's decision on the application. The hearing must be a contested case hearing.

(e) An extension granted under this paragraph must not exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension.

(6) Each notice of violation and statement of proposed penalty must include a review for pattern of violations. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

26.4.1207 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: INFORMAL HEARINGS (1) Except as provided in subsections (2) and (3) below, if a notice of noncompliance or cessation order which requires cessation of mining or prospecting, expressly or by necessary implication, that notice or order expires within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall must be held at or reasonably close to the mine site so that the alleged violation may be viewed during the hearing or at any other location acceptable to the department and the person to whom the notice or order was issued. The departmental office

nearest to the mine site ~~shall be~~ is hereby deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the department. For purposes of this rule, "mining" means extracting coal from the earth or waste piles and transporting it within or from the permit area.

(2)(a) A notice of noncompliance or cessation order ~~which~~ that requires cessation of prospecting or mining ~~shall~~ does not expire as provided in subsection (1) if the informal public hearing has been waived or, if, with the consent of the person to whom the notice or order was issued, the informal hearing is held later than 30 days after the notice or order.

(b) The informal public hearing will be deemed waived if the person to whom the notice or order was issued is informed, as provided in subsection (c) below, that he or she will be deemed to have waived the informal public hearing unless he or she requests one within 30 days after service of the notice and he or she fails to request an informal public hearing within that time.

(c) The written notice provided in subsection (b) above must be delivered to the person by personal service by an authorized agent of the department or certified mail within 5 days after the notice or order that requires cessation of mining is served on that person.

(3) The department shall ~~file~~ give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(a) the person to whom the notice or order was issued; and

(b) Remains the same.

(4) The department shall also post notice of the hearing at its office closest to the mine site, and issue a news release notice regarding the informal ~~conference~~ hearing, where whenever practicable, to a newspaper of general circulation in the area of the mine.

(5) An informal public hearing ~~shall~~ must be conducted by a representative of the department; who the representative may accept oral or written arguments and any other relevant information from any person attending.

(6) Within 5 days after the close of the informal public hearing, the department shall affirm, modify, or vacate the notice or order in writing. The decision ~~shall~~ must be sent to:

(a) through (b) Remains the same.

(7) The granting or waiver of an informal public hearing ~~shall~~ does not affect the right of any person to formal review under ~~sections~~ 82-4-251(3), or 82-4-251(6), or 82-4-254(2) ~~(3)~~. At such the formal review proceedings, ~~no~~ evidence as to statements made or evidence produced at an informal public hearing ~~shall~~ must not be introduced as evidence or to impeach a witness. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

#### 26.4.1208 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS:

EFFECT OF INABILITY TO COMPLY (1) No A cessation order or notice of noncompliance may not be vacated because of inability to comply. Inability to comply may not be considered in determining whether a pattern of violations exists. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

26.4.1209 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: CONTINUATION OF HEALTH AND SAFETY RELATED ACTIVITIES

(1) Reclamation operations and other activities intended to protect public health and safety and the environment shall must continue during the period of any order unless otherwise provided in the order. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

26.4.1210 CESSATION ORDERS: ADDITIONAL AFFIRMATIVE OBLIGATIONS (1) If a cessation order will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the commissioner or his authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order shall must specify the time by which abatement shall must be accomplished and may require, among other things, the use of existing or additional personnel and equipment. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

26.4.1212 POINT SYSTEM FOR CIVIL PENALTIES AND WAIVERS:

(1) The department shall assign points for each violation based upon the following criteria:

(a) History of recent violations. One point shall must be assigned for each violation contained in a notice of noncompliance and five points shall must be assigned for each violation contained in a cessation order. Violations shall must be counted for one 1 year after the notice of noncompliance was issued. No A violation for which the notice of noncompliance or cessation order has been vacated or which is subject to a pending administrative or judicial appeal shall must not be counted. Violations subject to administrative or judicial appeal shall must be counted for one 1 year after resolution of the final appeal.

(b) Seriousness. Points shall must be determined in accordance with one of the following subparagraphs:

(i) Harm to public health, public safety or environment. If the violation created a situation in which the public health, public safety, or environment could have been harmed, and the violated law, rule, order, or permit term or condition was designed to prevent such harm, the violation shall must be assigned up to 15 points, depending upon the probability of occurrence of the harm which the violated standard was designed to prevent. In addition, the violation shall must be assigned up to 15 points, depending on significance and amount of potential or actual harm.

(ii) Impairment of administration. If the violation

was of an administrative requirement but did not impair the department's administration of the ~~Act~~, rules, or permit, it ~~shall~~ may assign no points under this subparagraph. In the case of a violation of an administrative requirement which that causes impairment of administration, the violation ~~shall~~ must be assigned one to 30 points, depending upon the degree of impairment. An administration requirement, such as the keeping of records and filing of reports, is one that does not directly affect public health, safety, or the environment.

(c) Negligence. If a violation has occurred through no negligence on the part of the permittee, it ~~shall~~ must not be assigned ~~no~~ points under this category. A violation involving ordinary negligence, which is failure to exercise toward the violated legal requirement the care ordinarily exercised by a person of common prudence, ~~shall~~ must be assigned one to 12 points depending upon the degree of negligence. If the violation occurred due to gross negligence which is gross or reckless disregard for the violated legal requirement, or intentional conduct, it ~~shall~~ must be assigned 13 to 25 points depending upon the degree of fault.

(d) Good faith. If the person abates the violation in an adequate manner upon being notified of the violation or if the violation requires no abatement, no points ~~shall~~ may be assigned. If the violator takes extraordinary measures to achieve compliance before the time set in the abatement order or to minimize harm, up to 10 points may be deducted from the total points assigned. However, reduction of points due to good faith does not allow waiver of an otherwise unwaivable penalty.

(2) Amount of penalty. The amount of civil penalty ~~shall~~ must be assessed based on the following schedule:

Points	Dollars	Points	Dollars
10 and below	\$200	41	\$2,100
11	\$220	42	\$2,200
12	\$240	43	\$2,300
13	\$260	44	\$2,400
14	\$280	45	\$2,500
15	\$300	46	\$2,600
16	\$320	47	\$2,700
17	\$340	48	\$2,800
18	\$360	49	\$2,900
19	\$380	50	\$3,000
20	\$400	51	\$3,100
21	\$420	52	\$3,200
22	\$440	53	\$3,300
23	\$460	54	\$3,400
24	\$480	55	\$3,500
25	\$500	56	\$3,600
26	\$600	57	\$3,700
27	\$700	58	\$3,800
28	\$800	59	\$3,900



29	\$900	60	\$4,000
30	\$1,000	61	\$4,100
31	\$1,100	62	\$4,200
32	\$1,200	63	\$4,300
33	\$1,300	64	\$4,400
34	\$1,400	65	\$4,500
35	\$1,500	66	\$4,600
36	\$1,600	67	\$4,700
37	\$1,700	68	\$4,800
38	\$1,800	69	\$4,900
39	\$1,900	70 and up	\$5,000
40	\$2,000		

(3) The total civil penalty assessed under this system includes both the penalty for the violation and for ~~one~~ 1 day of violation. Additional days of violation ~~shall~~ must be assessed a penalty at the same rate as the first day of violation.

(4) If an administrative order issued after hearing increases the amount of penalty due, the person to whom the order is issued shall pay the difference within 15 days of receipt of the order.

(5) When a cessation order is issued for failure to comply with an abatement order and the notices and orders are under appeal, the department may not assess a penalty for failure to comply until the appeals are resolved. (See also 82-4-254(1). (AUTH: Sec. 82-4-204(3), 205(7), and 254(2) MCA; IMP, Sec. 82-4-254(2) MCA.)

26.4.1213 SUSPENSION AND REVOCATION OF PERMITS: DETERMINATION OF PATTERN OF VIOLATIONS In implementing section 82-4-251(3), the department:

(1) may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any 12-month period, after considering the circumstances, which circumstances shall include:

(a) the number of violations, cited on more than one occasion, of the same ~~of~~ or related requirements of the ~~act~~, ~~this~~ the rules adopted pursuant thereto, or the permit;

(b) through (c) Remains the same.

(d) the number of violations caused by unwarranted failure of the permittee to comply or willfully caused by the permittee; and

(2) shall determine that a pattern of violations exists if it finds that there were violations of the same or related requirements during ~~3~~ three or more inspections of the permit area within any 12-month period.

(3) If the department determines that a pattern exists, it shall issue an order to show cause why the permit should not be suspended or revoked. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

26.4.1214 SUSPENSION AND REVOCATION OF PERMITS: PUBLIC

NOTICE OF SHOW CAUSE ORDER (1) At the same time as the issuance of a show cause order pursuant to section 82-4-251(3), the department shall:

(a) through (b) Remains the same.

(2) If the permittee files an answer to the show cause order and requests a hearing, a public hearing shall must be held. The department shall give 30 days written notice of the date, time, and place to the permittee and any intervenors and, if practicable, publish notice in a newspaper of general circulation in the area of the operations and. The department shall also post the notice in the departmental office closest to those operations. The department shall issue a decision within 60 days of hearing. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

26.4.1215 SUSPENSION AND REVOCATION OF PERMITS: SERVICE OF PROCESS (1) A show cause order shall must be served in the same manner as a notice of violation pursuant to Rule 26.4.1206. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251 MCA.)

26.4.1221 SMALL MINER OPERATOR ASSISTANCE PROGRAM: PROGRAM SERVICES To the extent possible with available federal funds, the department shall for a coal mine operating permit applicant meet the criteria of 26.4.1222 and qualified-small operators who requests assistance:

(1) select and pay a qualified laboratory to:

(a) determine for the operator applicant the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with rule 26.4.1225; and

(b) prepare a statement of the results of test borings or core samplings in accordance with Rule 26.4.1225; and

(2) collect and provide general hydrology information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall must be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

26.4.1222 SMALL MINER OPERATOR ASSISTANCE PROGRAM: ELIGIBILITY FOR ASSISTANCE An applicant is eligible for assistance if he or she:

(1) intends to apply for a permit pursuant to the act; and

(2) establishes that the probable total actual and attributed coal production of the applicant operation for each year of the permit will not exceed 100,000 tons, production from the following operations shall must be attributed to the permittee applicant:

(a) through (d) Remains the same.

(e) all coal produced by operations owned by the family and relatives of the applicant, unless there is no direct or

indirect business relationship between or among the individuals; and

(3) has not organized or reorganized his or her company solely for the purpose of obtaining assistance. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

26.4.1223 SMALL MINER OPERATOR ASSISTANCE PROGRAM: FILING FOR ASSISTANCE Each applicant shall submit the following information to the department:

(1) through (b) Remains the same.

(3) a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant. The schedule ~~shall~~ must include for each location:

(a) through (b) Remains the same.

(c) the actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and

(d) the estimated coal production for each year of the proposed permit and that portion attributed to the applicant; and

(e) the estimated total reserves within the proposed permit area and the method by which those reserves were calculated;

(4) through (d) Remains the same.

(5) a U.S. geological survey topographic map of 1:24,000 scale or larger or other topographic map of equivalent detail ~~which~~ that clearly shows:

(a) through (d) Remains the same.

(e) the location and extent of known workings of any underground mines; and

(6) through (b) Remains the same. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

26.4.1224 SMALL MINER OPERATOR ASSISTANCE PROGRAM: APPLICATION APPROVAL AND NOTICE (1) If the department finds the applicant eligible, and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(a) determine the minimum data requirements necessary to meet the provisions of ~~Rule~~ 26.4.1225;

(b) select the services of one or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work ~~shall~~ must be provided to the applicant.

(2) Remains the same.

(3) The granting of assistance under ~~Rules~~ 26.4.1221 through 26.4.1228 ~~shall~~ must not be a factor in decisions by the department on a subsequent permit application. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

26.4.1225 SMALL MINER OPERATOR ASSISTANCE PROGRAM: DATA REQUIREMENTS (1) The department shall determine the data

collection requirements for each applicant based on:

(a) Remains the same.

(b) the data collection and analysis guidelines developed and provided by the office of surface mining federal coal regulatory authority.

(2) (a) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on- and off-site, ~~shall~~ must be made by a qualified laboratory.

(i) The data required for this determination ~~shall include~~ must be collected pursuant to 26.4.304(6).

~~(i) -- the existing and projected surface and ground water level and water table evaluations; the department shall specify duration and return frequencies to be used in the determination;~~

~~(ii) -- the existing and projected seasonal quality of the surface and groundwater regime; this shall include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion and other water quality parameters specified by the department.~~

(ii) The determination of probable hydrologic consequences must be made pursuant to 26.4.314.

(b) The applicant shall include a statement of the results of test borings or core samplings from the proposed permit area, including information on overburden and coal, as required by 26.4.304(7) and 26.4.322(2)(a).

~~(i) -- logs from any drill holes including identification of each stratum and water level penetrated;~~

~~(ii) -- the coal seam thickness and its chemical analysis including sulphur content; and~~

~~(iii) -- the chemical analysis of potentially acid or toxic forming sections of the overburden; and the chemical analysis of the stratum lying immediately underneath the coal to be mined.~~

(3) The statement by a qualified laboratory under paragraph subsection (2)(b) may be waived by the department by a written determination that such requirements are unnecessary with respect to the specific permit application.

(4) Data collected under this program ~~shall~~ must be made available to all interested persons. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

#### 26.4.1226 SMALL MINER OPERATOR ASSISTANCE PROGRAM:

QUALIFICATION OF LABORATORIES (1) The department shall designate qualified laboratories. ~~Persons who desire to be included in the list of qualified~~ To receive such a designation laboratories established by the department shall apply to the department and provide such information as is necessary to establish the qualifications required by subsection (2).

(2) (a) through (vi) Remains the same.

(A) Standard Methods for the Examination of Water and Waste Water, 14th 15th Edition, 1975. This publication is available from the American Public Health Association, 1015 18th Street, NW, Washington, D.C. 20036;

(B) ~~m~~Methods for ~~c~~Chemical ~~a~~Analysis of ~~w~~Water and ~~w~~Wastes, 1974. This publication is available from the office of technology transfer, U.S. ~~e~~Environmental ~~p~~rotection Agency, ~~i~~ndustrial-environmental-research-laboratory, ~~C~~incinnati, ~~O~~hio-45268, EPA Library, Region 8, 1860 Lincoln Street, Suite 270, Denver, Colorado 80295. ~~t~~These standards are hereby incorporated by reference;

(vii) has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by the department.

(b) To become qualified, a laboratory must be capable of performing either the determination or statement under Rule 26.4.1225(2)(a) and (b). Subcontractors may be used to provide the services required provided if their use is defined described in the application for designation and approved by the department. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

26.4.1227 SMALL MINER OPERATOR ASSISTANCE PROGRAM: ASSISTANCE FUNDING (1) Funds authorized for this program shall must not be used to cover administrative costs or the costs of test boring or core sampling.

(2) The department shall to the extent practicable establish a formula for allocating funds among eligible small ~~operators~~ operator permit applicants if available funds are less than those required to provide the services. This formula ~~shall~~ must include such factors as the applicant's:

(a) through (c) Remains the same.

(3) Funding must not be given unless it is clear that the applicant would not be restricted in any manner from receiving a permit. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

26.4.1228 SMALL MINER OPERATOR ASSISTANCE PROGRAM: APPLICANT LIABILITY (1) The applicant shall reimburse the department for the cost of the laboratory services performed pursuant to Rule 26.4.1224 if the applicant:

(a) through (b) Remains the same.

(c) fails to mine after obtaining a permit; or

(d) produces coal in excess of 100,000 tons during any year of mining under the permit for which the assistance is provided; consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit, whichever is shorter; or

(e) sells, transfers, or assigns the permit and the total actual and attributed production exceeds the 100,000-ton annual production limit during any consecutive 12-month period of the remaining term of the permit. Under this subsection, the applicant and its successor are jointly and severally obligated to reimburse the department.

(2) Remains the same. (AUTH: Sec. 82-4-204, 205; IMP, Sec. 82-4-221 MCA.)

26.4.1231 ABANDONED MINE LAND RECLAMATION: DEFINITIONS

For the purposes of ~~Rules~~ 26.4.1232 through 26.4.1242 the following definitions ~~shall~~ apply:

(1) "Abandoned mine land reclamation fund" means a separate fund established pursuant to ~~sections~~ 82-4-242, 82-4-323 and 82-4-424 for the purpose of accounting for monies granted by the ~~office of surface mining~~ federal coal regulatory authority under an approved state reclamation program and other monies authorized by these ~~regulations~~ rules to be deposited in the abandoned mine reclamation fund.

(2) through (6) Remains the same.

(a) where all mining processes have ceased and no current permit for continuing operations existed as of August 3, 1977, or, if a permit did exist on that date, but all mining processes had ceased, the permit has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance; and

(b) Remains the same.

(7) "Montana abandoned mine reclamation plan" means a plan approved by the ~~office of surface mining~~ federal coal regulatory authority under 30 CFR part 884.

(8) through (9) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1232 ABANDONED MINE LAND RECLAMATION: FUND

(1) Remains the same.

(2) Revenue to the fund ~~shall~~ includes:

(a) amounts granted to the state by ~~office of surface mining~~ the federal coal regulatory authority for purposes of conducting the Montana abandoned mine reclamation plan;

(b) through (e) Remains the same.

(3) Monies deposited in the fund ~~shall~~ must be used to carry out the Montana abandoned mine reclamation plan. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1234 ABANDONED MINE LAND RECLAMATION: RECLAMATION OBJECTIVES AND PRIORITIES

Abandoned mine land reclamation projects ~~shall~~ must meet one or more of the objectives stated in this subsection. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources ~~shall~~ must be given to projects meeting the higher of the following priority objectives:

(1) Remains the same.

(2) protection of public health, safety, and general welfare from adverse effects of past coal mining practices ~~which~~ that do not constitute an extreme danger;

(3) through (8) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1235 ABANDONED MINE LAND RECLAMATION: RECLAMATION PROJECT EVALUATION Proposed reclamation projects and completed reclamation work ~~shall~~ must be evaluated in terms of the factors stated in this rule. The factors ~~shall~~ must be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under Rule 26.4.1234. Completed reclamation ~~shall~~ must be evaluated in terms of the factors set forth below as a means of identifying conditions ~~which~~ that should be avoided, corrected, or improved in plans for future reclamation work. The factors include:

(1) the need for reclamation work to accomplish one or more specific reclamation objectives as stated in Rule 26.4.1234;

(2) the availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans ~~shall~~ must provide reasonable assurance of beneficial results without residual adverse impacts;

(3) the specific benefits of reclamation ~~which~~ that are desirable in the area in which the work will be carried out. Benefits to be considered include, but are not limited to:

(a) through (e) Remains the same.

(f) improvement of the use of natural resources, including post-reclamation land uses ~~which~~ that:

(i) through (4) Remains the same.

(5) the costs of reclamation. Consideration ~~shall~~ must be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(6) the availability of additional coal or other types of mineral or material resources within the project area ~~which~~ that:

(a) through (b) Remains the same.

(7) the acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with the applicable state, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located; and

(8) the probability of post-reclamation management, maintenance and control of the area consistent with the reclamation completed. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1236 ABANDONED MINE LAND RECLAMATION: CONSENT TO ENTER LANDS (1) The department shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent ~~shall~~ must be in the form of a signed statement by the owner of record or his authorized agent ~~which~~ that, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement may

must not include any commitment by the department to perform reclamation work nor to compensate the owner for entry.

(2) If the owner of the land to be entered for purpose of study or exploration will not provide consent to entry, the department may give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices ~~which~~ that may be harmful to the public health, safety, or general welfare. The notice ~~shall~~ must be by mail, return receipt requested, to the owner, if known, and any purchaser under contract for deed and ~~shall~~ must include a statement of the reasons why entry is believed necessary. If ~~neither the owner nor any purchaser under contract for deed is~~ not known, or none of the current mailing addresses of the owner-is-not are known, or ~~the owner-is-not~~ none of these persons are readily available, the notice ~~shall~~ must be posted in one or more places on the property to be entered where it is readily visible to the public. ~~and-advertised~~ The notice must also be published once in a newspaper of general circulation in the locality in which the land is located. Notice ~~shall~~ must be given at least 30 days before entry.

(3) The department shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice ~~shall~~ must be in writing and ~~shall~~ must be mailed, return receipt requested, to the owner, if known, and any purchaser under contract for deed, if known, with a copy of the findings required by 82-4-239(4). ~~If the no owner and no purchaser under contract for deed is not known or the current mailing addresses of the owner-is all of these persons are not known, notice shall~~ must be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper ~~shall~~ must include a statement of where the findings required by this rule may be inspected or obtained. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1237 ABANDONED MINE LAND RECLAMATION: LAND ELIGIBLE FOR ACQUISITION (1) Land adversely affected by past coal mining practices, including coal disposal sites and all coal refuse piles thereon, may be acquired with monies from the abandoned mine land reclamation fund if approved in advance by the ~~regional-director~~ federal coal regulatory authority, and ~~when if~~ acquisition of the lands meets the requirements of ~~section 82-4-239~~.

(2) The department, whenever acquiring land under this rule, ~~shall~~ may acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired ~~if~~ whenever:



(a) through (c) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1238 ABANDONED MINE LAND RECLAMATION: PROCEDURES FOR ACQUISITION (1) The department shall obtain an appraisal of the fair market value of all land or interest in land to be acquired from a professional appraiser. The appraisal ~~shall~~ must state the fair market value of the land as adversely affected by past mining and ~~shall~~ must otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-agency Land Acquisition Conference, 1973). A copy of this handbook is available at the main office of the department of state lands, Capitol Station, Helena, Montana 59620.

(2) When practical, acquisition ~~shall~~ must be by purchase from a willing seller. The amount paid for interests acquired ~~shall~~ must reflect the fair market value of the interests as adversely affected by past mining.

(3) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures ~~shall~~ must not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(4) When acquiring land under this part, the board shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq. 41 CFR Part 114-50; Solicitor of the Interior's Regulations for Approval of Title to Lands and Condemnation, 1 SRM 6.1 et seq; and regulations of the United States Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for federal public purposes. Copies of these documents are on file at the department of state lands, Capitol Station, Helena, Montana 59620.

(5) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1239 ABANDONED MINE LAND RECLAMATION: ACCEPTANCE OF GIFTS OF LAND (1) The board may accept donations of title to land or interest in land that is necessary for reclamation activities. A donation ~~shall~~ must not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(2) Offers to make a gift of such land or interest in land ~~shall~~ must be in writing and ~~shall~~ must include:

(a) through (d) Remains the same.

(i) The offeror is the ~~record~~ owner of record of the interest being offered;

(ii) through (e) Remains the same.

(3) If the offer is accepted, a deed of conveyance ~~shall~~ must be executed, acknowledged, and recorded. The deed ~~shall~~ must state that it is made "as a gift under the Montana Strip and Underground Mine Reclamation Act." Title to donated land

shall must be in the name of the state of Montana. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1240 ABANDONED MINE LAND RECLAMATION: MANAGEMENT OF ACQUIRED LANDS (1) Remains the same.

(2) Any user of land acquired under Rules 26.4.1237 through 26.4.1240 shall must be charged a use fee. The fee shall must be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the department for providing the benefit, whichever is appropriate.

(3) All use fees collected shall must be deposited in the fund in accordance with Rule 26.4.1232 unless previously appropriated by the legislature for the specific purpose of operating and maintaining improvement of the land. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1241 ABANDONED MINE LAND RECLAMATION: DISPOSITION OF RECLAIMED LANDS (1) Prior to the disposition of any land acquired under this rule, the board shall:

(a) publish a notice which that describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall must provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. ~~The~~ notice shall must also state that a public hearing will be held if requested by any person;

(b) after 30 days notice thereof in a newspaper of general circulation in the area, hold a public hearing if requested as a result of the public notice, which hearing shall must be scheduled at a time and place that affords local citizens and governments and the maximum opportunity to participate. ~~all~~ All comments received at the hearing shall must be recorded; and

(c) make a written finding that the proposed disposition is appropriate, ~~considering all comments received~~ and consistent with any local, state, or federal laws or regulations which apply, and that all comments received on the proposed disposition have been considered.

(2) The board may transfer, with approval of the ~~regional director~~ federal coal regulatory authority, the administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(a) through (b) Remains the same.

(3) The board with the approval of the ~~regional director~~ federal coal regulatory authority may sell land acquired under this part by public sale if retention is not in the public interest and if such land is suitable for industrial, commercial, residential, or recreational development and if such

development is consistent with local, state, or federal land use plans for the area in which the land is located. Land ~~shall~~ must be sold for not less than fair market value under a system of competitive bidding ~~which~~ that includes at a minimum:

(a) publication of a notice once a week for 4 consecutive weeks in a newspaper of general circulation in the locality in which the land is located. ~~The notice shall~~ must describe the land to be sold, state the appraised value, state any restrictive covenants ~~which~~ that will be a condition of the sale, and state the time and place of the sale; and

(b) Remains the same.

(4) All monies received from disposal of land under this subsection ~~shall~~ must be deposited in the fund. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1242 ABANDONED MINE LAND RECLAMATION: RECLAMATION ON PRIVATE LAND (1) Reclamation activities may be carried out on private land if a consent to enter is obtained under

Rule 26.4.1236 or if entry is made under section 82-4-239(4).

(2)(a) ~~A~~ The board shall obtain notarized appraisal of the full market value of private land to be reclaimed ~~shall be obtained by the board~~ from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in the handbook on "~~Uniform Appraisal Standards for Federal Land Acquisitions~~" (~~Interagency Land Acquisitions~~ Conference 1973). A copy of that handbook is on file at the department of state lands, Capitol Station, Helena, Montana 59620. The appraisal ~~shall~~ must be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal ~~shall~~ must be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal ~~shall~~ must state the full market value of the land as adversely affected by past mining.

(b) An appraisal of the full market value of all land reclaimed ~~shall~~ must be obtained after all reclamation activities have been completed. The appraisal ~~shall~~ must be obtained in accordance with paragraph subsection (a) of this subsection and ~~shall~~ must state the market value of the land as reclaimed.

(c) The landowner ~~is to~~ must be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and notice of whether a lien will or will not be filed in accordance with section 82-4-239(5).

(d) Appraisals for privately owned land ~~which~~ that fall under Rules 26.4.1237 through 26.4.1239 and this rule may be obtained from either an independent or staff professional appraiser.

(3)(a) The department may place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the appraisals obtained under subsection

(2) above.

(i) A lien ~~shall~~ must not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation ~~which~~ that necessitated the reclamation work.

(ii) through (iii) Remains the same.

(b) ~~If~~ Whenever a lien is to be filed, the department shall, within 6 months after completion of the reclamation work, file a statement in the office of the county clerk and recorder of the county in which the property is located. Such statement ~~shall~~ must consist of an account of monies expended for the reclamation work, together with notarized copies of the appraisals obtained under ~~subsection~~ (2) above.

(4) The department shall maintain or renew a lien on private property from time to time as may be required under law and shall satisfy the lien at the time of transfer of ownership.

(5) Monies derived from the satisfaction of liens established under this rule ~~shall~~ must be deposited in the Montana abandoned mine reclamation fund. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-239 MCA.)

26.4.1246 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESPONSIBILITIES OF THE COMMISSIONER The commissioner shall:

(1) provide advice, assistance, and guidance to ~~all~~ each state employees, to determine if the employee is required to file a statement pursuant to ~~this Rule~~ 26.4.1249;

(2) Remains the same.

(3) resolve prohibited financial interests ~~situations~~ by ordering or initiating remedial action or by reporting the violations to the ~~regional director who is responsible for initiating action to impose the penalties of the act~~ federal coal regulatory authority;

(4) certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(5) submit to the ~~regional director~~ federal coal regulatory authority such statistics and information as he or she may request to enable preparation of the required annual report to congress;

(6) submit to the ~~director~~ federal coal regulatory authority the initial listing and the subsequent annual listings of positions as required in ~~this Rule~~ 26.4.1249;

(7) through (9) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1247 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESPONSIBILITIES OF EMPLOYEES ~~Department~~ State employees performing any duties or functions under the ~~act~~ shall:

(1) Remains the same.

(2) file a fully completed statement of employment and financial interest ~~or~~ upon entrance to duty and annually thereafter on the specified filing date; and

(3) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1248 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS:  
DEFINITIONS For purposes of Rules 26.4.1246 through 26.4.1254, the following ~~terms shall mean the following~~ definitions apply:

(1) through (2) Remains the same.

(3) "~~Indirect~~ financial interest" means the same financial relationships as for direct ownership, ~~but where except~~ that the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee ~~should does not be deemed to~~ have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(4) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1249 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS:  
FILING OF STATEMENT (1) (a) Any state employee who performs any function or duty under the ~~a~~Act is required to file a statement of employment and financial interests.

(b) The commissioner shall prepare a list of those positions within the department and other departments that have employees performing any functions under the Act and the title of bureaus or divisions within the those departments which that do not perform any functions or duties under the ~~a~~Act.

(c) The commissioner shall submit to the ~~regional director~~ federal coal regulatory authority the listing of positions that do not involve performance of any functions or duties under the ~~a~~Act.

(d) The commissioner shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the ~~regional director~~ federal coal regulatory authority and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required ~~shall~~ must be submitted to the ~~regional director~~ federal coal regulatory authority no later than September 30 of each year. The commissioner may revise the listing by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the law or Rules 26.4.1246 through 26.4.1254. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

(2) (a) through (b) Remains the same.

(c) A ~~New employees are~~ is not required to file an annual statement on the subsequent annual filing date if this date occurs within 2 months after ~~their~~ his or her initial statement was filed.

(3) The commissioner shall file his or her statement with the ~~regional-director~~ federal coal regulatory authority. All other employees shall file their statement with the commissioner. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1250 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: CONTENTS OF STATEMENT (1) Each employee who performs any function or duty under the Act shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report ~~shall~~ must be on OSM-Form-705-1 the form currently in use by the federal coal regulatory authority, if that form meets the requirements of this rule.

(2) through (4)(b) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1251 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: EFFECT OF FAILURE TO FILE STATEMENT (1) Failure to file the statement of employment and financial interest as required in Rule 26.4.1249 subjects the employee to removal from his or her position. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1252 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: GIFTS AND GRATUITIES (1) Except as provided in subsection (2), an employees shall who performs any function or duty under the Act may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which that:

(a) through (b) Remains the same.

(2) The prohibitions in subsection (1) do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, whenever the circumstances make it clear that it is those relationships rather than the business of the persons concerned which that are the motivating factors. An employee may accept:

(a) through (b) Remains the same.

(3) An employee who violates any of the provisions of this ~~subsection-shall-be~~ rule is subject to suspension without pay for a single violation and termination for repeated violations in accordance with existing rules on policies for termination and suspension. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1253 RFSTRICIONS ON EMPLOYEE FINANCIAL INTERESTS: RESOLUTION OF PROHIBITED INTERESTS OF EMPLOYEES (1) If

Whenever an employee who performs any function or duty under the Act has a prohibited financial interest, the commissioner shall promptly advise the employee that remedial action which that will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

- (a) reassignment of the employee to a position which performs no function or duty under the Act; or
- (b) divestiture of the prohibited financial interest; or
- (c) other appropriate action which that either eliminates the prohibited interest or eliminates the situation which ~~creates~~ creating the conflict.

(3) Failure of the employee to comply with an order of the commissioner to resolve the prohibited financial interest may result in suspension or termination of the employee subject to ~~appeal to the board~~ the employee grievance procedure. An Employees have has 30 calendar days to exercise this right to file a grievance before disciplinary action is initiated taken. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1254 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESOLUTION OF PROHIBITED FINANCIAL INTERESTS OF THE COMMISSIONER (1) If it is determined that the commissioner has a prohibited financial interest, the governor shall promptly advise the commissioner that remedial action which will resolve the prohibited interest is required within 90 days. Remedial action for the commissioner should be consistent with the procedures prescribed for other state employees.

(2) If the commissioner fails to resolve a prohibited financial interest as directed by the governor, the governor shall immediately report this fact to the ~~regional-director~~ federal coal regulatory authority and shall take whatever further action he is deemed appropriate. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-254 MCA.)

26.4.1260 REQUIREMENTS FOR THE CONDUCT OF BLASTING OPERATIONS (1) ~~No later than twelve months after the effective date of the U.S. Department of the Interior, Office of Surface Mining's final approval of blaster certification program for Montana,~~ Each operator shall conduct each blasting operation under direction of an individual who has been certified by the department pursuant to ARM 26.4.1261 and who is familiar with the operation's blasting plan and site-specific blasting performance standards. The certified blaster's responsibilities include, but are not limited to, determining blasting pattern, hole pattern, type and quantity of explosives, maintenance of blasting records, and safety of employees involved in the storage, transportation, and use of explosives.

(2) A certified blaster may not delegate the direction of blasting operations to any individual who is not a certified blaster.

(3) Remains the same.

(4) A certified blaster shall immediately exhibit on-site or at the mine office his certificate to any authorized representative of the department or the ~~Office of Surface Mining~~ federal coal regulatory authority upon request.

(5) ~~An Operator~~ shall require that persons who are not certified blasters receive direction and on-the-job training from a certified blaster before those persons assist in the storage, transportation, and use of explosives. (AUTH: Sec. 82-4-204(4), 82-4-205(7), and 82-4-231(3) (e) MCA; IMP, Sec. 82-4-231(3) (e) MCA.)

26.4.1261 CERTIFICATION OF BLASTERS (1)(a) A ~~persons~~ seeking certification as a blaster shall submit to the department an application on a form provided by the department. The applicant ~~must~~ shall include a verifiable statement that he has successfully completed a training course, provided by the department, the operator, or other person, meeting the requirements of ARM 26.4.1262(2) and incorporating the training manual prepared by the department.

(b) The department shall make available to the public, upon request and payment of a reasonable fee, a copy of the training manual. The training manual ~~shall~~ must be updated yearly and these updates ~~shall~~ must also be available upon request and payment of a reasonable fee. ~~However, before adoption of the initial manual, the department shall circulate a draft for public review.~~

(2) through (c)(1) Remains the same.

(ii) achieves a grade of 80% on an examination administered by the department. The examination ~~shall~~ must, at a minimum, reflect the training manual prepared by the department and examine in the topics set forth in ARM 26.4.1262. The examination ~~shall~~ must also incorporate an equally weighted section that covers practical field experience on blasting procedures and occurrences. An applicant who fails may retake the examination. If the applicant fails the examination a second time, he ~~must~~ shall successfully complete a blaster training course again and reapply for certification before retaking the examination.

(3) Remains the same.

(4) A ~~C~~certification shall expire three years after issuance. The department shall recertify if the blaster:

(a) through (c) Remains the same.

(5) In lieu of the provisions of sections (1) and (2), the department shall certify any person who has a current state or federal blaster certificate under any program approved by the ~~Department of Interior~~ federal coal regulatory authority under 30 C.F.R. Part 850. The period of the department's certification ~~shall~~ must be coextensive with the period of certification under the other program but shall not exceed ~~three~~ 3 years. (AUTH: Sec. 82-4-204(4), 82-4-205(7), and 82-4-231(3) (e) MCA; IMP, Sec. 82-4-231(3) (e) MCA.)

26.4.1262 BLASTER TRAINING COURSES (1) In order to



qualify for certification or recertification, an applicant ~~must~~ shall successfully complete training or refresher courses meeting the requirements of section (2) or (3) below.

(2) through (m)(iv) Remains the same.

(3) A blaster refresher course must familiarize the blaster with new developments contained in the yearly supplement to the department's training manual and ~~shall~~ must refresh the blaster's knowledge in one or more of the topics listed in section (2) above. (AUTH: Sec. 82-4-204(4), 82-4-205(7), and 82-4-231(3)(e) MCA; IMP, Sec. 82-4-231(3)(e) MCA.)

26.4.1263 SUSPENSION OR REVOCATION OF BLASTER CERTIFICATION (1) The following are grounds for suspension or revocation of blaster certification:

(a) through (e) Remains the same.

(f) failure to present blaster certification upon request of the department or ~~Office of Surface Mining~~ federal coal regulatory authority personnel;

(g) through (2) Remains the same.

(3) If the department has probable cause to believe that a certified blaster has committed any of the acts prohibited in section (1) above and that the blaster's certification should or must be suspended or revoked, the department shall notify the blaster and his employer in writing by certified mail at the address contained in the blaster's application for certification or at a subsequent address of which the blaster has notified the department in writing. The blaster does not defeat service by refusing to accept or failing to pick up the notice. The notice ~~shall~~ must advise the blaster of the department's proposed action, the alleged facts upon which the proposed action is based, and the blaster's right to request a hearing. If the department determines that suspension of the blaster's certification is reasonably necessary in order to protect human life or limb or the environment, it may suspend the certification until the hearing is held; provided, however, that no such suspension may be in effect for longer than 45 days. At the close of the hearing, the hearing officer may, based on a finding that the department will probably prevail and that continued suspension is reasonably necessary, continue the suspension until a final decision is made. (AUTH: Sec. 82-4-204(4), 82-4-205(7), and 82-4-231(3)(e) MCA; IMP, Sec. 82-4-231(3)(e) MCA.)

RULE XIII MODIFICATION OF EXISTING PERMITS: ISSUANCE OF REVISIONS AND PERMITS (1) By [the date that is 2 years after the effective date of this rule] each operator and each test pit prospector shall submit to the department:

(a) an index to the existing permit cross-referencing each section of the permit to sub-chapters 3 through 12, as they read on [the day before the effective date of this rule] and as they read on [the effective date of this rule];

(b) a modified table of contents for the existing permit;

(c) maps showing each portion of the permit area on which each of the following had been completed as of 11:59 p.m. on [the day before the effective date of this rule]:

(i) removal of overburden only;

(ii) removal of overburden and coal only;

(iii) removal of overburden and coal and backfilling and grading only;

(iv) removal of overburden and coal, backfilling and grading, and soiling only; and

(v) removal of overburden and coal, backfilling and grading, soiling and seeding and planting;

(d) an application for all permit revisions necessary to bring the permit and operations conducted thereunder into compliance with [this rule] and Rules I through XII.

(2) A permit revision application submitted solely for purposes of subsection (1)(d) above is a minor revision for purposes of sub-chapter 4. The department shall issue written findings granting or denying the application within 5 months of its receipt.

(3) No permittee may continue to mine under an operating permit after [the date that is 30 months after the effective date of this rule] unless the permit has been revised to comply with sub-chapters 3 through 12, as amended [effective date of this rule].

(4) As of the date that a permit is revised to comply with sub-chapters 3 through 12, as amended on [the effective date of this rule], the permittee shall conduct all operations in compliance with the permit and sub-chapters 3 through 12, as amended, except that:

(a) any area in which backfilling and grading operations had been completed on [the day before the effective date of this rule] is subject to the backfilling and grading requirements as they read on that date;

(b) any area in which soiling operations had been completed on [the day before the effective date of this rule] is subject to the soiling requirements as they read on that date; and

(c) any area for which the final minimum period of responsibility for establishing vegetation, as provided in ARM 26.4.725(1), had commenced on or before [the day before the effective date of this rule] is subject to the seeding and planting and related requirements as they read on that date.

(5) Each new permit and each amendment to an existing permit issued after [the day before the effective date of this

rule) must be in compliance with sub-chapters 3 through 12 as they read on [the effective date of this rule]. (AUTH: Sec. 82-4-205 MCA; IMP, Sec. 82-4-221, 222 MCA.)

26.4.1302 NONCONFORMING STRUCTURE (1) No application for a permit or revision under sub-chapter 3 or 4 which proposes to use an existing structure which does not conform to the design criteria of this sub-chapter ~~shall~~ may be approved ~~and~~ unless the department finds, in writing, on the basis of information set forth in the application that:

(a) through (3) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-231 MCA.)

26.4.1303 RULES APPLICABLE TO COAL OPERATIONS ONLY

(1) The following rules are applicable only to the strip and under-ground mining of coal only: Rules 26.4.763 (Coal Conservation), 26.4.801 through 26.4.807 (Alluvial Valley Floors), 26.4.811 through 26.4.816 (Prime Farmlands), 26.4.1131 through 26.4.1138 (Areas Upon Which Mining Is Prohibited), 26.4.1141 through 26.4.1148 (Designation of Lands Unsuitable), 26.4.1221 through 26.4.1228 (Small ~~Miner~~ Operator Assistance Program), and 26.4.1231 through 26.4.1242 (Abandoned Mine Land Reclamation) and those portions of sub-chapter 3 that apply to these rules. In addition, certain portions of other rules may be applicable only to coal mining only if the text of the rule clearly so indicates. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-227, 228, 231, 232, 233, 235 MCA.)

26.4.1309 LITIGATION EXPENSES: CONTENTS OF PETITION AND ANSWER (1) A petition for costs, expenses, or attorney fees ~~shall~~ must include the name of the person from whom costs and expenses are sought and the following ~~shall~~ must be submitted in support of the petition:

(a) an affidavit setting forth in detail all costs and expenses including attorney fees reasonably incurred for or in connection with, the person's participation in the ~~proceedings~~ proceedings;

(b) through (2) Remains the same. (AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-251, MCA.)

4. The repealers, new rules, and existing rule amendments are necessary for a number of reasons. The Office of Surface Mining, U.S. Department of the Interior (OSM) is authorized to promulgate rules with which each state must comply in order to continue regulating strip and underground coal mining. OSM approved the existing Montana rules in 1980. Since that time, OSM has changed the federal rules and is now requiring Montana to change its rules. Much of the proposed rulemaking is in response to these federal requirements.

Other changes are being made to conform the rules to Chapter 437, Laws of 1981; Chapter 499 and 526, Laws of 1983; Chapters 288 and 289, Laws of 1985; and Chapter 70, Laws of

1987.

The change to 26.4.303(15) is necessary because the Montana Supreme Court struck down that rule in Western Energy Company v. Genie Land Company, DSL, 44 St.Rep. 904, 737 P.2d 478 (1987). That section is being replaced with similar language because of federal requirements.

Additional changes are necessary to keep pace with technology, which has advanced during the eight years since these rules were adopted. Other changes are being made to eliminate requirements and procedures that experience in administering the program has demonstrated are unnecessary.


A number of changes are necessary to reorganize, consolidate, and eliminate duplication in rules dealing with similar subject matters in order to make the rules better organized and more easily understood.

Finally, many changes are necessary to correct grammatical, cross-referencing, and typographical errors in the original rules.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bonnie Lovelace, Chief, Coal and Uranium Bureau, Department of State Lands, Capitol Station, Helena, Montana 59620, no later than August 29, 1988. To guarantee consideration, mailed comments must be postmarked no later than August 29, 1988.

6. Dennis Hemmer, Commissioner of Department of State Lands, has been designated to preside over and conduct the hearing.

7. The authority of the Board and Department to make the proposed new rules, rule amendments, and repeals is based on sections 82-4-204, MCA, and 82-4-205, MCA; and they implement Title 82, Chapter 4, Part 2.

  
\_\_\_\_\_  
Dennis Hemmer, Commissioner  
Department of State Lands

Certified to the Secretary of State July 5, 1988.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- )	NOTICE OF PUBLIC HEARING on
MENT of ARM 42.25.1116 re- )	ARM 42.25.1116 relating to
lating to Mines Net Proceeds)	Mines Net Proceeds

TO: All Interested Persons:

1. On August 9, 1988 at 2:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana to consider the amendment of the above-referenced rule relating to Mines Net Proceeds. This amendment was noticed for adoption on May 26, 1988 with no public hearing contemplated. A request for public hearing has been received from the Montana Mining Association. This request represents more than 10% of the persons directly affected by the proposed amendment. Therefore, the amendment is now being noticed for public hearing as stated above.

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

42.25.1116 TRANSPORTATION EXPENSES (1) Cost of transporting crude ore or deposit to mill, smelter, or reduction works may be deducted in computing net proceeds as provided under ARM 42.25.1102 and 42.25.1103. Included in these deductions shall be costs actually expended for hauling, freight charges, and other expenses connected related directly with to transporting the ore or deposit from the mine to the mill, smelter, or reduction works. Transportation expenses incurred beyond the point of mineral valuation for net proceeds purposes are not deductible. AUTH, 15-23-503 MCA; IMP, 15-23-503 MCA.

3. ARM 42.25.1116 is proposed to be amended to eliminate the reference to smelters. This language relates to metals which are no longer subject to the Mines Net Proceeds Tax. When metal mines became subject to the Metal Mines Gross Proceeds Tax this net proceeds rule was not changed.


The last sentence was added to emphasize the fact that expenses, in this case transportation, and valuation stop at the same point. The Montana Supreme Court acknowledged this in Pfizer, Inc. v. Madison County in 1973.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than August 12, 1988.

5. Paul Van Tricht, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT	)	NOTICE OF THE AMENDMENT
of Rule 2.5.505 pertaining to	)	OF RULE 2.5.505, MISTAKES
mistakes in bids	)	IN BIDS

TO: All Interested Persons.

1. On May 26, 1988 the Department of Administration published notice of the proposed amendment of Rule 2.5.505 pertaining to minor mistakes in bids on page 916 of the 1988 Montana Administrative Register, issue number 10.

2. The State has often had to accept higher bids when the low bid has been submitted unsigned. It is in the best interest of the State to declare unsigned bids as mistakes.

3. The Department has amended Rule 2.5.505 as proposed.

4. The Department received no written comments.

DEPARTMENT OF ADMINISTRATION



Ellen Feaver, Director

Certified to the Secretary of State June 30, 1988.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA


IN THE MATTER OF THE CORRECTED ) NOTICE OF CORRECTED  
ADOPTION of ARM 2.5.603 relating ) ADOPTION OF ARM 2.5.603  
to small purchases of supplies )  
and services )

TO: All Interested Persons.

1. On July 30, 1987, the Department of Administration, Procurement and Printing Division published notice to amend and adopt rule 2.5.603 of the above stated rule on page 1151 in issue #14 of the 1987 Montana Administrative Register and adopted on November 27, 1987, MAR page 2144.

2. Section (8), renumbered (9) was inadvertently omitted from the page revisions. The corrected section is being augmented by this notice and replacement pages have been submitted for the June 30, 1988 replacement changes. The effective date of the rule is not changed by these actions.

DEPARTMENT OF ADMINISTRATION

  
\_\_\_\_\_  
Ellen Feaver, Director

Certified to the Secretary of State June 27, 1988.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF VETERINARY MEDICINE

In the matter of the amendment     ) NOTICE OF AMENDMENT OF 8.  
of a rule pertaining to fees         ) 64.402 FEE SCHEDULE

TO: All Interested Persons:

1. On May 26, 1988, the Board of Veterinary Medicine published a notice of proposed amendment of the above-stated rule at page 939, 1988 Montana Administrative Register, issue number 10.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF VETERINARY MEDICINE  
WILLIAM J. QUINN, D.V.M.  
PRESIDENT

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

Certified to the Secretary of State, July 5, 1988.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MILK CONTROL

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of rule 8.86.301(6)(g)(i)(B) ) RULE 8.86.301  
(I),(III),(IV) and (C)(I) as )  
it relates to the class I ) PRICING RULES  
price formula )  
 ) DOCKET # 84-88

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT  
(SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED  
PERSONS:

1. On May 26, 1988 the Montana Board of Milk Control published notice of a proposed amendment of rule 8.86.301(6)(g)(i)(B)(I),(III),(IV) and (C)(I) as it relates to the class I price formula. Notice was published at page 846 of the 1988 Montana Administrative Register, issue no. 9 as MAR Notice No. 8-86-24.

2. The board has amended the rule exactly as originally proposed except for the following change: (text of matter stricken is interlined and new matter added is underlined)

**"8.86.301 PRICING RULES**

Subsections (1) through (6)(g)(i)(B) remain the same as originally proposed.

(C) Wholesale dock pickup or delivery price:

(I) Delivery shall be FOB the processing plant's dock, or processing plant's warehouse dock.

(II) . . ." remain the same as before proposed.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

3. Principal reasons for the adoption of the amendments to the rule were as follows:

a) The rule restricting service and preventing licensees from earning a living has been proven to be unenforceable in court.

b) Restricting service creates an undesirable competitive situation, because the product is perishable and must be moved so it can be sold. Jobbers and small distributors need the freedom to compete on service in order to survive.

c) Eliminating service restriction is also desirable because the dairy gets the blame when the store fails to stock the shelves.

d) Substantial elements of industry have been unwilling to comply with the provisions of the rule in its previous form.

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e) The nature and subject of the rule makes it extremely difficult and costly to police.

4. Principal reasons given against amendment of the rule was that:

a) Some jobbers can not afford to provide the additional service permitted by amendment of the rule.

5. The principal reasons for denying objections were as follows:

a) The board felt that a regulation which numerous people were unwilling to abide by and which is difficult to enforce does not serve a useful purpose.

b) The board did not feel that regulation which limits one's ability to remain in business is beneficial to the public's health and welfare, nor is it enforceable in the courts.

c) The board felt eliminating the regulations could promote stabilization of the marketing of milk.

d) The amendment as adopted does not require jobbers and small distributors to service store shelves, it gives them that option.

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross  
WILLIAM E. ROSS, Bureau Chief

Certified to the Secretary of State July 5, 1988.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF REPEAL OF ARM 10.58.101,  
Repeal of Advisory ) ADVISORY GROUP  
Group )

TO: All Interested Persons

1. On April 14, 1988, the Board of Public Education published notice of the proposed repeal concerning ARM 10.58.101, Advisory Group, on page 637 of the 1988 Montana Administrative Register, issue number 7.

2. The Board has repealed the rule as proposed.

3. No public hearing was held and no written comments were received prior to May 13, 1988, the date on which the Board closed the hearing record.

In the matter of the) NOTICE OF ADOPTION OF ARM 10.66.104,  
adoption of Fees ) FEES

TO: All Interested Persons

1. On April 14, 1988, the Board of Public Education published notice of a proposed amendment concerning ARM 10.66.104, Fees, on page 637 of the 1988 Montana Administrative Register, issue number 7.

2. The Board has amended the rule as proposed.

3. No public hearing was held and no written comments were received prior to May 13, 1988, the date on which the Board closed the hearing record.

In the matter of the ) NOTICE OF ADOPTION OF ARM 10.65.201,  
adoption of Policy ) POLICY STATEMENT ON KINDERGARTEN  
Statement on Kinder- ) ACCREDITATION AND SCHEDULE  
garten Accreditation ) VARIANCES, ARM 10.65.202, LOCAL  
and Schedule Vari- ) DISTRICT PARTICIPATION, AND ARM  
ances, Local District) 10.67.101, STATE AID DISTRIBUTION  
Participation and ) SCHEDULE  
State Aid Distribu- )  
tion Schedule )

TO: All Interested Persons

1. On April 14, 1988, the Board of Public Education published notice of the proposed amendment concerning Policy Statement on Kindergarten Accreditation and Schedule Variances, Local District Participation and State Aid Distribution Schedule, on page 639 of the 1988 Montana Administrative Register, issue number 7.

2. The Board has amended the rules as proposed, with the addition to ARM 10.65.201 and ARM 10.65.202 that the effective date be September 1, 1988, to coincide with other school deadline dates.

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3. At the public hearing which was held May 4, 1988, one person testified to request consistent effective dates with other rules and no written comments were received in the matter of ARM 10.65.201, Policy Statement on Kindergarten Accreditation and Schedule Variances, and ARM 10.65.202, Local District Participation. The Board considered the comment and determined the effective date to be September 1, 1988. In the matter of ARM 10.67.101, State Aid Distribution Schedule, one person testified as a proponent, two testified as opponents, and one testified with general information. One written comment was received in opposition prior to May 13, 1988, the date on which the Board closed the hearing record. Opponents discussed distribution dates that would better serve the needs of the school districts. The Board appointed a task force to investigate financial issues, discussed financial implications with the Office of Budget and Program Planning and the Legislative Finance Committee. The Board considered all comments and determined time elements in the rule to best meet the needs of school districts with the least impact on state finances.

*Alan Nicholson*  
ALAN NICHOLSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

BY:

*Claudette Morton*

Certified to the Secretary of State July 5, 1988.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION
proposed new rules I through XII	)	OF
concerning procedures for adminis-	)	NEW RULES
tration of the WIC supplemental	)	
food program	)	
	)	(Women, Infants & Children)

To: All Interested Persons

1. On February 25, 1988, at page 346 of the 1988 Montana Administrative Register, the Department published notice of a public hearing on the proposed new rules regarding the administration of the WIC supplemental food program.

2. The Department has adopted the new rules with the following changes, which include an additional rule (NEW RULE XIII) that lists the Code of Federal Regulations (CFR) edition dates for CFR material incorporated by reference in these rules (new material is underlined; material to be stricken is interlined):

NEW RULE I (to be codified as 16.26.101) PURPOSE OF RULES

(1) The purpose of the rules in subchapters 1 and 2 of this chapter is to provide a clear procedural framework under which the department administers the federal special supplemental food program for women, infants, and children, the so-called "WIC" program which is sponsored by the food and nutrition service (FNS) of the United States department of agriculture (USDA) and which has been administered in Montana by the department of health and environmental sciences since approximately 1976 1974.

NEW RULE XIII (to be codified as 16.26.102) INCORPORATIONS BY REFERENCE (1) This chapter of Title 16, ARM establishes a state WIC program which is essentially the equivalent of the federal WIC program.

(2) In view of the requirements of equivalence with the federal program and in order to simplify the rulemaking process and make the rules less cumbersome, the department has relied heavily upon incorporation and adoption by reference of federal requirements as set forth in Title 7 of the Code of Federal Regulations (CFR).

(3) Where the department has adopted a federal regulation by reference, the following shall apply:

(a) References in the federal regulations to "Administrator" or "Regional Administrator", or the like, should be read to mean "department".

(b) Where the department incorporates by reference a subpart of a federal regulation, both the subpart and its constituent sections and subsections are also incorporated by reference.

(4) All of the incorporations by reference of federal agency rules are listed below by state rule number, together with the CFR edition date. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

<u>State Rule</u>	<u>Federal Rule Incorporated</u>	<u>CFR Edition Date</u>
<u>16.26. . . .</u>	<u>7 CFR . . . .</u>	
<u>103</u>	<u>Parts 15, subparts A &amp; B;</u> <u>Part 246;</u> <u>and Part 3015</u>	<u>January 1, 1988</u>
<u>105</u>	<u>246.4, 246.5, 246.10,</u> <u>246.14(b) &amp; (c); and</u> <u>Part 3015</u>	<u>January 1, 1988</u>
<u>201</u>	<u>246.5(a)-(e)</u>	<u>January 1, 1988</u>
<u>202</u>	<u>246.6</u>	<u>January 1, 1988</u>
<u>203</u>	<u>246.5(d)(1) and 246.18</u>	<u>January 1, 1988</u>
<u>301</u>	<u>246.12(e)-(o)</u>	<u>January 1, 1988</u>
<u>302</u>	<u>246.18</u>	<u>January 1, 1988</u>
<u>303</u>	<u>246.12(f)</u>	<u>January 1, 1988</u>
<u>401</u>	<u>246.9</u>	<u>January 1, 1988</u>
<u>402</u>	<u>246.18</u>	<u>January 1, 1988</u>

(5) All material which is incorporated by reference may be obtained from the Family/Maternal and Child Health Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

AUTH. 50-1-202, MCA

IMP. 50-1-202, MCA

NEW RULE II (to be codified as 16.26.103) PROGRAM ADMINISTRATION AND GUIDANCE (1) As the state agency to which the USDA has delegated the administration of the WIC program, the department is responsible for the effective and efficient administration of the program in accordance with the USDA program regulations set forth in 7 CFR Part 246, USDA's regulations governing nondiscrimination the WIC program; 7 CFR Parts 15, 15a, and 15b subparts A and B, USDA's regulations governing nondiscrimination; and 7 CFR Part 3015, USDA's regulations governing the administration of grants {7-CFR-Part-3015}.

(2) In addition to the documents referred to in section

(1) above, the department, as the state agency to which the USDA has delegated the WIC program, also receives numerous policies, forms, guidelines, and instructions from the USDA food and nutrition service (FNS) issued under the FNS directives management system. The department has assembled such policies, forms, guidelines, and instructions (and the state forms and guidelines required by such directives) into two three department documents:

(a) Same as proposed.

(b) "Guidelines on Financial Management and Operations of the WIC Program in Montana" (January 1988 edition), a series of instructions, guidelines, and interpretations developed by the USDA and periodically received by the department, to which the department refers in resolving financial management issues under the WIC program, including but not limited to financial management issues. This document--which is available--to local agencies--is--advisory in--nature and does not establish mandatory requirements upon local agencies, food vendors, or program participants:

(3) The department hereby adopts and incorporates herein by reference the following:

(a) 7 CFR Part 246, which are USDA regulations governing nondiscrimination--~~(7-CFR--Parts 15,--15a,--and 15b)~~ the WIC program;

(b) 7 CFR Part 15, subparts A and B, which are USDA regulations governing nondiscrimination;

~~(b)(c)~~ Same as proposed, but renumbered.

~~(e)(d)~~ Same as proposed, but renumbered.

~~(d)(e)~~ Copies of these materials may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE III (to be codified as 16.26.104) NUTRITION SERVICES STANDARDS (1)-(3) Same as proposed.

(4) The department hereby adopts and incorporates herein by reference the following documents:

(a)-(b) Same as proposed.

(c) "Weighing and Measuring Children: A Training Manual for Supervisory Personnel" (November 1980 edition), which is a federal department of health and human services reference publication concerning standardized methods for weighing and measuring children; and

(d) Same as proposed.

(e) Copies of these documents may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE IV (to be codified as 16.26.105) DEFINITIONS

(1)-(12) Same as proposed.

(13) "Dual participation" means simultaneous participation



in the program in ~~one or~~ more than one WIC clinic.

(14)-(51) Same as proposed.

(52) The department hereby incorporates herein by reference the following:

(a)-(b) Same as proposed.

(c) 7 CFR 246.10, which is a federal agency WIC regulation concerning the ~~food--delivery--system~~ supplemental foods prescribed for eligible persons;

(d) 7 CFR 246.14(b) and (c), which is a federal agency WIC regulation concerning the ~~distribution-of--funds allowable~~ administrative and program services costs;

(e) 7 CFR Part 3015, which is a federal agency regulation ~~contains containing the United States department--of health and human services~~ USDA's uniform federal assistance regulations. Part 3015 implements the policies established by the office of management and budget (OMB) in circulars A-21, A-87, A-102, A-110, and A-122, and A-128, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977.

(f)-(h) Same as proposed.

(i) Copies of the above materials may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE V (to be codified as 16.26.201) SELECTION OF LOCAL AGENCIES (1) In selecting new local agencies, the department will apply the criteria in 7 CFR 246.5(a) through ~~(d)~~ (e) together with the following criteria:

(a)-(c) Same as proposed.

(2) The department hereby adopts and incorporates herein by reference 7 CFR 246.5(a) through (e), which is a federal agency rule setting forth requirements and procedures for local agency selection and the expansion, reduction, and disqualification of participating local agencies. Copies of 7 CFR 246.5(a) through (e) may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE VI (to be codified as 16.26.202) AGREEMENTS WITH LOCAL AGENCIES (1) The department hereby adopts and incorporates herein by reference 7 CFR 246.6, which is a federal agency rule setting forth terms and requirements for agreements between the department and local agencies. Copies of 7 CFR 246.6 may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE VII (to be codified as 16.26.203) PERIODIC REVIEW AND DISQUALIFICATION OF LOCAL AGENCIES

(1)-(3) Same as proposed.

(4) The department hereby adopts and incorporates herein by reference the following:

(a)-(b) Same as proposed.

(c) Copies of 7 CFR 246.18 and 7 CFR 246.5(d)(1) may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE VIII (to be codified as 16.26.301) REQUIREMENTS FOR LOCAL AGENCY SELECTION OF FOOD VENDORS

(1) In selecting food vendors to participate in the program, local agencies shall apply the requirements of 7 CFR 246.12(e) through (o), and the following criteria:

(a) whether the place of the vendor's business is permanent; no "~~rolling~~" stores on wheels may be allowed;

(b)-(e) Same as proposed.

(2) The department hereby adopts and incorporates herein by reference the following:

(a) 7 CFR 246.12(e) through (o), which is a federal agency rule setting forth the authorization of food vendors; requirements for food vendor agreements; periodic review of food vendor qualifications; guidelines for food vendor training; monitoring of food vendors; participant and vendor complaints and sanctions; requirements for control and reconciliation of food instruments; and payment to food vendors.

(b) Copies of 7 CFR 246.12(e) through (o) may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE IX (to be codified as 16.26.302) PERIODIC REVIEW AND DISQUALIFICATION OF FOOD VENDORS

(1) The department (or local agency in consultation with the department), before reauthorization, shall conduct periodic reviews of the operations of participating food vendors. In conducting such reviews, the department or local agency may utilize an "educational buy" or a "compliance buy" as described in the "1988 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (July 1987 edition), and shall consider the following:

(a)-(d) Same as proposed.

(e) on-site follow-up to subsections (2)(a) (1)(a) and (d) above when warranted by incomplete information or complaint;

(2)-(3) Same as proposed.

(4) The department hereby adopts and incorporates herein by reference the following:

(a)-(b) Same as proposed.

(c) Copies of these documents may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE X (to be codified as 16.26.303) AGREEMENTS WITH FOOD VENDORS (1) The department hereby adopts and incorporates herein by reference 7 CFR 246.12(f), which is a federal agency rule setting forth terms and requirements for agreements between the department and food vendors. Copies of this document may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE XI (to be codified as 16.26.401) APPEALS BY PROGRAM PARTICIPANTS (1)-(2) Same as proposed.

(3) The department hereby incorporates herein by reference the following:

(a)-(b) Same as proposed.

(c) Copies of the above documents may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

NEW RULE XII (to be codified as 16.26.402) APPEALS BY LOCAL AGENCIES AND FOOD VENDORS

(1)-(2) Same as proposed.

(3) The department hereby adopts and incorporates herein by reference the following:

(a)-(b) Same as proposed.

(c) Copies of 7 CFR 246.18 and the local agency and food vendor fair hearing provisions of the "1988 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (July 1987 edition) may be obtained from the Family/Maternal and Child Health Services Bureau, WIC Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

3. Comments received by the department and the department's responses follow:

a. Comment: Mary Feuersinger, R.D., Missoula City-County Health Department, sent a document dated May 3, 1988, received by the department on May 4, 1988, which contained numerous comments about WIC program policies, procedures, and plans, along with specific comments relevant to the adoption of the proposed rules. Only those portions identifiable as relating directly to the proposed rules will be addressed. Ms. Feuersinger notes that "several definitions described in NEW RULE

IV', addressed in 29, 30, 31, 32 are functions protected under the Dietetics/Nutrition Practice Act of the State of Montana . . . . Staff other than registered dietitians are now performing this function in WIC clinics. This appears to be in violation of the newly adopted state law."

Further, Ms. Feuersinger notes that "Number 36 refers to postpartum woman as a woman up to 6 months after termination of pregnancy. This definition would include women who miscarry or who have abortions at any time during the pregnancy . . . Is this correct?"

She further states, "Additionally, we recommend that competency-based testing be implemented for any WIC program staff who gather data for and/or interpret nutrition assessments, provide nutrition counseling and education with WIC clients."

Response: With regard to conflict with Title 37, Chapter 25, MCA ("Nutritionists"), the department notes that such conflict arises only when and if the individuals engaged in the activities described in subsection 37-25-304(5), MCA, hold themselves out as or advertise themselves as "nutritionists" without gaining licensure as nutritionists (37-25-305, MCA). The department intends to notify all local WIC staff of the requirements of Title 37, Chapter 25, MCA, and of the consequences of willful violation of the law. Further action by the department must await final adoption of the proposed "Nutrition Practice Rules".

The department notes that persons meeting the definition of "competent professional authority" in the proposed rule and in 7 CFR 246.2, Definitions, may be physicians, registered nurses, physician assistants, or other specified individuals; thus, a local WIC agency may indeed have staff other than a registered dietitian performing required WIC activities. Therefore, in the absence of additional substantive evidence, no judgment of violation of Section 37-25-101 through 37-25-308, MCA, is made by the department.

The department has reviewed the definition of postpartum woman and confirms that the definition includes women who miscarry or who have abortions at any time during the pregnancy.

The department recognizes the need for competency-based testing for WIC program staff, and has included in the WIC Plan of Operations for state fiscal year 1989 plans for implementing such a program beginning in October, 1988.

b. Comment: Mary Feuersinger, R.D., also recommends identifying the following four codes as high risk:

- Genetic disorders
- 8200 Food procurement
- 8861 Critically dependent food needs
- 8836 Parent Irresponsible
- 4802 Thalassemia

Response: The department notes that "high risk" codes are not defined in the federal WIC regulations, nor in the statewide program. However, nutritional risk is defined and used in the program's priority system. The coding system referred to by Ms. Feuersinger is used to assist in the assign-

ment of nutritional risk to participating persons and must follow the regulatory definition of nutritional risk. Hence, the 8200, 8861, and 8836 codes are not used to assign priority levels because they do not meet this regulatory definition. Genetic disorders, including thalassemia, are used to assign priority levels.

c. Comment: Ms. Feuersinger comments that, "Currently, the state plan states that infants may not be certified eligible as a priority 2, 'Born to WIC Mom' after the infant is 6 months of age. [There are] instances where an infant may be initially certified as a high risk infant, priority 1, who would otherwise be certified priority 2 for the infant's first year [but] cannot be certified in priority 2 if the high risk issues are resolved at the 6-month reassessment. We recommend that infants be eligible for priority 2 status after 6 months."

Response: The department observes that this proposal is in conflict with 7 CFR 246.7(4)(ii), Priority II. The wording in the proposed rules will be retained.

d. Comment: Regarding New Rule IX, Periodic Review and Disqualification of Food Vendors, Ms. Feuersinger "would like the option of suspending vendors who fail to demonstrate compliance with the contract for distribution of WIC foods. A suspension rather than termination of the contract would protect the vendor's right to redeem food stamps."

Response: The department regards failure of a food vendor to comply with contractual provisions for participation in the WIC program as a serious matter, indicative of potential program abuse and fraud in other USDA programs (like Food Stamps), as well as WIC. Therefore, the wording as proposed in New Rule IX is retained.

e. Comment: Minkie Medora, M.S., R.D., President, Montana Dietetic Association, sent written comments regarding the Association's interpretation of the relationship between the proposed WIC rules and Section 37-25-101 through 37-25-308, MCA. She notes that Section 37-25-101 through 37-25-308, MCA, allows only licensed nutritionists to provide the function of assessment (New Rule III(1)) and counseling (New Rule IV(29)), even though a provision exists for exemption of certain licensed professionals.

Response: With regard to Title 37, Chapter 25, MCA ("Nutritionists"), the department notes that conflict arises only when and if the individuals engaged in the activities described in Section 37-25-304(5) hold themselves out as or advertise themselves as "nutritionists" without gaining licensure as nutritionists (Section 37-25-305, MCA). The department intends to notify all local WIC staff of the requirements of Title 37, Chapter 25, MCA, and of the consequences of willful violation of the law. Further action by the department must await final adoption of the proposed "Nutrition Practice Rules".

f. Comment and Response: The department, on its own, has corrected a technical error in NEW RULE V. Section (1) of that rule listed 7 CFR 246.5(a) through (d), while section (2) of the rule properly incorporated 7 CFR 246.5(a) through (e). The department has corrected section (1) to include 7 CFR 246.5(e).

g. Comment and Response: The department, on its own, has made a few editorial changes that do not affect the meaning of the rules. One such change is the addition of NEW RULE XIII which provides a centralized location for the many incorporations by reference of federal regulations. This rule was added to make updating and referencing of federally incorporated requirements easier for those using the rule. Another change is in NEW RULES II and XIII; "7 CFR Parts 15, 15a, and 15b" is an incorrect citation of those federal regulations. This citation has been corrected to read, "7 CFR Part 15, subparts A and B."

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 5, 1988.

BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA


In the matter of the amendment	)	NOTICE OF THE ADOPTION OF
of rule 36.15.216 pertaining to	)	THE AMENDMENT OF RULE
the minimum standards for	)	36.15.216
granting a permit for the	)	
establishment or alteration of	)	
an artificial obstruction or	)	
nonconforming use in a	)	
designated floodway	)	

TO: All Interested Persons:

1. On April 14, 1988, at page 691 of issue number 7 of the 1988 Montana Administrative Register, the Board published notice of proposed amendment to ARM 36.15.216 relating to the criteria for issuing permits for the establishment or alteration of an artificial obstruction or nonconforming use in a floodway.

2. The Board has amended the rule as proposed with the addition of one editorial change. In 3(a) change period to semicolon.

3. The Board received no requests for a public hearing concerning the rule amendment. No comments were received concerning the proposed rule.

  
\_\_\_\_\_  
William A. Shields, Chairman  
Board of Natural Resources  
and Conservation

Certified to the Secretary of State, July 1 , 1988

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of Rule I (42.23.407) relating)	Rule I (42.23.407) relating
to Limitation of Charitable )	to Limitation of Charitable
Contribution Deduction for )	Contribution Deduction for
Corporations. )	Corporations.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed adoption of Rule I (42.23.407) relating to Limitation of Charitable Contribution Deduction for Corporations at page 965 of the 1988 Montana Administrative Register, issue no. 10.

2. No comments or testimony were received.

3. The Department has adopted rule I (42.23.407), Limitation On Charitable Contribution Deduction as proposed.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.25.503 relating to )	ARM 42.25.503 relating to
Failure to File Coal Gross )	Failure to File Coal Gross
Proceeds Returns. )	Proceeds Returns.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed amendment of ARM 42.25.503 relating to Failure to File Coal Gross Proceeds Returns at page 961 of the 1988 Montana Administrative Register, issue no. 10.
2. No written comments were received.
3. The Department has amended ARM 42.25.503, Failure to File as proposed.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

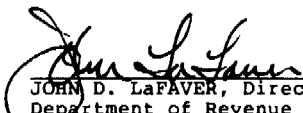
IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.25.512 relating to )	ARM 42.25.512 relating to
Imputed Valuation of Coal. )	Imputed Valuation of Coal.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed amendment of ARM 42.25.512 relating to Imputed Valuation of Coal at page 957 of the 1988 Montana Administrative Register, issue no. 10.

2. A Public Hearing was held on June 16, 1988 to consider the proposed amendment. No one appeared to testify and no written comments were received.

3. The Department has amended ARM 42.25.512, Imputed Valuation as proposed.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of Rules I (42.26.227), II )	Rules I (42.26.227), II
(42.26.228) and III (42.26.229)) )	(42.26.228) and III
relating to Partnerships In )	(42.26.229) relating to
Apportionment Formula. )	Partnerships in Apportionment
)	Formula.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed adoption of Rules I (42.26.227), II (42.26.228) and III (42.26.229) relating to Partnerships In Apportionment Formula at page 947 of the 1988 Montana Administrative Register, issue no. 10.

2. A public hearing was held on June 16, 1988, to consider the proposed adoption of these rules. No one appeared to testify and no written comments were received.

3. The Department has adopted rule I (42.26.227), Partnership Defined; rule II (42.26.228), Treatment of Partnerships In the Apportionment Formula; and rule III (42.26.229), Partnerships - Non-Business Income as proposed.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

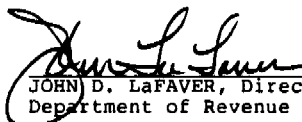
IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.26.236 relating to )	ARM 42.26.236 relating to
Exclusion of Royalties From )	Exclusion of Royalties From
Property Factor. )	Property Factor.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed amendment of ARM 42.26.236 relating to Exclusion of Royalties From Property Factor at page 951 of the 1988 Montana Administrative Register, issue no. 10.

2. A Public Hearing was held on June 16, 1988 to consider the proposed amendment. No one appeared to testify and no written comments were received.

3. The Department has amended ARM 42.26.236, Valuation of Rented Property as proposed.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)  
of ARM 42.26.236 relating to )  
Valuation of Rented Property. )

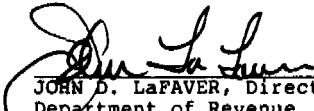
NOTICE OF THE AMENDMENT of  
ARM 42.26.236 relating to  
Valuation of Rented Property.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed amendment of ARM 42.26.236 relating to Valuation of Rented Property at page 967 of the 1988 Montana Administrative Register, issue no. 10.

2. No written comments were received.

3. The Department has amended ARM 42.26.236, Valuation of Rented Property as proposed.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION )	NOTICE OF THE ADOPTION of
of Rules I (42.26.270) and II )	Rules I (42.26.270) and
(42.26.271) relating to In- )	II (42.26.271) relating to
stallment Gains - Corporations.)	Installment Gains -
)	Corporations.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed adoption of Rules I (42.26.270) and II (42.26.271) relating to Installment Gains - Corporations at page 963 of the 1988 Montana Administrative Register, issue no. 10.

2. No comments were received.

3. The Department has adopted rules I (42.26.270), Special Rules Related To Installment Sales; and II (42.26.271), Unreported Income On Installment Obligation In Year Of Dissolution as proposed.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)  
of ARM 42.28.324 relating to )  
Motor Fuels Tax. )

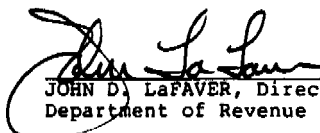
NOTICE OF THE AMENDMENT of  
ARM 42.28.324 relating to  
Motor Fuels Tax.

TO: All Interested Persons:

1. On May 26, 1988, the Department published notice of the proposed amendment of ARM 42.28.324 relating to Motor Fuels Tax at page 969 of the 1988 Montana Administrative Register, issue no. 10.

2. A Public Hearing was held on June 17, 1988 to consider the proposed amendment. No one appeared to testify and no written comments were received.

3. The Department has amended ARM 42.28.324, Failure To Maintain Records as proposed.

  
JOHN D. LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 7/5/88.

2111



VOLUME NO. 42

OPINION NO. 89

PUBLIC FUNDS - Use of tax increment funds by city for art center operated by private nonprofit corporation;  
TAXATION AND REVENUE - Use of tax increment funds by city for art center operated by private nonprofit corporation;

URBAN RENEWAL - Use of tax increment funds by city for art center operated by private nonprofit corporation;

MONTANA CODE ANNOTATED - Sections 7-8-2103, 7-15-4204(1), 7-15-4206, 7-15-4255, 7-15-4267(1)(b), 7-15-4282, 7-15-4288.

HELD: The proposed grant of \$125,000 to the Yellowstone Art Center is a legal use of tax increment funds.

15 June 1988

James L. Tillotson  
Billings City Attorney  
P.O. Box 1178  
Billings MT 59103

Dear Mr. Tillotson:

You have asked my opinion on the following question:

Is a proposed grant of \$125,000 to the Yellowstone Art Center from the Billings City Council a legal use of tax increment funds?

The Yellowstone Art Center is a public fine arts museum. The Center is located in a building which is owned by Yellowstone County and managed by a commission (Yellowstone County Fine Arts Center Commission) appointed by the Board of County Commissioners pursuant to section 7-8-2103, MCA. The museum is operated and governed by the Yellowstone Art Center Foundation, a nonprofit corporation which owns all museum assets other than the building. The five members of the commission appointed to manage the building also serve on the Board of Trustees for the Yellowstone Art Center Foundation in

order to coordinate the functions of the Commission and the Foundation.

Yellowstone County provides 14 percent of the Yellowstone Art Center's annual budget. The remainder of the museum's budget is raised by the Foundation, which has been granted tax-exempt status by the Internal Revenue Service as an educational and charitable foundation under 26 U.S.C. § 501(c)(3).

The Foundation is currently purchasing a building from Burlington Northern Railroad (BN) which is located immediately to the north of the museum building on land owned by BN. The Foundation leases the land from BN. The Billings City Council has proposed to grant the Foundation the sum of \$125,000 in tax increment funds to be used to construct public parking for the museum. The proposed location of the parking area is on the land which the Foundation is leasing from BN. Construction of the parking lot will require partial demolition of the building which the Foundation is purchasing from BN.

In order to receive the grant, the Foundation will be required to meet certain conditions. The Foundation must obtain a long-term (20-year) lease on the land from BN. The Foundation may use up to \$11,700 of the grant to pay off the existing purchase agreement with BN; the balance is to be used for building demolition, stabilization and weatherization of the undemolished portion of the building, and construction of the paved parking lot. The finished parking lot must be open to the public and utilized for the Yellowstone Art Center. The Foundation will be required to enter into a written development agreement with the City concerning the terms and conditions of the grant.

You have asked whether the proposed grant would be a lawful expenditure of tax increment funds.

Pursuant to section 7-15-4282, MCA, a municipality such as Billings is authorized to provide for tax increment financing as part of its plan for urban renewal. Section 7-15-4288, MCA, sets forth the costs which may be paid by tax increment financing:

The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project:

- (1) land acquisition;
- (2) demolition and removal of structures;
- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewers, waterlines, waterways, public buildings, and other public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred; and
- (5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233.

The proposed grant would be used to pay for demolition and removal of a structure and for construction of a parking lot. Both costs are specifically included within the scope of section 7-15-4288, MCA. Assuming that the museum properties are located within a designated urban renewal area, the proposed improvements would qualify as an urban renewal project. See § 7-15-4206(19), (15)(b) and (c), (16)(b) and (c), MCA.

The underlying question, however, is whether the grant funds will be used for public purposes in view of the legal status of the grantee Foundation. Article VIII, section 1 of the Montana Constitution provides that "[t]axes shall be levied by general laws for public purposes." Does the legal status of the Foundation, a private nonprofit corporation, render the proposed grant invalid as violative of this constitutional provision?

I conclude that it does not. The proposed expenditures are for a public purpose, and the nature and capacity of the recipient are not determinative of the validity of the expenditures.

Whether a particular purpose for which tax funds may be expended is a "public purpose" is a question primarily for the Legislature, and the legislative decision is given a presumption of correctness. See Grossman v. State, 41 St. Rptr. 804, 682 P.2d 1319 (1984). The fact that individuals, associations, or corporations derive special benefit from an expenditure does not necessarily affect its validity; as long as the legislation authorizing the expenditure serves a public purpose, the recipient may be a nonpublic entity such as a private nonprofit corporation. See, e.g., Jones v. Burns, 138 Mont. 268, 357 P.2d 22 (1960). The test is not who receives the money, but whether the purpose for which it is to be expended is a public one. Stanley v. Jeffries, 86 Mont. 114, 284 P. 134 (1929).

When it enacted the Urban Renewal Law in 1959, the Legislature declared that the powers conferred by the new law "are for public uses and purposes for which public money may be expended." § 7-15-4204(1), MCA.

The Legislature has given municipalities the express authority to contract with both public and private entities, including corporations, to provide services in connection with an urban renewal project. §§ 7-15-4255, 7-15-4206(11), MCA. The municipality has all the power necessary or convenient to carry out the purposes and provisions of the Urban Renewal Law, including the construction of public improvements. § 7-15-4251, 7-15-4255(1)(b), MCA. Construction of parking lots and off-street parking facilities in connection with an urban renewal project is a public improvement for which tax increment financing is authorized. § 7-15-4288(4), MCA. The municipality may incur the entire expense of the public improvement in exercising its powers. § 7-15-4267(1)(b), MCA.

Construction of a public parking lot for use by a public fine arts museum is "essentially public and for the general good of the inhabitants, satisfying their needs

or contributing to their convenience, rather than merely for gain or for private objects." Stanley v. Jeffries, supra, 284 P. at 138. In view of the express statutory authorization and the cases discussed above, I am satisfied that the proposed grant is for a public purpose and is in compliance with Montana law.

THEREFORE, IT IS MY OPINION:

The proposed grant of \$125,000 to the Yellowstone Art Center is a legal use of tax increment funds.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 42

OPINION NO. 90

COUNTIES - Authority to create rural improvement district for weed control;  
COUNTY COMMISSIONERS - Authority to create rural improvement district for weed control;  
MUNICIPAL CORPORATIONS - Authority to create rural improvement district for weed control;  
WEED CONTROL DISTRICTS - Authority to create rural improvement district for weed control;  
MONTANA CODE ANNOTATED - Sections 1-3-225, 7-12-2102, 7-12-4102(2)(g) and (h), 7-22-2101 to 7-22-2153.

HELD: A rural improvement district may not be established under sections 7-12-2102(1) and 7-12-4102(2)(g) and (h), MCA, for the purpose of providing weed control because those statutes are subordinate to and preempted by the specific statutory scheme of weed control in Title 7, chapter 22, part 21, MCA.

17 June 1988

Keith C. Kelly, Director  
Department of Agriculture  
Scott Hart Building  
303 Roberts  
Helena MT 59620

Dear Mr. Kelly:

You have asked my opinion on the following question:

May sections 7-12-2102 and 7-12-4102, MCA, be utilized by a board of county commissioners to authorize a rural improvement district for the purpose of providing weed control on public and private property?

It is my opinion that a rural improvement district may not be established under section 7-12-2102(1), MCA, for the purpose of providing weed control because it would be preempted by the provisions of Title 7, chapter 22, part 21, MCA.

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A comprehensive system of weed control is legislatively mandated in Title 7, chapter 22, part 21, MCA. Under those provisions (§§ 7-22-2102 to 2153, MCA), each county is required to form a weed management district and each district is to include all land within the county's boundaries--both public and private. § 7-22-2102, MCA. While the provisions on county weed control do not expressly preclude the creation of an overlapping service by a rural improvement district, the fact that this service would duplicate one already statutorily authorized means that it would be prohibited under the general rules of preemption and statutory construction. The catch-all language of section 7-12-4102(2)(g) and (h), MCA, provides:

(2) Whenever the public interest or convenience may require, the [county commissioners are] hereby authorized and empowered to:

....

(g) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way ... and

(h) maintain, preserve, and care for any and all of the improvements herein mentioned.

However, this general statutory allowance is preempted by the specific legislation which gives weed management districts primary responsibility and power regarding weed control. §§ 7-22-2102, 7-22-2121, MCA. The fundamental rule that municipal ordinances are inferior in status and subordinate to the laws of the state applies. 5 McQuillin, Municipal Corporations § 15.20 (3d ed. 1981).

Another applicable rule is the maxim that "[p]articular expressions qualify those which are general." § 1-3-225, MCA. When there are two statutes dealing with a subject, one in general terms and the other in more detailed terms, the special statute controls the general. State v. Montana Department of Public Service Regulation, 181 Mont. 225, 592 P.2d 34 (1979). See also

Witty v. Fluid, 43 St. Rptr. 354, 714 P.2d 169 (1986). The courts are "constrained to follow the more specific statute." Pierson v. Montana, 38 St. Rptr. 3, 622 P.2d 195 (1981). Hence, while a rural improvement district appears to have been given general authority which could potentially include weed control under sections 7-12-2102(1) and 7-12-4102(2)(g) and (h), MCA, that authority is preempted by specific statutory weed control provisions directing that county governments form weed management districts to implement weed control on all property in the district. Creation of a rural special improvement district for the same purpose would be duplicative.

THEREFORE, IT IS MY OPINION:

A rural improvement district may not be established under sections 7-12-2102(1) and 7-12-4102(2)(g) and (h), MCA, for the purpose of providing weed control because those statutes are subordinate to and preempted by the specific statutory scheme of weed control in Title 7, chapter 22, part 21, MCA.

Very truly yours,



MIKE GREELY  
Attorney General



VOLUME NO. 42

OPINION NO. 91

COUNTY OFFICERS AND EMPLOYEES - Nepotism statutes prohibiting a sheriff from appointing his son to the position of reserve deputy sheriff;

NEPOTISM - Nepotism statutes prohibiting a sheriff from appointing his son to the position of reserve deputy sheriff;

SHERIFFS - Nepotism statutes prohibiting a sheriff from appointing his son to the position of reserve deputy sheriff;

MONTANA CODE ANNOTATED - Sections 2-2-302, 2-2-304, 7-32-201(5), 7-32-202, 7-32-216, 46-1-201(8), 72-11-104.

HELD: The nepotism statutes prohibit a sheriff from appointing his son to the position of reserve deputy sheriff.

24 June 1988

James Yellowtail  
Big Horn County Attorney  
Drawer L  
Hardin MT 59034

Dear Mr. Yellowtail:

You have requested my opinion on the following question:

Do the nepotism statutes prohibit a sheriff from appointing his son as a reserve deputy sheriff?

Section 2-2-302(1), MCA, provides:

It shall be unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

Your specific question is whether a reserve deputy sheriff is a "position of trust or emolument." The

nepotism statutes are penal. § 2-2-304, MCA. Therefore, they must be strictly construed. Montana Auto Association v. Greely, 38 St. Rptr. 1638, 632 P.2d 300, 306 (1981). Neither "trust" nor "emolument" is statutorily defined for the purpose of the nepotism laws. Moreover, my research has failed to uncover nepotism statutes in other jurisdictions with the same language. However, various sources provide appropriate meanings for these terms in the appropriate context.

"Emolument" generally means a pecuniary benefit such as salary, fees, or perquisites. Black's Law Dictionary 616 (rev. 4th ed. 1968); State ex rel. Amaya v. McBride, 539 P.2d 1006, 1012 (N.M. 1975); Spearman v. Williams, 415 P.2d 597, 600 (Okla. 1966). A reserve officer is a volunteer and is not entitled to compensation or pecuniary benefits. §§ 7-32-201(5), 7-32-202, MCA. The position is not a position of "emolument."

A "position of trust" is generally synonymous with public office or position. It implies performance of a duty for the benefit of the public and is thus also referred to as a "public trust." Black's Law Dictionary, supra, at 1234; State v. Monahan, 84 P. 130, 133 (Kan. 1905); see 67 C.J.S. Officers § 3 (defining "public trust" as "every agency in which the public, reposing special confidence in the particular persons, appoints them for the performance of some duty or service.") The Montana Supreme Court has held that a public office is a public trust because it exists in the interest and for the benefit of the public. State v. Eaton, 114 Mont. 199, 133 P.2d 588, 591 (1943). The Court noted that the powers delegated to the officer are held in trust for the people and are to be exercised in their behalf. Id. at 591.

There is no question that the office of sheriff is a public trust according to the reasoning above. A reserve deputy sheriff is appointed to represent the office of the sheriff. § 7-32-201(5), MCA. He or she has some of the responsibilities and duties included in the office of the sheriff, such as being a peace officer, which entails maintaining public order and making arrests. §§ 7-32-201(5), 46-1-201(8), MCA. A reserve officer serves only in a supplementary capacity and under supervision of a full-time law enforcement officer. § 7-32-216, MCA. However, the limited nature of a reserve officer's authority does not diminish the

import of his or her responsibilities in serving the public. In James v. Thompson, 392 So. 2d 1178, 1180 (Ala. 1981), the court held the office of supernumerary sheriff to be an office of trust. That position was similar to that of a reserve officer in that the position was legislative, was a supplemental office, and entailed duties that were contingent and narrowly defined.

I therefore conclude that a reserve deputy sheriff holds a "position of trust" within the meaning of section 2-2-302(1), MCA, and his or her appointment is subject to the nepotism statutes.

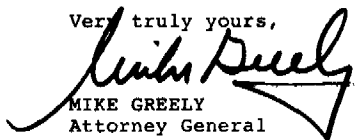
Section 2-2-302(1), MCA, prohibits the appointment of a relative connected by consanguinity within the fourth degree; therefore, a sheriff may not appoint his son, since they are related within the first degree. § 72-11-104, MCA.

My conclusion has no bearing on the effect of any actions taken by a "de facto" reserve deputy sheriff. The validity of actions of de facto officers has been addressed by the Montana Supreme Court in Wood v. Butorovich, 716 P.2d 608 (Mont. 1986).

THEREFORE, IT IS MY OPINION:

The nepotism statutes prohibit a sheriff from appointing his son to the position of reserve deputy sheriff.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mike Greely", is written over a horizontal line. The signature is fluid and cursive.

MIKE GREELY  
Attorney General

VOLUME NO. 42

OPINION NO. 92

CITIES AND TOWNS - Policemen's membership in private pension trust plan supported by public funds precluded by membership in PERS;  
EMPLOYEES, PUBLIC - Policemen's membership in private pension trust plan supported by public funds precluded by membership in PERS;  
POLICE DEPARTMENTS - Policemen's membership in private pension trust plan supported by public funds precluded by membership in PERS;  
PUBLIC FUNDS - Policemen's membership in private pension trust plan supported by public funds precluded by membership in PERS;  
RETIREMENT SYSTEMS - Policemen's membership in private pension trust plan supported by public funds precluded by membership in PERS;  
MONTANA CODE ANNOTATED - Sections 7-32-4120, 19-10-305(1), 19-3-403(8);  
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No. 51 (1973);  
REVISED CODES OF MONTANA, 1947 - Section 68-1602(8).

HELD: Section 19-3-403(8), MCA, prohibits use of funds received by a city pursuant to section 19-10-305, MCA, for a pension trust plan for police officers who are also members of the Public Employees' Retirement System.

29 June 1988

John Hunt  
Plentywood City Attorney  
215 First Avenue West  
Plentywood MT 59254

Dear Mr. Hunt:

You have requested my opinion concerning the following question:

Does the Public Employees' Retirement System Act (PERS), particularly section 19-3-403(8), MCA, preclude a city which is a PERS contractor from investing funds distributed under section 19-10-305, MCA, in a private

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pension trust plan for its police officers?

I understand that Plentywood policemen are PERS members and that they make contributions to PERS. Plentywood is not a member of the state-wide police retirement system (chapter 9 of Title 19, MCA), nor does it have a local plan under chapter 10 of Title 19, MCA. You also state that the Plentywood police do not make any contributions to the private pension trust fund established on their behalf by the city with funds distributed to Plentywood by the State Auditor's Office under section 19-10-305(1), MCA. Finally, it is my understanding that Plentywood policemen are entitled to benefits under the pension trust plan based on the duration of their service as police officers.

Section 19-10-305(1), MCA, provides in pertinent part:

After the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid ... to cities and towns for fire department relief associations pursuant to 19-11-512.

Section 7-32-4120, MCA, further directs that "[a]ny city or town not governed by the provisions of chapter 9 or 10 of Title 19 shall only expend the payment received pursuant to 19-10-305 for police training or to purchase pensions for members of its police department."

Because Plentywood is a PERS contractor, the difficulty arises under section 19-3-403(8), MCA, which states in part:

The following persons may not become members of the [public employees] retirement system:

....

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of ... any state government, or political subdivision thereof

and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds .... [Emphasis added.]

Under PERS, "service" is defined as "employment of an employee." § 19-3-104(29), MCA.

The issue you raise was implicitly addressed in 35 Op. Att'y Gen. No. 51 (1973) wherein Silver Bow County, a PERS contractor, sought to make an additional contribution to its employees' union pension trust fund. In that opinion, it was stated:

Section 68-1602(8) [now § 19-3-403(8), MCA], ... prevents a public employee from receiving credit for the same employment from two (2) retirement systems supported by public funds.

35 Op. Att'y Gen. No. 51 at 125. In that opinion, the additional contributions were allowed because under the union contract, the contributions were in lieu of wages rather than "out of the county's own pocket." Thus, the Silver Bow County employees were "apparently ... not receiving credit in two (2) retirement systems supported by public funds, which is prohibited by section 68-1602(8)." 35 Op. Att'y Gen. No. 51 at 125. A 1974 amendment to the statute adopted the position taken by the Attorney General in the Silver Bow County case. § 19-3-403(8) (a), MCA.

However, in the instant case, the funds contributed by the City of Plentywood to the private pension trust fund are clearly public funds. This fact raises an obvious conflict between section 19-3-403(8), MCA, and section 7-32-4120(1), MCA, which requires that payments received under section 19-10-305, MCA, be expended only "for police training or to purchase pensions for members of its police department." (Emphasis added.)

In construing conflicting statutes, the paramount consideration is to give effect to the intention of the Legislature. Marriage of Jones, 44 St. Rptr. 422, 424, 736 P.2d 94, 95 (1987), citing § 1-2-102, MCA. An important consideration in this regard is the fact that section 19-3-403(8), MCA, was passed in 1973, long after

sections 19-10-305 and 7-32-4120, MCA, were enacted in 1965. "Generally, where statutes irreconcilably conflict, the latest statute supersedes the prior enactment." Dolan v. School District No. 10, 195 Mont. 340, 346, 636 P.2d 825, 828 (1981). This rule of construction does not operate to defeat prior legislation which is more specific in its provisions, however,

"... unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both [statutes], or unless there is something in the general law or in the course of legislation upon its subject matter that make it manifest that the legislature contemplated and intended a repeal."  
[Emphasis in original.]

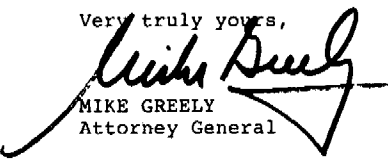
Dolan, 195 Mont. at 346, 636 P.2d at 828.

It is arguable that the PERS statutory scheme, and particularly section 19-3-403(8), MCA, is general legislation, and that sections 19-10-305 and 7-32-4120, MCA, are statutes that deal more specifically with the subject matter in question here. However, the specific legislative admonishment in section 19-3-403(8), MCA, that "it [is] the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds" evinces a clear intent to prohibit use of public funds to set up a pension plan based on service for police officers who are also members of PERS.

THEREFORE, IT IS MY OPINION:

Section 19-3-403(8), MCA, prohibits use of funds received by a city pursuant to section 19-10-305, MCA, for a pension trust plan for police officers who are also members of the Public Employees' Retirement System.

Very truly yours,



MIKE GREELY  
Attorney General

VOLUME NO. 42

OPINION NO. 93

ANNEXATION - Conclusive presumption of annexation of land to municipality;  
CITIES AND TOWNS - Conclusive presumption of annexation of land to municipality;  
MUNICIPAL CORPORATIONS - Conclusive presumption of annexation of land to municipality;  
MUNICIPAL GOVERNMENT - Conclusive presumption of annexation of land to municipality;  
PROPERTY, REAL - Conclusive presumption of annexation of land to municipality;  
STATUTES - Retroactivity;  
MONTANA CODE ANNOTATED - Sections 1-2-109, 7-2-4210, 61-8-402(5).

HELD: Section 7-2-4210, MCA, applies to tracts or parcels of land on which municipal taxes have been paid without protest for seven years, even when a portion of the seven-year period passed prior to the 1981 enactment date of that section.

30 June 1988

John Houtz  
Forsyth City Attorney  
P.O. Box 1230  
Forsyth MT 59327

Dear Mr. Houtz:

You have requested my opinion on the following question:

Does section 7-2-4210, MCA, apply to tracts or parcels of land shown on municipal maps as being within municipal boundaries, on which municipal taxes have been paid without protest for seven years, when a portion of the seven-year period passed prior to the 1981 enactment of that section?

Section 7-2-4210, MCA, enacted in 1981, provides:

A tract or parcel of land that has been shown on municipal maps or plats as being within

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municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

In the fact situation presented, a landowner paid, without protest, municipal taxes on a parcel of land for at least seven years, 1980 through 1986. He protested paying municipal taxes in 1987. The landowner believes his land cannot be conclusively presumed to be annexed to the City of Forsyth. Although he paid taxes for at least seven years before registering a protest, he argues that the year or years prior to the enactment of section 7-2-4210, MCA, may not be included in a calculation of the seven-year period. He contends that any application of the statute to his land would make the law retroactive, and that section 1-2-109, MCA, which provides that no law is retroactive unless expressly so declared, precludes retroactive application.

In my opinion, section 7-2-4210, MCA, applies to the landowner and his land, and such an application of the law is not retroactive.

"A statute is not made retroactive merely because it draws upon antecedent facts for its operation." Cox v. Hart, 260 U.S. 427, 435 (1922).

The application of section 7-2-4210, MCA, to situations such as the one raised here is analogous to the application of section 61-8-402(5), MCA, regarding revocation of a driver's license, to a situation where a person refuses to take a blood alcohol test within five years of the first refusal. In Stiffarm v. Furois, 42 St. Rptr. 1227, 704 P.2d 75 (1985), the Montana Supreme Court upheld application of that statute even though it drew upon facts which occurred prior to its amendment. In Stiffarm, the petitioner's driver's license was revoked upon a second refusal to submit to a chemical test within five years of a previous refusal. The court upheld application of the amended law to Stiffarm even though his first refusal occurred before the enactment of the amendment providing for a mandatory revocation upon a second refusal. The court held:

We are in accord with rulings from courts from other jurisdictions that an amended statute which is applied to a factual situation which occurred prior to the enactment of the amendment is not viewed as retroactive in application. [Citations omitted.]

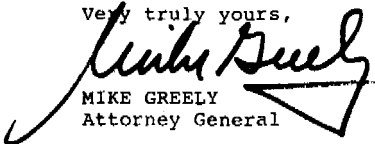
42 St. Rptr. at 1229-30, 704 P.2d at 77. This reasoning is followed by the courts regardless of whether the statute in question has been amended or newly enacted.

In this case, section 7-2-4210, MCA, enacted in 1981, provides that payment without protest of municipal taxes on a tract or parcel of land for seven years results in a conclusive presumption that the parcel or tract has been annexed to the city. The fact that one or more of the seven years of payment without protest may have occurred prior to the adoption of the statute does not make it retroactive. The landowner paid municipal taxes without protest for at least seven years, six of those years following enactment of the statute. He thus clearly triggered the statute's application by actions following its enactment.

THEREFORE, IT IS MY OPINION:

Section 7-2-4210, MCA, applies to tracts or parcels of land on which municipal taxes have been paid without protest for seven years, even when a portion of the seven-year period passed prior to the 1981 enactment of that section.

Very truly yours,

  
MIKE GREELY  
Attorney General

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

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The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1988. This table includes those rules adopted during the period March 31, 1988 through June 30, 1988 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1988, this table and the table of contents of this issue of the MAR.

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