MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules concerning any moving and relocation expenses of eligible State employees	NOTICE OF PROPOSED ADOPTION OF THE MOVING AND RELOCATION EXPENSES RULE. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On or after May 26, 1978, the Department of Administration proposes to adopt a rule concerning any moving and relocation expenses of eligible State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Rules.

3. The proposed Rule provides as follows:

Rule I. INTRODUCTION. (a) This policy is adopted as a minimum guideline for moving and/or relocation expenses paid to eligible State employees who are in a permanent status, having satisfied the agency's probationary period. For those agencies who wish to pay more than these guidelines or wish to waive certain requirements, they may do so.

Rule II. DEFINITIONS. (a) Employee Transfer: means an agency-initiated move of an employee from one geographic location to a different geographic location in the State, the distance to be at the discretion of the hiring agency. The transfer must be to fulfill staffing needs.

(b) Moving and Relocation Expenses: means that cost to move an employee's household belongings either by a commercial moving company or by personal means, and/or living expenses incurred during exploratory trips.

(c) Commercial Moving Company: means any bona fide transfer and storage corportion governed by federal tariff rates, which makes a profit by services offered and is certificated by the Public Service Commission of the State of Montana.

(d) Eligible Employee: means a permanent employee who at the request of the agency moves to another geographic location to fill a management need. The transfer of the employee must be management-initiated.

Rule III. POLICY. (a) The employing agency will pay the moving and relocation expenses of the employee's transfer within the following guidelines:

(i) For packing and moving up to 12,000 pounds of household and personal belongings. A maximum allowance for packing and crating will be paid according to prevailing rates at the time of the move. The employee must obtain at least two bids, except where there is no choice of commercial moving companies. These bids must be submitted to the Director or designated authority for approval prior to moving. Trailer or truck rental for moving purposes may be authorized for a mileage allowance according to the prevailing rate per mile, for actual miles driven, not to exceed the estimated commercial one-way distance rate.

(ii) The actual cost of unblocking, blocking, unhooking and hooking and transportation will be paid for mobile homes (if by PSC certified carrier). The State will not pay for packing and crating any belongings since this cost is not included in the initial mobile home move.

(b) The agency will not pay the cost of storage.

(c) The agency will pay the employee, per the travel regulations, in Administrative Rules of Montana 2-2.4(1)-S400 through 2-2.4(1)-S4170, for food and lodging during exploratory trips to the new location.

(i) If the new location is not within reasonable commuting distance of the old location, the employee may be paid for travel, lodging and meals during exploratory trips, not to exceed three days and two nights, for the purpose of seeking a home at the new location.

(ii) If the new location is within reasonable commuting distance of the old location not requiring overnight lodging, the employee will be paid for travel and meals for up to three round trips for the purpose of seeking a home at the new location.

(d) The employee will be paid his/her normal salary at a regular time status, and accrue all benefits for exploratory trips or during the actual move, such as when the employee would travel with his/her family to the new location. Under no circumstance will the employee be paid compensatory time or overtime during the move.

Rule IV. PROCEDURES. (a) The employee must report estimates of cost of moving household and personal goods to the Director or designated authority for confirmation so that the employee's move may take place.

(b) As soon as a transfer action has been confirmed, the employing agency should inform the employee of how much time can be used to accomplish the move or make exploratory trips to the new location. The move will take no more than a maximum of three days and two nights with one-way distance paid for mileage and per diem.

Rule V. CLOSING. This policy shall be utilized unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

4. Reason for this Rule is as follows: There is a critical need to provide uniform rules to be consistently applied in the administration and pay of moving and relocation expenses provided to eligible State employees. Adoption of these Rules will lessen the possibility of discriminatory or unfair payment of moving and relocation expenses by State agencies and will provide uniform guidelines for all State agencies to follow.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption to Mr. William S. Gosnell, Administrator, Personnel Division, Department of Administration, Room 101, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing along with any written comments to Mr. William S. Gosnell before May 24, 1978.

7. If the Department receives requests for a public hearing on the proposed Rule from more than ten percent (10%) or twenty-five (25) or more persons directly affected, or from the Administrative Code Committee of the legislature, a public hearing will be held at a later date. Notification of parties will be made by publication to the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947. Implementation is based on Section 59-913, R.C.M. 1947.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, April 11, 1978.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
CONSUMER AFFAIRS DIVISION

In the Matter of the Adoption of Rules I and II, Relating to Notice of Cost of Hearing for Motor Vehicle Dealership Termination, Establishment or Noncontinuation	)	NOTICE OF PROPOSED ADOPTION OF **RULES I AND II** (Service and Costs of Hearing) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 30, 1978, the Department of Business Regulation proposes to adopt Rule I and Rule II, relating to service of notice of hearing on parties to termination, establishment or noncontinuation of motor vehicle dealerships.

2. The proposed rules do not modify or replace any section currently found in the Montana Administrative Code.

3. The proposed rules provide as follows:

RULE NO. I COSTS

Unless stated otherwise herein, costs of hearing shall be apportioned equally on the part of participants.

(1) Costs of calling witnesses, and costs of preparation of materials therefor, for the purposes of a hearing under this subchapter shall be borne by the party calling such witnesses.

(2) Costs of written transcriptions of testimony taken at the hearing shall be borne by the party requesting such transcriptions.

(3) All other costs shall be borne equally as stated herein.

RULE NO. II EXCEPTION - PERSONAL SERVICE

MAC 1-1.6(2)-P310 provides for personal service. For the purposes of Section 51-605, R.C.M. 1947, relating to termination, noncontinuation or establishment of motor vehicle franchises, notice shall be provided as follows:

(1) Service by certified mail shall be given to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate or not continue;

(2) Service may be given by delivery of a copy of the franchisor's notice to such persons as the Department may determine appropriate;

(3) Service to all others shall be given by publication in a newspaper of general circulation in the county in which the franchisee sought to be established, terminated or not continued, is located and doing business.

4. These rules are proposed to implement Chapter Number 380 of the Laws of Montana 1977 as enacted by the 45th Legislative Session of the State of Montana. The new law requires that the Department of Business Regulation shall license motor vehicle manufacturers, distributors and importers doing business in the state of Montana, and provide for hearing in the case of protest in the event of a termination, establishment or noncontinuation of a motor vehicle dealership.

5. Interested persons may submit their data, views or arguments either orally or in writing to Mr. Kent Kleinkopf, Director, Department of Business Regulation, 805 North Main Street, Helena, Montana 59601, phone 449-3163. Written comments, in order to be considered, must be received by the Department not later than May 22, 1978.

6. If the Department receives requests for a public hearing on the proposed rules from more than ten percent (10%) or twenty-five (25) or more of the persons directly affected, a public hearing will be held at a later date. Notification will be made by publication in the Administrative Register and by direct notice to persons presenting timely requests for hearing.

7. The authority of the Department to make the proposed rules if based on Section 51-603, R.C.M. 1947.

Kent Kleinkopf

Kent Kleinkopf, Director
Department of Business Regulation

Certified to the Secretary of State April 13, 1978.

BEFORE THE BOARD OF COUNTY PRINTING
STATE OF MONTANA

in the matter of the amendment of Rule 22-3.10(6)-S1050 increasing certain maximum county printing fees; deleting certain items from the fee schedule; and altering the schedule format.	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 22-3.10(6) - S1050 (Schedule of Prices)

TO: All Interested Persons

1. On May 19, 1978, at 10:00 a.m., a public hearing will be held in the Department of Community Affairs Reception Room, 1424 Ninth Avenue, Helena, Montana, to consider the amendment of Rule 22-3.10(6) - S1050 relating to the fees to be charged for all county printing and legal advertising.

2. The proposed amendments are for the purpose of increasing certain maximum printing fees; deleting certain items from the fee schedule; and altering the schedule format.

3. The schedule as amended may be obtained by requesting a copy from:

Daniel J. Worsdell, Administrator
Centralized Services Division
Department of Community Affairs
1424 Ninth Avenue
Helena, Montana 59601

4. Interested parties may present their views, whether orally or in writing, at the hearing or by submitting their views in writing to the address provided above in paragraph 3.

5. Wayne Croskrey, Chairman of the County Printing Board, is designated to preside over and conduct the hearing.

6. The authority for the County Printing Board to adopt the proposed schedule is based on Section 16-1229, R.C.M. 1947.

Daniel J. Worsdell
Administrative Officer
Montana Board of County Printing

Certified to the Secretary of State April 11, 1978

BEFORE THE DEPARTMENT OF JUSTICE
FIRE MARSHAL BUREAU
OF THE
STATE OF MONTANA

In the Matter of the Adoption and Amendment of Rules MAC 23-2.10B(1) - S1010; 23-2.10B(1) - S1030 relating to the adoption of the latest edition of the Life Safety Code and Adoption of the Uniform Fire Code	NOTICE OF PUBLIC HEARING FOR AMENDMENT of Rules MAC 23-2.10B(1) - S1010 Incorporation by Reference of the Life Safety Code #101; Adoption of Rules MAC 23-2.10B(1) - S1030 Incorporation by Reference of the Uniform Fire Code.

1. On May 19, 1978, at 10:00, a.m., a public hearing will be held in the Commission room of the Highway Building, Helena, Montana, to consider the amendment of rules MAC 23-2.10B(1) - S1010, Incorporation by Reference of the Life Safety Code #101, 1976 edition; and Adoption of Rules MAC 23-2.10B(1) - S1030, Incorporation by Reference of the Uniform Fire Code.

2. The proposed amendments are for the purpose of adopting the 1976 edition of the Life Safety Code. Presently the 1973 edition of this model code is in effect. The proposed adoption of the Uniform Fire Code is to establish a fire protection code that can be used in conjunction with the Uniform Building Code, as promulgated in Rules MAC 2-2.10(6) - S10130, by the Department of Administration.

3. Rule MAC 23-2.10B(1) - S1010 is to be amended to read as follows:

Rule MAC 23-2.10B(1) - S1010, Subsection (1) as proposed to be amended and adding subsections (2) and (3) to read: 23-2.10B(1) - S1010 LIFE SAFETY CODE (1) Adoption of "Life Safety Code," National Fire Protection Association pamphlet No. 101, ~~1973~~ 1976 edition. The Fire Marshal Bureau adopts and incorporates by reference herein the LIFE SAFETY CODE #101 which provides basic requirements for life safety from fire. Copies may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Mass., 02210.

(2) This code is adopted by the State Fire Marshal Bureau to be used as a code for the regulation of buildings occupied at the time of inspection. No portion of this code shall be enforced regarding the design construction, quality of materials, and location of buildings under construction.

(3) It is the intent of these regulations to avoid conflicting requirements between the Life Safety Code, herein adopted, and the Uniform Building Code, Rule MAC 2-2.10(6) - S10130 MAC, adopted by the Department of Administration.

4. There is a new rule MAC 23-2.10B(1) - S1030 that reads as follows:

23-2.10B(1) - S1030 UNIFORM FIRE CODE

(1) Adoption of UNIFORM FIRE CODE 1976 edition. The Fire Marshal Bureau adopts and incorporates by reference herein the UNIFORM FIRE CODE, 1976 edition, published by the International Conference of Building Officials. Copies may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(2) For the purpose of this regulation the following provisions shall apply:

a) As used in the UNIFORM FIRE CODE, the terms chief, fire chief, fire marshal, and fire prevention engineer shall mean the head of the State Fire Marshal Bureau, Department of Justice.

b) As used in the UNIFORM FIRE CODE, the terms fire department and bureau of fire prevention shall mean the State Fire Marshal Bureau.

c) As used in the UNIFORM FIRE CODE, the term building official shall mean the head of the Montana State Building Codes Division, Department of Administration.

d) As used in the UNIFORM FIRE CODE, the term city shall mean the State of Montana.

(3) No provision of the UNIFORM FIRE CODE shall be construed contrary to the provisions of Chapter 12, Title 82, R.C.M. 1947, and in all cases where conflict arises between the UNIFORM FIRE CODE and Chapter 12, Title 82, R.C.M. 1947, the latter shall prevail.

(4) All sections of the UNIFORM FIRE CODE pertaining to permits and certificates shall be considered void and are not adopted as part of these regulations. See: Rule MAC 23-2.10B(10).

(5) It is the intent of the Fire Marshal Bureau that the UNIFORM FIRE CODE shall be used in conjunction with the UNIFORM BUILDING CODE as adopted by Rules MAC 2-2.10(6) - S10130 by the Department of Administration.

5. Interested persons may present their data, views or arguments whether orally or in writing at the hearing.

6. Mike McGrath, Assistant Attorney General, Capitol Building, Helena, Montana, 59601 has been designated by the Department of Justice to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments is based on §82-1202, R.C.M. 1947.

ROBERT E. KELLY
Chief
Fire Marshal Bureau

Certified to the Secretary of State April 11, 1978.

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

In the matter of the adoption of rules regulating the conduct of private employment agencies	NOTICE OF PROPOSED ADOPTION OF RULES (Regulating Private Employment Agencies)
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 24, 1978, the Standards Bureau proposes to adopt rules regulating the conduct of private employment agencies.

2. The proposed rules provide as follows:

RULE I DEFINITIONS. Division - means the Labor Standards Division of the Montana Department of Labor and Industry.

Administrator - means the Administrator of the Labor Standards Division.

Commissioner - means the Commissioner of Labor.

Open Job Order - means a job order placed by an employer for categories or jobs for which the employer usually has two or more open positions at any one given time; or, job orders placed by an employer for positions for which the employer has a steady and continuous need of qualified employees; or, for a job order placed by an employer on occasions when the employer is interested in receiving applications for future or present job openings and where the employer does not immediately hire all qualified applicants.

Standing Job Order - same as open job order. Example - a job order from a personnel office of a large business to refer any qualified applicants the agency may have for specific job openings that come up regularly.

Exploratory Interview or Exploratory Job Order - means an interview agreed to by the employer even though there is no definite position open with the employer.

Job Referral Document - The document or copy of document given to the applicant in which the pertinent facts about the agency, the employer and the job are listed.

Scheduled Appointment - means a definite time and date of interview with a specific employer or employer representative arranged for by an agency.

Temporary Employment - means that employment lasting less than ninety (90) days.

Permanent Employment - means that employment lasting

ninety (90) days or more.

Commission Employment - means that employment in which the applicant is paid on a commission basis.

Fee Paid - means a position in which under no circumstances is the applicant charged a deposit, retainer, or fee directly, or indirectly at any time in connection with such position, either by the agency or the employer.

Advertising - means any material or means used by the employment agency for solicitation or promotion of business. This includes, but is not limited to, business cards, news papers, radio, television, brochures, pamphlets, gift items and signs, referral cards, invoices, letterheads, or other forms that may be used in combination with the solicitation and promotion of business.

License - means that license issued by the Labor Standards Division to private employment agencies.

One month - means 1/12th of a year or 4-1/3rd weeks.

Contract - means that agreement entered into by the applicant and the agency and in some cases the employer whereby the applicant is placed in a position with the employer and the payment of fees to the agency is agreed to.

Rationale: These terms are recurrently used in the rules and these definitions are to define these terms in their plain and ordinary meaning.

RULE II RECORD KEEPING REQUIREMENTS.

(1) Method of maintaining records. All records of the agency pertaining to a job referral, and/or placement of an applicant for employment shall be maintained together or adequately cross indexed for easy retrieval of all such records for the Labor Standards Division. This includes, but is not limited to, the application, contract, addendums to contracts, reference information (employment, personal or credit), and a copy of all job orders and job referral documents.

(2) A separate file shall be maintained for all applicants placed by the agency. This file shall be alphabetically or by adequate cross reference index for easy retrieval for the Labor Standards Division.

(3) Copies of all job advertisements correlated to show the date and publication in which the ad appeared together with the job order number of each job advertised.

(4) An adequate log of job orders shall be maintained. Each job order shall have a log number assigned to it. The log will contain the date the job order was placed by the employer and the name of the employer placing the order. All job orders shall be recorded in numerical order and registered in the log. The log number will be used on any contracts, referrals, advertising, correspondence, placements and receipts that are related to the job order. If the

agency wishes it may maintain a separate log for "fee paid" orders. The log shall be preserved for three years.

(5) Each agency shall keep a record of all receipts of money received from each applicant in payment of a charge for service.

The receipts shall be filed together or adequately cross-indexed for easy retrieval for the Labor Standards Division.

(6) Records must be maintained for a period of three years with the exception of job advertisements in sub-section 3 of Sub-Chapter 6 which must be maintained for one (1) year.

Rationale: This rule supplements the statutory record keeping requirements, with emphasis on the availability of such information to the Director.

Rule III BONA FIDE JOB ORDER. (1) A bona fide order for employment may be considered to have been given by an employer to an employment agency under the following conditions:

(a) If the employer or his agent, in person, by telephone, telegram, or in writing, registered a request that the agency recruit, or gives permission to the agency to refer job applicants for employment who meet the specifications of the stated job.

(b) Such an order is valid for the referral of any qualified applicant until it is filled or cancelled by the employer and may serve as the basis for agency advertising. The agency is required, however, to recontact the employer after every thirty days to insure that the position is still vacant prior to any additional advertising or referrals.

(2) "Open" or "Standing" job orders are to be renewed prior to each interview and at the end of every thirty days in order for them to be current and valid. Open or Standing job orders may not be advertised in any way. Open or Standing job orders must be for specific job categories as distinguished from a specific job. Open or Standing job orders must fulfill all informational content requirements of regular job orders and will contain the title "Open" or "Standing" job order.

(3) Exploratory job orders shall be considered to have been given by an employer if, as a result of the agency's bringing the qualifications of an applicant to the attention of an employer, the employer's interest in exploring the possibility of employing the applicant is evidenced by the employer's agreement to interview the applicant.

(a) Exploratory job orders or interviews are not valid orders that can be advertised. The exploratory job order must be written up by the agency prior to any applicant being referred for an interview. The order must contain the information required by Section 24-3.14BI(1)-S14020, sub chapter 2. Applicants referred to an Exploratory interview must be given a referral document containing all available job order infor-

mation and the following underlined statement: "This is an exploratory interview. There is no definite position open with this employer at this time. However, this interview has been agreed to by the employer as a consideration for possible future employment."

(b) Exploratory job orders or interviews will not be used by employment agencys in situations where the agency has a "regular" job order, or access to one.

(4) In the process of obtaining a job order the employment agency, in an introductory statement, shall identify itself to employers as an employment agency. This shall be done in all cases. If the agency is employer-fee paid only, the employer must be so advised during the initial contact.

(5) When accepting a "fee paid" job order, the employment agency shall insure that the employer will not collect the fee from the employee in any manner whatsoever.

Rationale: These provisions insure honest disclosure in advertising for job seekers and in referring job applicants to a prospective employer. Section 41-1429.

Rule IV JOB ORDER, INFORMATION TO BE CONTAINED IN. (1) Each job order shall contain all of the following information:

(a) The normal number of hours of work per day and any exceptions.

(b) Weekend or night work required. Specify the number of hours and which days.

(c) Whether fee is employer paid or applicant paid.

(d) The job title and classification.

(e) A list of special skills required to perform adequately on the job and the minimum performance or skill level required. Skills required means those skills which will be regularly and habitually required to gain the job, perform at a minimum level on the job and to retain the job.

(f) The log number of the job order.

(g) The date and time of day the job order was received.

(h) The salary, hourly pay rate or salary paid for the position. At least a minimum salary or wage must be specified in terms of dollars and cents. If earnings are to be paid on a commission basis, the order must contain a statement as to whether or not any guaranteed salary or draws are involved.

(i) The name, address and telephone number of the company placing the job order.

(j) The name and title of the individual who placed the job order for the employer and the name and title of the individual who accepted the order for the employment agency.

(k) Whether or not union membership is required and the approximate cost to the applicant for any union fees and dues.

(l) Whether or not the employer has any existant labor troubles.

(m) When a job order is filled the following information will be appended to the order:

1. The true name, as it appears on the contract, of the individual who obtained the job.
2. The date the job was filled.
3. The amount of the fee charged for the service.
4. Whether the fee was employer paid or applicant paid.

(n) A list of established fringe benefits such as but not limited to holidays, sick leave, car allowances, expense allowances, room and board, medical and hospital insurance, vacations and the statement whether or not these benefits are paid for by the employer as indicated by the employer.

Rationale: This rule insures disclosure that reflect honestly the nature of employment the applicant is being referred to.

RULE V JOB REFERRAL DOCUMENT. (1) The job referral document shall be assigned the same log number as the job order and shall contain the following information:

(a) The name, address and telephone number of the employment agency.
(b) The name, address and telephone number of the employer who placed the order for help.
(c) The name of the individual placing the order.
(d) The date the order was received by the employment agency and the date of issuance of the job referral document.
(e) The manner in which the order was transmitted (telephone, mail, personal, etc.)
(f) The amount of fee to be charged and to be collected from the applicant if he accepts the employment and a statement to the effect that the employer is not responsible for paying the fee or, if it is an employer paid fee a statement to the effect that the applicant is not responsible for paying the fee.
(g) The name, address and telephone number of the applicant.
(h) The name, address and telephone number of the person to whom the applicant is sent for interview.
(i) The date and time of the interview.
(j) The kind of work or employment
(k) The daily hours of work and any exceptions.
(l) The wages or salary.
(m) Any fringe benefits such as but not limited to holidays, sick leave, car allowances, expense allowances, room and board, medical and hospital insurance, vacations and a statement whether or not these benefits are paid for by the employer.
(n) The existence of any known union organizational, picketing or strike activity.

(o) The job referral document shall be signed by a qualified representative of the employment agency and shall be delivered to the applicant or sent by United States mail to the applicant prior to his interview with the employer with the following exceptions:

1. If the referral is made by telephone contact or other means of remote communication the job referral document will also be mailed to the applicant and the full content of the job referral document will be revealed to the applicant prior to the job interview.

2. Job referral documents which are mailed, must be mailed within 24 hours, or one working day of the referral contact with the applicant.

(p) The exact fee to be charged in dollars and cents, not in percentage statements.

Rationale: This rule is designed to effect full and complete disclosure of the quid pro quo in the employment agency contract.

RULE VI REBATE OF SERVICE CHARGES INTEREST AND/OR PLACEMENT FEES. (1) In all cases where employment lasts less than 90 full calendar days, all interest, fees or other charges paid or required to be paid by an applicant to any person or organization in order to procure the funds to pay an employment agency's charge for service shall be allowed as a credit against the charge. This includes all carrying and service charges and all related charges in obtaining funds for payment of the agency's charge.

(2) If the sum total of the interest, fees, or other charges incurred by the applicant are greater than the agency's charge for service and are listed in such a manner that interest fees or other charges for the employment agency's services are not stated separately then the interest, fees and other charges may be prorated to cover only those interest fees and service charges directly attributable to the payment of the employment agency's charge for service.

(3) A reasonable effort shall be made by the employment agency, within ten (10) days specified time for making the rebate, to procure all information necessary regarding the interest, fees, and other charges required to be paid by the applicant in procuring the funds used to pay the agency's charge for service.

Rationale: This rule is to clarify the requirements of 41-1431.1 governing excessive fees.

RULE VII ADVERTISING. (1) No employment agency shall knowingly publish or cause to be published any false, fraudulent or misleading information, representation, notice or advertisement. The following examples are of the

types of advertising which are considered false or misleading:

(a) Exclusive listing in advertisements of jobs designated as "fee paid" by agencies which do not operate exclusively on the basis of no fee to the applicant, in such manner as to give the false impression that all jobs handled by the agency are "fee paid" jobs.

(b) Use of phrases such as "100% free" or "all free" as column headings where both "fee" and "fee paid" jobs are listed, so as to give the impression that the entire agency operation is on a "fee paid" basis.

(c) Designating jobs as "fee paid" where this is true only if certain conditions are met. Example; jobs where the employer will pay the fee only if the applicant stays on the job for a stipulated period of time, or jobs where the employer deducts the amount of the fee from the applicant's salary, or where the employer will pay only a portion of the fee, or if the fee payment on the part of the employer is a negotiable item.

(d) Ads worded so as to mislead the applicant regarding the nature of the position advertised.

(e) Using the phrase "lowest fee" or similar words where the agency's fee is not in fact the lowest fee rate in effect in the area in which the agency does business.

(2) The following standards must be used in all agency advertising:

(a) Headlines or titles relating to fees, such as "Applicant Pays Fee" or "Fee" or "Fee Paid" must be set in the same type of equal size and boldness, whenever an agency advertises both categories of jobs.

(b) In group advertisements which contain both "Employer Pays Fee" and "Applicant Pays Fee" listings, all listings of each type shall be grouped together in a block under the respective title, or each listing must include a designation as to the source of the fee.

(c) If an advertisement is of a job or jobs for which the employer pays the fee, and if the agency so advertised the jobs as such, the ad must state in type of equal size and boldness that the agency also handles jobs for which the applicant pays the fee, if such is the case.

(d) All advertising must be factual as to the job requirements. Sufficient information must be contained in each ad so as to indicate the nature of the position. The omission of unusual or special job requirements and characteristics is considered misleading or fraudulent.

(e) If specific requirements not normally associated with the position advertised are required, the requirements must be indicated in the ad.

(f) No salary shall appear in an ad except that which appears in the actual job order as a starting salary. Where the top of the salary range is quoted, it must be preceded by

the lowest of the salary range and the word "to".

(g) If the position advertised is located ten (10) miles or more from the location of the office of the agency, the fact that the position is non-local or that relocation is necessary, or the location of the place of employment shall be indicated in the listing.

(h) The word "open" or the symbol "$$$" or words and symbols of similar importance may not be used as a substitute for the salary of any position or positions in an ad.

(i) The symbol "+" or the word "plus" may be used in connection with a salary appearing in an ad only when it refers to an extra such as a car, bonus, commission or lodging which is provided in addition to the given salary. Such extras must be contained in the agency's job order for the position. The salary figure in the advertisement can only represent the amount of salary or draw as shown on the job order.

(j) The word "up" may be listed with a salary appearing in an ad only when the employer has made a definite commitment to the agency to pay a higher salary for a qualified employee. The commitment by the employer to pay a higher salary must be contained in the agency's job order for the position.

(k) If an advertised salary is based entirely or partially on a bonus and/or commission the ad must so state this fact.

(l) Whenever an employment agency advertises or states in its letters that members of the agency are "certified", "registered", or "Licensed" (other than by the Labor Standards Division) or uses other special terms conveying special qualifications or abilities, the advertising or letter must also set forth the identity of the governmental agency or other organization which has certified, registered or licensed such members.

(m) Employment agencys advertising jobs where the employment agency itself is the employer shall so state this fact in the ad.

(n) Each job position that is advertised must contain the job order number and log number.

(o) Employment positions will not be advertised on the same day under two or more different job discriptions.

Rationale: This rule implements specifically, but not exhaustively, the safeguards contained in Section 41-1429 R.C.M. 1947.

RULE VIII FEE SPLITTING. No arrangement can be made by agency and employer or between agencies whereby applicant fees are split.

Fees cannot be financed by a third party such as a finance company. In no case will the agency be allowed to collect the full fee on the first day of work.

Rationale: A job applicant is usually poor and disadvantaged by the fact he goes to an employment agency. Requiring an applicant to finance his fee through a finance company tends to result in peonage and is not in the public interest.

RULE IX When an applicant is separated from his employment through his own fault, the agency shall upon request meet and confer with the applicant about a refund within 15 days of the date of separation.

Rationale: This rule is to provide protection to the applicant when the employment does not last as anticipated.

RULE X In addition to the requirements of Section 24.15.007 and Section 24.15.008 the following clauses are required to be in all contracts between agencies and applicants for employment when placements are made or to be made on commission positions:

(1) "Should proof be presented after six months and/or twelve months of employment that the estimates of total gross earnings were inaccurate, _____(agency)_____ shall refund to the applicant any excess charges paid by him, or the applicant shall pay to _____(agency)_____ any deficiency in charges."

(2) "If the applicant's compensation is based on commission and his employment is terminated prior to the conclusion of the first twelve months of employment, the actual total gross earnings of the applicant for the period of employment shall be projected to twelve months on a pro-rata basis as though the applicant had been employed for the entire period of twelve months, and a computation shall be made thereon. The adjusted charge for services by the applicant shall be predicated upon such computation."

Rationale: This rule provides for fee charges when contingencies occur in the employment contract.

RULE XI The following clauses or statements are not required to be in any contract between the employment agency and the applicant for employment who may be responsible for the agency's charge for service directly or indirectly but so long as consistent with other required or permissable clauses may be included in the contract between the employment agency and the applicant for employment:

(1) "One month equals 1/12th of a year or 4 1/3 weeks."

(2) "These service charges can be deducted for income tax purposes."

(3) "I will keep the agency informed about the results of all arranged interviews, and will advise the agency at once upon acceptance of employment, or if employment which has been

accepted is terminated for any reason."

(4) "I hereby give permission for references to be checked for purposes of employment, and understand that upon request _____(agency)_____ will divulge the content of same to me."

(5) "If the applicant fails to perform this contract, or to pay the agency's service charge provided herein, then the applicant agrees to pay _____(agency)_____ reasonable attorney's fees and other costs of collection as determined by a court."

(6) "There shall be no oral agreements or oral additions to this contract. Any further terms, conditions or understandings shall be in writing."

Rationale: This rule is intended to aid employment agencies in drafting fair contracts.

RULE XII Whenever an agency receives notice from any source that an applicant has terminated employment within the time which requires a refund of a portion or all of the agency's charge for services the agency shall refund within ten days of such notice, by cash or its equivalent, and not by goods or services, all sums due as a refund to the applicant. Contracts or agreements shall not contain statements or understandings concerning job replacement or other goods and services contrary to this rule.

Rationale: This rule restricts subtle inventions which may be used to circumvent the refund requirements.

RULE XIII There shall be no oral agreements or oral additions to any contract between the employment agency and the applicant for employment. Any terms, conditions or understandings between the employment agency and the applicant for employment shall be in writing.

Rationale: A parol evidence rule to protect all parties parties.

RULE XIV Renewal of License: The annual license fee shall be assessed from July 1 of the existing year until July 1 of the following year. Licenses that are renewed at times different from the annual schedule shall run until the first of July, at which time that license shall expire and the renewal fee will be due and payable for the next year. A new application and copy of the agency contract shall be sent in with the renewal fee.

Rationale: This rule is to facilitate the orderly licensing of employment agencies by scheduling the annual fees to one time period.

(3) Interested persons may submit their opinion, data, and criticisms on or before the 24th day of May, 1978, to David E. Fuller, Commissioner of the Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana 59601.

4. The authority of the Commissioner to adopt these rules is based on Section 41-1423 R.C.M. 1947.

David E. Fuller
Commissioner of the Department of Labor and Industry

Certified to the Secretary of State, April 13, 1978.

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

In the matter of the adoption of rules pursuant to the Contractor's Bond Law	)))))	NOTICE OF PROPOSED ADOPTION OF CONTRACTOR'S BOND RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 25, 1978, the Commissioner of the Department of Labor and Industry proposes to adopt the following rules to clarify and give effect to the Contractor's Bond Law, Section 41-2701 et seq R.C.M. 1947:

Rule I DEFINITIONS. For purposes of the Act:

(a) "Bond" means an agreement under which one becomes surety to pay for all of the wages and fringe benefits owed to employees of the contractor and subcontractor or owed by the contractor or subcontractor to an employee's trust.

(b) "Surety" means the person or corporation guaranteeing the obligations of the contractor/employer.

(c) "Other Form of Security" includes a reasonable, bona fide method of insuring that employees will be paid all of their wages and fringe benefits including, but not limited to:

1. Performance and/or Payment Bonds.
2. Certificates of Deposit which are in the name of the Commissioner and the contractor and drawable only by both of them.
3. Cash Bond.

Rule II EMPLOYER TO FURNISH RECORDS

(a) In order to enable the Commissioner to determine the size of the bond or other form of security, an employer shall furnish upon request the necessary records and information relating to the employer-contractor's payroll.

(b) The information provided in (a) will be treated as confidential information to protect the employer's business interests. The Commissioner in his discretion may release this information only when the interests of justice clearly outweigh the employer's right to privacy.

Rule III FINANCIAL STATEMENT

(a) A resident contractor electing to file a financial statement under the Section 41-2704 R.C.M. exception, shall at the request of the Commissioner or the Administrator of the Labor Standards Division file certified financial statements at 3 month intervals.

(b) For purposes of this act, "Net Worth" means owner's equity in the standard accounting formula of owner's equity = assets - liabilities.

2. The reason for the adoption of the rules are:
   (a) to define the terms of the law
   (b) to require the employer to furnish records so that the Commissioner can determine the size of the bond needed to protect the employees
   (c) to require current financial statements in cases where a contractor may be in financial jeopardy with the consequent danger to the employees

3. Interested parties may submit their data, views or agreements concerning the proposed rules in writing, to the Commissioner of the Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana. Written comments must be received not later than May 25, 1978.

4. If the Commissioner receives requests for a public hearing on the proposed adoption of the rules from 25 or more persons, a public hearing will be held at a later date, notice of which will be supplied.

5. The authority of the Commissioner to promulgate rules is based on Section 41-2705 R.C.M. 1947.

DAVID E. FULLER
Commissioner of the Department
of Labor and Industry

Certified to the Secretary of State April 13, 1978

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

In the matter of the repeal of the rule requiring a job order, Section 24-3.14BI(1)-S1400	NOTICE OF PROPOSED REPEAL OF RULE (Job Order for Private Employment Agencies)
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 24, 1978, the Standards Bureau proposes to repeal Section 24-3.14BI(1)-S1400 Job Order Necessary.

2. The rule proposed to be repealed is on page 24-83 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because a specific statute, Section 41-1419 R.C.M. 1947 requires more precise data than the rule requires. Additionally, the agency is simultaneously promulgating a comprehensive set of rules directed to the same regulatory area.

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

Dick Kane, Administrator
Labor Standards Division
Department of Labor and Industry
35 South Last Chance Gulch
Helena, Montana

no later than May 23, 1978.

5. The authority of the Bureau to make the proposed repeal is based on Section 41-1423 R.C.M. 1947.

David E. Fuller
Commissioner of the Department of
Labor & Industry

Certified to the Secretary of State 4-13-78
(date)

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

IN THE MATTER of the adoption of NEW Rules I through XXI pertaining to Sanitation, Safety, Clearance, Sidetracks and Station Service of Railroads.	)))))	NOTICE OF PUBLIC HEARING FOR THE ADOPTION OF SANITATION, SAFETY, CLEARANCE, SIDETRACKS AND STATIONS SERVICE OF RAILROADS

TO: All Interested Persons

1. On Wednesday, May 24, 1978, in the Conference Room of the Public Service Commission, 1227 11th Avenue, Helena, Montana, at 10:00 a.m., a public hearing will be held to consider the proposed adoption of rules concerning the sanitation, safety, clearance, sidetracks and station service of railroads.

2. The proposed rules do not replace or modify any section currently in the A.R.M.

3. The proposed rules read as follows:

Wrecks and Accidents

RULE I WRECKS AND ACCIDENTS (1) All railroad companies operating in the State of Montana are required pursuant to the provisions of Section 72-121, R.C.M. 1947, and the Commission's minute entry of April 4, 1945 thereunder, to report to the Public Service Commission, by wire, within 24 hours, any wreck or accident on its line.

(2) In addition to immediate notification, each company shall file a copy of the Preliminary Accident Report form with the Commission, for each such accident.

Discontinuance of Station Agents,
Stations & Sidetracks

RULE II DISCONTINUANCE OF STATION AGENTS, STATIONS AND SIDETRACKS (1) No railway company now or hereafter operating within the State of Montana shall:

(a) Discontinue a station agent who now is or may hereafter be installed, without first giving notice thereof to and receiving permission from the Public Service Commission of the State of Montana to make such change.

(b) Abandon any station either upon main or branch lines which now is or may hereafter be established, without first giving notice thereof to and receiving permission from the Public Service Commission of the State of Montana to make such change.

(c) Abandon or remove any sidetrack or spur track either on main or branch lines which now is or may hereafter be installed, without first giving notice thereof to and receiving permission from the Public Service Commission of the State of Montana.

Train Clearance; Platform Clearance

RULE III GENERAL PROVISIONS (1) Subsequent to the effective date of these regulations, in all construction or reconstruction of tracks or structures adjacent thereto, on all railroads over which freight cars are transported or proposed to be transported, the following minimum clearances, hereinafter set forth, shall be allowed.

(2) A railroad company shall not operate freight cars, locomotives or other rolling equipment over tracks constructed subsequent to the effective date of these regulations, or tracks adjacent to buildings constructed or entirely reconstructed subsequent to that date, wherein the clearances are less than those prescribed in these regulations.

(3) OVERHEAD CLEARANCES authorized in these regulations are applicable to tracks on which freight cars having a height to running board of fifteen (15) feet six (6) inches or less are transported. In the case of cars or loads exceeding fifteen (15) feet six (6) inches, Rule VIII (1) and IX must be complied with.

(4) SIDE CLEARANCES authorized in these regulations are applicable to tracks on which freight cars having an overall width not greater than ten (10) feet ten (10) inches are transported. In the case of cars or loads exceeding ten (10) feet ten (10) inches, Rule VIII (2) and Rule IX must be complied with.

(5) Exemptions

(a) When the overhead or side clearances between a track and any building, structure or facility are less than the minimum prescribed in these regulations but where created prior to the effective date thereof, the minimum clearances prescribed herein shall be provided whenever the building, structure or facility is relocated or entirely reconstructed; however, the Public Service Commission will consider specific requests for the future continuance of existing clearances at such reconstructed building, structure or facility when application thereof has been made as provided in (c) of this rule.

(b) Where restricted clearances are necessary nothing herein shall be construed as preventing the movement of material over tracks or placed adjacent to tracks when such material is necessary in the construction or maintenance of such tracks, nor in the movement of special work equipment used in the construction, maintenance or operation of the railroad, provided such movements shall be carried on under the conditions as are necessary to provide for the safety of all concerned; nor shall these rules be applicable, provided reasonable safety precautions are observed, during periods of actual emergency due to wrecks, derailments, washouts and like conditions.

(c) If in any particular case, exemption from any of the requirements herein is deemed necessary by the carrier concerned, the Public Service Commission will consider the application of

such carrier for such exemption when accompanied by a full statement of the conditions existing and the reason why such exemption is asked. Any exemption so granted will be limited to the particular case covered by the application.

(d) The Public Service Commission reserves the right to modify after due notice to all interested parties any of the provisions of these regulations in specific cases, when, in its opinion, safety of railroad employees, public safety, convenience or necessity would be served by so doing.

(e) Locomotive terminal facilities and car shops are exempt from these regulations.

(f) It is not intended that this rule is adopted for the purpose of regulating industries other than common carrier railroads and street railroads. The common carrier railroads are not required by this order to police properties of industries other than those owned and operated by the carriers.

(g) Restricted clearances in the case of new construction or reconstruction of loading platforms owned and operated by industries, other than the common carriers, shall not be cause to refuse delivery or shipping facilities but each separate case may be called to the attention of the Public Service Commission whereupon each case of restricted clearance shall be treated upon its merits.

RULE IV DEFINITIONS (1) THE OVERHEAD CLEARANCE is that distance measured along a line which is perpendicular to and joins a horizontal plane passing through the top of the highest rail and the lowest point of the overhead structure or obstruction.

(2) THE SIDE CLEARANCE is the shortest distance from centerline of track to a structure or obstruction at the side of the track.

(3) THE TRACK CLEARANCE is the shortest distance between the centerlines of adjacent tracks.

(4) HEIGHT OF A FREIGHT CAR is the distance between the top of rail and the top of running board.

(5) WIDTH OF A FREIGHT CAR is twice the distance from the centerline of the car to the extreme outside part thereof.

(6) ICING PLATFORMS: The term "Icing Platform" shall include structures used in performing the service of icing, precooling, heating, ventilating and servicing of cars used in the handling of commodities requiring the above services.

(7) CONSTITUTED AUTHORITY shall mean the Public Service Commission of the State of Montana.

(8) OVERCROSSING when used in this rule means any point or place where a highway crosses a railroad by passing above the same. Clearances shall be as specified in Rule V (1) and (3).

(9) UNDERCROSSING when used in this rule means any point or place where a highway crosses a railroad by passing under the same. Existing laws pertaining to highways shall prevail.

(10) ENFORCEMENT shall be by the Public Service Commission of the State of Montana.

RULE V OVERHEAD CLEARANCES

(1) OVERHEAD CLEARANCE IN GENERAL . . . . . 22'6"

(2) OVERHEAD CLEARANCE IN BUILDINGS . . . . . 18'0"

The overhead clearance inside of entirely enclosed buildings may be reduced to eighteen (18) feet, provided that this clearance shall apply only to tracks terminating within the building, and further provided, that when an overhead clearance of less than twenty-two (22) feet six (6) inches is established therein, all cars, locomotives or other equipment shall be brought to a stop before entering such enclosed building, the conditions provided to require such stop to be approved by constituted authority.

(3) OVERHEAD CLEARANCE IN TUNNELS AND BRIDGES

Minimum overhead clearance in tunnels and through bridges may be decreased to the extent defined by the half-circumference of a circle having a radius of eight (8) feet and tangent to a horizontal line twenty-two (22) feet six (6) inches over top of rail at a point directly over the centerline of track.

(4) OVERHEAD CLEARANCE--ALL OTHER STRUCTURES

Minimum overhead clearance as prescribed in Rule V (1) above may be decreased to the extent defined by the half-circumference of a circle having a radius of eight (8) feet six (6) inches and tangent to a horizontal line twenty-two (22) feet six (6) inches above top of rail at a point directly over the centerline of track.

(5) OVERHEAD CLEARANCE OF WIRES

All wires in general shall have a minimum vertical clearance of not less than that specified by the National Electrical Safety Codes as published by the U.S. Department of Commerce, National Bureau of Standards, or any revisions or amendments thereto.

RULE VI SIDE CLEARANCES

(1) SIDE CLEARANCE IN GENERAL . . . . . 8'6"

NOTE: To further reduce operational hazards, it is recommended that, wherever practicable, all posts, pipes, warning signs and other small obstructions be given a side clearance of ten (10) feet.

(2) Side Clearance at Platforms:

(a) PLATFORMS----8" or less above top rail . . . . 4'8"

(b) PLATFORMS----4'0" or less above top rail . . . 5'9" or 7'3"

NOTE: Whether the five (5) feet nine (9) inches or seven (7) feet three (3) inches clearance shall be used in any particular case shall be at the discretion of this Commission. Such determination will be made upon written application by the railroad setting forth the details of each particular installation.

(c) PLATFORMS----4'6" or less above top of rail--when used principally for loading or unloading refrigerator cars . . . . . 8'0"

(d) ICING PLATFORMS AND SUPPORTS . . . . . 5'9"

(e) PLATFORMS--OTHER THAN ABOVE . . . . . 8'6"

NOTE: Retractable platforms, either sliding or hinged, which are attached to a permanent structure shall be so designed that when not in use no part of such retractable platform shall fall within the clearance limits herein prescribed for a platform of that height above the top of the rail.

(f) PLATFORMS--COMBINATIONS OF ANY ABOVE

NOTE: Platforms defined under (2)(a) above may be combined with either (2)(c) or (b) provided that the lower platform present a level surface from a point not more than four (4) feet eight (8) inches from centerline of track to the face of the wall of the platform with which it is combined. No other combinations will be permitted.

(g) PLATFORMS--EXTENSION OF EXISTING PLATFORMS

NOTE: Platforms which were constructed prior to the effective date of this order may be extended at existing clearances.

(h) SIDE CLEARANCE--BRIDGES AND TUNNELS . . . . . 8'0"

(i) BRIDGES AND TUNNELS--UPPER SECTION (See Rule V (3).

Side clearance in through bridges and tunnels may be decreased to the extent defined by the half circumference of a circle having a radius of eight (8) feet and tangent to a horizontal line twenty-two (22) feet six (6) inches above top of rail directly above centerline of track.

(j) BRIDGES--LOWER SECTION AND STRUCTURES 4' HIGH OR LESS:

Through bridges supporting track affected, hand rails, water barrels and refuge platforms on bridges and trestles, water columns, oil columns, block signals, cattle guards and cattle chutes, or portions thereof, four (4) feet or less above top of rail may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of rail and five (5) feet distant laterally from centerline of track to a point four (4) feet above top of rail and eight (8) feet distant laterally from centerline of track: Provided that the minimum clearance for hand rails and water barrels shall be seven (7) feet six (6) inches and the minimum clearance for fences of cattle guards shall be six (6) feet nine (9) inches.

NOTE: Clearances authorized in this subsection, except as provided for hand rails and water barrels, shall not be permitted on any new or entirely reconstructed through bridges where the work of trainmen or yardmen requires them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead.

(k) SIDE CLEARANCE--CATTLE GUARDS AND CATTLE CHUTES (See (j).

(l) SIDE CLEARANCE--HAND RAILS ON BRIDGES AND TRESTLES (See (j).

(m) SIDE CLEARANCE--INTERLOCKING MECHANISM, SWITCH BOXES, ETC. . . . . 3'0"

Switch boxes, switch operating mechanism necessary for the control and operation of signals and interlockers projecting

four (4) inches or less above top of rail.

(n) SIDE CLEARANCE--MAIL CRANES AND TRAIN ORDER STANDS WHEN NOT IN OPERATIVE POSITION . . . . . 8'6"

(o) SIDE CLEARANCE--OIL COLUMNS . . . . . 8'0"
(See (j).

(p) SIDE CLEARANCE--POLES SUPPORTING TROLLEY CONTACT 8'3"
Conductors supplying motive power to track affected--of bracket construction.

(q) SIDE CLEARANCE--POLES OTHER THAN TROLLEY POLES 8'6"

(r) SIDE CLEARANCE--SIGNALS AND SWITCH STANDS
3' high or less when located between tracks where not practicable to provide clearances otherwise prescribed in this order . . . . . 6'0"

(s) SIDE CLEARANCE--SIGNALS AND SWITCH STANDS OTHER THAN ABOVE . . . . . 8'0"

(t) SIDE CLEARANCE--TUNNELS (See (i). . . . . 8'0"

(u) SIDE CLEARANCE--WATER BARRELS ON BRIDGES (See (j).

(v) SIDE CLEARANCE--WATER COLUMNS (See (j). . . . . 8'0"

(w) SIDE CLEARANCES ON CURVED TRACK
NOTE: Side clearances on all structures adjacent to curved track shall be increased as necessary to give the equivalent of tangent track clearances.

(x) SIDE CLEARANCE--MATERIAL OR MERCHANDISE
Adjacent to tracks . . . . . 8'6"
NOTE: No merchandise, material or other articles shall be placed or stored on ground or platforms adjacent to any track at a distance less than eight (8) feet six (6) inches from the centerline of track, except in cases of maintenance or emergency when such material is to be used within a reasonable period of time or where local conditions make compliance with this note impossible.

RULE VII TRACK CLEARANCE

(1) TRACK CLEARANCES--IN GENERAL . . . . . 14'0"
The minimum distance between the centerlines of parallel standard gauge railroad tracks, which are used or proposed to be used for transporting cars, engines, motors or like equipment, shall be fourteen (14) feet, except as hereinafter prescribed.

(2) TRACK CLEARANCES--MAIN AND SUBSIDIARY TRACKS. . 15'0"
The centerline of any standard gauge track, except a main track or a passing track, parallel and adjacent to a main track or a passing track, shall be at least fifteen (15) feet from the centerline of such main track or passing track; provided, however, that where a passing track is adjacent to and at least fifteen (15) feet distant from the main track, any other track may be constructed adjacent to such passing track with clearance prescribed in (1) of this rule.

(3) TRACK CLEARANCES--PARALLEL TEAM, HOUSE OR INDUSTRY TRACKS. . . . . 13'0"
Minimum clearances between centerlines of parallel team, house or industry tracks shall be thirteen (13) feet.

(4) TRACK CLEARANCES--PARALLEL LADDER OR LADDER AND OTHER TRACK . . . . . 20'0"

The centerline of any standard gauge ladder track constructed parallel to any other track, shall have a clearance of not less than twenty (20) feet from the centerline of such other track.

(5) TRACK CLEARANCES--EXISTING TRACKS

NOTE: Existing tracks may be extended at clearances existing prior to the effective date of this order.

RULE VIII MARKING OF CARS (1) CARS EXCEEDING 15'6" IN HEIGHT

Each car of a height exceeding fifteen (15) feet six (6) inches from top of rail to top of running board, the movement of which is hereby authorized, shall be marked, stenciled or placarded, and such markings maintained in a legible condition to read:

"THIS CAR
EXCESS
HEIGHT"

The words "EXCESS HEIGHT" to occupy the greater portion of a rectangular space 7" x 10" enclosed within a 3/4" solid border. The markings required shall be made permanent on owned cars as soon as practicable. Lettering and border of signs shall be of colors contrasting to that of the car body. All such required marking and placarding shall be placed on the side adjacent to the ladder or hand-holds near the floor line of the car at each of the four corners.

(2) CARS EXCEEDING 10'10" IN WIDTH

Each car of a width exceeding ten (10) feet ten (10) inches, the movement of which is hereby authorized, shall be marked, stenciled or placarded and such markings maintained in a legible condition to read:

"THIS CAR
EXCESS
WIDTH"

The words "EXCESS WIDTH" to occupy the greater portion of a rectangular space 7" x 10" enclosed within a 3/4" solid border. The markings required shall be made permanent on owned cars as soon as practicable. Lettering and border of signs shall be of colors contrasting to that of the car body. All such required marking and placarding shall be placed on the side adjacent to the ladder or handholds near the floor line of the car at each of the four corners.

RULE IX OPERATION OF EXCESS DIMENSION LOADS (1) CARS CONTAINING LADING IN EXCESS OF 15'6" HIGH AND/OR 5'5" FROM CENTERLINE OF CAR

Each open top car containing lading of a height exceeding fifteen (15) feet six (6) inches above top of rail, or which extends laterally more than five (5) feet five (5) inches from

the centerline of the car, the movement of which is hereby authorized, shall be marked, stenciled or placarded, and such markings maintained in a legible condition to read:

"THIS CAR EXCESS HEIGHT"	OR	"THIS CAR EXCESS WIDTH"

The words "EXCESS HEIGHT" or "EXCESS WIDTH" to occupy the greater portion of a space 7" x 10" enclosed within a 3/4" solid border. Letters and border to be of contrasting colors. All such required markings and placarding shall be placed on the side adjacent to the ladder or handholds near the floor line of the car at each of the four corners where practicable, and in addition one each of such signs shall be placed on each side of the load in a conspicuous position.

(2) CARS CONTAINING LADING WHICH EXTENDS LATERALLY IN EXCESS OF 5'5"

The movement of open top cars containing lading which extends laterally in excess of five (5) feet five (5) inches is hereby authorized only if the lading is of such a nature that it cannot practically be reduced in dimensions.

(3) LADING HIGHER THAN 15'6" OR EXTENDING LATERALLY MORE THAN 5'5½"

The movement of all open top cars having lading in excess of fifteen (15) feet six (6) inches in height, or which extends laterally in excess of five (5) feet five and one half (5½) inches from centerline of car will be authorized by written notice stating the total number of such cars, and advising that no member of the train crew is required to ride on top of such high car or the side of any such wide car.

(4) A WRITTEN NOTICE shall be delivered to every train containing any car, the lading of which extends laterally in excess of 5'5½" from the centerline of the car or in excess of 15'6" in height above top of rails, informing the crew of the train that the train includes such car or cars, stating the total number thereof and advising that no member of the train crew is required to ride on the side of any such wide car or top of any such high car.

(5) NOTICE TO YARD SUPERVISORS

Yard Supervisors shall be given notification sufficiently in advance of the arrival of such wide loads as described in (3) as to enable them to take necessary precautions to safeguard employees in yard.

(6) LOADS WHICH CANNOT BE PASSED OVER BY EMPLOYEES

Open top cars containing lading having an overall height in excess of fifteen (15) feet six (6) inches above top of rail, if otherwise in compliance with these requirements, and the nature of which precludes the possibility of employees passing over the cars, are exempt from the provisions of (3), (4), and (5), but written notice must be given to all members of train crew informing them of the presence of such loads.

(7) EXEMPTIONS

The common carrier railroads are hereby authorized to move excess height loads and width loads, as described in (1) over roads or portions thereof, without complying with the provisions of (1), provided that clearances equivalent to the minimum herein prescribed for cars having a height of fifteen (15) feet six (6) inches and width of ten (10) feet ten (10) inches are maintained.

Sanitation and Adequate Shelter
For Certain Railroad Employees

RULE X DEFINITIONS (1) The words and phrases used herein shall be construed as follows, unless the context shall otherwise require;

(a) The term "localized facilities," when used herein, shall mean those facilities of sanitation or shelter for the welfare and health of railroad employees, including but not limited to trainmen, enginemen, yardmen, maintenance of way employees, highway crossing watchmen, clerical, platform, freight house and express employees, station agents and telegraphers, which facilities are to be maintained at points where employees are required to report for duty or are relieved from duty.

(b) The term "highway crossing shanty," when used herein, shall mean a building at which public highway crossing watchmen are regularly stationed for performance of their duties.

(c) The term "running facilities," when used herein, shall mean those facilities of sanitation or shelter to be maintained on engines, trains or cabooses for the welfare and health of railroad trainmen, enginemen and yardmen.

(d) The term "camp facilities," when used herein, shall mean those facilities of sanitation or shelter for the welfare and health of maintenance of way employees, when such facilities are to be maintained at railroad camps of a permanent or seasonal nature, or are located in moveable cars when used for housing maintenance of way employees.

(e) The term "crossing watchmen," when used herein, shall include such employees, except members of train and yard crews, as are used in the flagging of public highway crossings or in the actual operation of manually controlled gates, public highway crossing signals, or other appurtenances having to do with the protection of such crossings.

(f) The term "tool house or shelter facilities," when used herein, shall mean the shelter facilities maintained for maintenance of way employees at points where such employees report for duty or are relieved from duty.

RULE XI LOCALIZED FACILITIES (1) Adequate localized facilities, as defined in Rule X (a) hereof, consisting, as in each location may be necessary, of the following facilities,

installed and maintained as specified, shall be furnished by all railroad companies under the jurisdiction of this Commission, if, in the judgment of the Commission, after hearing thereon, such facilities, or any of them, are necessary for the welfare and health of the above mentioned employees:

(a) There shall be provided a locker room where the employees may change their clothing, which shall be separated by solid partition from any toilet room then existing or which will be provided under the provisions of these regulations. The area of such room shall not be less than eighty (80) square feet of clear floor space for ten (10) employees, and adequate space to be added for additional employees.

Necessary benches and tables shall be provided.

(b) Where lockers are not now provided, a sufficient number of lockers shall be provided, the dimensions of which shall not be less than seventy-two (72) inches high, twelve (12) inches wide and eighteen (18) inches deep, save that, in such locations where larger lockers shall be deemed necessary, they shall be provided as shall be agreed to between the Railroad Company and its employees. Said lockers shall be equipped on the inside with a top shelf, and not less than one clothes hook on each side, a hanger bar, and also sufficient openings in the door for the purpose of ventilation.

(c) Where running water and sewers are available under reasonable conditions, or where physical conditions and ordinances permit the use of septic tanks in lieu of sewers, sufficient wash bowls and flush toilets shall be provided.

(d) If practical, every toilet room shall be so located as to open to the outside light and air by windows or skylights.

(e) All inside toilet facilities shall be made of materials impervious and resistant to moisture, and shall be fitted with individual flush systems. In the case of urinals, the water may be allowed to run continuously.

(f) The walls of compartments or partitions between toilets may be less than room height, but the top shall not be less than five (5) feet from the floor and the bottom not more than one (1) foot from the floor.

(g) An adequate supply of cool, sanitary water, satisfactory for drinking purposes, shall be made available to all employees. When necessary, this water shall be provided in suitable, sanitary containers, conveniently placed for the use of the above mentioned employees, and each container will be equipped with a faucet or other dispenser. The Company shall furnish single service paper drinking cups.

(h) Locker and toilet rooms shall be adequately heated, ventilated, lighted, and provided with screens, and said facilities shall be kept reasonably clean by the employer.

RULE XII RUNNING FACILITIES (1) Cabooses and locomotives used in road service must be provided with toilet facilities, toilets to be of retention type, where a locomotive consists of

one or more road diesel units, the lead unit shall be equipped with toilet facilities.

(a) All new road diesel units and cabooses intended for road service (not including yard switch engines or cabooses used entirely within yard service) contacted for and purchased subsequent to May 1, 1978, shall be equipped with toilet facilities.

(i) Such sanitary facilities shall be kept reasonably clean and in sanitary condition.

(b) All yard diesels shall have the floors cleaned and the windows washed at reasonable intervals.

(c) Cabooses shall be maintained in a clean and sanitary condition, provided that it shall be the duty of the employees to keep any assigned cabooses cleaned and sanitary and the employer shall offer such cleaning supplies as are reasonably necessary to maintain a clean and sanitary condition in such assigned cabooses.

(d) An adequate supply of cool, safe, water, satisfactory for drinking purposes shall be made available for the use of trainmen, enginemen and yardmen. Suitable sanitary containers, equipped with a faucet or other dispenser, shall be maintained on cabooses and locomotives, and single-service paper drinking cups shall be furnished by the company.

(e) Every caboose used in any train in this state, regardless of service, shall be provided with a stove or other adequate means of heating, properly ventilated. A sufficient amount of fuel for the trip or shift shall be made available.

(f) Cabooses contracted for and purchased after May 1, 1978, shall be equipped with washing facilities, for washing face and hands.

RULE XIII CROSSING WATCHMEN FACILITIES (1) Adequate shelter shall be furnished for crossing watchmen, and said shelter shall be properly sealed and heated.

(2) If, in the judgment of the Commission, it is practical, toilet and washing facilities will be furnished as the Commission may require, after inspection and agreement or hearing in the matter.

RULE XIV CAMP FACILITIES (1) When employees are furnished meals in camp cars, as hereinbefore defined, adequate sanitary facilities and space shall be provided.

(2) Where cars, other than passenger coaches, are furnished for sleeping quarters, each occupant of said car shall have a minimum of 250 cubic feet of air space. Where passenger coaches are furnished, the Commission may designate the number of men to be housed in each coach.

(3) All camp cars will be properly heated, ventilated, sealed and lighted; where possible camp cars shall be electrically lighted and, during the period of the year in which insects are prevalent, the doors and windows will be screened.

(4) All extra and permanent gangs will be furnished with

shower car, with running hot and cold water. Adequate toilet facilities will be furnished for all employees.

(5) Assignment of a camp man or janitor by the employer in all gangs over twenty (20) men will be made for the purpose of keeping the cars and grounds in a clean and sanitary manner.

(6) When extra and permanent gangs are furnished with kitchen car or cars, the same shall be well equipped with adequate kitchen facilities. Such kitchen cars shall be maintained in a clean and sanitary condition.

RULE XV TOOL HOUSE OR SHELTER FACILITIES (1) Adequate shelter facilities, located in tool houses or other suitable buildings, consisting, as in the individual case may be necessary, of the following appliances, installed and maintained as specified, shall be furnished by all railroad companies under the jurisdiction of this Commission for regularly assigned maintenance of way employees, at points where such employees are required to report for duty or are relieved from duty, as, in the judgment of the Commission, after investigation, and hearing, such facilities, or any of them, are necessary for the welfare and health of the above mentioned employees:

(a) There shall be provided space, adequate for the number of employees using said facilities, where employees may change their clothing, furnished with tables and benches or chairs in accordance with the number of employees using the facilities. Where lockers are not now provided, a sufficient number of metal lockers shall be provided to meet the requirements of said employees.

(b) During the period of the year in which insects are prevalent, screens will be furnished for the windows and doors.

(c) The space designated as shelter will be partitioned, sealed and adequately heated and lighted.

(d) Where running water and sewerage facilities are reasonably available, flush toilets and washing facilities will be provided. Otherwise, an outside toilet will be furnished and maintained in accordance with the provisions of Rule XVI, PROVIDED, HOWEVER, the provisions of this sub-section shall not be applicable where toilets and washing facilities are otherwise made reasonably available for maintenance of way employees.

(e) If necessary, a sufficient supply of safe running or well water will be made reasonably available, and single service paper drinking cups will be furnished.

RULE XVI CONSTRUCTION AND MAINTENANCE OF OUTSIDE TOILETS WHEN USED BY EMPLOYEES COMING UNDER THE PROVISIONS OF THIS ACT (1) The installation and maintenance of outside toilet facilities will be permitted in those situations where it is found otherwise impractical to install inside toilet facilities.

(2) Where outside toilets are installed and maintained in accordance with the above paragraph, they shall be located on ground that is well drained and where their location will in

no way endanger the public health.

(3) A suitable approach shall be provided.

(4) All windows, ventilators, and other openings, except doors, shall be screened to prevent the entrance of insects. A separate ventilator duct, with hood, shall be provided for the vault, and shall extend above the roof. The outside of the structure shall be banked to prevent the entrance of rodents.

(5) The entire installation must be kept clean and sanitary. Milk of lime (freshly slaked lime), or other equally effective disinfectant, shall be used in the vault and in the urinal trough, in sufficient quantities and at frequent intervals. The floors, seats and urinals must be scrubbed as often as necessary. A self closing door must be provided and the structure must be of tight construction.

RULE XVII EXISTING SHELTERS AND SANITARY FACILITIES (1) Any shelter and sanitary facilities which have been constructed and are presently being maintained in accordance with an agreement heretofore entered into between the parties in interest, shall be deemed a complete compliance with these rules and regulations, until such time as a specific complaint is filed with the Commission claiming that, on account of changes made in the uses of the facilities, such facilities are inadequate. PROVIDED, Nothing herein shall be construed to abrogate or limit any agreement between the interested parties now in effect which provides for better or more adequate facilities, or to prevent the negotiation of such an agreement in the future.

RULE XVIII APPLICATION FOR RELIEF FROM ENFORCEMENT (1) Any railroad company being of the opinion that the application or enforcement of this order, or any part thereof, at any particular place, will be unjust or unreasonable, may apply to the Commission for relief therefrom, and the Commission may, by written order, after notice and hearing, relieve said railroad company from the application of this order, or any part thereof, at such place, or modify the same in such manner and to such extent as shall be just and reasonable.

RULE XIX UPON ORDER BY THE COMMISSION OF INADEQUATE CONDITIONS, THE RAILROAD COMPANY MUST COMPLY WITHIN A REASONABLE TIME (1) In the absence of specific complaint, present facilities shall be deemed adequate. In the event of a complaint filed hereafter in respect of such facilities, and the Commission shall find, after notice and hearing, the same inadequate, the railroad company involved shall have a reasonable time in which to complete the work required in the light of the then existing situation, circumstances and conditions.

RULE XX IF AFTER PROPER NOTICE NO SATISFACTORY ADJUSTMENT IS MADE COMPLAINTANT MAY PETITION THE COMMISSION (1) If a

complaint within the purview of these rules is not satisfactorily adjusted after a period of thirty (30) days following the written notice thereof to the Division Superintendent by an authorized member of a Legislative Committee representing employees of a company to which these rules and regulations apply; or, in the absence of any Legislative Committee representative, some other properly authorized representative; the Montana Public Service Commission, upon proper petition and hearing, may issue an order directing that conditions complained of be corrected. When a hearing on such petition and complaint is ordered held by such Commission, due and proper notice shall be given to all interested parties, and the complaining and petitioning party will have the burden of establishing the fact of which it complains.

RULE XXI COMMISSION SHALL HAVE AUTHORITY TO INTERPRET RULES (1) In the event of any dispute or disagreement between any employee and any employer as to the intent, meaning and interpretation of any or all of the rules hereinabove set forth, the Commission reserves unto itself the right to set a hearing thereon, and to issue appropriate order or orders, so as to effectuate and carry out the intent and purpose of said rules.

4. These rules embody a series of "General Orders" adopted by the Commission over a number of years both before and after the enactment of the Administrative Procedure Act. In order to ensure the enforcability of these provisions, adoption as administrative rules is required.

5. Interested parties may submit their data, view or arguments, orally or in writing, concerning the proposed rules to James C. Paine, 1227 11th Avenue, Helena, Montana 59601, phone 449-3415.

6. Authority of the Department to make the proposed rules is based on Sec. 72-150 and 70-104,1, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE April 13, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

IN THE MATTER of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions.	NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions.

NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On May 24, 1978, the Board of Landscape Architects proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule, as proposed will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter two (2), Sub-Chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Landscape Architects, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than May 22, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Landscape Architects, LaLonde Building, Helena, Montana on or before May 22, 1978.

5. If the Board of Landscape Architects receives requests for a public hearing on the proposed adoption of a new rule from twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

6. The authority of the Board of Landscape Architects to make the proposed adoption of a new rule is based on Section 82A-1602.30

DATED this 13th day of April, 1978.

BOARD OF LANDSCAPE ARCHITECTS
RICHARD MAYER
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional and
Occupational Licensing

Certified to the Secretary of State 4-13 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

IN THE MATTER of the Proposed Adoption of ARM 40-3.86(6)-S86075 Reciprocity for Registered Land Surveyors, and ARM 40-3.86(6)-S86105 Corporate or Multi-person Firms; amendment of ARM 40-3.86(6)-S8690 Code of Ethics, ARM 40-3.86(6)-S86020 Applications, ARM 40-3.86(6)-S86030 Grant and Issue Licenses, ARM 40-3.86(6)-S86050 Examinations, ARM 40-3.86(6)-S86060 Renewals, ARM 40-3.86(6)-S86070 Duplicate or Lost Licenses; and ARM 40-3.86(6)-S86090 Fees Schedule.	NOTICE OF ADOPTION AND AMENDMENT NO HEARING CONTEMPLATED

Having published Notice on November 25, 1977 of the changes stated in the above-entitled matter and having received a letter from the Montana Administrative Code Committee recommending that another notice be prepared taking into consideration the Code Committee's comments and objections, that notice published on November 25, 1977 is hereby amended to read as follows:

TO: ALL INTERESTED PERSONS

1. On May 24, 1978, the Board of Professional Engineers and Land Surveyors proposes to make the above stated adoptions and amendments.

2. The changes as proposed are in the way of a complete review of the Board rules as required by Section 82-4204, R.C.M. 1947. For the most part such changes do not intend to delete or impose substantive requirements, but rather are intended only to eliminate out-dated or redundant provisions and to amplify or clarify existing provisions. However, notice will provide an explanatory statement after each proposed change and will specify some detail where a change is substantive.

3. The adoption of ARM 40-3.86(6)-S86075 Reciprocity for Registered Land Surveyors will read as follows:

"40-3.86(6)-S86075 RECIPROCITY FOR REGISTERED LAND SURVEYORS: (1) Registration by Endorsement: The Board may, upon application therefore and payment of proper fee and passing a written eight (8) hour examination, issue a certificate of registration as a Land Surveyor to any person who submits evidence that he holds a certificate of registration issued to him by proper authority of any state or territory or possession of the U.S., or of any

country provided that the applicants qualifications meet the requirements of the act and rules established by the Board. (See Rule -S86070(1)(a),-S86070(1)(b), -S86070(1)(c) and -S86070(2).)

(2) Non-Resident Practice in Montana. No firm, corporation, partnership or individual may establish or maintain within this state an office, or branch office, to engage in the practice of land surveying unless such office is under the responsible control and direct supervision of a resident land surveyor registered in this state."

The reason for the proposed language in sub-section (1) is to implement Section 66-2357(2)(a)(iii). That statutory section allows for registration by endorsement and this rule simply describes the method by which the Board requires that the provisions of that statutory section shall be met.

The reason for the provisions in sub-section (2) is basically to provide a means for regulating unlicensed practice by land surveyors within the state of Montana. In making this provision the Board has taken into consideration Section 66-2367(5) which states that no person or group of persons unlicensed in Montana may conduct business in Montana unless each person who is in direct or supervisory charge of the land surveying work is in fact registered in Montana. Consistent with this reasoning, the Board feels that if any non-resident wishes to conduct land surveying in Montana without a license then they must make sure that the person in Montana responsible for the land surveying work done is infact a Montana licensee. It should be noted in this connection that the language originally proposed has been significantly changed in this notice as a matter of clarification and as a response to the Montana Administrative Code Committee's particular objection.

4. The adoption of ARM 40-3.86(6)-S86105 Corporate or Multi-person Firms will read as follows:

"40-3.86(6)-S86105 CORPORATE OR MULTI-PERSON FIRMS: A firm, copartnership, corporation, or joint-stock association may offer and perform professional engineering or land surveying services in this state upon complying with the following:

1. All officers of the entity in responsible charge of engineering and/or land surveying must be registered under this act.

2. All resident representatives of the entity must be registered under this act.

3. All individuals performing engineering or land surveying services within the state must be registered under this act.

4. All entities offering Engineering or Land Surveying services in the state must be represented by residents registered under this act.
5. The term Associates in the name of a firm shall be construed to represent individuals who are registered in this state, who can be identified and show responsibility to the professional and operation decisions of the firm."

The reason for the proposed new rule is to specify licensure requirements, again under Section 66-2367(5) and to make it clear that such requirements apply both to land surveyors and to engineers and regardless of whether the practice is through a branch office or not.

5. The amendment of ARM 40-3.86(6)-S8690 Code of Ethics will read as follows: (Deleted matter interlined, new matter underlined)

"40-3.86(6)-S8690 CODE OF ETHICS (1) The Board will expect all engineers and land surveyors to uphold and advance the honor and dignity of the Engineering and Surveying Profession and Registration law within the ethical standards set forth in both the "Codes of Ethics" included ~~in~~ on the application form. ~~and as published by the National Society of Professional Engineers.~~"

The reason for the proposed amendment is to make it clear that the Code of Ethics is the code of the Montana Board and is not dependent upon any publication by the National Society of Professional Engineers.

6. ARM 40-3.86(6)-S86020 Applications is proposed to be amended by inserting the following words into the existing sub-section (3), and adding a new sub-section (7); (New matter underlined.)

"(3) References: Upon receipt of an application, a copy of the Board's uniform questionnaire and form letter shall be transmitted to five (5) or more references. Applicants will note that three or more of the references shall be registered in the profession being applied for AS Professional Engineers or Land Surveyors. No member of the Board will be accepted as a reference.

(7) Applications by holders of National Engineering Certificates: Applicants who have a current NEC certificate number must complete the following section of the Application for Registration as Professional Engineer 1 - General Information, 2 - Registration in other states, 9 - Affidavit."

The reason for the proposed amendment to sub-section (3) stated above is to clarify from the existing rule that obviously applicants for Professional Engineer will need professional Engineer references and Land Surveyors will need land surveyor references.

The reason the addition of sub-section (7) stated above is to make sure that the applicant shall advise the Board of and make current information contained in the NCE Certificate Packet current and to make sure the certificate provides the same interim action as the application form. This addition is simply a reporting requirement necessary to properly implementing the application requirements stated in Section 66-2353, 2355, and 2357, R.C.M. 1947.

7. ARM 40-3.86(6)-S86030 Grant and Issue Licenses is proposed to be amended by inserting certain words in sub-section (1)(a), deleting certain words in (1)(b), and replacing existing subsection (3) through (8) with a new subsection (3) as follows: (new matter underlined, deleted matter interlined)

"(a) Seals for Professional Engineers and Land Surveyors will be furnished by the Board ~~at cost~~, at a fee, upon request. Seals of two different sizes are authorized; pocket seal, the size commercially designated as a 1-5/8 inch seal; or a desk seal, commercially designated as a 2 inch seal. The seal will bear the registrant's name, serial number, and the legend "Registered Professional Engineer", "Registered Land Surveyor", or "Registered Professional Engineer and Land Surveyor".

(b) For stamping plans, specifications, and reports, registrants are authorized to have a rubber stamp copy made of their official seal; ~~however,~~ the title page of all sets of plans and all documents filed with public authorities must bear the ~~imprint of the official seal~~.

(3) Classification of Experience: Engineering experience or land surveying experience "of a character satisfactory to the Board" shall include the following:

(a) Sub-Professional Work shall be construed to cover the time spent as Rodman, Chainman, Instrumentman, Inspector, Recorder, Draftsman, Computor,Tester, Superintendent of Construction, or Clerk of the Works, Junior Engineer, or similar work; that is, positions in which the responsibility is slight and the individual performance of a task, set and supervised by a superior, is all that is required. It shall also include full time engineering employment before the applicant graduated from an approved college or university.

(b) Each year of experience in Sub-Professional Work, as defined herein may be credited as one-half (1/2) year toward the requirement of experience or practice of a character satisfactory to the Board. Only experience of the applicant which is classified as Sub-Professional or Pre-Professional Work by the Board will be considered.

(c) Pre-Professional Work is work performed before registration in Montana which is of a character worthy of the profession. Pre-Professional Work shall include the time after the applicant has graduated from an approved college or university, during which he has been accepted in engineering work of a higher grade and responsiblity than that above defined as Sub-Professional work. Successful completion of graduate study in engineering shall be considered Pre-Professional Work, but such study will not be credited as more than 1 year of Pre-Professional Work. The mere execution, as a contractor, of work designed by an engineer, or the mere supervision of construction of such work as foreman or superintendent shall not be deemed to be Pre-Professional Work.

(d) Education may be considered as Pre-Professional or Land Survey Work experience for applications considered under "Temporary Qualifications". Each academic year successfully completed in a school approved by the Board shall be rated as one (1) year of Pre-Professional or Land Survey Work experience. However, not more than two (2) years experience shall be credited to undergraduate educations qualifications.

(e) Experience time may be counted as Pre-Professional or Sub-Professional for work done during years counted for education.

(f) Land Survey Experience consists of work done under supervision of registered land surveyors such as section break downs, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches, corner recordation, etc.

(g) Other Survey Experience is survey work which may not be done under the supervision of a registered land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads pipelines, canals, etc., construction staking for land modifications; construction staking for highways, roads utilities, etc.

(h) Non Survey Experience is work not related to surveying.

(i) Part time survey work, if any, which may or may not run concurrent with a full time engagement, shall be listed as a separate engagement with total hours worked converted to years by dividing by a normal work year of 2080 hours.

(j) Full time work is considered a normal work week of 40 or more hours.

(k) Pre-Professional work (in charge) means: In the field, the applicant must have directed the work. The successful accomplishment of the work must have rested upon him. He must have made decisions regarding methods of execution and suitability of materials, without relying upon advice or instructions from his superiors.

In the office the applicant must have had to undertake investigations, or carry out important assignments, demanding resourcefulness and originality, or to make plans, write specifications and direct drafting and computation for designs or engineering, with only rough sketches, general information and field measurements for reference and guidance.

In teaching, the applicant must have taught an engineering program of recognized standing, and must have been engaged in research, product development, or consulting as a concurrent activity.

(l) Pre-Professional work (Design) means: All that is given above as Pre-Professional in charge and in addition one qualified in design must have met the exigencies encountered in engineering design and fulfilled the requirements of local circumstances and conditions, without violating any of the cannons of engineering.

(m) The Board, in passing on each of these requirements as defined, will carefully weigh the evidence of experience submitted by the applicant and the replies received from his references."

The reason for the proposed amendment in Sub-section 1)(a) is to clarify from the existing language that the charge for the seal, which may include Board expenses in providing this service in addition to the actual cost of the seal.

The reason for the proposed amendment of sub-section (1)(d) is to clarify from the existing rule that a seal other than the official seal will be allowable. The Board thought this change was necessary since Section 66-2360(3) allows for use of the official seal or facsimile thereof.

The reason for proposing new sub-section (3) is to properly implement definitional distinctions made by section 66-2350 and to properly implement registration requirements stated in section 66-2357. Existing sub-section (3) through (8) are reorganized through this proposed amendment under a classification of experience heading to help applicants evaluate their own experience in the same manner as would the Board upon receipt of the application. The new sub-section also introduces the phrase "Pre-Professional" to distinguish such status from the word "Professional" as it is used in the act. This proposed new sub-section also attempts to distinguish between land surveying and engineering experience. Finally, the amendment is made to meet the additional and modified definitions in

Section 66-2350, which was a legislative enactment made after the publication of the existing rule.

8. ARM 40-3.86(6)-S86050 is proposed to be amended by replacing existing sub-section (1) and (2), renumbering sub-section (4) as subsection (3), inserting certain language into subsection (5) and renumbering it (4) and renumber subsection (6) as (5) as follows (new matter underlined, deleted matter interlined.)

"40-3.86(6)-S86050 EXAMINATIONS (1) After July 1, 1975 registration as a professional Engineer and/or Land Surveyor in Montana, requires in part, examinations. The examinations required are defined in Section 66-2359. (2) Applicants will be notified of the time and place of examination at least thirty (30) days in advance. ~~(4)~~ (3) A passing grade of seventy (70) per cent in each part of the examination will be required. ~~(5)~~ (4) A candidate failing to pass any ~~part of the~~ examination~~s~~ may take that examination ~~part~~ a second time at a subsequent examination period upon payment of a fee established by the Board. ~~(6)~~ (5) The examinee may review his examination paper in the Board office within 90 days after being notified of his status. No notes are to be made nor any marks made on the examination paper.

The examination documents (test papers) will be retained in the examinee's file for a period of two years, and then destroyed."

The reason for the proposed replacement for sub-section (1) is to change the commencement date to reflect the date proposed by the new section 66-2359, which was enacted effective July 1, 1975 and also to reflect that there is a new controlling statutory section.

The reason for the proposed replacement of sub-section (2) and the amendment of sub-section (5) (proposed for renumbering as subsection (4) is to indicate that new Section 66-2359 no longer contemplates the taking of parts of the examination, but rather contemplates taking the full exam. The amendment further authorizes the Board to impose an examination fee.

9. ARM 40-3.86(6)-S86060 Renewals is proposed to be amended by replacing the catch phrase, replacing the first half of subsection (1) and redesignating the second half of sub-section (1) as subsection (2) as follows:

"40-3.86(6)-S86060 ~~RENEWALS~~ EXPIRATION-RENEWALS-FEE. (1) Certificates of registration expire each year and shall be renewed as outlined in Section 66-2361 upon receipt of the renewal fee set by the Board.

~~(1) Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed, provided, however, that certificates issued prior to January 1, 1958, shall expire December 3, 1958. It shall be the duty of the Board to notify every person registered under the act, of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year, such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be affected at any time during the month of December by the payment of a fee of ten ($10.00) dollars for either a Professional Engineer or Land Surveyer or both.~~

(2) The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal but the fee to be paid for the renewal of a certificate after the month of December shall be increased ~~to~~ ten percent for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fees."

The reason for the proposed amendment of sub-section (1) is to clarify and briefly state the renewal requirements as imposed by section 66-2361 adopted in 1975.

10. ARM 40-3.86(6)-S86070 Reciprocity is proposed to be amended as follows (new matter underlined, deleted matter interlined);

"40-3.86(6)-S86070 RECIPROCITY FOR PROFESSIONAL ENGINEERS

(1) Registration by Endorsement: The Board may, ~~without written examination,~~ upon application therefore and payment of proper fee, issue a certificate of registration as a Professional Engineer to any person who submits evidence that he holds a certificate of Qualification or Registration issued to him by proper authority of the National Engineering Certification Committee of ~~Bureau of Engineering Registration operated by~~ the National Council of ~~State Board of~~ Engineering Examiners, or of any State or Territory or Possession of the United States, or of any country provided that the applicant's qualifications meet the requirements of the act and of the rules established by the Board. Such applicants shall, as part of their application, complete and send to the Board the standard application form.

(a) When application for registration by endorsement is made the Montana Board shall secure from the examining

board by which the certificate of registration involved was issued, complete information as to the basis for the issuance of said certificate, provided, however, that if the applicant presents evidence of a certificate issued by the National ~~Bureau of Engineering Registration~~ Engineering Certification Committee of NCEE bearing thereon as an endorsement proper authorization by the authorized official of the State Board of Engineering Registration of the state in which the holder of the certificate is a resident, such inquiry may be omitted.

(b) All non-resident applicants must be registered in their states of residence and original registration, before their application can be considered. ~~-Who are not registered in their home state or who registered under standards lower than Section 66-2357 of the act shall not be eligible for registration by endorsement.~~

(c) The Board will, upon application for reciprocal registration by one of its registrants, certify as to his qualifications.

(2) Non-Registered, Non-Residents: Applications for registration as Professional Engineer and/or Land Surveyor from persons who are not residents of Montana and who are not registered in their home state or country will not be approved by the Board.

(3) Registration by Reciprocity without Examination: An out-of-state registrant, whose ~~has not entered his registration~~ conditions did not include examination may ~~by examination, will generally~~ be granted registration ~~in Montana by the Board~~ without examination ~~as follows:~~ if the original certificate of registration was granted under any of the following provisions:

(a) Engineers holding a certificate of qualification issued by the National Council ~~of State Boards~~ of Engineering Examiners Committee on National Engineering Certification (NEC). ~~-or by the National Bureau of Engineering Registration;~~

(b) Engineers registered under a provision of the law permitting registration to applicants who have graduated from a shcool or college in an engineering curriculum of four (4) years or more plus four (4) years or more of experience in engineering work of a character satisfactory to the Board; provided the certificate of registration was issued prior to July 1, 1948, for civil engineers and July 1, 1957, for others.

(c) Engineers registered under a provision of the law permitting registration to applicants who have a specific record of twelve (12) years or more of lawful practice in engineering work of a character satisfactory to the Board, of which at least five (5) years has been in responsible

charge of important work, provided such registration was granted after the individual was thirty-two (32) years of age, and the certificate was issued before July 1, 1975 and under requirements not lower than those of the Montana Law and the by-laws and rules of this Board at the time the certificate was issued.
(4) Registration by Reciprocity Without Education: An out-of-state registrant whose registration conditions did not include graduation from a four (4) year approved curricula, may be granted registration by the Board if the registrant has successfully passed the eight (8) hour E.I.T. and the eight (8) hour P.E. examinations issued by NCEE and has had eight (8) years of engineering work experience satisfactory to the Board, and provided that the certificate was issued before July 1, 1979.
(5) ~~(4)~~ Non-Resident Practice in Montana: A person not a resident of and having no established place of business in this state, practicing or offering to practice within the profession of Professional Engineering when such practice is for one specific engagement not exceeding one year shall not be required to register in Montana provided:
(a) Such person is legally qualified by registration to practice the said profession in his own State or Country in which the requirements and qualifications under which he registered were not lower than those of this state.
(b) Such person notify the Board of his desire to practice in this state prior to making an agreement for such practice and setting forth the name of the client, description of the job, date such practice will start and cease.
(c) Such person submit evidence of legal registration in his own state, and receive the approval of the Board for such practice.
(d) Such person notify the Board at the completion of practice in this date of the exact date of such practice started and ended.
(e) Such person shall remit sixty dollars ($60.00) with his permit form."

The reason for the proposed amendment to subsection (1) is to clearly indicate that under new section 66-2357 the Board cannot license by endorsement without written examination. The amendment further reflects certain non-substantive name changes.

The reason for the proposed amendment to sub-section (1)(b), (3), (3)(a), and (3)(b) and (4) is to provide clarity in the existing rule, to accommodate and implement the basic requirements specified in Section 66-2357 enacted in 1975,

and to provide for a method of determining whether the applicant has "comparable qualifications" within the intent and meaning of Section 66-2357(2)(a)(iii). Proposed subsection (3)(c) is made to clarify that the thirty-two (32) years requirement combines the twelve (12) years in the existing rule and the twenty-one (21) years required in ARM 40-3.86(6)-S86030(5) prior to his proposed amendment. This change will establish a total of thirty-two (32) years to represent the requisite experience and maturity.

Proposed sub-section (4) allows for a grandfathering for persons registered under Section 66-2357.

The reason for the proposed amendment stated in subsection (5) is to clarify and implement section 66-2368, and to specify that the statute allows a one (1) job limitation not to exceed one (1) year.

Finally, the catchphrase to the proposed rule as amended clearly indicates that the rule applies only for professional engineers. (Reciprocity for Land Surveyors has already been provided in proposed new rule 40-3.86(6)-S86075)

11. ARM 40-3.86(6)-S86080 Duplicate or Lost Licenses is proposed to be amended by changing the word "Licenses" in the catch phrase to the word "Certificate".

"40-3.86(S86080 DUPLICATE OR LOST ~~LICENSES~~ CERTIFICATE"

The reason for the proposed amendment to the catch phrase is simply to make it conform with the word used in the text of the rule.

12. ARM 40-3.86(6)-S86090 is proposed to be amended by inserting the following words into subsection three; (new matter underlined, deleted matter interlined.)

"(3) The annual renewal fee for registration as a Professional Engineer, or Land Surveyor, shall be twelve dollars ($12.00) or Professional Engineers and Land Surveyors shall be ~~ten~~ eighteen dollars ~~($10.00)~~ ($18.00).

The reason for the proposed amendment of sub-section (3) is simply to implement the statutory authorization in section 66-2361 to impose renewal fees not to exceed the maximum of $20.00.

13. Interested parties may submit their data, views or arguments concerning the proposed adoption and amendments in writing to the Board of Professional Engineers and Land Surveyors, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than May 22, 1978.

14. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Professional Engineers and Land Surveyors, LaLonde Building, Helena, Montana on or before May 22, 1977.

15. If the Board of Professional Engineers and Land Surveyors receives requests for a public hearing on the proposed adoption and amendments from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such will be made in the Administrative Register.

16. The authority of the Board of Professional Engineers and Land Surveyors to make the proposed adoption and amendments is based on Section 66-2353 R.C.M. 1947.

DATED this 13th day of April, 1978.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
WILLIAM TANGEN, President

BY: Ed Carney
ED CARNEY, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 4/13/78, 1978

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WATER WELL CONTRACTORS

IN THE MATTER of the Proposed Adoption of a New Rule to Implement Section 66-2602.2, R.C.M. 1947 defining supervision.	NOTICE OF HEARING on the Proposed Adoption of a New Rule to Implement Section 66-2602.2 R.C.M. 1947 defining supervision.

TO: ALL INTERESTED PERSONS

1. On May 16, 1978 at 9:00 o'clock A.M. in the Highway Auditorium, corner of 8th and Roberts, Helena, Montana, a public hearing will be held to receive testimony in the above entitled matter.

2. Section 66-2602.2 exempts from licensure "An individual who performs labor or services for a licensed Water Well Contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed Water Well Contractor." The proposed new rule will define "direction and under the personal supervision" as follows:

> "The word'direct'is defined as a employer-employee relationship. 'Personal supervision' is defined to mean that a licensed water well contractor must be present at the job site when the drilling rig is in operation."

The reason for the proposed rule is to clarify the meaning of "direction" and "personal supervision". The Board has found numerous instances where unlicensed persons are operating drilling rigs on their own, with little or no direction and supervision of a licensed contractor. The Board feels that this was not the intent of the statutory exception and direction and supervision must be made over such persons in order to insure that the drilling operation is attended to by a qualified and licensed contractor. The Board further feels that the Legislature intended these assurances as a proper protection, of the public water supply, and for the recipient of the well.

The Board further feels that such assurances can only be provided if the unlicensed person is in the employ and subject to the direction of a licensed contractor. The word employ does not include an independent contractor or sub-contractor who may not be subject to the direction of the licensee. The Board further feels that adequate supervision cannot be made unless the licensed contractor is present when the drill is in operation. The Board feels that this definition is well within the Legislative intent when the stature uses the term Personal supervision, which denotes the requirement of personal presence of the licensee.

3. All interested persons will be afforded opportunity to make an oral presentation as to their comments on the proposed ruling at the hearing. Written statements will be received in addition to or in lieu of oral testimony and made a part of the record of the hearing for the Board's review. The Board will receive written comments made to the Board at any time prior to, or at the hearing.

The Board will request that any person who desires to present, or intends to present oral testimony at the hearing shall notify the Board of the same, in writing, at least ten (10) days prior to the hearing date. Such letter and any other comments should be directed to the Board of Water Well Contractors, LaLonde Building, Helena, Montana 59601.

4. The hearing will be conducted by the Board of Water Well Contractors or its designee.

5. The authority of the Board to make the proposed adoption is based on Section 66-2605, R.C.M., 1947.

DATED this 13th day of April, 1978.

BOARD OF WATER WELL CONTRACTORS
WES LINDSAY
CHAIRMAN

BY: _____
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 4-13, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WATER WELL CONTRACTORS

IN THE MATTER OF THE Proposed Adoption of a new rule relating to Public Participation in Board decision making functions; and the Amendment of ARM 40-3.106(6)-S10630, Set and Approve Requirements and Standards - General; and the Amendment of ARM 40-3.106(6)-S10650, Examination.	NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions; and the Amendment of ARM 40-3.106(6)-S10630, Set and Approve Requirements and Standards - General; and the Amendment of ARM 40-3.106(6)-S10650, Examination.

NO HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On May 24, 1978, the Board of Water Well Contractors proposes to adopt a new rule relating to public participation in Board decision making functions; and the Amendment of ARM 40-3.106(6)-S10630, Set and Approve Requirements and Standards - General; and the Amendment of ARM 40-3.106(6)-S10650, Examination.

2. The rule as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter two (2), Sub-Chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. The Amendment of ARM 40-3.106(6)-S10630, Set and Approve Requirements and Standards - General, as proposed will add the following language as sub-section (1) and will cause the existing sub-sections to be re-numbered accordingly:

> "(1) A licensed Montana Water Well Contractor shall furnish high quality materials, installed in such a manner as to make all joints water tight. Any pipe or casing used for sealing out surface waters or contaminants shall have a minimum wall thickness of 1/8 inch. Water wells installed in areas where minerals in soil cause corrosion, pitting, shall have the casing protected by a cement grout placed around the casing using positive displacement method."

The reason for the proposed amendment is to re-include this provision in the rule which was inadvertently omitted when the rule was last amended. Such language originally appeared in the rule and was never noticed for repeal. The purpose of the rule is to provide what the board considers reasonable methods for protecting against contamination and for protecting against unnecessary damage to the casing.

4. The amendment of ARM 40-3.106(6)-S10650, Examination, as proposed will change the passing score on the examination from 76% to 75%. The Board has always used 75%, and the statement of 76% the Board assumes was a typographical error made when the page was re-typed to reflect an amendment in the prior rule.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoption of new rules in writing to the Board of Water Well Contractors, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than May 22, 1978.

6. If the Board of Water Well Contractors receives requests for a public hearing on the proposed amendment and adoption of new rule from more than ten percent (10%) of the persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

8. The authority of the Board of Water Well Contractors to make the proposed amendment and adoption of new rule is based on Section 66-2605, R.C.M. 1947.

DATED this 13th day of April, 1978.

BOARD OF WATER WELL CONTRACTORS
WES LINDSAY
CHAIRMAN

BY: _____
Ed Carney, Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 4-13, 1978.

BEFORE THE COMMISSIONER OF CAMPAIGN
FINANCES AND PRACTICES OF
THE STATE OF MONTANA

In the matter of the emergency amendment of rule ARM 44-3.10 (6)-S1086, defining "ballot issue" and prescribing reporting requirements of ballot issue committees under the Campaign Practices Act	NOTICE OF PUBLIC HEARING (on abbreviated notice) on the emergency amendment of ARM 44-3.10(6)-S1086, requiring reporting of certain contributions and expenditures relative to ballot issues made prior to the time an issue is certified.

TO: All interested persons

1. It has recently been brought to the Commissioner's attention, on the petition of interested Legislators and others, that the Agency's recently adopted rule regarding reporting requirements of ballot issue political committees is unsatisfactory in some respects. The rule as it now stands defines "ballot issue" as an issue which has been certified by the proper official as qualified to appear on the ballot, and states that political committees supporting or opposing such issues which have funds on hand as of the date of certification (which they wish to use in an election) shall report the sources of such funds as if the balance is made up of the contributions most recently received. The rule implies that funds paid out by such a committee prior to certification need not be reported, nor do contributions received prior to certification, if they are expended before that date.

While the rule was drafted to simplify the reporting and record keeping requirements of committees with regard to expenses of printing and circulating petitions, it is now apparent that it is capable of being construed to eliminate any and all expenditures made prior to certification from the reporting requirements of the Campaign Practices Act; for instance, expenditures contracted in advance of certification for the costs of public messages actually supporting or opposing an issue, on the assumption that it will qualify. It is the Commissioner's feeling that if stretched to its widest interpretation, this rule is capable of being utilized to entirely evade the letter and spirit of the Campaign Practices Act. Such an interpretation was not the Agency's intent when the rule was adopted.

There are various committees throughout the state which will be mounting campaigns in the near future, and it would be undesirable to change the applicable rules with campaigns already well underway. And because operation under the rule as now constituted could possibly result in a major portion of some campaigns being effectively exempted from the reporting requirements of the Act if clarification is not made as soon as possible, we feel that the amendment should not wait

until June 24, which is the earliest date an amendment could be effected through the normal hearing process. The dates of June 23 and July 24, for submission of petitions to County Clerks and Recorders for constitutional and statutory initiatives respectively, and the equally unalterable date of the November 7 general election, together with the need on the part of political committees to have applicable rules firmly established by the time campaigns are under way, demand that the amendment be accomplished immediately. The primary public interest--full disclosure of the source and disposition of funds used to influence elections in Montana--would not otherwise be served.

Therefore, the Commissioner intends to adopt the following emergency amendment to ARM 44-3.10(6)-S1086 in public hearing on April 14, 1978. The order of discussion at the hearing will be upon the following two questions: (1) the need for amendment by the emergency as opposed to the usual procedure; (2) the merits of the proposed amendment itself. Comments received on or before that date will be considered prior to adopting the amendment, and the Commissioner reserves the right to revise the language of the amendment prior to adoption. This notice and the amendment as adopted will be mailed to all committees circulating petitions that have been certified as to form by the Secretary of State. Such persons will also be personally notified and notice will be given to the press. The rule as adopted will be published as an emergency rule in the next issue of the Montana Administrative Register. Simultaneously with this notice, proceedings will be instituted to adopt a similar or identical amendment through the normal hearing process.

2. The hearing will take place in room 413 of the State Capitol building on April 14, 1978, at 10:00 a.m.

3. The text of the proposed amendment is as follows (stricken material is interlined, new material is underlined):

44-3.10(6)-S1086 BALLOT ISSUE - DEFINITION; PERSONS SUPPORTING OR OPPOSING (1) An issue as defined in section 23-4777(3), R.C.M. 1947, becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed.

(2) ~~Committees which have cash on hand at the time of certification (which they wish to use in an election) shall disclose on their first report the source(s) of those funds, including the information required by section 23-4779 and these rules. The cash balances are assumed to be composed of those contributions most recently received by the committee.~~ Contributions received and expenditures made to support or oppose a ballot issue prior to certification (except for expenses of printing and circulating of petitions) are contributions and expenditures as defined in section 23-4777(5)

and (6), and must be reported on a committee's initial report in the event certification occurs.

(3) A committee which has made such expenditures or received such contributions shall file a statement of organization within five days of the issue's certification.

4. The rationale for the proposed amendment is set forth in the statement of reasons for emergency.

5. Interested persons may comment in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana, prior to April 14, or at the hearing.

6. JACK J. LOWE, Helena, Montana, has been appointed hearing officer to preside over and conduct the hearing.

7. The authority of the Commissioner to adopt the proposed amendment is based on sections 23-4786(14) and 82-4204(2), R.C.M. 1947.

John N. Hanson

John N. Hanson
Commissioner of Campaign
Finances and Practices

Certified to the Secretary of State April 6, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 46-2.14 (86)-S14830 and 46-2.14(74) -S14700(5)(6) and adoption of Rule 46-2.14(74)-S14701 all pertaining to vocational rehabilitation services,economic need, placement, and tools, equipment, initial stocks and supplies	NOTICE OF PROPOSED AMENDMENT OF RULES 46-2.14(86)-S14830 and 46-2.14(74)-S14700(5)(6) and ADOPTION OF RULE 46-2.14(74)-S14701 all pertaining to vocational rehabilitation services, economic need, placement, and tools, equipment, initial stocks and supplies. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 1, 1978, the Department of Social and Rehabilitation Services proposes to amend rules ARM 46-2.14(86)-S14830 and ARM 46-2.14(74)-S14700(5)(6) and adopt rule ARM 46-2.14(74) -S14701 which all pertain to vocational rehabilitation services, economic need, placement, and tools, equipment, initial stocks and supplies.

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

46-2.14(86)-S14830 ECONOMIC NEED (1) Economic need of each client will be established simultaneously with, or within a reasonable time prior to, the provision of those services for which the Division requires a needs test. No economic needs test will be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Evaluation of rehabilitation potential, including diagnostic and related services (including transportation).

(b) Counseling, guidance and referral services.

(c) Placement in suitable employment.

(d) Vocational and other training services.

(2) Services contingent upon economic need include:

(a) Physical and mental restoration services.

(b) Maintenance

(c) Transportation, except when necessary in connection with determination of eligibility or nature and scope of services.

(d) Occupational licenses, books and training supplies.

(e) Tools, equipment and initial stocks and supplies.

~~(f) Services to members of a handicapped individual's family.~~

~~(g)~~ (f) Interpreter services for the deaf.
~~(h)~~ (g) Reader services for the blind.
~~(i)~~ (h) Telecommunications, sensory, and other technological aids and devices.
~~(j)--Post-employment-services.~~
~~(k)~~ (i) Other goods and services.

3. The rule as proposed to be amended provides for the deletion of sub-sections (5) and (6) of ARM 46-2.14(74)-S14700.

4. The rule as proposed to be adopted provides as follows:

46-2.14(74)-S14701 TOOLS, EQUIPMENT, INITIAL STOCKS AND SUPPLIES (1) Tools, equipment, initial stocks and supplies, including livestock, may be provided as needed in the individual case for the operation of a business or agricultural enterprise or the pursuit of a trade, occupation, or profession by eligible clients.

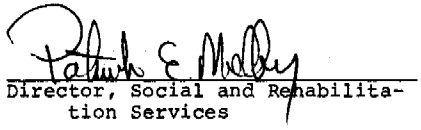
(2) Guides and standards governing quality and quantity are developed, as necessary, with appropriate professional, trade, business, training, and other organizations and institutions. Occupational licenses will be supplied, as required, in the individual case. (History: Sections 71-2101, 71-2102, R.C.M. 1947; NEW, MAC Notice No. 46-2-111; Order MAC No. 46-2-59; Adp. 12/15/76; Eff. 1/3/77.)

5. The Department's rationale in amending Rules 46-2.14(86)-S14830 and 46-2.14(74)-S14700(5)(6) and adopting Rule 46-2.14(74)-S14701 is to bring the vocational rehabilitation program into conformity with federal regulations and guidelines governing eligibility for specific services, and to clarify the Department's duties in providing tools, equipment, initial stocks and supplies to eligible clients.

6. Interested parties may submit their data, views, arguments, or requests for an oral hearing concerning the proposed amendments and adoption in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than May 11, 1978. A Public Hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the rules.

SOCIAL AND
REHABILITATION SERVICES

7. The authority of the department to make the proposed amendments and adoption is based on sections 71-2101 and 71-2102 R.C.M. 1947.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 7, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules relating to annual vacation leave for State employees.) NOTICE OF PROPOSED AMENDMENT OF ARM RULES 2-2.14(14)-S14100, 2-2.14(14)-S14120, 2-2.14(14)-S14200, and 2-2.14(14)-S14230. (ANNUAL VACATION LEAVE)

TO: All interested persons:

1. On February 24, 1978, the Department of Administration published notice of the proposed amendment of ARM Rules 2-2.14(14)-S14100, 2-2.14(14)-S14120, 2-2.14(14)-S14200, and 2-2.14(14)-S14230 relating to annual vacation leave for State employees at pages 142-145 of the Montana Administrative Register, issue number 2.
2. The agency has amended the rules as proposed.
3. No comments or testimony were received.

BEORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules relating to sick leave for State employees.) NOTICE OF PROPOSED AMENDMENT OF ARM RULES 2-2.14(20)-S14280, 2-2.14(20)-S14290, 2-2.14(20)-S14330, and 2-2.14(20)-S14450. (SICK LEAVE)

TO: All interested persons

1. On February 24, 1978, the Department of Administration published notice of the proposed amendment of ARM Rules 2-2.14(20)-S14280, 2-2.14(20)-S14290, 2-2.14(20)-S14330, and 2-2.14(20)-S14450 relating to sick leave for State employees at pages 146-148 of the Montana Administrative Register, issue number 2.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

Jack C. Crosser, Director
Department of Administration

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-3.36(10)-S36000) regarding late appeals to the State Tax Appeal Board	NOTICE OF THE AMENDMENT OF RULE 2-3.36(10)-S36000 (APPEALS - NOTICES)

TO: All Interested Persons

1. On January 25, 1978, the State Tax Appeal Board published notice of a proposed amendment to Rule 2-3.36(10)-S36000 concerning the time for late appeals to the State Tax Appeal Board.

2. The Board has amended the rule as proposed.

3. Only one comment was received recognizing the desirability of the proposed amendment, but questioning the Board's statutory authority to make such amendment. The Board's attorney has assured the State Tax Appeal Board that it does have proper authority to make this rule and therefore, the State Tax Appeal Board will amend the rule as noticed.

Helen M. Peterson, Chairman
State Tax Appeal Board

Certified to the Secretary of State April 13, 1978.

DEPARTMENT OF AGRICULTURE

Repeal of rule 4-2.22(6)-S22080, Single Purchase/Single Use Permits.

1. Department of Agriculture published Notice 4-2-46 of a proposed REPEAL to ARM 4-2.22(6)-S22080 on February 15, 1978 at page 149, Montana Administrative Register; 1978 issue number 2.

2. Statement of reasons in support of the repeal is that the rule is no longer needed to help serve the public or the department.

No testimony or comments were received.

3. This rule has been repealed as proposed with no changes and becomes effective on April 25, 1978.

Amendment of rules 4-2,6(2)-S647; 4-2.22(1)-S2200; 4-2.22(1)-S2270; 4-2.22(2)-S2280; 4-2.22(2)-S2290; 4-2.22(2)-S22000; 4-2.22(6)-S22060; 4-2.22(10)-S22120; 4-2.22(10)-S22130; 4-2.22(18)-S22260; 4-2.22(22)-S22360; & 4-2.28(10)-S28040.

1. Department of Agriculture published Notice 4-2-47 of a proposed amendment to the above mentioned rules on February 15, 1978 at pages 150-152, Montana Administrative Register; 1978 issue number 2.

2. Statement of reasons in support of the amendements is to do a general clean up of the rules and their language for better clarification.

No testimony or comments were received.

3. These rules have been amended as proposed with no changes and become effective on April 25, 1978.

Amendment of All rules in Title 4.

1. Department of Agriculture published Notice 4-2-48 of a proposed amendment to all of ARM rules in Title 4 on February 15, 1978 at pages 153-154, Montana Administrative Register; 1978 issue number 2.

2. Statement of reasons in support of the amendment is for re-codification of the entire Title 4 section of the codes. Departmental reorganization has consolidated some of the previous divisions and therefore rules need to be moved to enable clarification of the change.

No testimony or comments were received.

3. These rules have been amended as proposed with no changes and become effective on April 25, 1978.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule 8-3.14(14)-S1440 Relating to the Pricing of Milk	))))	NOTICE OF ADOPTION OF AMENDMENT OF RULE 8-3.14(14)-S1440 (PRICING RULES)

TO: All Interested Persons

1. On the 15th of December, 1977, the Board of Milk Control of the state of Montana published notice of a proposed amendment to Rule 8-3.14 (14)-S1440 concerning the amendment of pricing rules and other changes as stated in the heading of this matter. At pages 1079 and 1080 of the 1977 Montana Administrative Register, issue number 12.

2. The agency has amended the rule with the following changes:

(6)(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale institutional and retail prices of Class I milk in all market areas of the State utilizes a November, 1969 Base equalling 100, an interval of ~~5.3~~ 6.3 and consists of seven (7) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

	FACTOR	WEIGHT	CONVERSION FACTOR
(1)	Weekly Wages - Manufacturing (Montana Revised)	25%	.1828020
(2)	Weekly Wages - Mining (Montana Revised)	7%	.0473934
(3)	Weekly Wages - Transportation & Utilities (Montana Revised)	18%	.1178628
(4)	Wholesale Price Index (U.S.)	28%	.2607076
(5)	Pulp, Paper and Allied Products (U.S.)	12%	.1142857
(6)	Industrial Machinery (U.S.)	6%	.0556586
(7)	Motor Vehicle and Equipment (U.S.)	4%	.0376294
		100%	

The following table will be used in computing distributor prices:

TABLE II

Handler incremental deviation from last official reading of present formula. (~~December, 1973~~ March, 1978 = ~~122.10~~ 200.40; Formula Base = November, 1969; Interval = ~~5.3~~ 6.3)

FORMULA INDEX		HANDLER INCREMENTAL DEVIATION
~~106.20---110.44~~	114.40 - 119.44	-5
~~111.60---116.74~~	120.70 - 125.74	-4
~~116.80---121.04~~	127.00 - 132.04	-3
~~122.10---126.34~~	133.30 - 138.34	-2
~~127.40---131.64~~	139.60 - 144.64	-1
~~132.70---136.94~~	145.90 - 150.94	0
~~138.00---142.24~~	152.20 - 157.24	1
~~143.30---147.54~~	158.50 - 163.54	2

(NOTE: This chart is amended to reflect a ~~two~~ four cent ~~($0.02)~~ ($0.04) reduction in the distributors' margin based on a half (1/2) gallon of whole milk as ordered by the Board of Milk Control on ~~July 24, 1976~~ March 11, 1978.)

FORMULA INDEX		HANDLER INCREMENTAL DEVIATION
~~148.60---152.84~~	164.80 - 169.84	3
~~153.90---158.14~~	171.10 - 176.14	4
~~159.20---163.44~~	177.40 - 182.44	5
~~164.50---168.74~~	183.70 - 188.74	6
~~169.80---174.04~~	190.00 - 195.04	7
~~175.10---179.34~~	196.30 - 201.34	8
~~180.40---184.64~~	202.60 - 207.64	9
~~185.70---189.94~~	208.90 - 213.94	10
~~191.00---195.24~~	215.20 - 220.24	11
~~196.30---200.54~~	221.50 - 226.54	12
~~201.60---205.84~~	227.80 - 232.84	13
	234.10 - 239.14	14
	240.40 - 245.44	15

(c) Detailed information on converting the above factors in both formulas to a current weighted value can be obtained by contacting the Milk Control Division, 805 North Main Street, Helena, Montana 59601, Phone (406) 449-3163.

(d) The factors in both formulas will be converted to a weighted value as soon as practicable after the first of each month.

(e) For each 4.5 points that the weighted index advances or retreats, prices paid to producers will increase or decrease twenty-three cents ($0.23) per hundredweight. For each officially announced increase or decrease in producer prices, the wholesale price of one half (1/2) gallon of whole milk will increase or decrease one cent ($0.01).

(f) Prices for all other milk items are calculated by historic factors in relation to one half (1/2) gallon of whole milk. Three (3) quarter containers of homo and low fat will be priced at one and one half (1 1/2) times the one half (1/2) gallon container. It is impractical to reproduce all such factors herein, but they may be obtained at the Board office, 805 North Main Street, Helena, Montana 59601, phone (406) 449-3163.

(g) The wholesale ~~prices~~ price of a half (1/2) gallon of homo milk will be marked up ~~fifteen percent (15%)~~ nine cents ($0.09) to arrive at the retail prices and all other products priced accordingly.

3. At the public hearing testimony was received by various persons, including Dr. Rondo A. Christensen, Professor at Utah State University, Mr. Les Waite, counsel for Beatrice Foods, Mr. Jim Roberts, of the Teamsters No. 23 Joint Council, Mr. Ken Smiley, of the Jersey Creamery, and Mr. Ed McHugh, President of Clover Leaf Dairy. Dr. Christensen testified in opposition to reduction of distributor margins based on economic survey which he had performed. Mr. Waite testified as to increased labor costs involved in the distribution of milk. Mr. Roberts testified as to labor costs and their increases. Mr. Smiley testified in general opposing any changes in the distributor formula or distributor and/or retailer margins. His testimony was a summary of the contents of Jersey Creamery Exhibits 1 and 2, which are on record. Mr. McHugh testified in general terms as to the economics of the milk industry. The arguments of the opponents to changes in the formula or margins are overruled. The material presented in the cost study performed by the Milk Control Division and presented by the Board indicate cost factors which justify the reduction of distributor margins and change in the interval as does testimony presented by Mr. John Kimbel. Dr. Christensen's testimony

gave no consideration of how increased volumes related to unit cost.

4. Amendment to the rule has been made as stated herein. The reason for the amendment to the rule is to promote the general welfare and generally provide a pricing and marketing scheme which more adequately reflects the needs of the milk industry and the milk consuming public of the state of Montana.

BY ORDER OF THE BOARD OF MILK CONTROL

Curtis C. Cook

Curtis C. Cook, Chairman

By K. M. Kelly

K. M. Kelly, Administrator
and Executive Secretary
Milk Control Division

Certified to the Secretary of State on April 11, 1978.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule for arbitration of disputes within library federations	))))	NOTICE OF ADOPTION OF RULE 10.10.051 ON ARBITRATION OF DISPUTES WITHIN FEDERATIONS

To: All interested persons

1. On January 25, 1978, the State Library Commission published notice no. 10-3-10-3 proposing the adoption of a new rule to provide for the resolution of disagreements within library federations, at page 5 of the 1978, issue no. 1, Montana Administrative Register.

2. No comments of any kind were received; the Commission has therefore adopted the rule exactly as proposed, and will number it 10.10.051.

3. The reason for adopting the rule is to implement the Commission's responsibility under section 44-214.1, R.C.M. 1947, and to provide a means of breaking deadlocks within federations when federations apply for grants.

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: Alma S. Jacobs
Alma S. Jacobs
State Librarian

Certified to the Secretary of State April 12, 1978.

HEALTH AND ENVIRONMENTAL SCIENCES

REASON FOR ADOPTING EMERGENCY RULE I

On March 29, 1978, the U. S. Environmental Protection Agency assigned primary enforcement responsibility for the federal Safe Drinking Water Act in Montana to the state Department of Health and Environmental Sciences, after finding that state law and regulations adopted to implement it meet federal minimum standards. The Montana Public Water Supply Act requires collection and analysis of test samples from public water supplies; such analysis must be done by laboratories licensed by the Department of Health and Environmental Sciences, pursuant to rules adopted by the Board of Health and Environmental Sciences. A permanent laboratory licensing rule has been postponed, pending adoption of permanent licensing criteria by the EPA, which will be utilized by the state to develop its own parallel criteria. Such criteria have not yet been adopted, but should be in the near future. This emergency rule adopts federal interim certification standards as licensing criteria for Montana until the permanent rule can be adopted. Meanwhile, Montana must have a licensing rule in order to test, and therefore enforce, the quality of public water supplies, making immediate promulgation of the rule necessary to protect the health of the individuals using those supplies.

RULE I INTERIM LICENSING OF LABORATORIES

(1) Definitions.

(a) "EPA Manual" means the "Manual for the Interim Certification of Laboratories Involved in Analyzing Public Drinking Water Supplies" prepared by the Water Quality Assurance Work Group of the U. S. Environmental Protection Agency.

(b) "EPA" means the U. S. Environmental Protection Agency.

(c) "Laboratory evaluation officer" means a person designated by the department to evaluate laboratories for compliance with the criteria established in the EPA Manual, and who is experienced in quality assurance, holds an advanced degree or has equivalent experience in microbiology, chemistry or radiological chemistry.

(2) Criteria for licensing.

(a) Any laboratory that wishes to be licensed must submit information required by the department on a prescribed application form, a copy of which follows the test of this rule and is incorporated into it.

(b) After submission of a completed application, a temporary license will be granted by the department to laboratories already approved or certified by the EPA, until the department makes the decision whether to grant an interim license, after an on-site visit and evaluation of the laboratory by a laboratory evaluation officer. Laboratories not currently approved or certified by the EPA will be granted a license after on-site review and successful evaluation.

(c) Evaluation of laboratories shall be made according to the criteria and procedures contained in the EPA Manual, which is incorporated into this rule by reference. Copies of the manual are available at the Water Quality Bureau, 555 Fuller Avenue, Helena, Montana (phone: 449-2406).

(d) If the evaluation shows that the laboratory meets the criteria contained in the EPA Manual, the laboratory shall be granted an Interim License.

(3) Reciprocity.

The department may issue a license by reciprocity to out of state laboratories which apply, provided:

(a) the laboratory is currently approved or certified by the EPA, and

(b) the laboratory performs satisfactory analyses of audit samples furnished either by the department's laboratory or EPA.

(4) Revocation of license.

The department may revoke a laboratory license if it determines, after investigation, that the laboratory has failed to follow proper analytical procedures, released erroneous results or has acted unethically. The licensee shall have the right to a hearing before the Board of Health and Environmental Sciences. (History: Sec. 69-4903, R.C.M. 1947, NEW, EMERG, Eff. 4-10-78.)

APPLICATION FORM FOR INTERIM APPROVAL OF LABORATORIES

Laboratory Name and Mailing Address:

Laboratory Director:

Official Contact, if other than Laboratory Director:

Laboratory Phone Number:

Type of Certification applied for [please check appropriate box(es)]

- ☐ Coliform
- ☐ Nitrate
- ☐ Fluoride
- ☐ Pesticides and other Organics
- ☐ Trace Metals
- ☐ Radionuclides

Based on the above information, I herewith apply for Interim Approval of the _____ (name of laboratory) under the provisions of the Public Water Supply Act [Title 69, Chapter 49, R.C.M. 1947].

_____ _____
(Signature of Laboratory Director) Date

Comments: _____

_____

_____

Return form to: Ms. Carole Thomson or John Hawthorne
Laboratory Division
Department of Health and
Environmental Sciences
Cogswell Building
Helena, Montana 59601

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
BOARD OF PERSONNEL APPEALS OF
THE STATE OF MONTANA

Adoption of rule ARM 24.26.534 PETITIONS FOR UNIT CLARIFICATION, and repeal of rules ARM 24.26.530 PETITIONS FOR UNIT CLARIFICATION, ARM 24.26.531 EMPLOYER COUNTER PETITION, ARM 24.26.532 NOTICE OF UNIT CLARIFICATION PROCEEDINGS, and ARM 24.26.533 PROCEDURE FOLLOWING FILING OF PETITION FOR UNIT CLARIFICATION.

1. The Board of Personnel Appeals published notice No. 24-3-8-32 noticing the adoption of rule 24.26.534 Petitions for Unit Clarification to take the place of the present rule, 24.26.530 Petitions for Unit Clarification, at page 1088, Montana Administrative Register, 1977 Issue Number 12. The Board of Personnel Appeals also published notice No. 24-3-8-23 noticing the repeal of rules 24.26.531 (24-3.8(10)-S8083 (9)), 24.26.532 (24-3.8(10)-S8086(10)), and 24.26.533 (24-3.8(10)-S8089(11)), at page 646, Montana Administrative Register, 1977 Issue Number 10.

2. The Board of Personnel Appeals has adopted the proposed rule, ARM 24.26.534, and has repealed rules 24.26.530, 24.26.531, 24.26.532, and 24.26.533. This Board adopted the proposed rule because it felt it had a continuing duty to determine appropriate units and must allow both the employer and the employee representative to petition this Board for clarifications of bargaining units within certain limitations now recognized by the National Labor Relations Board. This Board feels that adopting the proposed rule accomplishes that objective. This was a very controversial rule and had to be noticed twice, with substantial changes being made in the present rule from the original proposed rule noticed in MAR Notice No. 24-3-8-22, and changes being made from the proposed rule to the rule finally adopted by this Board. Testimony opposing the rule was presented by the following individuals:

a. James McGarvey, representing the Montana Federation of Teachers, AFL-CIO. Mr. McGarvey complained of "grey areas" in the proposed rule which would result in court litigation. No specific areas were mentioned. This Board has revised this rule to accomodate most objections and feels that it is sufficiently clear and explicit to prevent any court litigation on the meaning of the rule.

b. Joseph Duffy, representing the AFL-CIO Public Employees Committee. Mr. Duffy objected that the rule did not provide a bar for clarification petitions being filed in units which have had an election conducted in the unit within the past 12 months. This Board agreed and accordingly amended its rule. Mr. Duffy objected to the phrase "there is no question concerning representation" found in paragraph (1)(a), stating that it was unclear. The purpose of that phrase

is to prevent the unit clarification petition from being used for jurisdictional questions. This Board, therefore, chose to leave that phrase in the rule. Mr. Duffy also objected to the use of the phrase "job classification(s)" as used in (3)(e). Mr. Duffy felt that an employer could change an an employee's job classification and then file a unit clarification petition. The purpose of having job classifications listed in a petition is for identification purpose, so this Board in its investigation can determine which employees are the subject of the petition. What job classification the petition states will not be the deciding factor on whether or not the petition is valid. The Board decided to keep the requirement of listing the job classification of the employees as to whom the clarification issue is raised. Finally, Mr. Duffy objected to (3)(g) which requires that a petition state that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification. Mr. Duffy claims that that requirement does not make sense in light of the other requirements. The purpose of that requirement is to again insure that there is no jurisdictional questions attempted to be solved by a unit clarification petiton and for that reason this Board has left that requirement in.

c. Emily Loring representing the Joint Council #23 of Teamsters, and the Montana Education Association. Ms. Loring was concerned that the rule might be used to get working foremen out of the unit. That is, those individuals with very limited supervisory duties would be petitioned to be removed by employers. Such a problem would have to be handled on a case-by-case basis. This Board, however, must always rule on whether or not an individual is a supervisory employee. It is true that this will allow the employer to bring the matter up after the original unit determination hearing if it can show a change in circumstances has taken place since the original determination. But this Board cannot abdicate its responsibility of determining who is a supervisor by not adopting this rule. Ms. Loring also expressed concern because the proposed rule required that the petitioner serve the petition. The usual procedure is for this Board to serve the petition. In order to avoid confusion, this Board amended the proposed rule to require that this Board serve the petition.

d. Donald Judge, representing American Federation of State, County and Municipal Employees, AFL-CIO. Mr. Judge stated that he felt the present rule is adequate. This Board's experience has shown that the current rule is not at all adequate and it has piecemealed a rule together with declaratory rulings that makes the current rule totally inadequate. Mr. Judge expressed concern that a petition may be filed shortly after negotiations which could disrupt the results of the negotiations; employers could disrupt the

administration of a local union by petitioning for exclusion of positions occupied by officers of the local; employer could intimidate or reward employees to feel that they should be out of a bargaining unit via employer petitions; constant disrupture of service may result by employers constantly redesigning its structure to realign duties and get more supervisory and managerial personnel out; and those units protected by the grandfather clause could be challenged under this rule. This Board is aware of the possible abuses of this rule. It has attempted to include as many safeguards in the proposed rule as are possible. Hopefully, the hearing examiners of this Board can prevent any further abuse of the rule. This Board, however, feels it is necessary to allow the employer access to this Board on questions of the compositions of units. Currently this Board is deciding the issue of whether grandfathered units are protected from attack. A hearing examiner for this Board has determined that they are. The case will soon be heard by the Board on appeal. This Board has also limited the number of petitions that can be submitted from the same unit in a given 12-month period in an attempt to limit potential abuse.

3. The rule has been adopted with the language changes as shown below:

PETITION FOR CLARIFICATION OF BARGAINING UNIT (1) A Petition for Clarification of Bargaining Unit may be filed WITH THE BOARD only by a bargaining representative of the unit in question or by a public employer and only if:

(a) there is no question concerning representation;

(b) the parties to the agreement are ~~not~~ NEITHER engaged in negotiations ~~or are not seen scheduled to enter into negotiations~~ NOR WITHIN 120 DAYS OF THE EXPIRATION DATE OF THE AGREEMENT;

(c) a petition for clarification has not been filed with the Board concerning substantially the same unit within the past 12 months IMMEDIATELY PROCEEDING THE FILING OF THE PETITION; and

(d) NO ELECTION HAS BEEN HELD IN SUBSTANTIALLY THE SAME UNIT WITHIN THE PAST 12 MONTHS IMMEDIATELY PROCEEDING THE FILING OF THE PETITION.

(2) A copy of any such petition ~~must be simultaneously served~~ SHALL BE SERVED BY THE BOARD upon the bargaining representative if filed by a public employer and upon the employer if filed by a bargaining representative. ~~with proof of service being filed with this Board.~~

(3) A Petition for Clarification of an existing bargaining unit shall containing the following:

(a) the name and address of the bargaining representative involved;

(b) the name and address of the public employer involved;

(c) the identification and description of the existing

bargaining unit;

(d) a description of the proposed clarification of the unit;

(e) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees en each such classification;

(f) a statement setting forth the reasons why petitioner desires a clarification of the unit;

(g) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification;

(h) a brief and concise statement of any other relevant facts; and

(i) the name, affiliation, if any, and the address of petitioner.

(4) The party on whom the petition was served shall have 20 days to file a response with this Board.

(5) UPON A DETERMINATION THAT A QUESTION OF FACT EXISTS, this Board ~~shall~~ MAY ~~then~~ set the matter for hearing. Upon completion of the hearing this Board may:

(a) grant the petition for clarification in whole or in part, or

(b) deny the petition for clarification in whole or in part.

(c) ~~determine that the matter could be best disposed of by conducting an election among the employees involved.~~

The language change in (1) was made to show that a petition was to be filed with this Board. The language change in (1) (b) was made to clarify the language "or are not soon scheduled." There was criticism of the unpreciseness of the language and this Board felt it should be more explicit. The language change in (1) (c) was made to show that the Board intended that "the past 12 months" were the months immediately proceeding the filing of the petition. The language in (1) (d) was added as explained above. The language change in (2) was explained above. Finally, the language change in (5) was to make clear that this Board could investigate petitions and dispose of the petitions if no questions of fact exist. Part (5) (c) was eliminated because the Board felt there were sufficient safeguards already provided under this Board's rules in the form of decertification proceedings and unit determinations which could sufficiently safeguard employees.

Adoption of rule ARM 24.26.520 EMPLOYER PETITION.

1. The Board of Personnel Appeals published notice No. 24-3-8-31 noticing the adoption of rule ARM 24.26.520 Employer Petition at page 1086, Montana Administrative Register, 1977 Issue Number 12.

2. The Board of Personnel Appeals has adopted the proposed rule, ARM 24.26.520. Again this was a very

controversial rule. The petition itself, however, is provided for in Section 59-1606(1)(b). The rule this Board adopted is a procedural rule for the implementation of Section 59-1606 (1)(b). The fact that the statutory right for an employer petition existed was the over-riding fact which led this Board to adopt 24.26.520. Testimony opposing the rule was presented by the following individuals:

a. Donald Judge, representing AFSCME, AFL-CIO. Mr. Judge recognizes that the rule is required under 59-1606 (1)(b), but would like to see the petitions limited to areas where there are existing bargaining units. Mr. Judge reasoned that presently when there is no certified or recognized bargaining agent, the employer need only refuse to bargain until there is an election. Mr. Judge's observation is correct. But this Board did not feel it could justify limiting the statutory language of the act. Mr. Judge also wanted the rule limited to where an employer can demonstrate the existence of a nonresolvable problem. But again, this Board felt such a limitation would be an unwarranted limitation of the statutory language. Mr. Judge requested that the rule should provide that any petition should disallow any additional inclusions or exclusions of positions covered by the organizations involved in the dispute. It is this Board's position that unless there can be a showing of some change from the original unit determination or recognition that the composition of the unit will not be a proper consideration in the employer petition proceeding. Finally, Mr. Judge felt concern over that part of the rule which allows an employer to petition when it feels that it can demonstrate that the union in question no longer has a majority status of employees. The portion of the rule in question, 4(b), was inserted by this Board to protect an incumbent union from being challenged as the certified bargaining representative on spurious grounds. Without that qualification it would appear that an employer could demand an election as an annual event, not just when it had a good faith doubt of the incumbent bargaining agent's majority status.

b. Jim McGarvey, Montana Federation of Teachers, AFL-CIO. Mr. McGarvey expressed concern that the rule would allow employers to carve up existing bargaining units. Again this Board does not see the composition of the unit as being a relevant topic if there is an existing bargaining agent. If all the employer is concerned about is the composition of the unit and not the majority status of the bargaining agent, the petition will not even be served by this Board.

c. Joe Duffy, representing AFL-CIO Public Employees Committee. Mr. Duffy suggested that the rule needs to be "tightened" but failed to give any specific examples. Upon review this Board determined that the rule was not too broad.

d. Jim Roberts, Secretary-Treasure of the Butte Teamsters Union, Local #2 and Vice President of Joint Council 23.

Mr. Roberts felt that the rule should be more specific to address those problems where there has been shown a need, namely the consolidation in Butte-Silver Bow. Again, this Board felt that that would result in an unwarranted restriction of statutory language.

e. Emily Loring, represent Joint Council 23 Teamsters and the Montana Education Association. Ms. Loring also felt that where there is no certified or recognized bargaining agent, the employer can get his election by merely refusing to bargain with any agent until an election has been conducted. Ms. Loring was also concerned that employers may abuse the petition, and even though there are safeguards, this Board would take the easy way out and serve the petition rather than thoroughly investigating the petition to see if there are valid grounds to doubt the majority status of the incumbent bargaining agent. This Board can only try to reassure Ms. Loring that it is aware of the seriousness of these petitions and will do its utmost in seeing that only valid petitions will be served.

3. The proposed rule was adopted with the following language changes:

EMPLOYER PETITION (1) A petition ~~for new unit determination~~ may be filed with the Board by an employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) The original petition shall be signed by petitioner or its authorized representative.

(3) The original petition shall be filed with the Board.

(4) The petition shall contain:

(a) A statement naming all parties making a claim to the employer to be recognized as the exclusive representative and bargaining agent and a concise statement of how that demand for recognition took place.

(b) If there is a recognized or certified representative the petition shall contain a statement by the employer of what criteria it bases its doubt that the incumbent, exclusive representative does not have the majority support of the members of the bargaining unit in question.

(c) A description of the unit the bargaining representative is demanding to represent. Such description shall include:

(i) The approximate number of employees in the unit, and

(ii) an enumeration, by job title, of the unit's inclusions and exclusions.

(d) A brief description, including expiration dates, of all contracts covering employees in the proposed unit.

(e) Any other relevant facts.

(5) If after investigating the matters alledged in the petition, this Board finds that there has been a sufficient demand for recognition made of the employer, and where

applicable that there are sufficient, objective criteria for the employer to, in good faith, doubt the certified or recognized bargaining representative's majority status, then this Board shall serve a copy of the petition on all parties named as claiming to be the exclusive representative and bargaining agent.

(6) The refusal to serve a petition is appealable to the full Board if written exception to the refusal is filed with this Board within 20 days after the date of the notification of the refusal to serve the petition.

(7) The same right of intervention shall exist for an employer Petition ~~for Unit Determination~~ as exists for ~~other~~ unit determination petitions.

The language was changed in both cases to make the language identical to the statute, 59-1606(1)(b), R.C.M. 1947.

Adoption of Amendment to ARM 24.26.404 (24-3.8B(6)-S8650), GROUP APPEALS.

1. The Board of Personnel Appeals published notice No. 24-3-8-33, noticing a proposed amendment of rule 24.26.404 concerning group classification appeals, on January 24, 1978, at page 41, Montana Administrative Register, 1978 Issue Number 1.

2. The Board of Personnel Appeals has adopted the proposed amendment to show that once this Board has accepted a group appeal it will revert back to step three of the formal appeals process.

No testimony or comments were received.

3. The amendment to the rule was adopted without any changes in the noticed language.

APPROVED AND ADOPTED 3/23/78

CERTIFIED TO THE SECRETARY OF STATE 4/13/78

BY Brent Cooley
Chairman of the Board of Personnel Appeals

STATE LANDS

RECLAMATION

REASONS FOR ADOPTING EMERGENCY RULES I-X

The Board of Land Commissioners finds that an imminent peril to the public health and welfare requires adoption of these emergency rules for the following reasons:

1. Under the rules promulgated by the Secretary of Interior pursuant to the Surface Mining Control and Reclamation Act of 1977, the State of Montana is required to enforce the initial surface mine regulatory program within its boundaries;

2. Unless it adopts the proposed emergency rules, the State of Montana will not have the authority to enforce the initial regulatory program within the state;

3. The Montana Legislature, by enacting the Montana Strip and Underground Mine Reclamation Act, deemed that the public health and welfare of the people of Montana would be advanced by the State of Montana regulating reclamation of coal strip mines within its borders;

4. The Montana Legislature in 1977, reaffirmed this policy by passing House Joint Resolution #40, which declared that state reclamation laws, where as stringent as federal standards, should be enforced by state personnel, and Senate Joint Resolution #18, which requested Congress to refrain from usurping the authority of the people of Montana by passing legislation weakening Montana's surface mining statutes;

5. If the State of Montana does not enforce the initial regulatory program, the Federal Office of Surface Mining will attempt to enforce the program, thereby supplanting the state's strip mine reclamation program;

6. The federal enforcement program during the time which these emergency rules are contemplated to be in effect would be ineffective to insure proper reclamation because of inadequate staffing in the Office of Surface Mining;

7. Even if the Office of Surface Mining were adequately staffed, the dual regulation of coal companies would be confusing, unnecessary, dilatory, inefficient, and a waste of tax dollars.

REASONS FOR EMERGENCY AMENDMENT OF RULES 26-2.10(10)-S10310, S10340 & S10350

The Board of Land Commissioners finds that an imminent peril to the public health and welfare requires adoption of these emergency rules for the following reasons:

STATE LANDS

1. Under the rules promulgated by the Secretary of Interior pursuant to the Surface Mining Control and Reclamation Act of 1977, the State of Montana is required to enforce the initial surface mine regulatory program within its boundaries;

2. Unless it adopts the proposed emergency rules, the State of Montana will not have the authority to enforce the initial regulatory program within the state;

3. The Montana Legislature, by enacting the Montana Strip and Underground Mine Reclamation Act, deemed that the public health and welfare of the people of Montana would be advanced by the State of Montana regulating reclamation of coal strip mines within its borders;

4. The Montana Legislature in 1977, reaffirmed this policy by passing House Joint Resolution #40, which declared that state reclamation laws, where as stringent as federal standards, should be enforced by state personnel, and Senate Joint Resolution #18, which requested Congress to refrain from usurping the authority of the people of Montana by passing legislation weakening Montana's surface mining statutes;

5. If the State of Montana does not enforce the initial regulatory program, the Federal Office of Surface Mining will attempt to enforce the program, thereby supplanting the state's strip mine reclamation program;

6. The federal enforcement program during the time which these emergency rules are contemplated to be in effect would be ineffective to insure proper reclamation because of inadequate staffing in the Office of Surface Mining;

7. Even if the Office of Surface Mining were adequately staffed, the dual regulation of coal companies would be confusing, unnecessary, dilatory, inefficient, and a waste of tax dollars.

Rule I EFFECTIVE DATE AND APPLICABILITY

(1) Effective dates. The regulations contained in new Emergency Rules I through X and Emergency Rules to Amend Rules S10310, S10340, and S10350 of this subchapter apply to operations conducted pursuant to permits issued after February 3, 1978, and all operations conducted after May 3, 1978. These new regulations and regulations to amend supersedes sections S10310 through S10350 of this subchapter as to those operations. Unless extended by regular rule making, they are effective until July 20, 1978, at which time the regulations contained in sections S10310 through S10350 will no longer be superseded.

(2) Applicability.

STATE LANDS

(a) No person shall engage in strip and underground mining operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public or which results in a condition or constitutes a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(b) For operations conducted pursuant to permits initially issued before February 3, 1978, the regulations of new Emergency Rules I through X and Emergency Rules to Amend Rules S10310, S10340, and S10350 of this subchapter shall apply to lands from which coal has not yet been removed and to any other lands used, disturbed, or redisturbed in connection with or to facilitate mining or comply with the requirements of new Emergency Rules I through X and Emergency Rules to Amend Rules S10310, S10340, and S10350 of this subchapter.

(c) Any preexisting, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective dates of new Emergency Rules I through X and Emergency Rules to Amend Rules S10310, S10340, and S10350 of this subchapter shall comply with the requirements of these regulations, unless--

(i) it is physically impossible to bring the structure or facility into compliance by the effective date;

(ii) the operator submits to the Department by the effective date of these regulations a plan designed by a professional engineer for the reconstruction of the structure or facility;

(iii) the Department approves the plan;

(iv) reconstruction is commenced and completed as soon as possible. No plan shall be approved unless construction is to begin on or before May 4, 1978, and is completed by November 4, 1978, at the latest.

(d) Notwithstanding paragraph (2)(c) of this section, any sedimentation pond, or related preexisting, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations unless--

(i) The permittee submits to the regulatory authority and to the Director of the Office of Surface Mining by May 3, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 3, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 3, 1978;

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer;

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than June 3, 1978, and completed later than November 4, 1978; and

(v) The Director approves of any schedules which contain an estimated date of completion beyond October 3, 1978.

(e) The Director shall be deemed to have approved such schedules referred to in paragraph (d)(V) of this section, unless written disapproval is received by the operator on or before June 3, 1978. (History: Sec. 50-1037 R.C.M. 1947; NEW EMERG, Eff. 3/31/78).

RULE II DEFINITIONS

As used throughout this subchapter the following terms have the specified meanings unless otherwise indicated:

(1) "Acid drainage" means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

(2) "Acid-forming" materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

(3) "Alluvial valley floors" means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with Rule V of this subchapter.

(5) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(6) "Combustible material" means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

(7) "Compaction" means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

(8) "Diversion" means a channel, embankment, or other man-made structure constructed for the purpose of diverting water from one area to another.

(9) "Downslope" means the land surface between a valley floor and the projected outcrop of the lowest coal bed being mined along each highwall.

(10) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(11) "Essential hydrologic functions" means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and groundwater, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.

(12) "Flood irrigation" means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.

(13) "Groundwater" means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

(14) "Highwall" means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

(15) "Hydrologic balance" means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

(16) "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 and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(17) "Imminent danger to the health and safety to the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of these rules in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(18) "Impoundment" means a closed basin formed naturally or articially built, which is dammed or excavated for the retention of water, sediment, or waste.

(19) "Intermittent or perennial stream" means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of groundwater discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

(20) "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

(21) "Noxious plants" means species that have been included on official State lists of noxious plants for the State in which the operation occurs.

(22) "Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location, or any person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of minerals or overburden during any period of time:

(23) "Outslope" means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

(24) "Productivity" means the vegetative yield produced by a unit area for a unit of time.

(25) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(26) "Regulatory authority" means the Board of Land Commissioners, or the Department of State Lands, of the State of Montana.

(27) "Roads" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State, county, or local roads are excluded.

(28) "Recurrence interval" means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to be exceeded on the average once in 10 years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

(29) "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

(30) "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(31) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(32) "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(33) "Significant, imminent environmental harm to land, air or water resources" is determined as follows:

(a) An environmental harm is any adverse impact on land, air, or water resources, including but not limited to plant and animal life.

(b) An environmental harm is imminent if a condition, practice or violation exists which (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.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(34) "Slope" means average inclination of a surface, measured from the horizontal, normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v to 5h=20 percent=11.3 degrees).

(35) "Soil horizons" means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are--

(a) A horizon. The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(b) B horizon. The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

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

(36) "Spoil" means overburden that has been removed during surface mining.

(37) "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

(38) "Strip and underground mining", as defined in Chapter 10 of Title 50, R.C.M. 1947, includes excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountain removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal at or near the mine site.

(39) "Subirrigation" means irrigation of plants with water delivered to the roots from underneath.

(40) "Surface water" means water, either flowing or standing, on the surface of the earth.

(41) "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(42) "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(43) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(44) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which 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.

(45) "Valley fill and head-of-hollow fill" means a structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any degree any natural stream channel other than those minor channels located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. Such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located farther downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

(46) "Waste" means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal-processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

(47) "Water table" means upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone. (History: Sec. 50-1037 R.C.M. 1947; NEW EMERG, Eff. 3/31/78).

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RULE III POSTING; MAP (1) Authorizations to operate. A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine shall be available for inspection at or near the mine site.

(2) Mine maps. Any person conducting surface coal mining and reclamation operations on and after May 3, 1978, shall submit two copies of an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the State regulatory authority and one copy shall be submitted to the Regional Director, OSM, before July 3, 1978. (History: Sec. 50-1038 R.C.M. 1947; NEW EMERG, Eff. 3/31/78).

RULE IV POSTMINING USES (1) General. All disturbed areas shall be restored in a timely manner (a) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (b) to higher or better uses achievable under criteria and procedures of subsection (4) of this section, except that use as cropland or hayland or pasture is not allowed as a postmining land use and is not allowed as part of a combined use as set forth in paragraph (3)(i) below.

(2) Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously 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 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 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 five years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(3) Land-use categories. Land use is categorized in the following groups. Change from one to another land-use category in premining to postmining constitutes an alternate land-use, and the permittee shall meet the requirements of subsection (4) of this section and all other applicable environmental protection performance standards of this chapter.

(a) Heavy industry. Manufacturing facilities, powerplants, airports or similar facilities.

(b) Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.

(c) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(d) Residential. Single- and multiple-family housing (other than apartment houses) with necessary support facilities.

(e) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(f) Forest land. Land with at least a 25 percent tree canopy or land at least ten percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(g) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(h) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.

(i) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

(4) Criteria for approving alternative postmining use of land. An alternative postmining land use shall be approved by the regulatory authority, after consultation with the landowner or the land-management agency having jurisdiction over State or Federal lands, if the following criteria are met (except that use as rangeland is exempted from these requirements).

(a) The proposed land use is compatible with adjacent land use and, where applicable, with existing local, State or Federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land-use policies and plans shall accompany the request for approval. The permittee shall obtain any required approval of local, State or Federal land management agencies, including any necessary

zoning or other changes necessarily required for the final land use.

(b) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land-use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, integrated with mining and reclamation, and that the plans will result in successful reclamation.

(c) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the permittee, as appropriate, to provide them in a manner compatible with the permittee's plans.

(d) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the permittee as appropriate, if the postmining land is to be developed by such parties.

(e) The plans are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(f) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(g) The use or uses will not involve unreasonable delays in reclamation.

(h) When required by law, approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate State and Federal fish and wildlife management agencies.

(i) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and local, State and Federal agencies to review and comment on the proposed land use. (History: Sec. 50-1037, R.C.M. 1947; IMP, Sec. 50-1045(b), R.C.M. 1947; NEW EMERG. Eff. 3/31/78).

RULE V HYDROLOGY (1) General provisions. The permittee shall plan and conduct coal 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 surface coal mining and reclamation operations, both on-and off-site. Changes in water quality and

quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected, and applicable Federal and State statutes and regulations are not violated. Waters within the public domain of the State that possess a higher quality than that established on the effective date of established standards shall be maintained at their present high quality consistent with the powers granted to the board. Such high quality waters shall not be lowered in quality unless and until it is affirmatively demonstrated to the board through public hearing, that such a change is justifiable as a result of necessary economic or social development and that the change will not adversely affect the present and future uses of such waters. In implementing this policy as it relates to interstate streams, the Administrator of the Environmental Protection Agency shall be provided with such information as will enable the Administrator to discharge his reponsibilities under the Federal Water Pollution Control Act. 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 surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, the permittee shall operate and maintain the necessary water-treatment facilities for as long as treatment is required.

(2) Impoundment and treatment. Treatment facilities in sufficient size and number consisting of but not limited to collection basins, water retarding structures and siltation dams shall be constructed with prior approval of the Department. All such facilities shall be constructed at or above the points of discharge into receiving streams for the purpose of treating acid or toxic water and for the settling of sediment prior to discharge into the receiving stream. As part of an application for permit, an operator shall submit the design specifications, drawings, method of operation and control, and quality of discharge of the treatment facilities. The operator shall indicate on the maps submitted as part of an application for permit the proposed location of all treatment facilities. Proposed reclamation of treatment facilities shall be included in the reclamation plan. No water quality treatment of approved lakes or ponds shall be permitted without Department approval. Under no circumstances shall water be discharged into highly erodible soil or spoil banks. Additional treatment facilities may be required by the Department after commencement of the operation if conditions

arise that could not be anticipated at the time of the permit application.

(3) Drainage. (a) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted shall be passed through a sedimentation pond, a series of sedimentation ponds or treatment facilities before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met the water quality requirements of this section and the revegetation requirements of section S10350 of this subchapter have been met. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with subsection (6) 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 paragraph.

(b) Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER, mg/l, EXCEPT FOR pH

Effluent characteristics	Maximum allowable[1]	Average of daily values for 30 consecutive discharge days[1]
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids[1]	45.0	30.0
pH[2]	Within the range 6.0 to 9.0.	

[1]Based on representative sampling.

[2]Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority 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.

The discharge must register positive net alkalinity (total alkalinity must exceed the total acidity) and the turbidity shall not exceed 100 J.C.U. The Department may modify above requirements if special problems occur.

The maximum total allowable increase to naturally occurring stream turbidity is ten Jackson Candle Units except that four hours following a major precipitation event, the discharge shall not contain suspended sediments in excess of 500 Jackson Candle Units above normal and not over 100 Jackson Candle Units above normal 24 hours thereafter. All analyses are to be defined and performed according to the Standard Methods for the Examination of Water and Wastewater, unless otherwise specified in writing by the Department.

(c) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a 10-year, 24-hour frequency event will not be subject to the effluent limitations of paragraph (3)(b).

(d) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable Federal or State laws or regulations or the limitations of paragraph (3)(b). If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If the regulatory authority finds--

(i) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process; and

(ii) that the mine normally produces less than 500 tons of coal per day, then the regulatory authority may approve the use of a manual system if the permittee ensures consistent and timely treatment.

(e) No surface mine drainage shall be discharged through or permitted to infiltrate into existing deep mine workings. Location of all known existing deep mines within the permit area and plans for remedial measures shall be included in the application for a permit.

(4) Monitoring. (a) Surface water monitoring. The permittee shall submit for approval by the regulatory authority a surface water monitoring program which:

(i) provides adequate monitoring of all discharge from the disturbed area.

(ii) provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge.

(iii) provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(iv) provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(v) provides a regular report of all measurements to the regulatory authority within 60 days of sample collection, unless violations of permit conditions occur, in which case the regulatory authority shall be notified immediately after receipt of analytical results by the permittee.

(b) Reporting. Monthly monitoring reports, where applicable, shall be submitted to the Department including the number of operating days, the gallons of drainage treated, a log of the tests made in accordance with these rules, and a description of any operating problems and the corrective action taken.

(i) If the discharge is subject to regulation by a Federal or State permit issued in compliance with the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. §§ 1251-1373), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the reporting requirements if the data meet the sampling frequency and other requirements of this paragraph.

(ii) After disturbed areas have been regraded and stabilized in accordance with this part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this section to minimize disturbance to the prevailing hydrologic balance and with the requirements of this part to attain the approved post-mining land use. These data shall provide a basis for approval by the regulatory authority for removal of water quality or flow control systems and for determining when the requirements of this section are met. The regulatory authority shall determine the nature of data, frequency of collection, and reporting requirements.

(iii) Equipment, structures, and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

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(5) Diversions. (a) Away from disturbed areas. All surface water which might damage regraded slopes, or drain into the stripping pit shall be intercepted on the uphill side of the highwall or other mine perimeters by diversion ditches and conveyed by stable channels or other means to natural or prepared watercourses outside the operation, unless it is determined by the Department that such ditches and channels are unnecessary or would create a more serious pollution problem. Such conveyances shall be of sufficient size and grade to prevent overflow into the mine area. If the ditches are likely to carry surface water only intermittently, they will be retopsoiled and revegetated with grasses, forbs and/or legumes. All constructed diversion ditches shall be included in the permit acreage and shown on the map. The following requirements shall be met:

(i) Temporary diversion structures are those used during mining and reclamation. When no longer needed, these structures shall be removed and the area reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one-year recurrence interval or a larger event as specified by the regulatory authority.

(ii) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(iii) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(b) Stream channel diversions.

(i) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, State, and Federal statutes and regulations. When streamflow

is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(A) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the regulatory agency for temporary diversions where necessary or for permanent diversions where they are stable.

(B) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the regulatory authority.

(C) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate State and Federal fish and wildlife management agencies.

(ii) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of section S10310 of the subchapter. At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent overtopping or failure of the facilities.

(iii) Buffer zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in Rule IX of this subchapter.

(6) Sediment control measures. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available.

(a) Sediment control measures include practices carried out within and adjacent to the disturbed area. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment

control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination), including but not limited to:

(i) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading and timely revegetation;

(ii) Shaping the backfill material to promote a reduction of the rate and volume of runoff consistent with the requirements of section S10310 and Rule VI of this subchapter;

(iii) Retention of sediment within the pit and disturbed area;

(iv) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;

(v) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume or entrap sediment;

(vi) Sedimentation ponds.

(b) Sedimentation ponds may be used individually or in series, should be located as near as possible to the disturbed area and where possible out of major stream courses, and shall (either individually or in series) meet the following criteria:

(i) Sedimentation ponds must provide 24-hour theoretical detention time for the inflow or runoff entering the ponds from a ten-year, 24-hour precipitation event. Runoff diverted, in accordance with subsection (5) of this section, away from the disturbed drainage areas need not be considered in sedimentation pond design. The characteristics of the mine site, reclamation procedures, and on-site sediment control practices shall be considered in determining the runoff volume.

(ii) Upon approval of the regulatory authority, theoretical detention time may be reduced to not less than ten hours, as demonstrated by the permittee, equal to the improvement in sedimentation removal efficiency as a result of pond design including but not limited to pond configuration, inflow-outflow facilities and their relative location, baffles to decrease inflow velocity and short circuiting, a surface area sufficient to achieve the sediment trap efficiency necessary to meet effluent limitations in paragraph (3)(b), and sediment control measures provided in paragraph (6)(a).

(iii) The regulatory authority may approve a detention time less than the time required by subparagraph (6)(b)(i) or (ii) of this section, when the permittee has demonstrated that the size distribution or the specific gravity of the suspended matter or the utilization of chemical treatment or flocculation are such that the effluent limitations can be met. The detention time shall be stipulated.

(c) An additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the regulatory authority, the sediment storage volume may be reduced in an amount, as demonstrated by the permittee, equal to the sediment removed by other appropriate sediment control measures such as those identified in paragraph (6)(a) of this section, or by lesser sediment yields as evidenced by empirical data for runoff characteristics.

(d) Ponds may be of the permanent pool or self-dewatering type. Dewatering-type ponds shall use siphon or other dewatering methods approved by the regulatory authority to prevent discharges of pollutants within the design flow.

(e) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval or larger event as specified by the regulatory authority.

(f) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and groundwater quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with section S10340.

(g) 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 be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, six-hour precipitation event or larger event as specified by the regulatory authority.

(ii) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 of maximum design flood elevation of the pool to ensure embankment slope stability.

(iii) The minimum top width of the embankment shall not be less than the quotient of H+35/5, where H is the height of the embankment as measured from the upstream toe of the top of the embankment.

(iv) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(h) All ponds shall be designed and inspected under the supervision of and certified after construction by a registered professional engineer.

(i) All ponds shall be examined for structural weakness, erosion, and other hazardous conditions.

(j) All ponds shall be removed and the affected land regraded and revegetated consistent with the requirements of section S10310 and S10350 of this subchapter, unless the regulatory authority approves retention of the ponds pursuant to subsection (12) of this section.

(7) Discharge structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

(8) Acid and toxic materials. Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by--

(a) identifying, burying, and treating, where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of sub-paragraph S10310 (1)(g) of this subchapter;

(b) preventing or removing water from contact with toxic-producing deposits;

(c) burying or otherwise treating all toxic or harmful materials within 30 days, if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds

and other coal waste materials shall be maintained according to paragraph (d) below;

(d) burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with paragraph S10310 (1)(g) of this subchapter;

(e) casing, sealing or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or groundwater and to prevent mixing of groundwaters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless the boreholes have been approved for use in monitoring.

(f) taking such other actions as required by the regulatory authority.

(9) Groundwater.

(a) Recharge capacity of reclaimed lands. The disturbed area shall be reclaimed to restore approximate 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 be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to paragraph (9)(c) of this section to ensure operations conform to this requirement.

(b) Groundwater systems. Backfilled materials shall be placed to minimize adverse effects on groundwater flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to paragraph (9)(c) of this section to ensure operations conform to this requirement.

(c) Monitoring. Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the regulatory authority to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the groundwater system, groundwater levels and groundwater quality shall be periodically monitored using wells that can adequately reflect changes in groundwater quantity and quality resulting from such operations. Sufficient water wells must be

used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the groundwater system. As specified and approved by the regulatory authority, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with paragraphs (a) and (b) of this subsection.

(10) Water rights and replacement. The permittee shall replace the water supply of an 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 an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

(11) Alluvial valley floors west of the 100th meridian west longitude.

(a) Surface coal mining operations conducted in or adjacent to alluvial valley floors shall be planned and conducted so as to preserve the essential hydrologic functions of these alluvial valley floors throughout the mining and reclamation process. These functions shall be preserved by maintaining or reestablishing those hydrologic and biologic characteristics of the alluvial valley floor that are necessary to support the functions. The permittee shall provide information to the regulatory authority as required in paragraph (11)(c) of this section to allow identification of essential hydrologic functions and demonstrate that the functions will be preserved. The characteristics of an alluvial valley floor to be considered include, but are not limited to--

(i) the longitudinal profile (gradient), cross-sectional shape, and other channel characteristics of streams that have formed within the alluvial valley floor and that provide for maintenance of the prevailing conditions of surface flow;

(ii) aquifers (including capillary zones and perched water zones) and confining beds within the mined area which provide for storage, transmission, and regulation of natural groundwater and surface water that supply the alluvial valley floors;

(iii) quantity and quality of surface and groundwater that supply alluvial valley floors;

(iv) depth to and seasonal fluctuations of groundwater beneath alluvial valley floors;

(v) configuration and stability of the land surface in the flood plain and adjacent low terraces in alluvial valley floors as they allow or facilitate irrigation with flood waters or subirrigation and maintain erosional equilibrium; and

(vi) moisture-holding capacity of soils (or plant growth medium) within the alluvial valley floors, and physical and chemical characteristics of the subsoil which provide for sustained vegetation growth or cover through dry months.

(b) Surface coal mining operations located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on alluvial valley floors, unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floors, or unless the area of affected alluvial valley floor is small and provides negligible support for the production from one or more farms. This subparagraph (b) does not apply to those surface coal mining operations that--

(i) were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or

(ii) had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.

(c) (i) Before surface mining and reclamation operations authorized under paragraph (11)(b) of this section may be issued a new, revised or amended permit, the permittee shall submit, for regulatory authority approval, detailed surveys and baseline data to establish standards against which the requirements of paragraph (11)(a) of this section may be measured and from which the degree of material damage to the quantity and quality of surface and groundwater that supply the alluvial valley floors may be assessed. The surveys and data shall include--

(A) a map, at a scale determined by the regulatory authority, showing the location and configuration of the alluvial valley floor;

(B) baseline data covering a full water year for each of the hydrologic functions identified in paragraph (11)(a) of this section;

(C) plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and groundwater system that supply such valley floors;

(D) historic land use data for the proposed permit area and for farms to be affected; and

(E) such other data as the regulatory authority may require.

(ii) Surface mining operations which qualify for the exceptions in paragraph (11)(b) of this section are not required to submit the plans prescribed in (i)(C) of this paragraph.

(12) Permanent impoundments. Permanent water impoundments shall not be allowed unless approved by the Department. If the Department determines at any time that a permanent impoundment area will not fill to expected levels, meet acceptable water quality standards or any other relevant criteria, the impoundment area shall be regraded and surface drainage facilitated. Any permanent water impoundment authorized by the Department must be demonstrated to be in compliance with Rule IV and S10310 of this subchapter in addition to the following requirements:

(a) The size of the impoundment is adequate for its intended purposes.

(b) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C. 1006).

(c) The quality of the impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable Federal and State law.

(d) The level of water will be reasonably stable.

(e) Final grading will comply with the provisions of section S10310 of this subchapter and will provide adequate safety and access for proposed water users.

(f) Water impoundments 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.

(13) Hydrologic impact of roads.

(a) General. Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of sections S10310 and S10350 of this subchapter, unless retention of a road is approved as part of a postmining land use under Rule IV of this subchapter as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(b) Construction.

(i) All roads, insofar as possible, shall 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 regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with subparagraph (5)(b) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed eight percent.

(B) The maximum grade greater than ten percent shall not exceed 12 percent for more than 300 feet.

(C) There shall not be more than 300 feet of grade exceeding eight percent within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, crossdrains, and ditch-relief drains. For access and haul roads that are to be maintained for more than one year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross-drains shall be spaced according to grade. Effluent limitations of paragraph (3)(b) of this section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(iv) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used.

Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(c) Maintenance. (i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(14) Hydrologic impacts of other transport facilities. Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

(15) Discharge of waters into underground mines. Surface and groundwaters shall not be discharged or diverted into underground mine workings. (History: Sec. 50-1037, R.C.M. 1947; IMP, Sec. 50-1043 R.C.M. 1947; NEW EMERG. Eff. 3/31/78).

RULE VI DISPOSAL OF SPOIL

Disposal of spoil in other than valley or head-of-hollow fills. Spoil not required to achieve the approximate original contour shall be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of this part, are met:

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority as suitable for construction of fills in accordance with the requirements of this paragraph.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the regulatory authority. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(4) The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the underdrains in such a manner that infiltration of the water into the spoil pile will be prevented.

(5) All organic material shall be removed from the disposal area, and the topsoil must be removed and segregated before the material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.

(6) The spoil shall be transported and placed in a controlled manner, 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 long-term stability. The final configuration of the fill must be suitable for postmining land uses. Terraces shall not be constructed unless approved by the regulatory authority.

(7) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority. (History: Sec. 50-1037 R.C.M. 1947; IMP. Sec. 50-1042, 50-1043, and 50-1044, R.C.M. 1947; NEW EMERG Eff. 3/31/78).

RULE VII BLASTING (1) General. (a) The permittee shall comply with all applicable local, State, and Federal laws and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives.

(b) Blasting operations that use more than the equivalent of five pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.

(c) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall--

(i) have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(ii) be capable of using mature judgment in all situations;

(iii) be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(iv) possess current knowledge of the local, State and Federal laws and regulations applicable to his work; and

(v) have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority.

(2) Preblasting survey. (a) On the request to the regulatory authority of a resident or owner of a man-made dwelling or structure that is located within one-half mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the regulatory authority.

(b) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the dwelling or structure and to document any 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 be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(c) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in subsection (5) which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the regulatory authority.

(3) Public notice of blasting schedule. At least ten days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of five pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every three months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum--

(a) identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

(b) dates and times when explosives are to be detonated expressed in not more than four-hour increments;

(c) methods to be used to control access to the blasting area;

(d) types of audible warnings and all clear signals to be used before and after blasting; and

(e) a description of possible emergency situations (defined in subparagraph (5)(a)(ii) of this section), which have been approved by the regulatory authority, when it may be necessary to blast at times other than those described in the schedule.

(4) Public notice of changes to blasting schedules. Before blasting in areas not covered by previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in subsection (3) of this section. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

(5) Blasting procedures. (a) General. (i) All blasting shall be conducted only during the daytime hours, defined as sunrise until sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.

(ii) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety requires unscheduled detonation.

(iii) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by Rule IX of this subchapter.

(iv) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.

(v) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

(vi) Airblast shall be controlled such that it does not exceed 128 decibel linear-peak at any man-made dwelling or structure located within one-half mile of the permit area.

(vii) Except where lesser distances are approved by the regulatory authority (based upon a preblasting survey or other appropriate investigations), blasting shall not be conducted within--

(A) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(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; and

(C) 500 feet of an underground mine not totally abandoned except with the concurrence of the Mining Enforcement and Safety Administration.

(viii) All holes primed shall be blasted within 72 hours.

(b) Blasting standards. (i) Blasting shall 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.

(ii) In all blasting operations, except as otherwise stated, the maximum peak particle velocity of the ground motion in any direction shall not exceed one inch per second at the immediate location of any dwelling, public building, school, church, or commercial or institutional building. The regulatory authority may reduce the maximum peak particle 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.

(iii) The maximum peak particle velocity of ground motion does not apply to property inside the permit area that is owned or leased by the permittee.

(iv) An equation for determining the maximum weight of explosives that can be detonated within any eight-millisecond period is given in subparagraph (v). If the blasting is conducted in accordance with this equation, the regulatory authority will consider the vibrations to be within the 1 inch per second limit.

(v) The maximum weight of explosives to be detonated within any eight millisecond period shall be determined by the formula

$$W=\left(\frac{D}{60}\right)^2$$

where W=the maximum weight of explosives, in pounds, that can be detonated in any 8 millisecond period, and D=the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building.

For distances between 350 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D):	Maximum weight, in pounds (W)
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,402
4,000	4,444
4,500	5,625
5,000	6,944

(vi) If on a particular site the peak particle velocity continuously exceeds one-half inch per second after a period of one second following the maximum ground particle velocity, the regulatory authority shall require the blasting procedures to be revised to limit the ground motion.

(c) Seismograph measurements. (i) where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one inch per second is not exceeded, the equation in subparagraph (v) need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot.

(ii) The use of a modified equation to determine maximum weight of explosives for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the peak particle velocity limit of one inch per second required in subparagraph (5)(b)(ii) of this section would be exceeded.

(iii) The regulatory authority may require a seismograph recording of any or all blasts.

(6) Records of blasting operations. A record of each blast, including seismograph reports, shall be retained for at least three years and shall be available for inspection by the regulatory authority and the public on request. The record shall contain the following data:

(i) Name of permittee, operator, or other person conducting the blast;

(ii) Location, date, and time of blast;

(iii) Name, signature, and license number of blaster-in-charge;

(iv) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned or leased by the permittee;

(v) Weather conditions;

(vi) Type of material blasted;

(vii) Number of holes, burden, and spacing;

(viii) Diameter and depth of holes;

(ix) Types of explosives used;

(x) Total weight of explosives used;

(xi) Maximum weight of explosives detonated within any eight millisecond period;

(xii) Maximum number of holes detonated within any eight millisecond period;

(xiii) Methods of firing and type of circuit;

(xiv) Type and length of stemming;

(xv) If mats or other protections were used;

(xvi) Type of delay detonator used, and delay periods used;

(xvii) Seismograph records, where required, including--

(A) seismograph reading, including exact location of seismograph and its distance from the blast;

(B) name of person taking the seismograph reading; and

(C) name of person and firm analyzing the seismograph record. (History: Sec. 50-1037 R.C.M. 1947; IMP. Sec. 50-1043(3) (e) R.C.M. 1947; NEW EMERG. Eff. 3/31/78).

RULE VIII PRIME FARMLAND (1) Applicability. (a) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of this subchapter in addition to the special requirements of this section. Prime farmlands are those lands defined in paragraph (2) of this section that have been used for the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains for at least five years out of the 20 years preceding the date of the permit application.

(b) The requirements of this section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this section regarding actions to be taken before a permit is issued. Permit renewals or revisions shall include only those areas that--

(i) were in the original permit area or in a mining plan approved prior to August 3, 1977; or

(ii) are contiguous and under State regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.

(2) Definition. Prime farmland means those lands that meet the applicability requirements in paragraph (1) of this section and the specific technical criteria prescribed by the Secretary of Agriculture as published in the Federal Register on August 23, 1977. These criteria are included here for convenience. Terms used in this section are defined in U.S. Department of Agriculture publications: Soil Taxonomy, Agriculture Handbook 436; Soil

Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses From Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland, soils must meet all of the following criteria:

(a) The soils have--

(i) aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches or in the root zone, if the root zone is less than 40 inches deep, to produce the commonly grown crops in seven or more years out of ten; or

(ii) xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (a dependable water supply is one in which enough water is available for irrigation in eight out of ten years for the crops commonly grown); or

(iii) aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality.

(b) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that at a depth of 20 inches have a mean annual temperature higher than 32 degrees F. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees F.; in soils that have no O horizon, the mean summer temperature is higher than 59 degrees F.

(c) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone, if the root zone is less than 40 inches deep.

(d) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(e) The soils can be managed so that, in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

(f) The soils are not flooded frequently during the growing season (less often than once in two years).

(g) The soils have a product of K (erodibility factor) times percent slope of less than 2.0 and a product of I (soil erodibility) times C (climatic factor) not exceeding 60.

(h) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches, and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.

(i) Less than ten percent of the surface layer (upper six inches) in these soils consists of rock fragments coarser than three inches.

(3) Identification of prime farmland. Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The regulatory authority also may require data on irrigation, drainage, flood control, and subsurface water management. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include--

(a) data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with subsection (2);

(b) a map designating the exact location and extent of the prime farmland; and

(c) a description of each soil mapping unit.

(4) Negative determination of prime farmland. The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations--

(a) Lands within the proposed permit boundaries have been used for the production of cultivated crops for less than five years out of 20 years preceding the date of the permit application.

(b) The slope of all land within the permit area is ten percent or greater.

(c) Land within the permit area 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, which clearly place all land within the area outside the purview of prime farmland.

(e) A written notification, based on scientific findings and soil surveys, that land within the proposed mining area does not meet the applicability requirements in paragraph (1) of this section is submitted to the regulatory authority by a qualified person other than the applicant, and is approved by the regulatory authority.

(5) Plan for restoration of prime farmland. The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the technological capability of the applicant to restore prime farmlands. The plan shall include--

(a) a description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced;

(b) the proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with paragraph (7) of this section;

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

(d) 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 horizon, 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; and

(e) plans for seeding the final graded mine land and the conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(f) available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation could achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining; and

(g) plans that demonstrate that the proposed method of reclamation will achieve vegetation to satisfactorily comply with section 50-1047.

(6) Consultation with Secretary of Agriculture and issuance of permit.

STATE LANDS

(a) The regulatory authority may grant a permit which shall incorporate the plan submitted under subsection (5) of this section if it finds in writing that the applicant--

(i) has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) will achieve compliance with the standards of paragraph (7) of this section.

(b) Before any permit is issued for areas that include prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service, and the U.S. Soil Conservation Service will carry out the consultation and review through its State Conservationist, located in each State.

(7) Special requirements. For all prime farmlands to be mined and reclaimed, the applicant shall meet the following special requirements:

(a) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons results in erosion that may cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden. The permittee shall--

(i) remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

(ii) remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productivity capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

(iii) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(b) If stockpiling of soil horizons is allowed by the regulatory authority in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of S10340 of this subchapter.

(c) Scarify the final graded land before the soil horizons are replaced.

(d) Replace the material from the B horizon, or other suitable material specified in subparagraph (7)(a)(ii) or (7)(a)(iii) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(e) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in subparagraph (7)(a)(i) of this section in a manner that--

(i) prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and

(ii) protects the surface layer from wind and water erosion before it is seeded or planted.

(f) Apply nutrients and soil amendments as needed to establish quick vegetative growth. (History: 50-1037 R.C.M. 1947;; IMP. Sec. 50-1039, 50-1043, 50-1044 and 50-1045, R.C.M. 1947; NEW EMERG. Eff. 3/31/78).

RULE IX SIGNS AND MARKERS (1) Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

(2) Mine and permit identification signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

(3) Perimeter markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers or by other means approved by the regulatory authority.

(4) Buffer zone markers. Buffer zones shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.

(5) Blasting signs. If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all clear signals shall be posted at all entrances to the permit area.

(6) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled, the stockpiled material shall be marked. Markers shall remain in place until the material is removed. (History: Sec. 50-1037, R.C.M. 1947; NEW EMERG. Eff. 3/31/78).

RULE X UNDERGROUND MINING (1) Compliance. All underground coal mining and associated reclamation operations shall comply with the applicable performance standards of these rules.

(a) For the purpose of these rules, underground coal mining and associated reclamation operations mean a combination of surface operations and underground operations. Surface operations include construction, use, and reclamation of new and existing access and haul roads, above ground repair areas, storage areas, processing areas, shipping areas, and areas upon which are sited support facilities, including hoist and ventilating ducts, and on which materials incident to underground mining operations are placed. Lands overlying any tunnels, shafts or other excavations are included. Underground operations include underground construction, operation, and reclamation of shafts, adits, underground support facilities, underground mining, hauling, storage, and blasting.

(b) For the purpose of this part, disturbed areas means surface work areas and lands affected by surface operations including, but not limited to, roads, mine entry excavations, above ground (surface) work areas, such as tipples, coal processing facilities and other operating facilities, waste work and spoil disposal areas, and mine waste impoundments or embankments.

(2) Authorizations to operate. A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site. Each application for an underground mining permit shall be accompanied by cross-sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. (History: Sec. 50-1037 R.C.M. 1947; NEW EMERG, Eff. 3/31/78).

26-2.10(10)-S10310 MINING AND RECLAMATION PLANS

(1) Backfilling and grading.

(a) Backfilling and grading of the disturbed area shall 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.

(b) ~~An operator shall show where the overburden and parting strata materials are to be placed in the backfill. Materials which are not conducive to revegetation techniques, establishment, and growth shall not be left on the top or within eight (8) feet of the top of regraded spoils or at the surface of any other affected areas. The Department may require that problem materials be placed at a greater depth.~~

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. Where a flat surface or a surface with less slope than the original ground surface is desired, such surface shall be deemed to comply with backfilling and grading to the approximate original contour. With the exception of highwalls, railroad loops and access road cuts and fills through unmined lands, no final graded slopes shall be steeper than five horizontal to one vertical (5:1) unless otherwise approved in writing by the Department.

(c) ~~The operator shall bury under adequate fill all materials set forth in section 20(2)(a) of Chapter 325, Session Laws of Montana, 1973, only after approval of the method and site by the Department. In the event that the operator plans to use fly ash for fill material, it must be shown by adequate testing and analysis that the fly ash material will not have any adverse or detrimental effect. Plans for placement of fly ash or any other foreign material or processes in the backfill must be approved by the Department.~~

In order 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. Cut-and-fill terraces may be used only in those situations expressly identified in this section. The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraph (i).

(i) Slope measurements. (A) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the regulatory authority 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 coal outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the regulatory authority. 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 regulatory authority 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 area 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.

(B) 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 regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

(ii) Final graded slopes. The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (i)(A) and approved by the regulatory authority or any lesser slope specified by the regulatory authority based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform.

~~(d) Box-cut-spoils-or-portions-thereof,-shall-be-hauled to-the-final-cut-if:~~

~~(i)--Excessively-large-areas-of-the-mine-perimeter-will be-disturbed-by-proposed-methods-for-highwall-reduction-or 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-are-likely-to preclude-effective-recontouring.~~

On approval by the Department, cut-and-fill terraces may be allowed if the terraces are compatible with the approved postmining land use. Terraces shall be installed in such a way so as not to prohibit vehicular access or revegetation procedures. Terraces shall be installed at varying intervals as determined by climatic conditions, spoil and topsoil composition and texture, slope steepness, and slope length. Suggested terrace installation intervals shall be submitted in the reclamation plan. Additional surface manipulation procedures shall be installed as required by the Department. Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

(e) ~~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 elevations-of-the-original-ground-surface.--Where-a-flat-surface or-a-surface-with-less-slope-than-the-original-ground-surface-is desired,-such-surface-will-be-deemed-to-comply-with-backfilling and-grading-to-the-approximate-original-contour.--With-the exception-of-highwalls,-railroad-loops-and-access-road-cuts-and fills-through-unmined-lands,-no-final-graded-slopes-shall-be steeper-than-five-horizontal-to-one-vertical-(5:1)-unless otherwise-approved-in-writing-by-the-Department.~~

Small depressions. The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the Department. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph (f) of this section and by Rule V.

(f) ~~The-Department-may-require-terracing-to-conserve moisture-and-control-water-erosion-on-all-graded-slopes-during the-process-of-current-grading.--Terraces-shall-be-installed-in such-a-way-so-as-not-to-prohibit-vehicular-access-or-revegetative procedures.--Terraces-shall-be-installed-at-varying-intervals as-determined-by-climatic-conditions,-spoil-and-topsoil-composition and-texture,-slope-steepness,-and-slope-length.--Suggested terrace-installation-intervals-shall-be-submitted-in-the-reclamation plan.--Additional-surface-manipulation-procedures-shall-be-installed as-required-by-the-Department.~~

Permanent impoundments. Permanent impoundments 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 be constructed on top of areas in which excess materials are deposited pursuant to Rule VI.

(g) ~~Final grading shall be kept current with mining operations. In order to be considered current, grading and backfilling shall meet the following requirements unless exceptions are granted by the Department.~~

~~(i) On lands affected by area strip mining, the grading and backfilling shall not be more than two spoil ridges behind the pit being worked, the spoil from that pit being considered the first ridge. The Department may allow delay grading of box cut spoils if better recontouring will result.~~

~~(ii) If the operation involves stripping and augering, the augering shall follow the stripping by not more than sixty (60) days and final grading and backfilling shall follow the augering by not more than fifteen (15) days, but in no instance shall an area be left ungraded more than 1,500 feet behind the augering.~~

~~(iii) All backfilling and grading shall 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 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.~~

~~(iv) Grading and backfilling of other types of subject excavations shall be kept current as departmental directives dictate for each set of field circumstances.~~

All exposed coal seams remaining after mining shall be covered with a minimum of four feet of nontoxic and noncombustible material, and acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the regulatory authority that are exposed, used, or produced during mining shall be covered with a minimum of eight feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth or to otherwise meet local conditions, the regulatory authority shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

~~(h)--Reclamation equipment to be used in grading and highwall reduction shall be listed in the application for permit.~~

An operator shall show where the overburden and parting strata materials are to be placed in the backfill. Materials which are not conducive to revegetation techniques, establishment, and growth shall not be left on the top or within eight feet of the top of regraded spoils or at the surface of any other affected areas. The Department may require that problem materials be placed at a greater depth.

(i) The operator shall bury under adequate fill all materials set forth in section 50-1043 only after approval of the method and site by the Department. In the event that the operator plans to use fly-ash for fill material, it must be shown by adequate testing and analysis that the fly-ash material will not have any adverse or detrimental effect. Plans for placement of fly-ash or any other foreign material or processes in the backfill must be approved by the Department.

(j) Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with Rule V and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(k) Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by hydro-geological means and chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area. Where thick overburden is encountered, all highwalls and depressions will be eliminated by backfilling with soil and suitable waste materials. The thick overburden provisions of this section may apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area.

(l) Box cut spoils or portions thereof, shall be hauled to the final cut if:

(i) excessively large areas of the mine perimeter will be disturbed by proposed methods for highwall reduction or 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 are likely to preclude effective recontouring.

(m) Final grading shall be kept current with mining operations. In order to be considered current, grading and backfilling shall meet the following requirements unless exceptions are granted by the Department.

(i) on lands affected by area strip mining, the grading and backfilling shall not be more than two spoil ridges behind the pit being worked; the spoil from that pit being considered the first ridge. The Department may allow delayed grading of box cut spoils if better recontouring will result.

(ii) if the operation involves stripping and augering, the augering shall follow the stripping by not more than sixty 60 days and final grading and backfilling shall follow the augering by not more than 15 days; but in no instance shall an area be left ungraded more than 1,500 feet behind the augering.

(iii) all backfilling and grading shall be completed within 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 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.

(iv) grading and backfilling of other types of subject excavations shall be kept current as departmental directives dictate for each set of field circumstances.

(n) Reclamation equipment to be used in grading and highwall reduction shall be listed in the application for a permit.

(2) Highwall reduction.

(a) All highwalls shall be reduced and the steepest slope of the reduced highwall shall be no greater than ~~twenty (20)~~ degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank.

(b) The company shall show by a narrative and cross-sections the plan of highwall reduction, including the limits of buffer zone.

(c) Grading along the contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators, then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

(d) Regrading or stabilizing rills and gullies. When rills or gullies deeper than nine inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas. The regulatory authority shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

(3) Buffer zones.

(a) All mining activities, including highwall reduction and related reclamation, shall cease at least ~~one-hundred~~ ~~(100)~~ feet from a property line, permanent structure, unmineable 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.

(b) The transition from undisturbed ground shall be blended with cut or fill to provide a smooth transition in topography.

(4) Roads and railroad loops.

(a) Haulageway roads through permitted areas shall be allowed providing that their presence does not delay or prevent recontouring and revegetation on immediately adjacent spoils.

(b) Ramp roads will be allowed under the following criteria

(i) No more than two ramp roads per mile of active pit being mined shall be allowed. Fractional portions of ramp roads resulting from active pit lengths of uneven mileage will be counted as an additional ramp road allowable. (Example: 2.1 (active pit mile length) x 2 (ramp roads/mile) ~~equals~~ = 4.2 (ramp roads) or 5 ramp roads allowable). The Department may authorize an additional ramp road.

(ii) Ramp roads, beginning from the spoil edge of the pit being worked, shall be engineered so as to exhibit an overall ~~7%~~ seven percent grade, or steeper, until topping on graded spoils. As each new pit is excavated, the ramp roads shall be regraded, as soon as possible, so as to remain at an overall ~~7%~~ seven percent or steeper grade from the spoil side of the new pit. In all cases, ramp road renovation grading shall 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%~~ seven percent slopes would cause safety problems or hamper successful reclamation.

(c) The Department may require that access roads constructed after the effective date of the Act be graded, constructed, and maintained in accordance with the following requirements:

(i) No sustained grade shall exceed ~~8%~~ eight percent.

(ii) The maximum pitch grade shall not exceed 12% percent for ~~three hundred~~ (300) feet.

(iii) There shall not be more than ~~three hundred~~ (300) feet of maximum pitch grade for each ~~one thousand~~ (1000) feet.

(iv) The grade on switchback curves shall be reduced to less than the approach grade and shall not be greater than ~~10%~~ ten percent.

(v) Cut slopes shall not be more than 2:1 in soils or 1/2:1 in rock.

(vi) All grades referred to shall be subject to a tolerance of two percent of measurement. Linear measurements shall be subject to a tolerance of ~~10%~~ ten percent of measurement.

(vii) Additional requirements may be imposed by the Department if special drainage or steep terrain problems are likely to be encountered.

(d) The location of a proposed road or railroad loop shall be identified on the site by visible markings at the time the reclamation and mining plan is preinspected and prior to the commencement of construction. No such construction shall proceed along dry coulees and intermittent drainageways unless the operator assures that no offsite sedimentation will result.

(e) Drainage ditches shall be constructed on both sides of the through-cut, and the inside shoulder of a cut-fill section, with ditch relief cross-drains being spaced according to grade. Water shall be intercepted before reaching a switch-back or large fill and shall be drained off or released below the fill.

Drainage structures shall be constructed in order to cross a stream channel and shall not affect the flow or sediment load of the stream.

(f) All cut and fill slopes resulting from construction of access road, railroad loop or haulageway road outside of the area to be mined shall be stabilized and revegetated the first seasonal opportunity.

(g) No roads or railroad loops shall be surfaced with refuse coal, acid-producing or toxic materials or with any material which will produce a concentration of suspended solids in surface drainage.

(h) All appropriate methods shall be employed by the operator to prevent loss of haulage or access road surface material in the form of dust.

(i) Upon abandonment of any road or railroad loop, the area shall be conditioned and seeded and adequate measures taken to prevent erosion by means of culverts, water bars, or other devices. Such areas shall be abandoned in accordance with all provisions of Chapter 10, Title 50, R.C.M. 1947 and of the Rules and Regulations adopted pursuant thereto. Upon completion of mining and reclamation activities, all roads shall be closed and reclaimed unless the landowner requests in writing and the Department concurs that certain roads of specified portions thereof are to be left open for further use.

(5) Steep slope mining. The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, geology, and other regional characteristics shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area.

(a) Spoil, waste materials or debris, including that from clearing and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(b) The highwall shall be completely covered with spoil and the disturbed area graded to comply with the provisions of these rules. Land above the highwall shall not be disturbed unless the regulatory authority finds that the disturbance will facilitate compliance with the requirements of this section.

(c) Material in excess of that required to meet the provisions of this section shall be disposed of in accordance with the requirements of Rule VI of this subchapter.

(d) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the regulatory authority. (History: Sec. 50-1023 and 50-1037, R.C.M. 1947; IMP, 50-1039 and 50-1043 and 50-1044, R.C.M. 1947; Eff. 9/5/73; EMERG. AMD. Eff. 3/31/78).

26-2.10(10)-S10340 TOPSOILING (1) All available topsoil shall be removed from the area of land affected before further disturbance occurs. The Department may require the operator to segregate the A, B, and C horizons, or combinations thereof, into separate stockpiles when such segregation will significantly enhance postmining soil productivity. Topsoil removal shall precede each step of the mining operation. Topsoil shall be immediately redistributed according to the requirements of paragraphs (4), (5), and (7) of this section on areas graded to the approved postmining configuration.

(2) The topsoil shall be stockpiled if sufficient graded areas are not immediately available for redistribution. Stockpiles of salvaged topsoil shall be located in an area where they will not be disturbed by ongoing mining operations and will not be lost to wind erosion or surface runoff. All unnecessary compaction and contamination of the stockpiles shall be eliminated; and, once stockpiled, the topsoil shall not be rehandled until replaced on regraded disturbances. The operator shall immediately plant an annual and/or perennial crop or use other methods demonstrated to provide equal protection, such as snow fences, chemical binders, and mulching on topsoil stockpiles for the purposes of stabilization. ~~The Department may require immediate planting of an annual/or perennial crop on topsoil stockpiles for the purpose of stabilization.~~ Proposed stockpile locations shall be indicated on the map submitted as part of an application for a permit.

(3) ~~Stockpiled topsoil shall be replaced on all areas to be seeded within a ninety (90) day period prior to revegetative seeding or planting. Extreme care shall be exercised to guard against erosion during application and thereafter. In the case of abandoned roads, the roadbeds shall be ripped, disced, or otherwise conditioned before topsoil is replaced. The Department may prescribe additional alternate conditioning methods for the reclamation of abandoned roadbeds.~~

Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

~~(4) If necessary, redistributed topsoil shall be reconditioned by discing, ripping, or other appropriate methods. Gypsum, lime, fertilizer, or other amendments may be added in accordance with MAC 26-2.10(10)S10350, and/or as stated in the approved reclamation plan.~~

(4) Topsoil shall be redistributed in a manner that--

(a) Achieves an approximate uniform thickness consistent with the postmining land uses;

(b) Prevents excess compaction of the spoil and topsoil.

~~(5) Spoil surfaces shall be left roughened in final contour grading to eliminate slippage zones that may develop between deposited topsoil and heavy textured spoil surfaces. The operator shall take all measures necessary to assure the stability of topsoil on graded spoil slopes.~~

Stockpiled topsoil shall be replaced on all areas to be seeded within a 90-day period prior to revegetative seeding or planting. Extreme care shall be exercised to guard against erosion during application and thereafter. In the case of abandoned roads, the roadbeds shall be ripped, disced, or otherwise conditioned before topsoil is replaced. The Department may prescribe additional alternate conditioning methods for the reclamation of abandoned roadbeds.

~~(6) Any application for permit for accompanying reclamation plan which for any reason proposes to use materials other than or along with topsoil for final surfacing of spoil or other disturbances shall document problems of topsoil quantity or quality. The application or plan must also show that the topsoil substitute(s) proposed:~~

~~(a) Will not contribute to or cause pollution of surface or underground waters;~~

~~(b) Will support a diverse cover of predominantly native perennial species equivalent to that existant on the site prior to any mining related disturbances.~~

If necessary, redistributed topsoil shall be reconditioned by discing, ripping or other appropriate methods. Gypsum, lime, fertilizer, or other amendments may be added in accordance with section S10350 and/or as stated in the approved reclamation plan.

(7) Spoil surfaces shall be left roughened in final contour grading to eliminate slippage zones that may develop between deposited topsoil and heavy textured spoil surfaces. The operator shall take all measures necessary to assure the stability of topsoil on graded spoil slopes.

(8) (a) Any application for permit or accompanying reclamation plan which for any reason proposes to use materials other than or along with topsoil for final surfacing of spoil or other disturbances shall document problems of topsoil quantity or quality. The following requirements must be met before use of material other than topsoil will be allowed:

(i) The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

(ii) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.

(iii) The alternative material is removed, segregated, and replaced in conformance with this section.

The application or plan must also show that the topsoil substitute(s) proposed:

(i) will not contribute to or cause pollution of surface or underground waters;

(ii) will support a diverse cover of predominantly native perennial species consistent with section S10350.

(b) The proposed plan shall provide chemical and physical analyses of the topsoil substitute(s).

(i) These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

(ii) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.

(iii) The alternative material is removed, segregated, and replaced in conformance with this section. (History: Sec. 50-1037, R.C.M. 1947; IMP, Sec. 50-1044, R.C.M. 1947; EMERG. AMD., Eff. 3/31/78).

26-2.10(10)-S10350 PLANTING AND REVEGETATION (1) A suitable permanent, effective, and diverse vegetative cover of species native to the area of disturbed land or species that will be capable of meeting the criteria set forth in ~~Section 12 of Chapter 325, Session Laws of Montana, 1973.~~ Section 50-1045 shall be established on all areas of land affected except traveled portions of railroad loops and roadways or areas of authorized water confinement. Areas shall be planted or seeded during the first appropriate season following completion of grading, topsoil redistribution and remedial soil treatments.

(2) ~~An operator shall establish a permanent diverse vegetative cover of predominantly native species by drill seeding or planting, by seeding transplants, by establishing sod plugs, and/or by other methods. All methods must have prior approval by the Department.~~

For areas qualifying as prime farmland, test plots shall be established and cropped until restoration of the premining productivity has been shown to the satisfaction of the Department. When restoration of the premining productivity has been demonstrated the operator shall revegetate the test plots consistent with section 50-1045.

(3) ~~The operator shall utilize locally grown genotypical seed and seedings when available in sufficient quality and quantity.~~

All disturbed lands, except authorized water confinements and traveled portions of railroad loops and roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the land use when compared with the naturally occurring vegetation during each season of the year.

(4) ~~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 germination percentages.~~

Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the Department. Except for mixtures designed to provide a quick, temporary, and stabilizing cover, the operator shall establish a permanent diverse vegetative cover of predominantly native species. Introduced species shall meet applicable State and Federal seed or introduced species statutes and shall not include poisonous or potentially toxic species.

~~(5) The operator shall consider soil, climate, and other relevant factors when planting and/or seeding to provide for the best seed germination and plant survival.~~

The species of grasses, legumes, browse, trees, or forbs for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area.

~~(6) All drill seeding shall be done on the contour. When grasses, shrubs and/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 avoid deleterious competition of different vegetal types or to avoid seed distribution problems due to different seed sizes.~~

The permittee shall consult with appropriate State and Federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

~~(7) Soil amendments shall 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.~~

Where forest is necessary to comply with 50-1045, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.

~~(8) 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, and fencing or other protective measures.~~

Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site

conditions and climate. Any disturbed areas, except water areas and surface areas of roads that are approved as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established. When rills or gullies that would preclude the successful establishment of vegetation or the achievement of the postmining land use form in regraded topsoil and overburden materials, additional regrading or other stabilization practices will be required before seeding and planting as specified in section S10310 of this subchapter.

~~(9) The Department may require the seeding of annual grasses and/or legumes on such areas as it deems necessary.~~

The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The regulatory authority shall approve species selection and planting plans.

~~(10) Mulch shall be immediately applied to all areas that do not have permanent or temporary cover established when, in the opinion of the Department, the grade or length of any slope presents a likelihood of substantial erosion or substantial deposition of sediment into any waters of the state.~~

An operator shall establish a permanent diverse vegetative cover of predominantly native species by drill seeding or planting, by seedling transplants, by establishing sod plugs, and/or by other methods. All methods must have prior approval of the Department.

~~(11) The Department will annually inspect seeded areas at the end of the growing season to determine species diversity, germination, and seeding take. If the Department determines that seedings are unsuccessful in terms of good germination and/or seedling 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 very next seasonal opportunity. The investigative report shall be submitted along with prescribed course of corrective action prior to the next growing season.~~

The operator shall utilize locally grown genotypical seed and seedlings when available in sufficient quality and quantity.

~~(12) If the area affected is to be primarily utilized by domestic stock, the Department may require incorporation of a grazing system after vegetative establishment to gauge stand tolerance to grazing pressure.~~

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 germination percentages.

(13) The operator shall consider soil, climate, and other relevant factors when planting and/or seeding to provide for the best seed germination and plant survival.

(14) All drill seeding shall be done on the contour. When grasses, shrubs and/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 avoid deleterious competition of different vegetal types or to avoid seed distribution problems due to different seed sizes.

(15) Soil amendments shall 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.

(16) Mulch shall 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. Mulch shall be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

(17) Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority, 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.

(18) 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, and fencing, or other protective measures.

(19) The Department will annually inspect seeded areas at the end of the growing season to determine species diversity, germination, and seedling take. If the Department determines that seedings are unsuccessful in terms of good germination and/or seedling 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 very next seasonal opportunity. The investigative report shall be submitted along with prescribed course of corrective action prior to the next growing season.

(20) If the area affected is to be primarily utilized by domestic stock, the Department may require incorporation of a grazing system after vegetative establishment to gauge stand tolerance to grazing pressure.

(21) Topsoil stockpiled in compliance with section S10340 of this subchapter must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions or protected by other approved measures as specified in section S10340. (History: Sec. 50-1037, R.C.M. 1947; IMP, Sec. 50-1045, R.C.M. 1947; EMERG. AMD., Eff. 3/31/78).

BEFORE THE BOARD OF LIVESTOCK

OF THE STATE OF MONTANA

In the matter of ARM Rule 32-2.2(3)-P300 concerning Board oversight of agency decisions made in the interim between Board meetings.	NOTICE OF THE ADOPTION OF RULE OF PRACTICE 32-2.2(3)-P300

TO: ALL INTERESTED PERSONS.

1. On January 25, 1978, the Department of Livestock published notice of the proposed adoption of a rule of practice concerning Board oversight of agency decisions particularly those made in the interim between Board meetings, at pages 44 and 45 of the 1978 Montana Administrative Register issue number 1.

2. The Board has adopted rule 32-2.2(3)-P300 as proposed with one minor modification as follows:

"BOARD OVERSIGHT OF AGENCY ACTIONS. (1) When a private citizen feels a decision of an agent of the Department of Livestock is unfair and if carried to completion will result in unnecessary inconvenience or harm to him, he may seek the reversal of the decision by requesting the Board of Livestock in writing to stop the implementation of the decision, or to otherwise modify its impact. Upon receipt of the ~~petition~~, letter the matter shall be placed upon the agenda of the next regular meeting of the Board."

(2) remains the same.

3. The Board of Livestock has adopted this rule to clearly set forth a method for members of the livestock industry to seek relief from unwarranted or unnecessary actions taken by the Department, in a manner which minimizes bureaucratic red tape. No comments or requests for public hearing were received in this matter. The additional change in paragraph (1) changing the word "petition" to "letter" was made to stress the relative informality of the procedures seeking Board review of agency actions.

Robert G. Barthelmess

ROBERT G. BARTHELMESS, Chairman
BOARD OF LIVESTOCK

Certified to the Secretary of State April 13, 1978.

BEFORE THE BOARD OF LIVESTOCK

OF THE STATE OF MONTANA

In the matter of the amendment of ARM Rule 32-2.6A(26)-S6025 relating to brucellosis testing.	NOTICE OF THE AMENDMENT OF RULE 32-2.6A(26)-S6025

TO: ALL INTERESTED PERSONS:

1. On January 25, 1978, the Department of Livestock published notice of proposed amendments to rule 32-2.6A(26)-6025, relating to brucellosis testing, at pages 46 and 47 of the 1978 Montana Administrative Register, issued number 1.

2. The agency has amended the rule with the following changes:

(1) and (2) remain the same.

"(3) Any cattle, bison or elk under domestication, capable of breeding in which the eruption of the first pair of permanent incisor teeth has occurred, or which are in the third trimester of the first pregnancy and female swine and boars 6 months of age and over not consigned for immediate slaughter or to an out-of-state destination which change ownership, shall"

(a) through and including (f) remain the same.

"(4) (a) Cattle capable of breeding in which the eruption of the first pair of permanent incisor teeth has occurred, or which are in the third trimester of the first pregnancy owned or managed by an investment service or an out-of-state corporation the majority of whose shareholders are not primarily engaged in the production of livestock, which are moved from one premise to another noncontiguous premise shall be found negative to an official test for brucellosis made not more than 30 days prior to such a movement. The owner or manager of such cattle may petition the state veterinarian for a waiver of such test requirements. Upon a finding that the interests of animal disease control will not be harmed, the waiver may be granted."

(4) (b) remains the same.

3. No comments or testimony were received. The Board has amended this rule to assist in identifying animals subject to the brucellosis test. The former standard of testing animal two years of age and older was difficult to implement because it is frequently difficult to identify the actual age of an animal approximately two years old. The new standards permit greater precision in the identification of test eligible animals.

Robert G. Barthelmess

ROBERT G. BARTHELMESS, Chairman
BOARD OF LIVESTOCK

Certified to the Secretary of State April 13, 1978.

BEFORE THE BOARD OF LIVESTOCK

OF THE STATE OF MONTANA

In the matter of the amendment of ARM Rules 32-2.6A(78)-S6330 and 32-2.6A(78)-S6331 to require Montana permits as a condition for importing livestock into Montana, and to place all requirements for the importation of semen into a single rule.	NOTICE OF THE AMENDMENT TO RULES 32-2.6A(78)-S6330 and 32-2.6A(78)-S6331

TO: ALL INTERESTED PERSONS:

1. On February 24, 1978 the Department of Livestock published notice of proposed amendments to rules 32-2.6A(78)-S6330 and 32-2.6A(78)-S6331, concerning the altering of livestock import requirements at pages 161-168 of the 1978 Montana Administrative Register, issue number 2.

2. The agency has amended rule 32-2.6A(78)-S6331 as proposed. Rule 32-2.6A(78)-S6330 has been amended with the following changes:

32-2.6A(78)-S6330 IMPORTATION REQUIREMENTS. Paragraphs (1) through (12) are amended as proposed. Paragraph (13) is amended by making the existing language of the proposed amendment subparagraph (a) and adding a new subparagraph (b), which states:

"(b) The owners and operators of railroads, trucks, airplanes, or other conveyances which transport animals into this state in violation of this subchapter shall properly clean and disinfect the conveyances in which such animals were illegally brought into the state. The cleaning and disinfection shall be performed under the supervision of an authorized representative of this department or of the United States Department of Agriculture."

Paragraphs (14) through (23) remain as proposed.

3. At the public hearing a licensed livestock dealer importing mostly lambs into Montana for feeding purposes objected to the amendments on two grounds. First he felt that there would be unnecessary and additional veterinary and telephone expense associated with his obtaining a permit in addition to a health certificate for shipments of livestock into the state. The Board in amending the rule over his objection noted that the proposal no longer absolutely requires the issuance of a health certificate, but makes it optional, at the direction of the department. The State Veterinarian explained at the hearing that no health certificate would be required in many of the instances involving animals imported into Montana for feeding purposes only, and that, therefore, in the case of the objecting dealer, the amendment would result in less expense.

Second, the dealer objected to certain language in para-

graph (7) subparagraph (a) requiring that information about the herd of origin, intermediate stops within the past six months, and the names of the person transporting the animals be supplied to obtain the permit. In overruling this objection, the Board noted that this information is necessary in order to determine if conditions should be placed upon the permit, and that to not require such information would; in large part, thwart the purposes of the permit system.

The entry by permit system for the importation of livestock is being adopted because it provides better protection against imported disease, by (1) giving the Department of Livestock prior notice to the fact of importation, (2) enabling the department to establish appropriate and necessary conditions for the issuance of a permit, when the livestock is coming from an area with known disease problems, or (3) in the unusual instance, enabling the department to refuse to issue a permit. The permit system will also enable the department to quickly respond to changing disease patterns outside of the state.

ROBERT G. BARTHELMESS, Chairman
BOARD OF LIVESTOCK

Certified to the Secretary of State April 13, 1978.

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

In the Matter of the Amendment of Rules MAC 36-2.8(1)-S800 through 36-2.8(10)-S880 and the Adoption of New Rules Pertaining to Notices of Intent to File an Application Pursuant to the Major Facility Siting Act, and Pertaining to Exemptions from Compliance with the Requirements of the Major Facility Siting Act	NOTICE OF ADOPTION OF AMENDMENTS OF RULES AND ADOPTION OF NEW RULES (MONTANA MAJOR FACILITY SITING ACT)

TO: All Interested Persons:

1. On November 14, 1977, the Department of Natural Resources and Conservation published notice of amendments to Rules MAC 36-2.8(1)-S800 through 36-2.8(10)-S880 concerning the Montana Major Facility Siting Act at page 867 of the 1977 Montana Administrative Register, issue number 11.

2. The Board of Natural Resources and Conservation has adopted the rules with the following changes:

Sub-Chapter 1

Definitions

36-2.8(1)-S800 DEFINITIONS. (1) Unless the context requires otherwise, in these rules:

(a) "Act" means the Montana ~~Utility Siting Act of 1973~~ Major Facility Siting Act, Title 70, Chapter 8, R.C.M. 1947.

~~(d)~~(b) "Application" means an application to the Department for a certificate of environmental compatibility and public need under ~~Section~~ 70-806 of the Act, containing the information required by that Section and these rules.

(c) "Applicant" means the utility or person filing an application with the Department.

(d) "Block load" means the load of a power customer whose individual demand is ten percent or more of the peak demand at the point from which it is served, or the load of any other customer with which an applicant has a specific contractual agreement.

~~(c)~~(e) "Board" means the Board of Natural Resources and Conservation.

~~(b)~~(f) "Department" means the Department of Natural Resources and Conservation.

~~(e)~~(g) "Facility," "associated facilities," and "utility" ~~shall be given the meanings assigned to these terms by Section~~ are defined in 70-803 of the Act.

~~(h) "Unit Area," for electricity consumption purposes in~~

~~rural-areas,-means-the-area-served-by-each-distribution-point, i.e.,-each-substation.--In-urban-areas-it-means-the-entire-city or-metropolitan-area.--For-gas-and-gasoline-consumption-purposes, the-term-means-the-area-defined-by-urban-and-county-boundaries.~~

(h) "Interruptible load" means the load of any power customer which may be interrupted by a utility under contractual arrangement.

~~(f)~~(i) "Long range plan" means the plan, actual or tentative, which a utility has for the construction and operation of its utility facilities for the ensuing ten ~~(10)~~ years, submitted to the Department under ~~Section~~ 70-814 of the Act, and containing the information required by that Section and these rules.

(j) "Notice" means a notice of intent to file an application for a certificate under 70-806(7) of the Act, containing the information required by that Section and these rules.

~~(g)~~(k) "Transmission Corridor" means a linear tract of land, ~~two-(2)-miles-or-less-in-width,-where-a-transmission-line may-be-located.--It-differs-from-a-right-of-way-in-that-it-is only-an-approximation-of-the-location-of-a-transmission-line.~~ at least 0.80 kilometers (about 0.5 miles) in width, within which a transmission right-of-way less than 0.80 kilometers (about 0.5 miles) in width may be located.

(l) "Transmission substation" means any new or proposed structure, device, or equipment assemblege, commonly located and designed for voltage transformation, voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line covered by the Act.

Sub-Chapter 2

Applications

36-2.8(2)-S810 GENERAL REQUIREMENTS. (1)(a) The applicant shall submit ~~twenty-(20)~~ an original and 19 copies of the application at the time of filing to the Department, 32 So. Ewing, Helena, Montana 59601. The applicant may submit ~~less~~ fewer than ~~twenty-(20)~~ 19 copies upon prior written approval of the Department.

(b) The application shall be typed, printed, or otherwise legibly reproduced on 81/2" x 11" paper. Maps, drawings, charts, or other documents bound in an application shall be cut or folded to 8 1/2" x 11" size. Maps, drawings, or charts may accompany an application as separate exhibits.

~~(c)--Typed-or-offset-material-shall-have-a-1-1/2"-margin on-the-binding-side-and-a-1"-margin-on-all-other-sides.~~

~~(d)~~(c) All pages in an application shall be consecutively numbered. Maps, drawings, or charts accompanying the application as exhibits shall be identified as "Exhibit____," and if comprising more than one sheet shall be numbered "sheet____ of _____."

~~(e)~~(d) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regard to the application shall be made.

(e) The application shall be accompanied by:

(i) Proof of service of a copy of the application on the chief executive officer of each municipality and county and the head of each federal, state, and local government agency or unit charged with the duty of protecting the environment or of planning land use in the area in which any portion of the facility is to be located, both primarily and as alternatively proposed in the application. The applicant may contact the Department, the Department of Community Affairs or the Environmental Quality Council for advice regarding appropriate agencies to be served. The state government agency heads to be served shall include, but not be limited to, those of the Environmental Quality Council and the Departments of Health and Environmental Sciences, Highways, Community Affairs, Fish and Game, State Lands, and Public Service Regulation.

(ii) Proof that public notice was given pursuant to 70-806(4) of the Act.

~~(2)(a) An applicant for a certificate is encouraged to submit the application to the Department at least two (2) weeks in advance of the applicant's formal filing of the application for its informal review. Close interaction with the Department during the planning and compilation stage will assist the applicant in preparing a more complete application and also will increase the Department's efficiency in evaluating the application once formally filed.~~

(2)(a) An applicant is encouraged to meet with the Department at an early stage of compilation of the application to discuss the application content.

(b) Within the ~~two (2) week~~ 30 day period after an application is formally filed, the Department shall evaluate the application to determine whether it is in patently substantial compliance with the Act and these rules. If the Department determines that ~~the application~~ it is not ~~in substantial compliance with the Act and these rules within this two (2) week period~~, the application shall be ~~considered~~ void and the Department shall reject the application, notifying the applicant in writing and listing the application's deficiencies, and ~~the filing fee shall be returned.~~ returning the unexpended filing fee with a proper accounting of any filing.

(c) A potential applicant may, prior to the application filing date, submit a preliminary application for the Department's evaluation as to its compliance with the Act and these rules. This evaluation shall be in lieu of the preceding paragraph (2)(b) provided that:

(i) Pursuant to 70-806(2)(c) of the Act, the potential applicant contracts with the Department for the evaluation;

(ii) The contract includes provision for compensation, not to be deductible from any filing fee under the Act, for the Department's evaluation;

(iii) The contract specifically provides that the Department must find that the preliminary application is in patently substantial compliance with the Act and these rules before the application is formally filed with the Department, and the Department does so find; and

(iv) The contract includes provision for public notice as required in 70-806(3) and (4) of the Act and 36-2.8(2)-S 810(1)(e) of these rules.

(3)(a) The applicant shall submit supplemental material ~~as needed~~ to the application and when it becomes available without undue delay after an application is filed to update or finalize maps, drawings, and information submitted with the original application. The Department may void an application if an applicant fails to submit relevant supplemental material as requested by the Department or when it becomes available to the applicant or his agent or contractor; in this case, the unexpended filing fee shall be returned by the Department with a proper accounting of any filing fee expended.

Prior to voiding an application for failure to submit relevant supplemental material, the Department must notify the applicant by certified mail that a voiding action is pending. The notice must specify the material which must be provided and provide a reasonable period by which the material must be supplied to the Department.

Supplemental material includes, but is not limited to, information, data, reports, studies, determinations, analyses, calculations, maps, drawings, or schematics not included in the application which would define, describe, clarify, or demonstrate the facility's:

(i) environmental impact;
(ii) design;
(iii) estimated cost;
(iv) reliability;
(v) operation;
(vi) preferred and alternative sites;
(vii) preferred and alternative technologies;
(viii) construction; and
(ix) in the case of a utility applicant, need for the facility.

(b) If an applicant desires to change or add to an application after it is formally filed, the applicant shall inform the Department of the change or addition by certified mailing or personal service. If, as determined by the Department, the change or addition will result in a substantial change ~~in the environmental impact of the proposed facility or a substantial change in the location of all or a portion of the facility, other than as provided in the alternatives set forth in the original application, the Department shall consider the change or addition to constitute a new application. The submission of data or information requested by the Department as offered by the applicant to explain, support, or provide detail with respect to an item described in general terms in the original application shall not be considered to constitute a new application. The applicant is encouraged to make updating changes or~~

~~additions-to-the-application-in-order-to-adopt-newer-technology that-will-lessen-environmental-impacts-of-the-proposed-facility.~~ in the facility design, location, or environmental impact, the Department may consider the change or addition to require a new application. A substantial change may include, but is not limited to:

(i) A change in the type of fuel, method of cooling, or method of pollution control proposed for the facility;

(ii) A change in the design of any major component of the facility if the change would alter significantly the source or composition of inputs to the facility or destination or composition of outputs or emissions from the facility.

(iii) A change in facility size of at least:

(A) 50 MW electrical generating capacity; or

(B) 500,000 tons per year of coal utilization, refining, or converting capacity; or

(C) 25,000,000 cubic feet per day of gas production capacity; or

(D) 25,000 barrels per day of liquid hydrocarbon production capacity; or

(iv) a change of at least one mile in the location of the preferred site.

The submission of data or information requested by the Department as offered by the applicant to explain, support, or provide detail with respect to an item described in general terms in the original application shall not require a new application. The applicant shall notify the Department in a timely manner of any new available technology that will lessen environmental impacts of the proposed facility.

(4) Information previously supplied as specified in the rules in the annual long range plan or notice need not be resupplied; however, the applicant shall append an index listing the previously supplied information.

36-2.8(2)-S820 CONTENT--APPLICATIONS FOR ENERGY GENERATING AND CONVERSION PLANTS. (1) An application for a utility facility defined in ~~subsection~~ 70-803(3)(a) and 70-803(8) of the Act ~~(energy-generating-and-conversion-plants)-shall-contain the-following:~~ which is an energy-generating or conversion plant shall explain the need for the proposed facility. Such explanation shall include a general discussion of the problem to be solved and analyses and information as follows:

(a) Destination and distribution patterns of the energy form to be produced ~~by-conversion-plants.--This-information shall-be-given~~ on an annual or biennial basis for a period of ten years after operation of the facility is projected to begin. ~~The-Department-may-require-the-same-information-as-considered necessary-and-applicable-in-the-application-for-energy-generating-plants.--Since-generating/transmission-systems-are-generally-interconnected,-existing-load-flow-diagrams-and-projected load-flow-diagrams-indicating-dominant-and-peak-flow-patterns shall-be-supplied-for-the-applicant's-system-and-for-its-interconnected-neighboring-systems-on-an-annual-or-biennial-basis~~

~~for a period of ten (10) years after operation of the facility is projected to begin.~~ Diagrams of existing and projected energy flows indicating peak energy flow patterns and the load centers to be served by the proposed facility shall be supplied for the applicant's system and for its interconnected neighboring systems on an annual or biennial basis for a period of ten years after the operation of the facility is projected to begin. For electric generation facilities the peak energy flow diagrams shall be load flow diagrams based upon a model of the affected regional transmission system recognized by the interconnected neighboring utilities with which the applicant traditionally or historically cooperates and plans as described in its long range plan. If sufficient data are unavailable to conduct load flow studies for the entire ten year period, projected peak load flows shall be supplied in an alternate form agreed to in writing by the Department.

~~(b) Energy use data of the energy form to be produced by the proposed facility. This data shall be provided on energy use for the twenty (20) years immediately preceding the year of application (on a yearly basis), and a projection of such use for the ensuing twenty (20) years (on a five (5) year basis) for the service area of the applicant. Projections of load growth shall include a consideration for historical load growth, growth in number of customers and economic indicators. Historic and projected growth patterns shall be either plotted on maps or equal to 1:500,000 for the area within Montana and with a scale larger than or equal to 1:1,000,000 for the area outside of Montana or in such form and scale as the applicant and the Department may agree upon, or it may be submitted in tabular form. Where appropriate, the discussion shall include information on considerations affecting regional reserve, energy, and reliability requirements.~~

(b) For the service area of the applicant and any additional area in which the energy would be marketed, use data for the energy form to be produced by the proposed facility.

(i) Historical and projected energy use data shall be provided in tabular form on an annual basis for the 20 years immediately preceding the year of the application and for the ensuing 20 years, respectively. For electric utilities, projections of both annual peak demand in kilowatts and annual energy demand in kilowatt-hours shall be supplied.

(A) Applicants required to report to the Federal Energy Regulatory Commission (FERC) or a state Public Service Commission (PSC) shall provide the historical and projected energy use data as follows:

(aa) The 20 year historical data and 20 year projected data shall correspond to the rate schedule categories reported to the FERC, or if not required to report to the FERC, to the state PSC. The applicant shall furnish the current and projected coincidental peak demand of each customer class based upon the latest load study data.

(ab) Projections of load growth shall include a description of the assumptions used in making the projections. The

assumptions described shall include, but not be limited to: assumptions about population growth; changes in the use of the energy form to be produced by the proposed facility by the FERC or PSC rate schedule categories; economic conditions affecting industrial and commercial activity; conservation; and renewable alternative energy use.

(B) Applicants which are not required to report to the FERC or PSC shall provide the historical and projected energy use data as follows:

(aa) The historical and projected energy use data shall identify the portions of the energy consumption corresponding to at least the following three categories: energy sold to other utilities or customers for resale; block load customers; and, all other customers.

(ab) Projections of load growth shall include a description of the assumptions used in making the projection. This shall include, but not be limited to, assumptions about: population growth; changes in the use of the energy form to be produced by the proposed facility by households and by agriculture and industrial and commercial establishments; economic conditions affecting industrial and commercial activity; conservation; and renewable alternative energy use.

(C) The applicant shall assess the effect upon demand of changes in the average price and rate structure for the energy form to be produced by the proposed facility.

(D) The applicant shall discuss any regional requirements for energy and capacity reserves.

(ii) For electric utilities, annual peak and total annual energy data for the most recent available year shall be separated into firm and interruptible loads and a description supplied of the conditions under which the loads may be interrupted. Each interruptible load customer shall be identified and the amount of the customer's interruptible load shall be given.

(iii) To facilitate a geographical reference for historical and projected growth patterns, the 20 year historical and 20 year projected energy data for major load centers shall be plotted on maps with a scale larger than or equal to 1:500,000 for the area within Montana and with a scale larger than or equal to 1:1,000,000 for the area outside of Montana, or in such form and scale to which the applicant and Department agree. The maps shall be plotted on five year intervals for the two 20 year periods.

(c) The applicant's projected energy resources. The applicant shall provide data on peak resources and average resources under average and critical water conditions (i.e., average and worst water conditions that can be reasonably expected based upon historical hydrologic data). The load factors for each of the applicant-owned energy sources used by the applicant in projecting peak and average energy resources shall be specified.

For electric utilities, data shall be presented on general reliability, i.e., the practice followed by the applicant with regard to desired levels of generation reliability and an an-

alysis of how that practice affects the cost of service to consumers as compared with higher or lower levels of reliability.

(d) Pooling, interconnection, and exchange agreements. Either a copy of each agreement to which the applicant is a party or the following information for each agreement shall be provided:

(i) A brief description of the nature of the obligations of and the benefits to the utility under the agreement;

(ii) A list of all parties to the agreement;

(iii) The time period during which the agreement is in effect;

(iv) The amount of electrical energy in megawatts to be exported from and imported to the utility's service area under the agreement;

(v) The specified timing or rate of delivery or receipt of the energy; and

(vi) The financial agreement involved.

(e) Copies of all contracts covering periods longer than one year to which the applicant is a party for the purchase of equipment or materials for the facility or for the sale of the energy form to be produced by the facility. Copies of these contracts shall be supplied. If at any time after the data of the application but prior to receiving a certificate an applicant enters into any such contract, the applicant shall immediately supply a copy of the contract to the Department.

~~(e)~~(f) Energy conservation ~~or~~ and promotion programs, if any, of the applicant ~~if any~~. An explanation shall be given ~~regarding~~ of the effects ~~and alterations~~ of ~~such~~ the programs ~~will have~~ on past and present energy consumption rates and on ~~existing and~~ future energy growth rates. The applicant shall assess the potential for conservation and a reduction in promotional activities for reducing or eliminating the energy needs for the proposed facility.

~~(d)~~(g) The role of the proposed facility in meeting energy needs during its ~~the~~ projected life ~~of the facility, which shall be discussed~~ according to the following criteria:

(i) A description of the criteria utilized by applicant in determining that the facility is necessary to meet the requirements of its customers or others, which shall make reference to any studies prepared by the applicant, by regional planning or coordinating agencies, or by others, which may relate to the need for the proposed facility. The compatibility of these criteria with state, regional, and national energy conservation policies and programs shall be evaluated.

(ii) The extent the proposed facility will be unable to meet the need for the energy form produced by the proposed facility in the service area of the applicant.

(iii) The efforts by the utility to ~~minimize new impacts, as by building adequate new facilities to meet a long range demand, therefore reducing the need for installing another new facility, or by utilizing and expanding existing facilities.~~ determine the adequacy of the facility to meet long range demand.

(iv) Opportunities for joint use with energy-intensive industries or other activities, to utilize the waste heat from

the proposed facility.

(v) Research activities of the applicant ~~of new~~ concerning technology ~~available to it~~ which might minimize environmental ~~and economic impact~~, social, or economic impacts, or improve the overall efficiency of the facility.

~~(vi) The proposed on-line life and the projected operating capacity during the on-line life of the facility.~~

(vi) The estimated on-line life of the facility.

(vii) The projected operating capacity during the on-line life of the facility.

~~(e) Reasonable alternative energy sources and technologies for the energy form produced by the proposed facility.~~

(h) Reasonable alternative energy sources and technologies for the energy form produced by the proposed facility.

(i) ~~Examples of alternative energy sources are alternative electricity sources derived from nuclear power generation, hydroelectric power generation, coal fired power generation, etc., and alternative gasoline sources derived from crude oil, oil shale, synthetic gasoline from coal liquefaction, etc.~~ Examples of alternative energy sources include, but are not limited to, crude oil, nuclear, coal, hydro, wind, and solar energy.

(ii) Examples of alternative technologies are include alternative cooling systems and alternative air and water pollution control devices.

~~(iii) Explanation shall be given as to why the preferred sources and technology are better than the alternatives. This comparison shall include social, economic, engineering (including construction), and environmental factors. The discussion shall also include the types of difficulties that will be encountered if other sources or technologies are chosen, how these difficulties might be solved, and the advantages and disadvantages of each solution.~~

~~(f) The preferred site and alternative sites considered by the applicant. Reasons the preferred site is superior to the alternative sites shall be discussed. The discussion shall include a consideration and comparison of social, economic, engineering, and environmental factors, both during and the construction and operational phases.~~

~~(i) Social factors shall include, but not be limited to, projected changes in social structure, impacts on public, semi-public and private services, changes in population and local life style (i.e., farming community or industrial community).~~

~~(ii) Economic factors shall include, but not be limited to, construction and operation costs, taxation, local and governmental income generated from the proposed facility, local and governmental spending in education, welfare, roads, medical care, law enforcement, and other services as related to the proposed facility.~~

~~(iii) Natural environmental factors shall include, but not be limited to, climate, geology, soil, hydrology, vegetation, and wildlife.~~

~~(iv) Cultural environmental factors shall include, but not be limited to, existing and potential land uses such as recreational, historical, archaeological, agricultural, trans-~~

~~portation, commercial, residential, and industrial uses.~~

~~(g) Drawings and maps, as follows:~~

~~(i) Preliminary site plans at a scale at least 1"=400' indicating the anticipated location of all proposed facilities such as major structures, roads, material storage piles, etc.;~~

~~(ii) Site analysis maps depicting the relevant mappable factors listed in subparagraph (f) of this subsection;~~

~~(iii) Any other maps or drawings necessary to illustrate the proposed facility.~~

~~(h) Design criteria and objectives for the major components of the proposed facility such as a boiler, steam generator, turbine generator, cooling facilities, and emission control devices.~~

~~(i) Material analysis.~~

~~(i) All materials such as air, water, coal, chemical compounds, etc., that flow into (i.e., are utilized by) the proposed facility shall be analyzed as follows:~~

~~(aa) consumption rate;~~

~~(ab) detailed chemical content of all input materials;~~

~~(ac) BTU content of fuel material;~~

~~(ad) sources of all input materials.~~

~~(ii) Material and energy flow diagrams (including heat and radiant energy flows) shall be submitted to illustrate the path of each input material through the facility in a qualitative and quantitative manner to the end of its flow cycle.~~

~~(j) Treatment of all materials that flow out of the proposed facility. These materials may be divided into three (3) major categories:~~

~~(i) Products and by products such as gas, hydrocarbon liquid and electricity;~~

~~(ii) Waste materials such as exhaust gas and liquid and solid wastes;~~

~~(iii) Materials such as heat and radiant energy that escape during processing. The method of treating and dispersing each of these materials shall be discussed in detail. The method of monitoring the treatment and dispersal of each of these materials shall also be discussed in detail.~~

~~(k) Construction analysis, as follows:~~

~~(i) Construction crew by size, skill and the variation of size according to the construction schedule;~~

~~(ii) Construction sequence and the time schedule of completing each component;~~

~~(iii) Construction method.~~

~~(l) Reclamation method to be employed on resources disturbed during construction.~~

(iii) The applicant shall evaluate load control techniques to determine whether they are cost-effective alternatives to additional generation.

(iv) Explanation shall be given as to why the applicant chose the preferred energy sources and technology rather than the alternatives. This explanation shall include social, economic, engineering (including construction), and environmental factors.

(v) The applicant shall explicitly demonstrate the methodology used to optimize the proposed facility capacity, load factor, and type in order to achieve maximum economies of scale and the applicant's desired level of reliability at the lowest economic cost.

(2) Applications which involve more than one participating utility shall demonstrate that a joint interest venture is in the interest of the participants and the public.

(a) Joint applications shall assess the benefits anticipated to the respective utilities such as financing, economies of scale, and reliability.

(b) Joint applications shall evaluate possible adverse impacts such as loss of flexibility, differing degrees of urgency due to differing growth rates in energy demand, and differing state policies on energy conservation and utility rate making.

36-2.8(2)-S821 CONTENT--APPLICATIONS FOR UTILITY AND NON-UTILITY ENERGY GENERATING AND CONVERSION PLANTS: ALTERNATIVE SITING STUDY.

(1) An application for a utility or nonutility facility as defined in 70-803(3)(a) of the Act shall contain a reconnaissance level alternative siting study, which shall include at least the following:

(a) Definition and discussion of the quantities, sources, and acquisition patterns of major inputs (i.e. inputs costing at least one percent of the facility operating costs) to the proposed facility.

(b) Definition and discussion of the quantities and destination and distribution patterns of the output of the proposed facility.

For a utility facility the information provided in 36-2.8(2)-S820(1)(a)-(1)(d) of these rules is sufficient.

(c) A determination of potential sites for the facility. Such determination shall include the following information or analyses:

(i) A nonutility application shall contain a determination of the geographic range of economic feasibility of the facility to the applicant from an analysis of the absolute costs of varying the location of the facility.

(A) The analysis shall specify the effect upon the following costs, calculated on an equivalent basis, as the facility location would be moved toward demand or market centers or the sources of inputs such as, but not limited to, water, coal, raw materials, or labor:

the construction and operation costs including both labor and transportation of materials and fuel;

the costs of shipping the output of the facility;

the time required to amortize the investment in

the facility; and

the net energy required from the raw material to the product use stage.

(B) The analysis resulting in the delineation of the geographic range of economic feasibility shall demonstrate that no other areas of economic feasibility are overlooked or excluded. This may be accomplished by providing cost algorithms or maps from which the total facility costs can be calculated at sites inside and outside the range of economic feasibility. Regardless of the method of demonstration, sufficient data and discussion must be supplied to enable the Department to reconstruct the analysis resulting in the geographic range of economic feasibility.

(ii) A utility application shall include an appropriate analysis which demonstrates whether or not any facility site exists outside of Montana which would result in lower costs of delivering the energy form in question to the load centers to be served by the output of the proposed facility than sites within Montana.

(A) The analysis shall include, but not be limited to, the following:

(aa) A list and description of sites that were evaluated outside Montana, including both load center and other locations.

(ab) A list and description of sites initially evaluated in Montana.

(ac) An analysis of the delivered cost of energy to the load centers identified in 36-2.8(2)-S820(1)(a) from a facility built at each of the sites required by 36-2.8(2)-S821(1)(c)(ii)(A)(aa)-(ab). Such costs, calculated on an equivalent basis, shall include, but not be limited to: construction costs, including a specific analysis of the effect on such costs of a facility location in a remote, sparsly populated area due to potential high labor turnover and low productivity; and operation costs including differences in labor productivity and differences in transport costs of inputs to and outputs of the facility, including transmission line losses.

(ad) Sufficient data shall be provided to permit the Department to reconstruct the analysis.

(B) If a facility site outside Montana would result in lower costs of delivering energy to the load centers to be served by the proposed facility, then the application shall contain an explanation of why the facility is proposed to be constructed in Montana.

(iii) The applicant shall designate potential facility sites 2.6 square kilometers (about one square mile) in area. A nonutility application shall designate these sites within the geographic range of economic feasibility. A utility application shall designate these sites within at least the entire area of Montana. These sites shall reflect the available diversity of such factors, as but not limited to, proximity to population centers, process water, existing transportation corridors, and demand centers. The sites may not include specially managed areas in which federal, or state

legal restrictions would prohibit siting the proposed facility.

(iv) The potential sites shall be compared on economic and environmental grounds and a preferred site designated. The criteria which shall be considered in comparing the sites shall include, but not be limited to, the following:

(A) Cost minimization, reliability, and other criteria which would maximize the usefulness of the site to the applicant.

(B) Social impact criteria. The application shall contain an appropriate assessment of the relative social impacts at the different sites. For the county in which a facility is proposed and any other county within 16 kilometers (about 10 miles) of a potential site, the attitudes of the county residents should be evaluated toward the cumulative effects of the type of development likely to follow the proposed development and towards growth and development in general. The applicant may upon prior written approval of the Department assess the social impacts by another method.

(C) Socio-economic criteria. Evaluation shall be made of the ability of the area in and around each site to supply construction and operational labor to the proposed plant and provide social services for the required inflow of direct and indirect labor and associated population. The evaluation shall include, but not be limited to, a discussion of: the existing labor force; supply of skilled labor within the area to meet the job requirements for the facility; and present and projected employment and unemployment rates. Consideration shall also be given to the differential impacts near the different sites on public and private economies including, but not limited to: taxes; public expenditures for hospitals, mental health facilities, public health service, sewer and water systems, schools, roads, police and fire protection; existing businesses and farms; and labor and housing markets.

(D) Social welfare. Evaluation shall be made of the differential impacts of the facility at the different sites on particularly sensitive segments of the local population such as the poor, the elderly, the long term unemployed, and the ill for whom sensitivity to likely emissions from the plant shall be considered.

(E) Environmental criteria. Using at least existing information, the sites shall be compared as to existing ambient air and water quality relative air pollution potential, and the possibilities and difficulties for acquiring and disposing of process and cooling water and disposal of solid wastes. For each site any legal restrictions which would increase the difficulty and cost of compliance with air and water quality standards shall be noted and discussed (e.g. proximity to PSD Class I areas). The likelihood of impacting areas of high productivity of plant or animal habitats or of impacting rare or endangered species shall also be evaluated. The compatibility of each site with existing federal, state, and local land use plans and local legal restrictions shall be discussed. Should a potential site not be compatible with a local legal restriction, justification shall be given explaining why the

restriction would be unreasonable and should not be applied to the proposed facility. The explanation shall include one or more of the factors cited in 70-810(1)(f) of the Act.

(F) Economic-environmental. Evaluation shall be made of the short and long-term external economic impacts such as the effect on neighboring land productivity caused by the changed air and water quality, of the opportunity cost of the water withdrawals for the facility, and of the expected impacts on housing and public services.

(d) Designation and description of the preferred site considered by the applicant. The application shall designate the applicant's preferred site among the potential sites and shall provide a detailed justification for this designation. Additionally, the application shall contain a detailed description of the preferred site, including considerations of social, economic, engineering, and environmental factors, during both construction and operation phases of the proposed facility.

(i) Social factors shall include, but not be limited to: projected changes in social structures; impacts on public, semi-public and private services; changes in population and local life style (e.g. farming community or industrial community).

(ii) Economic factors shall include, but not be limited to: construction and operation costs; taxation; local and governmental income generated from the proposed facility; and local and governmental spending in education, welfare, roads, medical care, law enforcement, and other services as related to the proposed facility.

(iii) Natural environmental factors shall include, but not be limited to: climate, geology, soil, hydrology, vegetation, wildlife, air quality, and water quality.

(iv) Cultural environmental factors shall include, but not be limited to: existing and potential land uses such as recreational, historical, archaeological, agricultural, transportation, commercial, residential, and industrial uses.

(2) Records, materials, or other information furnished pursuant to the Act or these rules are a matter of public record and are open to public inspection. However, any records, materials, or information entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of competent jurisdiction.

36-2.8(2)-S822 CONTENT--APPLICATIONS FOR UTILITY AND NONUTILITY ENERGY GENERATING AND CONVERSION PLANTS: FACILITY DESCRIPTION AND DESIGN.

(1) An application for a utility or nonutility facility defined in 70-803(3)(a) of the Act which is an energy generating or conversion plant shall describe the proposed facility including the following information:

(a) Drawings and maps, as follows:

(i) Preliminary site plans at a scale no smaller than 1"-400' indicating the anticipated location of all proposed

facilities such as major structures, roads, and material storage piles. The site plans shall include topography and proposed drainage control.

(ii) Any other maps or drawings necessary to illustrate the proposed facility.

(b) Design specification, criteria, and objectives, or other information of sufficient detail that will enable the Department to determine the levels of emissions, including gaseous, liquid and solid effluents, and the reliability of operation of the major components of the proposed facility such as a boiler, steam generator, turbine generator, cooling facilities, and emission control devices. The applicant shall supply a list of any reports, documents, studies, analyses, determinations, or calculations performed by the applicant or by any contractor on the applicant's behalf which indicate that the design specifications and objectives for the major components are adequate and can be maintained in the continuous operation of the facility (e.g. bench, pilot, or demonstration scale emission control equipment reports).

(c) Material analysis.

(i) All materials such as air, water, coal and chemical compounds that would flow into (i.e., be utilized by) the proposed facility shall be analyzed as follows:

(A) consumption rate;

(B) detailed chemical content of all input materials; and

(C) heat content of fuel material.

(ii) Material and energy flow diagrams (including heat and radiant energy flows) shall be submitted to illustrate the path of each input material through the facility in a qualitative and quantitative manner to the end of its flow cycle.

(d) A qualitative and quantitative discussion of the treatment of all materials which would flow out of the proproposed facility. If precise estimates of output quantities are not available, then a quantitative range of output amounts shall be specified. The method of using, treating, and dispersing materials in each of the following categories shall be discussed in detail, including the method of monitoring the use, treatment, and dispersal:

(i) Products and by-products such as gas, hydrocarbon liquid, and electricity;

(ii) Waste materials such as gases, liquids, and solids;

(iii) Energy forms such as heat and radiant energy that escape during processing.

(e) Construction analysis, as follows:

(i) The construction crew by size, skill, and the variation of size according to the construction schedule;

(ii) A milestone chart and critical path method chart showing the estimated construction sequence and the time schedule of completing each component; and

(iii) Construction method.

(f) Reclamation methods to be employed on resources disturbed during construction, operation, and decommission phases of the proposed facility (e.g. the proposed reclamation method

for an ash disposal pond after the facility operational stage).

(g) The projected method of decommissioning any proposed nuclear facility.

36-2.9(2)-S830 CONTENT--APPLICATIONS FOR ELECTRIC TRANSMISSION LINES AND GAS OR LIQUID TRANSMISSION LINES.

(1) An application for a facility defined in subsections 70-803(3)(b) and 70-803(3)(c) of the Act which is an ~~(~~electric transmission lines ~~and~~ or gas or liquid transmission lines~~)~~ shall contain the following:

(a) An explanation of the need ~~for transmitting electricity, gas, or liquid hydrocarbon products from A (starting point) to B (ending point);~~ for the proposed facility to transmit electricity, gas, or liquid hydrocarbon products.

(i) For electric transmission lines the explanation of the need shall include one or more of the following factors based on existing or projected conditions:

(A) Insufficient power transfer capacity under normal or contingent operating conditions. The power transfer capacity of a transmission line is defined to be its surge impedance loading, thermal rating, or its power transfer capability for a specified power factor and voltage drop. References to thermal rating shall define and quote both the normal and the emergency thermal ratings. Every reference to the normal transfer capacity of a power line must be based on a specified standard power factor and voltage drop limit (e.g., unity power factor and eight percent voltage drop). Reference to emergency power transfer capacity (applicable under contingent operating conditions) must specify the voltage drop acceptable for the period of contingency.

(B) Transient stability consideration under normal or contingent operating conditions.

(aa) Contingent operating conditions for transient stability considerations should be based upon appropriate criteria such as: for steady state conditions, a single line outage during heavy winter or summerpeak loads; or for outage conditions, one line out on maintenance and another tripping on fault. The applicant shall specify the basis for the criteria used.

(ab) A stability study shall be submitted with any application based all or in part upon the need to alleviate a transient stability problem. Included with the study shall be sufficient input data to enable the Department to evaluate case runs and to determine the need for additional case runs. If so requested by the Department, the applicant shall supply sufficient input data to allow the Department to conduct its own study.

(C) Excessive voltage drop in the transmission or subtransmission network under normal or contingent operating contingent operating conditions. The application shall specify any applicable design or operating voltage drop standards or legal voltage drop restrictions.

(D) Reliability of service considerations. Any applica-

tion based on or referring to reliability of supply considerations shall provide the following:

(aa) Historical line outage data including the duration and location and cause of the outage, the load lost, and the number and type of customers affected if known.

(ab) Information on the practice followed by the applicant with regard to desired levels of transmission and distribution reliability and an analysis of how that practice affects the cost of electricity to customers of the applicant as compared with higher and lower levels of reliability.

(ac) A list of the types of customers in the area to be served by the proposed facility which would be effected in the event of an outage on the existing transmission system. The list shall identify specifically all industrial customers and all customers involved in the protection of the public health, safety, and welfare (e.g. hospitals, nursing homes, or police and fire departments). Any other customer which in the applicant's opinion requires special reliability considerations shall also be specifically identified.

(ii) Applications for electric transmission lines not based solely on transient stability considerations shall include the following:

(A) A minimum of four load flow studies showing: the base case illustrating the problem; the immediate effect of the solution; and two load flows showing the performance of the solution five and ten years later, or at other annual intervals agreed to in writing by the Department for which load flow data are available. All load flow studies shall clearly indicate any assumptions made, including any relevant input data, and a single line diagram showing MW and MVAR loads and flows and voltage levels.

(B) Ten year historical and ten year projected load growth data at each point of distribution in the area needing additional facilities. These data shall be provided in tabular and graphic form. Projections of load growth shall include a description of the assumptions used in making the projection. This shall include, but not be limited to, assumptions about: population growth; changes in electrical use per household; industrial, commercial and agricultural use of electrical energy and power; economic conditions affecting industrial and commercial activity; conservation; and renewable alternative energy use. The effect upon demand of changes in the average price and rate structure for electric energy shall be assessed.

(aa) Whenever anticipated additional load is used to justify or support an application for a new transmission line, the applicant shall list both the total connected load and the after-delivery maximum demand for each additional load. The ratio of the after-delivery maximum demand to total connected load for the anticipated additional load shall be compared to the same ratio for similar existing customers already on service to establish the validity of the after-delivery load estimate (e.g. the projected ratio for a new sawmill shall be compared to data for an existing, similar sawmill customer).

(ab) An explanation shall be given of the effects of the applicant's energy conservation or promotion programs, if any, on past and present energy consumption rate and on future energy growth rates. The applicant shall assess the potential for conservation and a reduction in promotional activities for reducing or eliminating the need for the proposed facility. The application shall include a discussion of the consistency of the proposed facility with state, regional and national energy and conservation policies and programs.

(b) A discussion of the availability of various technologies that can fulfill the need. ~~Explain why the preferred technology is better than the others. This shall include social, economic, engineering and environmental factors. This discussion shall also include the types of difficulties that will be encountered if other technologies are employed, how these difficulties can be solved, and what advantages and disadvantages are involved.~~

(i) Explanation shall be given as to why the applicant chose the preferred technology rather than the alternatives. This explanation shall include social, economic, engineering, and environmental factors. The recommended transmission technology and all alternatives considered shall be shown graphically in a manner agreed to by the applicant and the Department.

(ii) The application shall discuss the applicability of load control techniques for solving or mitigating the need for additional electric transmission facilities. If applicable an evaluation shall be provided which determines whether load control techniques are cost effective alternatives to additional electric transmission facilities.

(c) A projection indicating when the proposed facility will become insufficient to meet the future growing demand at which time a need will exist to construct additional facilities to meet such demand. Included with the protection shall be a detailed explanation of the methodology by which the projection is made including load flow studies or other calculations.

(d) The efforts by the applicant to minimize impacts, as by building facilities to meet a long range demand, therefore reducing the possibility of installing another new facility, or by utilizing and expanding existing facilities, or by removing older facilities after locating new facilities in better locations.

~~(c) The preferred transmission corridor and alternative transmission corridors considered by the applicant. Reasons the preferred corridor is superior to the alternative corridors shall be discussed. The discussion shall include a consideration and comparison of social, economic, engineering, and environmental factors, both during the construction and operational phases.~~

(e) Research activities of the applicant on technology which might minimize environmental, social, or economic impacts, or improve the overall efficiency of the transmission system.

(f) The preferred transmission corridor and reasonable

alternative transmission corridors considered by the applicant. Reasons the preferred corridor is superior to the alternative corridors shall be discussed. The discussion shall include a consideration and comparison of social, economic, engineering, and environmental factors, during both the construction and operational phases.

(i) Social factors shall include, but not be limited to: projected changes in social structure; impacts on public, semi-public and private services; and changes in population and local life style (i.e., farming community or industrial community).

(ii) Economic factors shall include, but not be limited to: construction and operation costs; taxation; local and governmental income generated from the proposed facility; and local and governmental spending in education, welfare, roads, medical care, law enforcement, and other services ~~as related to the proposed facility.~~

(iii) Natural environmental factors shall include, but not be limited to: climate, geology, soil, hydrology, vegetation, ~~and~~ wildlife, and air and water quality.

(iv) Cultural environmental factors shall include, but not be limited to, existing and potential land uses such as recreational, agricultural, and industrial uses.

~~(f)~~ (g) Drawings and maps, as follows:

~~(i) The preferred and alternative routes of transmission corridors shall be plotted on U.S.G.S. 7 1/2 minute topographic maps, or maps from other sources of aerial photographs with a scale no smaller than 1:24,000. If the above described maps or aerial photos are not available, maps with a scale of 1:125,000 shall be used. (Maps of the latter scale covering Montana are available from the Department.)~~

~~(ii) Drawings of preferred and alternative architectural designs for facilities such as electric transmission structures, aqueducts, substations, and pump stations shall be submitted.~~

(i) The center or outer boundaries of the preferred and all alternative corridors shall be plotted on United States Geological Survey (USGS) 7 1/2' or 15' quadrangle maps or USGS maps preliminary to the published quadrangle maps. If USGS quadrangle or preliminary maps are not available, then the corridors shall be demarcated on maps with a scale 1:125,000 or larger. The lines marking the corridor boundaries or center shall be no wider than one millimeter and shall be located accurately to within 0.16 kilometers (1/10 mile). If aerial photographs with a scale 1:62,000 or larger exist and are available, the applicant shall also plot the corridor boundaries on them and submit them with the application.

(ii) For electric transmission lines a map showing the geographic locations of all power lines of design capacity of 50 kilovolts and larger in the vicinity or referred to in the application shall be included. The map lines representing the power lines shall be no wider than one millimeter and shall be located accurately to within 0.40 kilometers (1/4 mile) or

0.32 centimeters (1/8 inch) on the map, whichever is smaller.

~~(g)~~(h) Description of engineering design specifications or criteria as follows:

~~(i)--For electric transmission lines:~~

~~(aa)--Conductors by material type, cross section, mid-span ground clearance, spacing between phases, etc.;~~

~~(ab)--Lightning protection system;~~

~~(ac)--Insulators by size, material;~~

~~(ad)--Thermal capacity and rating;~~

~~(ae)--Power losses as percentage of load and KVA rating;~~

~~(af)--Physical reliability of line due to geographic location and condition;~~

~~(ag)--Substations;~~

~~(ah)--Planned operational voltage;~~

~~(ai)--Critical voltage;~~

~~(ii)--For gas and liquid transmission lines:~~

~~(aa)--Conduit size;~~

~~(ab)--Pressure;~~

~~(ac)--Transmitting or pumping capacity--normal and maximum;~~

~~(ad)--Insulation method (if any);~~

~~(ae)--Pumping stations;~~

~~(af)--Cathodic protection system.~~

(i) For the preferred and each alternative electric transmission plans and technologies identified in 36-2.8(2)-S830(2).

(A) General:

(aa) Length, voltage and surge impedence loading the transmission line;

(ab) Number and location of substations affected;

(ac) Estimated beginning and ending dates of construction (a bar chart for the transmission line and each substation shall be attached);

(B) General design;

(aa) Corona loss in KW mile;

(ab) An estimate of minimum and maximum right-of-way widths; and

(ac) Line losses as percentages of thermal rating and transfer capacity for a specified voltage drop and load power factor.

(C) Conductors:

(aa) Number of conductors per phase;

(ab) Bundle spacing, configuration, and space details, where applicable;

(ac) Conductor type, size, and code name;

(ad) Theoretical voltage gradient in KV/cm and as a percentage of critical voltage gradient for the line; and

(ae) Equivalent phase spacing.

(D) Structures:

(aa) Height range; and

(ab) Approximate number per mile.

(E) Substations:

(aa) Map showing the proposed location of each substation and extension; and

(ab) Approximate land requirements.

(F) An assessment of potential corona and hardware generated audible noise and radio and television interference problems.

Data and calculations regarding potential audible noise and radio and television interference shall be provided.

(ii) For gas and liquid transmission lines:

(A) Conduit size;

(B) Pressure;

(C) Normal and maximum transmitting or pumping capacity;

(D) Pumping stations; and

(E) Cathodic protection system.

~~(h)~~(j) Construction analysis, as follows:

(i) Construction crew by size, skill and the variation of size according to the construction schedule;

~~(ii) Construction sequence and the time schedule of completing each phase of construction;~~

(ii) A milestone chart and a critical path method chart showing the estimated construction sequence and the time schedule of completing each component; and

(iii) Construction method (~~i.e.,~~ e.g., ~~erecting~~ erection of tower or pole structures, stringing conductors~~, etc.~~).

~~(i)~~(k) Reclamation methods to be employed on resources disturbed during construction and operation.

36-2.8(2)-S840 CONTENT AND FORMAT--APPLICATIONS FOR OTHER FACILITIES.

(1) For facilities other than those described in ~~sections~~ 36-2.8(2)-S820 ~~and~~ through 36-2.8(2)-S830 of these rules, contact the Department to obtain a format and content fitted for the proposed action.

36-2.8(2)-S850 FILING FEE AND ESTIMATED COST OF FACILITY.

~~(1) As a part of an application for facilities defined in Section 70-803(3)(a) of the Act, and associated facilities, the estimated construction, engineering, land acquisition, and contingency costs shall be itemized, showing various components and how costs were calculated in the following manner:~~ (1) As a part of an application for facilities defined in 70-803(a) of the Act and associated facilities defined in 70-803(4) of the Act the total costs and expenses attributable directly or indirectly to the engineering and construction of the proposed facility and associated facilities shall be estimated and described in as much detail as possible. As used herein, engineering costs include the costs related to planning, design, and land component acquisition. Construction costs include costs related to the site preparation, erection and assembly, and commissioning costs.

Such engineering and construction costs shall include, but not be limited to, the following: costs of materials, supplies, and equipment, including allocable construction equipment costs; labor and management personnel compensation and salaries; contract and subcontract fees; employee benefits; employment, sales and use taxes; per diem and subsistence allowances; site acquisition expenditures excluding the

acquisition costs of mineral rights and interests; the costs of access roads including modifications and improvements to existing roadways when such modifications or improvements are necessitated by the proposed facility, and the costs of other dependent components; and all other costs necessary and incident to the construction of the proposed facility.

The engineering and construction costs as defined shall be itemized by components together with an explanation of how the costs were calculated in the following manner:

(a) For plant facilities:

(i) ~~Estimated plant facility c~~Costs shall be itemized by components ~~which have different functions such as~~ (e.g. building structure, boiler, generator, and cooling tower) which have different functions.

~~(ii) Estimated pollution control facility costs shall also be itemized by components, such as electrostatic precipitater, etc.~~

(ii) Estimated costs of pollution control facilities such as electrostatic precipitators shall also be itemized by components.

(b) For associated facilities:

(i) Estimated costs ~~for associated facilities~~ shall be itemized by components ~~which have different functions such as~~ (e.g. the water supply line, pumping station, ~~and~~ surge pond, and electric transmission lines) which have different functions.

(c) For electric transmission line facilities:

(i) Estimated ~~transmission line~~ cost per mile and the total length of transmission line;

~~(ii) Estimated cost for each substation, capacitor and reactor and all the facilities associated with the transmission line.~~

~~(2) As a part of an application for gas and liquid transmission facilities defined in Section 70-803(3)(c) of the Act, the estimated construction, engineering, and contingency costs shall be itemized, showing various components and how costs were calculated in the following manner:~~

~~(a) Estimated transmission line cost per mile and the total length of the transmission line.~~

~~(b) Estimated cost for each substation, pumping station, etc.~~

~~(3) In determining estimated construction, engineering, land acquisition, and contingency costs, inflationary and escalation factors shall be used in the calculations. Methods of calculating the inflationary and escalation factors shall be shown for all components of the cost estimate.~~

(ii) Estimated cost for each new transmission substation or each alteration of an existing transmission substation associated with the construction or planned operation of the proposed electric transmission line including:

land acquisition, leveling, fencing, and civil works; circuit breakers and protection equipment; switches; power, current, voltage transformers;

busbars and items not already covered; installation and commissioning cost.

(d) For gas and liquid transmission facilities:

(i) Estimated cost per mile and the total length of the transmission line.

(ii) Estimated cost for each substation and pumping station.

(2) All costs shall be estimated based upon the date on which the cost will accrue according to the construction schedule required by these rules. A discounted present value of all costs shall be calculated for the date on which construction is projected to begin in the construction schedule supplied pursuant to 36-2.8(2)-S822(1)(e)(ii) or 36-2.8(2)-S830(1)(j)(ii). The appropriate most recent Handy-Whitman Index of Construction Costs or other industry recognized and Department approved construction cost index shall be used to estimate the cost inflation of all costs to the appropriate date in the construction schedule. The rate of discount used to convert costs to the beginning date of construction shall be the most recent value published by the United States Office of Management and Budget. The calculation of the total discounted present value of the estimated facility cost must be sufficiently detailed to enable the Department to reconstruct it from this total discounted present value of the estimated facility costs.

Sub-Chapter 4

NOTICES OF INTENT TO FILE AN APPLICATION

36-2.8(4)-S854 GENERAL REQUIREMENTS.

(1)(a) A potential applicant filing a notice shall submit an original and 19 copies of the notice at the time of filing to the Department, 32 So. Ewing, Helena, Montana 59601.

(b) The notice shall be typed, printed, or otherwise legibly reproduced on 8 1/2" x 11" paper. Maps, drawings, charts, or other documents bound in an application shall be cut or folded to 8 1/2" x 11" size. Maps, drawings, or charts may accompany a notice as separate exhibits.

(c) All pages in an application shall be consecutively numbered. Maps, drawings, or charts accompanying the notice as exhibits shall be identified as "Exhibit ," and if comprising more than one sheet shall be numbered "sheet of ."

(d) The notice shall state the name, title, telephone number, and post office address of the person to whom communications in regard to the notice shall be made.

(e) The notice shall be accompanied by:

(i) Proof of service of a copy of the notice on the chief executive officer of each municipality and the head of each federal, state, and local government agency charged with the duty of protecting the environment or of planning land use in which any portion of the facility is to be located, both primarily and as alternatively proposed in the notice. The poten-

tial applicant may contact the Department, the Department of Community Affairs, or the Environmental Quality Council for advice regarding the appropriate agencies to be served. The state government agency heads to be served shall include, but not be limited to, those of the Environmental Quality Council and the Departments of Health and Environmental Sciences, Highways, Community Affairs, Fish and Game, State Lands, and Public Service Regulation.

(ii) Proof that public notice of the notice was given to persons residing in the municipalities entitled to receive the notice under 36-2.8(4)-S854(1)(e)(i) of these rules by the publication of a summary and the notice, and the date on or about which it is to be filed, in those newspapers as will serve substantially to inform those persons of the notice.

(2) Within the thirty day period after a notice is formally filed, the Department shall evaluate the notice to determine whether it is in patently substantial compliance with the Act and these rules. If the Department determines that the notice is not in patently substantial compliance with the Act and these rules within this thirty day period, the notice shall be considered void and the Department shall reject the notice, notifying the applicant in writing and listing the notice deficiencies.

(3) If a potential applicant desires to change or add to a notice, after the notice is formally filed, the potential applicant shall inform the Department of the change or addition by certified mail or personal service. If the change or addition will result in a substantial change in the size or type of facility or in the preferred or alternative locations of all or a portion of the proposed facility, the Department may consider the change or addition to require a new notice. A substantial change may include, but is not limited to:

(a) A change in the type of fuel or method of cooling, or method of pollution control proposed for the facility;

(b) A change in facility size of at least:

(i) 50 MW electrical generating capacity; or

(ii) 500,000 tons per year of coal utilization, refining, or converting capacity; or

(iii) 25,000,000 cubic feet per day of gas production capacity; or

(iv) 25,000 barrels per day of liquid hydrocarbon production capacity;

(c) A change in the location of the preferred site. At any time prior to an application the Department and applicant may agree to substantial changes in a notice which would not constitute a new notice. Upon such an agreement the applicant must provide public notice of the change in the notice at least 180 days prior to filing an application for the proposed facility. The submission of data or information requested by the Department or as offered by the applicant to explain, support, provide detail with respect to an item described in general terms in the original notice shall not be considered to require a new notice.

36-2.8(4)-S855 CONTENT--NOTICES FOR ENERGY GENERATING AND CONVERSION PLANTS

(1) A notice for a utility facility defined in 70-803 (3)(a) of the Act (energy generating and conversion plants) shall contain the information required in 36-2.8(2)-S802(1)(a)-(d). Information previously supplied in most recent long range plan need not be resupplied; however, the applicant shall append an index listing the previously supplied information.

(2) A notice for a facility (both utility and nonutility) as defined in 70-803(3)(a) of the Act shall contain the following:

(a) A conceptual design of the facility describing the major facility components such as boilers, steam generators, cooling facilities, and emission control devices and the major material and energy flows.

(b) An alternative siting study as required in 36-2.8(2)-S821.

36-2.8(4)-S856 CONTENT--NOTICES FOR ELECTRIC TRANSMISSION LINES AND GAS OR LIQUID TRANSMISSION LINES.

(1) A notice for a facility which is an electric transmission line or gas or liquid transmission line shall contain the information required in 36-2.8(2)-S830(1), S830(6), and S830(7)(a).

36-2.8(4)-S857 CONTENT AND FORMAT--NOTICE FOR OTHER FACILITIES.

(1) For facilities other than those described in 36-2.8 (4)-S855 and S856, contact the Department to obtain a format and content of the notice for the proposed facility.

36-2.8(4)-S858 FILING FEE REDUCTION

When an application is filed for a facility for which a valid notice has been previously filed at least 12 months prior to the application filing date, an applicant is entitled to a five percent reduction of the filing fee if the facility type, size, or preferred location is not substantially changed from that specified in the notice.

If the application is substantially changed, the previous notice is not applicable and the five percent filing fee reduction may not be allowed unless the substantial changes have been formally agreed to be the Department and the required public notice given prior to the date on which the application is filed.

Sub-Chapter 6

Long-Range Plans

36-2.8(6)-S860 GENERAL REQUIREMENTS. (1) Long-range

plans shall be submitted on or before April 1 of each year by each utility, and each person contemplating construction of a facility in Montana in the ensuing ten years, and covering a period of ten ~~(10)~~ years starting from April 1 of the year submitted.

~~(2)~~(a) The utility and each person shall submit ~~twenty (20)~~ an original and 12 copies of the long range plan at the time of filing to the Department, 32 So. Ewing, Helena, Montana 59601. The utility or person may submit ~~less than twenty (20)~~ fewer than 12 copies upon prior approval of the Department.

(b) The long range plan shall be typed, printed, or otherwise legibly reproduced on 8 1/2" x 11" paper. Maps, drawings, charts, or other documents bound in a long range plan shall be cut or folded to 8 1/2" x 11" size. Maps, drawings, or charts may accompany a long range plan as separate exhibits.

~~(c) Typed or offset material shall have a 1 1/2" margin on the binding side and a 1" margin on all other sides.~~

~~(d)~~(c) All pages in a long range plan shall be consecutively numbered. Maps, drawings, or charts accompanying the long range plan as exhibits shall be identified as "Exhibit_____," and if comprising more than one sheet shall be numbered "sheet _____ of_____."

36-2.8(6)-S870 CONTENT.

(1) Within each long range plan the approximate filing date for new applications shall be listed in the following manner:

(a) For the first planning year, ~~the submission date of each expected application shall be indicated on a quarterly basis, i.e., indicate which quarter a new application will be filed.~~ the quarter in which each application is expected to be filed shall be indicated.

(b) For the second and third planning years, ~~the submission date of each expected application shall be indicated on a semi-annual basis,~~ the half-year in which each application is expected to be filed shall be indicated.

~~(c) From the fourth year to the tenth, the date of filing any new application shall be indicated on a yearly basis.~~ From the fourth to the tenth years, the year in which each application is expected to be filed shall be indicated.

(d) Because additional time beyond the Department study period is necessary to obtain a certificate for a facility (e.g. time is required for Board hearings), the period of time allowed in the long range plan between the projected application date and the date by which construction of the facility should be initiated to meet the projected need should exceed the maximum Department study period by at least six months. That is, for applications with one year and two year maximum Department study periods, at least 18 and 30 months, respectively, should be allowed in the long range planning calendar between the projected application and the initiation of construction of the facility.

(2) Within each long range plan, the content ~~of~~ for each listed new application shall include the general location, size, and type of all utility facilities and the approximate date that construction will commence and be completed. ~~A period of at least nine (9) months or two (2) years for one hundred eighty (180) day and six hundred (600) day applications respectively shall be included in the long range planning calendar in order for the Department to evaluate the application.~~ For facilities defined in 70-803(3)(a) of the Act (energy-generating and conversion plants) the proposed preferred site locations) shall as precisely as possible.

~~(3) The average monthly consumption and, where applicable, monthly peak demand shall be shown for the form of energy involved in the long range plan for each unit area of the service area within Montana of the utility filing the plan.~~

~~(4) Future energy demand patterns of the unit area of the service area of the utility within Montana shall be indicated in a map format. These shall be based upon either annual or biennial increments for at least the first ten (10) years. The long range plan shall also discuss the types of efforts that will be undertaken to meet the expected demand.~~

~~(5) The long range plan from electricity utilities shall include a summary of pooling, interconnection, and exchange agreements.~~

(3) The long range plan from electric utilities shall include the anticipated starting and ending dates of construction, relocation, reconstruction, or upgrading of all transmission lines and associated facilities of a design capacity of 50 kilovolts and larger.

(4) The monthly average demand and, where applicable, monthly peak demand for the preceding calendar year shall be shown for the form of energy involved in the long range plan for each unit area of the utility's service area within Montana. As used in this section, Unit Area means the service area and any units thereof as defined by the applicant and approved in writing by the Department.

For utilities which are required to report to the Federal Energy Regulatory Commission, the average monthly and peak demand data shall be reported according to the FERC rate schedule categories to the extent possible. Utilities required to report to a state Public Service Commission but not to the FERC shall report these data to the extent possible according to the PSC rate schedule categories.

(5) Projected energy demand data shall be provided in form on an annual basis for the ten year period beginning with the present year for each unit area of the utility's service area within Montana.

(a) Utilities required to report to the Federal Energy Regulatory Commission or a State Public Service Commission shall:

(i) report to the extent possible the average energy and peak demand data according to the FERC rate schedule categories, or if not required to report to the FERC, according to the PSC rate schedule categories;

(ii) describe the assumptions used in making the projections, including assumptions about population growth, changes in energy use by customer categories established in the FERC or PSC rate schedules, economic conditions affecting industrial and commercial activity, conservation, and renewable alternative energy use.

(b) Utilities not required to report to the FERC or a state PSC shall describe the assumptions used in making the projections, including, but not limited to, assumptions about: population growth; changes in the use of the energy form in question per household; industrial and commercial use of the appropriate energy form and power; economic conditions affecting industrial and commercial activity; conservation; and renewable alternative energy use.

(6) An assessment of the effect upon demand of changes in price and rate structures for the energy form in question shall be included.

(7) Pooling, interconnection, and exchange agreements shall be provided. Either a copy of each such agreement to which a utility serving customers within Montana is a party or the following information for each such agreement shall be provided:

(a) A brief description of the nature of the obligations of and the benefits to the utility under the agreement;

(b) A list of all parties to the agreement;

(c) The time period during which the agreement is in effect;

(d) The amount of electrical energy in megawatts to be exported and imported under the agreement;

(e) The specified timing or rate of delivery or receipt of the energy; and

(f) The financial agreements involved.

Sub-Chapter 10

CERTIFICATES

36-2.8(10)-S880 TRANSMISSION AND PIPELINE CORRIDORS--CONDITIONS

(1) An application to construct a transmission line within a transmission corridor will, under applicable circumstances, be granted for the approved transmission corridor subject to the further approval by the Board of the location of the line within the approved corridor. ~~A utility~~ A certificate holder may not commence construction of the transmission line in such cases without having obtained the Board's approval of its location.

Sub-Chapter 12

36-2.8(12)-S884 EXEMPTION OF GENERATION ADDITIONS TO EXISTING HYDROGENERATION FACILITIES

(1) The board may upon application exempt from compliance with the provisions of the ~~Major Facility Siting~~ Act an addi-

tion of generation capacity to an existing hydroelectric generation facility provided that such additional capacity:

(a) would not result in a significant change in water withdrawal or impoundment or adversely effect any existing water rights;

(b) would not significantly change the minimum or maximum volume of downstream flow or the periodicity of fluctuations in downstream flow or the rapidity of change of water levels downstream of the dam;

(c) would not necessitate the construction of a re-regulating reservoir;

(d) would not necessitate the acquisition of any rights-of-way or easements for transmission lines or water pipelines; or;

(e) would not otherwise result in significant adverse environmental impact.

(2) An applicant for an exemption shall file with the department a written explanation and description of the proposed generation capacity addition in such form and containing such information as specified by the Department. The Department shall review the application and report to the board its recommendation concerning granting or denying exemption at the next board meeting at least 30 days following the formal application filing date.

Sub-Chapter 13

36-2.8(13)-S888 WAIVER OF RULES

(1) At least 60 days prior to a filing date required by these rules, a potential applicant may petition the Department in writing to waive any of the requirements of these rules not expressly required by the Act. The Department may grant the petitioned waiver, in total or in part, only after the potential applicant has given public notice and an opportunity for the public to submit comments to the Department. The potential applicant must demonstrate to the Department substantial and compelling cause for the waiver. Public notice of a petitioned waiver shall be given by the potential applicant to every party required to be served with an application pursuant to 70-806(3) and (4) of the Act and 36-2.8(2)-S810(i)(e) of these rules. Public comments must be received by the Department within 30 days after the petition and proof of service of public notice have been received by the Department.

(2) This rule shall not be construed to require or provide for an opportunity for a hearing on the petition, involving the contested case hearing procedures of the Montana Administrative Procedures Act.

3. Testimony and extensive comments were received. In response to the comments an extensive statement of reasons containing the comments and the responses thereto has been submitted and filed with the rules to the Secretary of State. A

copy of the statement of reasons is too voluminous to include herein. A copy may be obtained by contacting Mr. Bob Anderson, Administrator, Energy Planning Division, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601.

CECIL WEEDING, CHAIRMAN
BOARD OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State April 13, 1978.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF NURSING

IN THE MATTER of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions.	NOTICE OF PROPOSED ADOPTION of a New Rule relating to Public Participation in Board decision making functions.

TO: ALL INTERESTED PERSONS:

1. The Board of Nursing published Notice No. 40-3-62-3 of a proposed adoption of new rules relating to public participation in Board decision making on February 24, 1978, at page 173, MAR 1978, Issue No. 2.

2. The adoption incorporates, as rules of the Board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State April 13, 1978.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF VETERINARIANS

IN THE MATTER of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions.	NOTICE OF PROPOSED ADOPTION of a new rule relating to Public Participation in Board decision making functions.

TO: ALL INTERESTED PERSONS:

1. The Board of Veterinarians published Notice No. 40-3-102-4 of a proposed adoption of new rules relating to public participation in Board decision making on February 24, 1978, at page 179, MAR 1978, Issue No. 2.

2. The adoption incorporates, as rules of the Board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40 Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State April 13, 1978.

VOLUME 37 OPINION NO. 121

ACCIDENTS - filing claims with Department of Administration;
ATTORNEYS - tort claims; fee regulation;
DEPARTMENT OF ADMINISTRATION - tort claims against the state;
STATE - tort claims against, filing;
SECTIONS 82-4316.1, (1), (3); 92-619(1), (2); 82-4318; 82-4319.

HELD: Section 82-4316.1 requires an attorney representing a party to a tort claim against the state to file a copy of his contract of employment with the Department of Administration. The district court of Lewis and Clark County has the power to regulate such fees in conjunction with claims which are not litigated. In the case of the litigated claims, the district court before which the case is tried has regulatory power. The method and extent of its regulation is a matter for the court's discretion.

17 March 1978

J. Michael Young, Administrator
Insurance and Legal Division
Department of Administration
Capitol Station
Helena, Montana 59601

Dear Mr. Young:

You have requested my opinion on the following question:

> Does §82-4316.1, R.C.M. 1947 require an attorney representing a party to a tort claim against the state to file a copy of his contract of employment with the Department of Administration, and if so, what entity has power to regulate such attorney fees?

Section 82-4311 provides that "[a]ll claims against the state arising under the provisions of [the Montana Comprehensive State Insurance Plan and Tort Claims Act] shall be presented to and filed with the department of administration." Section 82-4312 contains a similar provision requiring filing of claims against a political subdivision with its secretary or clerk.

Section 82-4316.1, the statute to which you refer, states as follows:

> (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorneys and the claimant.
> (2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.
> (3) Attorney's fees regulated under this section shall be made a part of the court record and are open to the public.
> (4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

Because subsections (2) and (3) place regulatory power in the district court rather than the department, you question whether the contract must be filed with the department or only with the court if suit is filed.

Statutes are to be interpreted according to their plain meaning, Clark v. Hensel Phelps Construction Co., _____ Mont. _____, 560 P.2d 515, 516-517 (1977), and sections of an act must be interpreted in such a manner as to ensure coordination with other sections of the act. Hostetter v. Inland Development Corp. of Montana, _____ Mont. _____, 561 P.2d 1323, 1326 (1977).

The language of §82-4316.1(1), "the attorney shall file with the claim a copy of the contract of employment...," clearly relates back to the sections governing filing of claims with the department or political subdivisions. The Workers' Compensation Act contains a similar provision. See §92-619(1). It differs, however, in that fee regulation and rule making power is vested in the administrator of the

workers' compensation division rather than the district court. Section 92-619(2). In neither case is regulation limited to claims which are ultimately the subject of suit. Cf. §§82-4316.1 and 92-619.

This raises the question of which district court has power to regulate attorney fees incident to litigated and non-litigated tort claims. Section 82-4316.1(2) merely states that "'the district court' may regulate the amount of the attorney's fee." It does not specify which district court or distinguish between litigated and non-litigated claims.

In construing statutes, "[t]he meaning of a given term must be measured and controlled by the connection in which it is employed, the evident purpose of the statute, and the subject to which it relates. Fletcher v. Paige, 124 Mont. 114, 120, 220 P.2d 484 (1950). The reasons the Tort Claims Act did not centralize regulatory power in an administrative agency as in the case of the Workers' Act are evident. Because the act encompasses not only tort claims against the state, but also its political subdivisions, there is no central authority capable of monitoring the claims. Furthermore, regulation by the state or its political subdivisions, the parties against whom the tort claims will be filed, is patently unacceptable. The district court, as a neutral arbiter, was the logical choice.

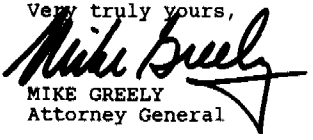
In determining which district court the legislature referred to in §82-4316.1(2), other sections of the act are relevant. Section 82-4321 recognizes that venue for litigated claims against the state or political subdivisions is not necessarily in the counties where the claims are filed. Sections 82-4318 and 4319 recognize that some claims will be settled without litigation. Section 82-4318 requires the district court "where the claim is filed" to approve settlement of claims against political subdivisions involving self-insurance or deductible reserve funds. Settlement of claims against the state must similarly be approved by the district court of Lewis and Clark County. Depending on whether a claim is settled or litigated, a different district court may be involved and in a better position to regulate the attorney's fee based on the complexity of the case, the time involved, and other relevant factors. See §82-4316.1(2). The legislature intended district courts hearing litigated claims to regulate attorneys' fees in those cases and the district court where the "claim is filed" [the district court of Lewis and Clark County in claims against the state] to regulate fees for non-litigated claims.

The district court is given responsibility and power to regulate attorneys fees. The method and extent of regulation is a matter for the court's discretion. See §82-4316.1(2). Because the department is the entity with which all fee contracts must be filed, however, it is in a position to recommend proper and expedient implementation of the section.

THEREFORE, IT IS MY OPINION:

Section 82-4316.1 requires an attorney representing a party to a tort claim against the state to file a copy of his contract of employment with the Department of Administration. The district court of Lewis and Clark County has the power to regulate such fees in conjunction with claims which are not litigated. In the case of litigated claims, the district court before which the case is tried has regulatory power. The method and extent of its regulation is a matter for the court's discretion.

Very truly yours,



MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 122

INDIANS - Personal property tax;
TAXATION - Personal property, Indians;
Section 84-301.12, R.C.M. 1947

HELD: An enrolled member of an Indian tribe is not required to pay personal property taxes on a mobile home located within the exterior boundaries of a reservation which he owns and uses as rental property.

17 March 1978

James A. McCann
Roosevelt County Attorney
Wolf Point, Montana 59255

Dear Mr. McCann:

You have requested my opinion on the following question:

> Is an enrolled member of an Indian tribe required to pay personal property taxes on a mobile home he owns which is located within the exterior boundaries of a reservation if the mobile home is used as rental property?

The State has no power to levy a personal property tax on the mobile home. Bryan v. Itasca County, Minnesota, 426 U.S. 373 (1976). See also Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976). The fact that it is used as rental property is irrelevant. The tax is levied on the mobile home as a physical object without regard to the use to which it is put. Section 84-301.12, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

> An enrolled member of an Indian tribe is not required to pay personal property taxes on a mobile home located within the exterior boundaries of a reservation which he owns and uses as rental property.

Very truly yours,

MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 123

CONSOLIDATION - Merger of agency staff functions;
DEPARTMENT OF ADMINISTRATION;
MERIT SYSTEM COUNCIL;
STATE AGENCIES - Agencies attached for administrative purposes only;
SECTIONS 82A-102(2), 82A-108, 82A-206(2), R.C.M. 1947.

HELD: The Merit System Council may enter into an agreement with the Department of Administration to allow the Department to perform staff functions for the Council provided the Council continues to retain its identity and exercise independent quasi-judicial, quasi-legislative, licensing and policy-making functions as provided by law.

17 March 1978

Jack C. Crosser, Director
Department of Administration
Mitchell Building
Helena, Montana 59601

Dear Mr. Crosser:

You have requested my opinion on the following question:

> May the Merit System Council enter into an agreement with the Department of Administration, to which the Council is attached for administrative purposes only, to allow the Department to perform staff functions for the Council? Such an agreement would provide that the Council retain its identity and independent quasi-judicial, quasi-legislative, licensing and policy-making functions but would result in a functional merger of the two agencies at the staff level.

The Merit System Council is created and attached to the Department of Administration for "administrative purposes only" by §82A-206(2), R.C.M. 1947. The term "administrative purposes only" is defined in §82A-108 as follows:

> (1) An agency allocated to a department for administrative purposes only in this title shall:
> (a) Exercise its quasi-judicial, quasi-legislative, licensing and policy-making

functions independently of the department and without approval or control of the department.
(b) Submit its budgetary requests through the department.
(c) Submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:
(a) Direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency.
(b) Include the agency's budgetary requests in the departmental budget....
(d) Provide staff for the agency. Unless otherwise indicated in this title, the agency may not hire its own personnel. (Emphasis added).

Section 82A-206(2) provides that the Council "may hire its own personnel, and §82A-108(2)(d) does not apply." It is apparent that the Merit System Council has the discretion to hire its own personnel, or to allow the Department of Administration to do the hiring. The proposed functional merger of the Council and the Department at the staff level is merely an articulated choice by the Council to refrain from hiring its own staff and to delegate routine staff functions to the Department.

The only apparent potential obstacle to the proposed merger of the Merit System Council with the Department is the language requiring the independent exercise of the discretionary powers of the attached agency.

Since it is clear from the terms of the proposed agreement between the Council and the Department that the Council will retain that independence I see no legal objection to the arrangement.

The proposed administrative arrangement will fulfill the purposes of executive reorganization, enumerated in §82A-102(2) as follows:

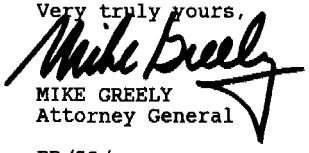
It is the public policy of this state and the purpose of this title to create a structure of the

executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions;...and to eliminate overlapping and duplication of effort within the executive branch of state government.

THEREFORE, IT IS MY OPINION:

The Merit System Council may enter into an agreement with the Department of Administration to allow the Department to perform staff functions for the Council provided the Council continues to retain its identity and exercise independent quasi-judicial, quasi-legislative, licensing and policy-making functions as provided by law.

Very truly yours,



MIKE GREELY
Attorney General

PD/SS/so

VOLUME 37 OPINION NO. 124

ELECTIONS - General elections;
ELECTIONS - Local Government Charter requirements for general election;
LOCAL GOVERNMENT - Charter requirements for general election; SECTIONS - 16-5115.13, 23-2601, and 23-2604, R.C.M. 1947.

HELD: The positions on the Anaconda-Deer Lodge Commission are subject to election at the primary and general elections to be held in 1978 and 1980.

24 March 1978

Mr. John Radonich
County Attorney
Anaconda-Deer Lodge County
108 East Park Avenue
Anaconda, Montana 59711

Dear Mr. Radonich:

You requested my opinion on the following question:

> When must the primary and general elections be held for positions on the Anaconda-Deer Lodge County Commission?

Anaconda-Deer Lodge has adopted a new charter form of government which became effective in the spring of 1977. Members of the commission, the governing board, were elected at a special election in April, 1977. That election was specifically held in lieu of the general election in 1976 to implement the new local government, pursuant to the provisions of §16-5115.13(2).

Article III, Section 3(4), Charter Anaconda-Deer Lodge County provides:

> Commissioners shall be elected in the general election for a term of four (4) years by the voters of the county at large. At least two (2) commissioners shall be elected every two (2) years.

Section 16-5115.13(5) provides in pertinent part:

> If the terms of commissioners are to be overlapping, they shall draw lots to establish their respective terms of office at the first meeting of the commission.

For the new government to comply with the above provisions of §16-5115.13, the transition schedule of the Charter, Article X, Section 3 provided:

> Initial Procedures. 1) The commission shall meet on May 2, 1977, to elect its chairman, establish regular meeting dates, provide for appointment of the Manager, and set the agenda for the next meeting. At this first meeting, the Commissioners shall draw lots to establish three (3) terms of office of four (4) years each and two (2) terms of office of two (2) years each. (Emphasis supplied)

To meet the provisions of the above sections, it was determined by the commission at its first meeting that the commissioners representing districts four and five would initially be elected to short terms. Therefore, in future elections at least two commissioners will be elected every two years.

Your question arises because of the reference to two year and four year terms in the transition schedule. If the commissioners are elected at the general elections in 1978 and 1980 the respective terms will be a few months less than two years and the full two year and four year terms as provided in the transition schedule, special elections would have to be held in April of every odd numbered year. That section of the transition schedule became inoperative after the first commission meeting pursuant to the Charter, Article X, Section 1.

It is my opinion that the language of the transition schedule must yield to the other provisions of the Charter requiring elections to be held at the general election, as well as the provisions of §16-5115.13(5). Therefore the commissioners that were initially elected in April 1977 will serve terms that are less than two and four years respectively.

Rules of statutory construction apply equally as well to the interpretation of a local government charter, and it is a fundamental rule that statutory construction of provisions

regarding the same subject should not lead to contrary results if reasonable construction will avoid it. State ex rel Ronish v. School District #1 of Fergus County, 136 Mont. 453, 348 P.2d 797 (1960). Each provision must be read in pari materia and given the reasonable interpretation which enables it to be read in harmony with the other provisions, thus giving vitality to the provisions as a whole. Oxford v. Topp, 136 Mont. 227, 346 P.2d 566 (1959); State Board of Equalization v. Cole, 122 Mont. 9, 195 P.2d 989 (1948). The charter provides that commissioners shall be elected in the general election. Section 16.5115.13 also requires at least one commissioner to be elected in 1978. A general election is defined in §23-2601(2) as:

> An election held for the election of officers throughout the state at times specified by law.

Section 23-2604 provides:

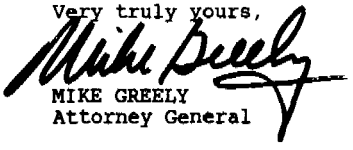
> General Election -- When to be held. A general biennial election shall be held throughout the state in every even numbered year on the first Tuesday after the first Monday of November.

The statute quoted above provides that the general election shall be held throughout the State in every even numbered year, and that provision necessarily includes communities that implemented new forms of government in April, 1977. The provisions in the statutes and charter implementing the new form of government and those requiring the commission seats to be filled at a general election are not irreconcilable. Read as a whole, the provisions require the elections to be held in conjunction with the state general election.

THEREFORE IT IS MY OPINION:

> The positions on the Anaconda-Deer Lodge Commission are subject to election at the primary and general elections to be held in 1978 and 1980.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 125

CONSTITUTIONS - Prisoner Voting Rights;
ELECTIONS - Inmate Voting Rights;
CIVIL RIGHTS - Inmate Voting Rights;
FELONS - Voting Rights of institutionalized Felons;
PRISONERS - Voting Rights;
Sections - 23-2701(2); 95-2227, R.C.M. 1947;
1972 Montana Constitution, Art. IV, Sec. 2.

HELD: No person may vote in the State of Montana while serving a sentence in a penal institution resulting from conviction of a felony.

27 March 1978

Mr. James Masar
Powell County Attorney
Deer Lodge, Montana 59722

Dear Mr. Masar:

You have requested my opinion concerning the following question: May an inmate of the Montana State Prison vote in the State of Montana while serving a sentence resulting from a felony conviction.

The 1973 Legislative Assembly enacted two statutes which must be construed in answer to your question. During that session the Legislature enacted an amendment to §23-2701(2), R.C.M. 1947 which now reads as follows:

> (2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution. Sec. 1, Ch. 40.L 1973 (Amendatory language emphasized).

During the same session the legislature passed the 1973 Criminal Code and the following new section dealing generally with the effect on rights of a criminal conviction. Section 95-2227, R.C.M. 1947 reads as follows:

> (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

> (2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.
> (3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

Section 95-2227 is a general one dealing with the rights of the convicted. Section 23-2701(2), specifically deals with denial of the right to vote to convicted persons while they are serving a sentence in a penal institution.

> Unless there is clearly and manifestly a conflict between the two Acts in question the Court will not declare that there is an implied repeal. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P.2d 750 (1939).

When one act of the same session is of general application and the other a special enactment the presumption is strengthened that the special statute is to be construed an exception to the general. Board of Education v. Rogers, 278 NY 66, 15 NE.2d 401 (1938).

Each of the acts in question represents the intent of the 1973 Legislature and each should be qualified in construction to give validity and effect to the other.

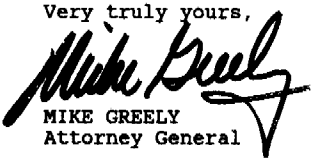
The specific prohibition on voting by convicted felons under sentence contained in §23-2701(2), R.C.M. 1947 is an exception to the more general language of §95-2227, R.C.M. 1947. This construction of the two statutes likewise gives effect to the language of Article IV Section II of the Montana Constitution of 1972:

> Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

THEREFORE, IT IS MY OPINION:

No person may vote in the State of Montana while serving a sentence in a penal institution resulting from conviction of a felony.

Very truly yours,



MIKE GREELY
Attorney General

MG/PD/so

VOLUME 37 OPINION NO. 126

JUDGMENTS - Execution and enforcement of out-of-county Justice Court judgments;
JUSTICES OF THE PEACE - Judgments and executions; out-of-county enforcement;
SHERIFFS - Execution and enforcement of out-of-county judgments of Justice Courts;
SECTIONS - 93-404, 93-7401, 93-7402, 93-7404, 93-7405, 93-7312 and 93-7313, R.C.M. 1947.

HELD: An execution issued by a justice court may be enforced only within the county in which the justice court has territorial jurisdiction. To enforce a justice court judgment in a different county, the procedures of Section 93-7312 and 93-7313, R.C.M. 1947, must be followed. Under those provisions, an abstract of the justice court judgment may be entered in the judgment docket of the district court and the clerk of the district court may then issue an execution directed to the sheriff of any county in the State. An execution issued pursuant to Section 93-7313, R.C.M. 1947, is enforceable in the same manner as an execution issued on a judgment of the district court.

29 March 1978

Robert L. Fletcher
Sanders County Attorney
Thompson Falls, Montana 59873

Dear Mr. Fletcher:

You have requested an opinion concerning the following question:

> May an execution issued from a justice court of one county direct the sheriff or constable of another county to levy upon a writ of execution in the second county?

An execution is a court directive to a sheriff, or other officer, requiring him to enforce or levy upon a judgment in a civil case. Your question arises because the sheriff of Sanders County has been requested by some attorneys to levy upon out-of-county justice court executions.

Your question, with regard to a justice court execution, is answered by Pierson v. Daly, 49 Mont. 478, 143 P. 957 (1914). That case held that civil jurisdiction of a justice court extends to the limits of its county and that a justice court execution cannot run to or be enforced in another county. Id., 49 Mont. at 482. The applicable statutory provisions in Pierson are identical in pertinent parts to present statutory provisions for justice court executions. Section 93-404, R.C.M. 1947, specifies the territorial jurisdiction of justice court and has been carried forward unamended in the various statutory recodifications since the Pierson case. Similarly, Sections 93-7401 to 93-7405, R.C.M. 1947, the current statutes governing the issuance and enforcement of justice court executions, are unchanged since the Pierson case except in immaterial aspects. Section 93-7401 provides that a justice court may issue an execution at any time within five years after entry of judgment; it is identical to the provision in Pierson except for a 1921 amendment changing the time in which the execution may be issued from six to five years, Laws of Montana (1921) ch. 38, sec. 1. Section 93-7402 prescribes the form of execution, and specifies those persons to which it is to be directed, providing in relevant part, "The execution must be directed to the sheriff or to the constable of the county ***." The Section, including its directive in the singular to "the sheriff" or "the constable of the county," is unchanged except for deletion of a requirement that the execution specify the township, town or city where the judgment was rendered, Laws of Montana (1973), ch. 491, sec. 21. Section 93-7404, which provides the manner of levy, remains unchanged.

This does not mean that judgments of a justice court are unenforceable in other counties. Specific provision is made for entering a justice court judgment in the judgment docket of the district court. Section 93-7312, R.C.M. 1947. Once entered, the clerk of the district court may issue an execution which is enforceable in other counties. Section 93-7313, R.C.M. 1947, provides in relevant part:

> From the time of docketing in the clerk's office, execution may be issued thereon by the clerk to the sheriff of any county in the state, in the same manner and with like effect as if issued on a judgment of the district court.

Both Sections 93-7312 and 93-7313, R.C.M. 1947, are identical to predecessor provisions considered in Pierson.

The court in Pierson specifically noted these provisions provide the mode of enforcement of a justice court judgment in other counties.

> *** But for these provisions there would be no lien, nor could the execution run to any other county than that in which the judgment is rendered, the limits of jurisdiction of the process of a justice court being coextensive with those of the county only.

Pierson, 49 Mont. at 482.

THEREFORE, IT IS MY OPINION:

> An execution issued by a justice court may be enforced only within the county in which the justice court has territorial jurisdiction. To enforce a justice court judgment in a different county, the procedures of Section 93-7312 and 93-7313, R.C.M. 1947, must be followed. Under those provisions, an abstract of the justice court judgment may be entered in the judgment docket of the district court and the clerk of the district court may then issue an execution directed to the sheriff of any county in the State. An execution issued pursuant to Section 93-7313, R.C.M. 1947, is enforceable in the same manner as an execution issued on a judgment of the district court.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMc/br

VOLUME 37 OPINION NO. 127

APPROPRIATIONS - Accounting requirements in general appropriations bills;
CONTRACTS, PUBLIC - Regional Community Mental Health Centers - contracts for services;
CORPORATIONS, NONPROFIT - Powers to contract; powers over financial affairs;
LEGISLATIVE BILLS - Single subject and title requirements; accounting requirements in general appropriations bills;
MENTAL HEALTH - Regional Community Mental Health Centers;
PUBLIC FUNDS - Conditions of grants of State moneys to Regional Community Mental Health Centers;
STATE AGENCIES:
DEPARTMENT OF ADMINISTRATION - Statewide Budget and Accounting System (SBAS);
DEPARTMENT OF INSTITUTIONS - Contracts with Regional Community Mental Health Centers;
TREASURY, STATE - Treasury fund structure, Statewide Budget and Accounting System (SBAS); federal and private grant clearance fund;
CODE OF FEDERAL REGULATIONS - Title 45, §74.45;
1889 MONTANA CONSTITUTION - Art. V, Sec. 23;
1972 MONTANA CONSTITUTION - Art. V, Sec. 11;
SECTIONS - 15-2305, 79-410, 79-411(2), 79-413, 79-2310, 79-2310(7), 80-2802, 80-2803, 80-2804, 80-2804(2), 82-110, and 82A-801.1(17), R.C.M. 1947.

HELD: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the State Treasury and the Statewide Budget and Accounting System (SBAS).

29 March 1978

Mr. Larry M. Zanto, Director
Department of Institutions
1539 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Zanto:

You have requested my opinion concerning the method of accounting established for regional community mental health centers by the last legislature. That method requires each regional center to account for all funds through the State Treasury and the statewide budget and accounting system

(SBAS). The requirement is attached to a line item appropriation in the 1977 general appropriations bill, wherein the 1977 Legislature appropriated approximately five million dollars to the Department of Institutions for grants to community mental health centers during the 1978-1979 biennium, and provides:

> All funds for community mental health programs shall pass through the state treasury for accounting purposes, unless prohibited by law. (Emphasis added.)

Specifically, the Department asks whether the particular method of accounting prescribed in H.B. 145 is otherwise prohibited by law. Three possible sources of prohibition are mentioned. They are Art. V, Sec. 11, 1972 Montana Constitution, which governs enactment of legislation; Section 15-2305, R.C.M. 1947, which enumerates the statutory powers of nonprofit corporations; and Title 45, Code of Federal Regulations, §74.45, which regulates use of non-federal moneys by recipients of federal grants from the United States Department of Health, Education and Welfare. It is my opinion that none of the three mentioned provisions prevent compliance with the accounting requirement of H.B. 145.

Regional community mental health centers are created by statute, being authorized by Chapter 28, Title 80, R.C.M. 1947. Under that chapter the State of Montana is divided into mental health regions and each region is authorized to establish itself as a nonprofit, community mental health center. Section 80-2804, R.C.M. 1947. Each center is governed by a board of directors appointed by the county commissioners for each of the counties served. Section 80-2804(2), R.C.M. 1947.

While it is expressly provided that the centers are to be organized as nonprofit corporations and "shall not be considered agencies of the Department (of Institutions) or the State of Montana ***," Section 80-2804(2), R.C.M. 1947, regional mental health centers are nonetheless instrumentalities through which the State delivers mental health services at local levels. The Department of Institutions has general responsibility for the administration of the mental health program and mental health centers. Sections 82A-801.1(17) and 80-2802, R.C.M. 1947. That responsibility is discharged through the Department's authority to enter into contracts with regional mental health centers. Section

80-2803, R.C.M. 1947. Pursuant to these contracts, the State of Montana furnishes up to fifty percent (50%) of each regional mental health center's operating budget. Each recipient center must agree to deliver mental health services within its jurisdictional area and comply with regulations and guidelines established by the Department. Id. Federal grants, private donations and charges for services make up the remainder of regional centers' operating budgets.

All recipients of State grants are required to permit State access to and audit of their financial records. Section 79-2310, R.C.M. 1947, specifically provides, in relevant part:

> The legislative auditor shall:
> * * *
> (7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written consent of the grantee to the audit provided for in this subsection.

The 1977 line item appropriation for regional community mental health centers makes no exception to that requirement. To the contrary, it provides in relevant part:

> The preceding general fund monies are appropriated for contracts for services by nonstate entities and any contracts for these services shall be considered grants for purposes of 79-2310(7) and the contractors may be audited pursuant to 79-2310(7).

House Bill 145, 1977 Session Laws, Vol. II, p. 1995.

The apparent purpose of the Treasury pass through requirement in H.B. 145 is to standardize the accounting systems of all regional mental health centers and give state auditors immediate and simple access to each center's financial transactions. In his Budget Analysis presented to the 1977 legislature, the Legislative Fiscal Analyst stated with regard to regional mental health centers that, "*** the diversity of fund sources for each region along with a

fragmented and non-standardized reporting and accounting systems makes accountability very difficult". (Page 354.) He went on to recommend that the legislature require, as a condition of the regional community mental health center appropriation, that regional centers "utilize the statewide budgeting and accounting system (SBAS) so that all funds and expenditures for each mental health region can be easily identified in SBAS". Id. That recommendation is reflected in the State Treasury pass through requirement.

SBAS is a computerized accounting system which records every deposit to or expenditure from a particular fund within the State Treasury. A coded entry identifies the nature of each deposit and expenditure. The system has been established by the Department of Administration pursuant to its responsibilities under Section 82-110, R.C.M. 1947, which provides in relevant part:

> (1) The Department (of Administration) shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property and shall develop plans for improvements and economies in the organization and operation thereof * * *.

The combination of computerization and uniformity in record keeping will permit almost instantaneous access to each regional mental health center's financial records. In turn, this will facilitate auditing and fiscal analysis. The Department presently plans to facilitate usage of SBAS by establishing SBAS computer terminals throughout the State. Local terminals will give regional mental health centers direct access to the accounting system.

Implementation of the Treasury pass through requirement presents no insurmountable difficulties. An appropriate account utilizing SBAS can be set up for each regional center within the present State Treasury fund structure. Section 79-410, R.C.M. 1947, sets forth the various funds within the State Treasury, including a federal and private grant clearance fund:

* * *

> (5) Federal and private grant clearance fund. The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses

> to persons, associations or units of local government. * * *
>
> * * *

The funds of each regional mental health center can be separately segregated for accounting purposes. Section 79-413, R.C.M. 1947, provides, in relevant part, "Moneys deposited in each fund except the general fund shall be segregated by the Department of Administration by specific accounts based on source, function, or department." Additionally, Section 79-411(2), R.C.M. 1947, provides:

> Any laws enacted in the future, or any contracts entered into in the future in pursuance of law, that require the segregation of moneys in the state treasury by means of a separate treasury fund, shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by section 79-410.

None of the three provisions mentioned by the Department of Institutions precludes implementation of the requirement.

The federal regulation referred by the Department is set forth in uniform provisions of the United States Department of Health, Education and Welfare (HEW) which govern the administration of HEW grants. 45 C.F.R., part 74. Section 74.45 of that part provides:

> (a) This section applies to all program income earned during the grant period except royalties and proceeds from the sale of real property or tangible personal property.
> (b) All such income earned during the grant period shall be retained by the grantee. The terms and conditions of the grant shall provide either:
> (1) That such income shall be used by the grantee for any purposes which further the objectives of the legislation under which the grant was made, or
> (2) That such income shall be deducted from total project costs for the purpose of determining the net costs on which the Federal share of costs shall be based.
> (c) The grantee shall elect either of the alternatives specified in paragraph (b) of this section if the terms and conditions of the grant do not specify which is to be followed.

Section 74.45 is not automatically applicable to federal grants to nonprofit organizations. The section is within subpart F of part 74, a subpart which applies to all grants made to state and local governmental entities but is "applicable to HEW grants to grantees other than state and local governments only to the extent made applicable by other duly published HEW policy statements (usually, but not necessarily, in the program regulations of the granting agency.)" 45 C.F.R. §74.4. (Emphasis added.) I do not know whether subpart F has been made applicable to federal mental health grants to nonprofit mental health corporations, but, in any event, the SBAS accounting requirement does not conflict with §74.45. That section merely limits federal control over a grantee's use of non-federal income. The Treasury pass through requirement does not restrict use of funds by the mental health centers or subject centers expenditures to control by the Department of Administration. The pass through is "for accounting purposes" only.

Similarly, there is no conflict between the Treasury pass through requirement and the statutory powers of nonprofit corporations under Section 15-2305, R.C.M. 1947, to manage their own financial affairs. Corporations, profit and nonprofit alike, customarily enter into contracts wherein they commit themselves to particular expenditures and accountability.

Finally, the accounting requirement does not violate Art. V, Sec. 11, 1972 Montana Constitution. That section provides in relevant part:

* * *

> (3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.
>
> (4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

* * *

A presumption of constitutionality attaches to a statute, "*** and every intendment in its favor will be made unless unconstitutionality appears beyond a reasonable doubt." Board of Regents of Higher Education v. Judge, 168 Mont. 433, 444, 543 P.2d 1323 (1975). A party attacking the constitutionality of a statute has the burden of proving its invalidity, Reeves v. Ille Electric Company, ___ Mont. ___, 551 P.2d 647, 650 (1976); that burden has not been met in the present case.

The accounting requirement does not violate subsection (4) of Art. V, Sec. 11. House Bill 145 is a general appropriations bill. Laws of Montana (1977), Session Laws, Vol. II, Sec. 1, p. 1981. The Department of Institutions has a statutory duty to provide mental health services, and payment for delivery of those services is an ordinary expense of the department. "Any expense which recurs from time to time and is to be reasonably anticipated as likely to occur in order for the proper operation and maintenance of the departments of the state government is an ordinary expense." Miller Insurance Agency v. Porter, 93 Mont. 567, 571-572, 20 P.2d 643 (1933).

Nor does the requirement violate the single subject and title restriction of subsection (3). In Davidson v. Ford, 115 Mont. 165, 141 P.2d 373 (1943), the Montana Supreme Court considered a provision similar to the one considered here. That provision was attached to an appropriation for veterans' welfare and specified the manner of expenditure of the appropriation. The Court rejected the contention that its inclusion in an appropriations bill violated the single subject requirement of Art. V, Sec. 23, 1889 Montana Constitution:

> The contention is without merit. So long as incidental provisions of an appropriation bill are germane to the purposes of the appropriation it does not conflict with any constitutional provision. (See State ex rel Souders v. District Court, 92 Mont. 272, 12 Pac. (2d) 852; Miller Ins. Agency v. Porter, 93 Mont. 567, 20 Pac. (2d) 643, State v. Healow, 98 Mont. 177, 38 Pac. (2d) 285; State v. McKinney, 29 Mont. 375, 74 Pac. 1095, 1 Ann. Cas. 579.) We think this point is dealt with in an able manner by the Supreme Court of New Mexico, whose constitution contains provisions much the same as our sections 23 and 25 of Article V, supra. That court, having under consideration

the identical question involved here, said in State ex rel. Lucero v. Marron, 17 N.M. 304, 128 Pac. 485, 488:

"To sustain the contention that the general appropriation bill should contain nothing, save the bare appropriations of money, and that provisions for the expenditure of the money, or its accounting, could not be included therein, *** would lead to results so incongruous that it must be presumed that the framers of the Constitution had no such intent in the adoption of the restrictions referred to. ***

"Numerous states have provisions similar to that contained in the first part of section 16, supra, which require the subject of every bill to be clearly expressed in its title, and that no bill embracing more than one subject shall be passed, etc., and the courts all uniformly hold that any matter germane to the subject expressed in the title of a bill and naturally related to it is valid. When an appropriation is made, why should not there be included with such appropriation matter germane thereto and directly connected with it, such as provisions for the expenditure and accounting for the money, ***. What valid objection can be interposed to such a course, so long as the Legislature confines the incidental provisions to the main fact of the appropriation, and does not attempt to incorporate in such act general legislation, not necessarily or directly connected with the appropriation legally made, under the restrictions of the section in question?" This decision was followed in the later case of State ex rel. Whittier v. Safford, 28 N.M. 531, 214 Pac. 759.

Davidson is conclusive. Art. V, Sec. 23, 1889 Constitution is identical to Art. V, Sec. 11(3), 1972 Montana Constitution. The Legislature may require a particular method of accounting in connection with any line item appropriation within a general appropriations bill.

No other provision of law which would prohibit implementation of the Treasury pass through requirement has been brought to my attention.

THEREFORE, IT IS MY OPINION:

State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the State Treasury and the Statewide Budget and Accounting System (SBAS).

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 128

FEES - Filing fees for petitions for dissolution of marriage by a petitioner and co-petitioner;
CLERKS - Clerks of Court, filing fees for petitions for dissolution of marriage by a petitioner and co-petitioner;
SECTION 25-232, R.C.M. 1947.

HELD: The Clerk of the District Court cannot require a $20 filing fee from each petitioner when one petition for dissolution of marriage is filed listing a petitioner and co-petitioner.

31 March 1978

A. Evon Anderson
Chouteau County Attorney
Office of County Attorney
Fort Benton, Montana 59442

Dear Mr. Anderson:

You have requested my opinion on the following question:

> When a petition for dissolution of marriage is filed listing a "petitioner" and "co-petitioner," is it proper for the Clerk of the District Court to demand a filing fee of $20 from each under §25-232(1)(a), R.C.M. 1947?

Section 25-232, R.C.M. 1947 provides as follows:

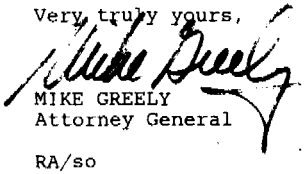
> (1) The clerk shall collect the following fees:
> (a) At the commencement of each action or proceeding, from the plaintiff or petitioner, $20; (Emphasis supplied).

The intent of the legislature must first be determined by the plain meaning of the words used in the statute, and when the statute can be so determined, no other means of interpretation may be applied. Matter of Baier's Estate, ____ Mont. ____, 567 P.2d 943 (1977). The plain meaning of §25-232(1)(a) establishes a $20 filing fee for each action and not each petitioner or co-petitioner. Reference to the petitioner is secondary in the statute.

THEREFORE, IT IS MY OPINION:

The Clerk of the District Court cannot require a $20 filing fee from each petitioner when one petition for dissolution of marriage is filed listing a petitioner and co-petitioner.

Very truly yours,



MIKE GREELY
Attorney General

RA/so

VOLUME 37 OPINION NO. 129

COMMITMENTS - Warm Springs State Hospital, financial responsibility for returning persons who leave without authorization;
INCOMPETENTS - Commitment to Warm Springs State Hospital, financial responsibility for returning persons who leave without authorization;
COUNTIES - Commitment to Warm Springs State Hospital, financial responsibilty for returning persons who leave without authorization;
SHERIFFS - Commitment to Warm Springs State Hospital, financial responsibility for returning persons who leave without authorization;
SECTIONS 16-2723, 38-1305, 38-1308, 80-1602, 80-1603, 95-506, 95-508.

HELD:

1. A sheriff who returns a patient to Warm Springs pursuant to §16-2723 when the patient has been subjected to an involuntary civil or a criminal commitment, is entitled to reimbursement for his costs, as specified below.

2. The applicable county is financially responsible for returning a person who is committed pursuant to §95-506.

3. The institution to which the person is committed is financially responsible for returning a person who is committed pursuant to §§95-508 and 38-1305.

7 April 1978

Mental Health Advisory Council
1218 East 6th Avenue
Helena, Montana 59601

Ladies and Gentlemen:

You have requested my opinion on the following question:

> Who is responsible for returning to Warm Springs State Hospital, patients who depart without authorization and who are subject to criminal or involuntary civil commitments?

Criminal commitments of persons to Warm Springs by the district court can arise in two situations. Under §95-506, a criminal defendant who is unfit to proceed to trial because of mental disease or defect, may be committed as

long as the unfitness continues. Under §95-508, a criminal defendant who is acquitted because of mental disease or defect must be committed. Involuntary civil commitments are ordered by the district court upon petition of the county attorney under §38-1305.

Your question ultimately involves the fiscal rather than physical responsibility for returning these persons to Warm Springs. Any number of different persons could return a previously committed person to Warm Springs. The important question is who must pay. Section 16-2723 clearly envisions that sheriffs will often be responsible for "delivering... mentally ill persons at the state hospital." When they do, however, they are entitled to "actual expenses necessarily incurred," claims for which must be "allowed" by the "department of administration or by the board of county commissioners, as the case may be...." No further explanation is offered in §16-2723 for determining what actual entities are ultimately financially responsible in any given case for these claims which must be "allowed" by the Department of Administration or the county commissioners.

In the case of a defendant adjudged unfit to proceed to trial under §95-506, subsection (5) thereof provides:

> (5) The expenses of sending the defendant to the custody of the director of the department of institutions, to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere.

In this situation, the legislative intent is clear that the appropriate county "in the first instance" is financially responsible for "sending," "keeping," and "bringing...back" a defendant committed under §95-506. Thus, if a sheriff returns such a person who has left without authorization, he is entitled to reimbursement from the county pursuant to §§16-2723 and 95-506(5). The county can then obtain reimbursement from the "estate of the defendant" or from a "town, city or county bound to provide for and maintain him elswhere." It should be noted that this right to reimbursement does not conflict with §80-1603(7), which prohibits the

Department of Institutions from recovering from the patient the costs of "care" provided to him if he is committed under a criminal statute. This prohibition applies to the Department seeking reimbursement for the charges allowed by §80-1603 but not to a county seeking reimbursement under §95-506.

There is no specific cost allocation such as that found in §95-506(5) which is applicable to criminal defendants committed after an acquittal pursuant to §95-508. Under §95-508, the person is specifically "committed to the custody of the superintendent of Warm Springs...for custody, care, and treatment." (Emphasis added). The institution is responsible for the person's "custody" which includes whatever measures are necessary to maintain that custody, including returning the person to the institution if he leaves without authorization. Thus, if a sheriff returns a person committed under §95-508, he is entitled to reimbursement from the State under §16-2723.

The financial responsibility for returning persons under involuntary civil commitments under §38-1305 is likewise not specifically addressed. If the person enjoys conditional outpatient release under §38-1308, but becomes a "danger to himself or others," he may be "apprehended" and the local sheriff has the "duty of transporting" him to Warm Springs. This "duty," however, must be read in light of §16-2723 which allows for reimbursement of the sheriff's costs. Since there is no provision otherwise, the State institution which is responsible for the person's custody, is liable to the sheriff for his costs.

That same reasoning is applicable to a person, not on conditional release, who leaves Warm Springs without authorization. That conclusion is bolstered by §80-1603, which allows the State to recover "per diem" and "ancillary" charges from the patient or a "financially responsible person." While transportation costs after unauthorized departures are not specifically mentioned, "per diem" under §80-1602(3) is based upon "the gross daily cost of operating an institution, as budgeted,...."

THEREFORE, IT IS MY OPINION:

1. A sheriff who returns a patient to Warm Springs pursuant to §16-2723 when the patient has been subjected to an involuntary civil or a criminal commitment, is entitled to reimbursement for his costs, as specified below.

2. The applicable county is financially responsible for returning a person who is committed pursuant to §95-506.

3. The institution to which the person is committed is financially responsible for returning a person who is committed pursuant to §§95-508 and 38-1305.

Very truly yours,

MIKE GREELY
Attorney General

ABC/so