MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 5
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NOTICE: The July 1977 through June 1978 Montana Administrative Registers have been placed on jacketing, a method similar to microfiche. There are 31 jackets 5 3/4" x 4 1/4" each, which take up less than one inch of file space. The jackets can be viewed on a microfiche reader and the size of print is easily read. The charge is $.12 per jacket or $3.72 per set. If the set is to be mailed, please include $.93 postage. Montana statutes require prepayment on all material furnished by this office. Please direct your orders along with a check in the correct amount to the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59601. Allow one to two weeks for delivery.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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RULE SECTION

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule concerning compensatory time and overtime for State employees.	NOTICE OF PROPOSED ADOPTION OF COMPENSATORY TIME AND OVERTIME RULE. NO PUBLIC HEARING IS CONTEMPLATED.

TO: All Interested Persons:

1. On or after April 14, 1979, the Department of Administration proposes to adopt a Rule concerning compensatory time and overtime for State employees.

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

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. (a) This Rule supersedes the previous Montana Operations Manual policy number 3-0210, Compensatory Time and Overtime, dated December 1, 1976.

(b) This Rule is to assist management in the fair and consistent administration of compensatory time and overtime for those employees required to work in excess of 40 hours in a workweek.

RULE II. DEFINITIONS. (a) Compensatory Time means paid time off on an hour-for-hour basis granted to exempt employees for time in a pay status in excess of forty (40) hours in a workweek.

(b) Exempt Employee means an employee in a position classified as executive, administrative or professional, as such terms are defined in the Administrative Rules of Montana, 24-3.14BII(2)-S1420 through 24-3.14BII(2)-S1440.

(c) Non-Exempt or Covered Employee means an employee in a position that is not classified as executive, administrative or professional, as such terms are defined in the Administrative Rules of Montana, 24-3.14BII(2)-S1420 through 24-3.14BII(2)-S1440, covered by the provisions of the Montana Minimum Wage Law of 1971.

(d) Overtime means time worked by a non-exempt employee in excess of forty (40) hours in a workweek.

(e) Workday means the number of hours designated by management to fulfill needs of each position, usually consisting of eight (8) hours in one twenty-four (24) hour period.

(f) Workweek means a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods.

RULE III. POLICY. (a) Work Scheduling: Whenever possible, employee work assignments shall be arranged to preclude work in excess of forty hours per workweek. Changes to the workweek schedule may be made if the change is intended to be permanent and not evasive of overtime requirements.

(b) Overtime: All employees classified non-exempt as defined above, will receive overtime compensation for hours worked over forty (40) in a workweek at the rate of one and

one-half (1½) times their regular hourly wage. Non-exempt employees may not elect to accept compensatory time in lieu of overtime payments at premium rates.

(c) Compensatory Time: Exempt employees as defined above will receive compensatory time if they work over forty (40) hours in a workweek. The time shall be recorded, then used at a mutually agreeable later date during regular work hours.

(i) Compensatory time may be accumulated to a maximum of 120 hours. When assigning necessary work in excess of 40 hours to an employee with the maximum hours already accrued, the excess hours must be used by the next January 1 or July 1 (whichever accommodates the peak work load period), or be lost.

(ii) Upon receipt of a reasonable and timely request, the employer shall allow an employee compensatory time off to avoid forfeiture of compensatory time according to (i) above. The same shall apply if a voluntary termination or transfer to another agency within the same jurisdiction is pending.

(iii) Compensatory time may be transferred with the employee to another agency providing the new employer agrees.

(d) Productive Work: Overtime or compensatory time is usually compensated only for hours actually worked; however, employees held at a work site are entitled to compensation. It is the responsibility of a supervisor to assign useful, productive work. If none is assigned, the employee's right to compensation will not be affected.

(e) Authority to Approve Overtime or Compensatory Time Earned: Employees shall obtain approval from the proper authority, in advance when possible, for permission to work in excess of forty hours per workweek.

(f) Qualifying Hours: (i) Compensatory Time: All hours in a pay status are considered for purposes of calculating compensatory time earned.

(ii) Overtime: All hours worked are paid at least regular time; however, only those hours the employee is present at work during a workweek are considered for the purpose of calculating overtime payments. Absent time, including holidays, paid and unpaid leaves are not counted toward the 40-hour workweek maximum.

(g) Records: Hours worked in excess of 40 in a workweek must be reported on a time and attendance form to be compensable.

(i) Compensatory Time: Compensatory time may be earned in half hour increments during the workweek, but the recorded amount for compensation purposes shall be in full hours only.

(ii) Overtime: Overtime must be paid even though it may be in fractional hours. The fractional increment may be rounded off to the nearest few minutes or nearest one-tenth or quarter hour, providing that over a period of time this does not result in the failure to compensate the employee for the entire time actually worked.

(h) Call Back: When an employee is required to return to perform unscheduled routine or emergency work at the end of a regular workday or on a day off, the employee is entitled pay at either the appropriate overtime rate or with compensatory time. Minimum pay for call back is one hour.

(i) Travel: Travel should be scheduled within the employee's regular workday whenever possible. However, travel time outside the regular schedule may be compensable. Travel time is compensable whenever it is necessary to conduct official business authorized by the employer. Such travel should be in accordance with a preferred travel plan established by the employer.

(i) Travel time includes only those hours necessarily incurred in transportation. It does not include hours spent for meals or lodging.

(ii) Time spent returning a vehicle to a garage, refueling, cleaning, and/or completing required travel reports is compensable.

(iii) Travel time for returning to and from work as in Call Back above is compensable.

(j) Training: Time required or approved by the employer to be spent attending lectures, meetings or training is considered working time for purposes of calculating overtime payments or compensatory time earned.

(k) Request for Interpretation: Questions regarding exempt, non-exempt classifications and other wage and hour law and regulations matters should be directed to authorized representatives of the Labor Standards Division (LSD), Montana Department of Labor and Industry. Before formally contacting the Labor Standards Division, employees and managers who disagree with LSD's interpretation should request reconsideration through their agency by contacting their personnel representative.

RULE IV. CLOSING. (a) This Rule shall apply to full time employees or part time employees, permanent, temporary or seasonal.

(b) This Rule shall be utilized unless it conflicts with negotiated labor contract provisions, which shall take precedence to the extent applicable.

4. The reason for this Rule is as follows: There is a critical need to provide compensatory time and overtime procedures for State employees. Adoption of these Rules will assure fair and consistent administration of compensatory time and overtime for those employees required to work in excess of 40 hours in a workweek.

5. Interested persons may submit their data, view or arguments concerning the proposed adoption to the Administrator, Personnel Division, Department of Administration, Room 130, 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 must make written request for a public hearing and submit his request along with any written comments to that office before April 12, 1979.

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, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 2-18-102, MCA (59-913, R.C.M., 1947). Implementation is based on Section 2-18-102, MCA (59-913, R.C.M., 1947).

David Lewis

David Lewis, Director
Department of Administration

Certified to the Secretary of State, MARCH 5, 1979

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule concerning new employee orientation for State employees.	NOTICE OF PROPOSED ADOPTION OF NEW EMPLOYEE ORIENTATION RULE. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On or after April 14, 1979, the Department of Administration proposes to adopt a Rule concerning new employee orientation for State employees.

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

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. Orientation is the process of familiarizing new employees with their organizational assignments, introducing them to the staff, explaining benefits and relating their work to organizational goals and objectives. The orientation program is intended for all new State employees, except independent contractors.

RULE II. POLICY. This policy provides a guideline for New Employee Orientation to: (a) Promote employee identification with the State.

(b) Encourage a high level of motivation by integrating the interests and goals of the State with those of the individual.

(c) Promote mutually satisfying interpersonal relationships between present employees and the new employee.

(d) Acquaint the new employee with the position responsibilities.

(e) Successfully initiate the employee into the probation period. Refer to Policy 3-0825, Probation.

RULE III. PROCEDURE. Any of the following already covered by other procedures or not applicable to the job need not be applied in this orientation procedure. The immediate supervisor and/or personnel representative has the primary responsibility for insuring an orderly and systematic orientation process of introducing the new employee to co-workers, explaining job responsibilities, touring office facilities, providing adequate supplies and materials, and discussing organizational responsibilities. (a) Prior to the employee's arrival, the supervisor and/or personnel representative should: (i) Review job application, resume, etc.; (ii) Review duties and performance standards of position; (iii) Prepare work area; (iv) Identify known on-the-job training needs; (v) Prepare personnel file; (vi) Assign orientation partner.

(b) Employee Orientation Data Sheet: During the first day on the job, each new employee should be presented an Employee Orientation Data Sheet (attached), filled out in advance.

(c) Orientation Meeting: A definite time should be set aside for the supervisor and/or personnel representative to meet with the new employee, preferably during the employee's first day on the job. At this time the new employee may be presented the Orientation Check List (attached), which may be used as reference for conducting the meeting. Any items on the check list that are not applicable need not be completed. The suggested check list should provide an orderly method of presenting information to the new employee to maximize retention of the material discussed. Follow-up meetings may be scheduled as required at the convenience of the employee/supervisor and/or personnel representative. (i) During the meeting the supervisor and/or personnel representative should discuss with the employee the duties and performance standards of the position. The employee should be given a copy of the job description for review.

(ii) The supervisor and/or personnel representative should brief the employee on State, department and work unit policies and procedures that affect the job and working conditions. These policies, procedures and rules should be in writing for consistent and efficient reference. The supervisor and/or personnel representative should inform the employee on use of office systems, operating equipment, telephones, etc., and explain and review rules of conduct.

(iii) The employee should not be flooded with too much information during the meeting as the orientation program is a systematic process and more information will be provided later. Providing the employee with such information in writing ensures maximum retention.

(d) Orientation References: The supervisor or personnel representative may refer to the following or provide copies for the employee to read: (i) Employee Handbook; (ii) Statewide Classification and Pay Plans Manual; (iii) Department Manual(s); (iv) Department Group Insurance Manual; (v) Montana Operations Manual, Volume III; (vi) Montana Code Annotated, 1947 (when applicable).

(e) Orientation Partner: During the orientation process, consideration may be given to assigning an employee who is an experienced fellow worker to act as an orientation partner. This person's responsibility is to assist in the induction process by answering questions, introducing the employee to co-workers, touring office facilities, generally familiarizing the new employee with the new environment, helping with minor problems which can arise, or briefing the employee on other important items not already discussed.

(f) Department Employees: should also assist the new employee during the induction period to make the employee feel welcome and an important, integral part of the organization.

(g) New Employee Orientation Workshop: The State Training Section will hold one day New Employee Orientation workshops regularly. All new employees should be scheduled to attend. The hiring agency may pre-register (form attached) the employee when the hiring papers are prepared. The Personnel Division will be responsible for scheduling, notification and content of the orientation program. (i) The format may vary slightly from time to time; however, the topics will include: providing public service, Equal Employment Opportunity, organizational structure, employee benefits and responsibilities, personnel policies and procedures and career development.

(ii) At the New Employee Orientation workshop each new employee will be presented an orientation folder that contains the minimum following articles: (A) Official State Employee Handbook; (B) Copy of Departmental Insurance Package; (C) Salary Schedule; (D) Orientation Training Schedule.

(iii) Those employees not planned to attend the New Employee Orientation workshop should receive either a state-wide or agency handbook the first few days of employment.

RULE IV. CONCLUSION. This Rule shall be followed unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

4. The reason for this Rule is as follows: There is a critical need to provide orientation procedures for new employees. Adoption of these Rules will assure consistent application of orientation procedures for such employees.

5. Interested persons may submit their data, view or arguments concerning the proposed adoption to the Administrator, Personnel Division, Department of Administration, Room 130, 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 must make written request for a public hearing and submit his request along with any written comments to that office before April 12, 1979.

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, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 2-18-102, MCA (59-913, R.C.M., 1947). Implementation is based on Section 2-18-102, MCA (59-913, R.C.M., 1947).

David Lewis

David Lewis, Director
Department of Administration

Certified to the Secretary of State, MARCH 5, 1978.

EXAMPLE

STATE OF MONTANA

Employee Orientation Data Sheet

As a reference guide for all new employees this Data Sheet should be filled out in advance and presented to the employee during the employee's first day on the job.

1. Name_____ Starting Date_____
2. Department_____ Division_____
3. Bureau_____ Section_____
4. Classification Code_____ Title_____
5. Position Grade_____ Step_____ Annual Salary_____
6. Immediate Supervisor's Name/Title_____
7. Division Administrator_____
8. Department Director_____
9. Office Address_____ Room Number_____
10. Office Phone Number_____
11. Pay Periods and Dates_____
12. Orientation Partner_____
13. Work Hours_____ Lunch_____ Break_____
14. Date Eligible for Annual Leave_____
15. Date Eligible for Sick Leave_____
16. Probationary Period Ends_____
17. Date Eligible for Anniversary Step Increase_____
18. Date Eligible for Merit Increase_____

PO - 9 NEW 11-78

Distribution: Original: Employee's Copy; First Copy: Supervisor

EXAMPLE

STATE OF MONTANA

ORIENTATION CHECK LIST

Any items on this check list that are not applicable need not be completed

Employee_____ Supervisor_____
Department_____ Division_____ Bureau_____
Classification Title_____ Grade_____ Starting Date_____

THESE ITEMS SHOULD BE COVERED THE FIRST FEW DAYS OF EMPLOYMENT

1. COMPLETION OF FORMS:

_____ Withholding Statement
_____ Orientation Data Sheet
_____ PERS retirement form
_____ TRS
_____ Payroll Status
_____ Turnaround Document
_____ Decedent's Warrant
_____ Other_____

2. PROVIDED EMPLOYEE WITH AND/OR EXPLAINED USAGE:

_____ Hospitalization Insurance
_____ Death & Dismemberment Insurance
_____ Current Staff Telephone/ Organizational Chart
_____ State Capitol Telephone Directory
_____ Travel Information
_____ Office Manual/Review
_____ Telephone Billing Card (if applicable)
_____ Key for ____No____(")
_____ Position Description
_____ Objectives of the Department
_____ Code of Ethics
_____ Introduction - other personnel
_____ Work area
_____ Authorized usage of telephone
_____ Current Evaluation Plan
_____ Designate Orientation Partner (if applicable)
_____ EEO Regulations
_____ Grievance Procedures
_____ State Capitol Credit Union
_____ U.S. Savings Bonds
_____ Time & Attendance reporting
_____ Mail Procedures
_____ Office Policies/Personnel Policies (MOM, Vol. III)
_____ Reporting absences/sick/vacation leaves
_____ Overtime/Compensatory
_____ Office Newsletter
_____ Initial equipment and supplies
_____ Other_____

3. INFORMED EMPLOYEE OF:

_____ Work hours/lunch/rest periods
_____ Pay periods/deductions, etc.
_____ Procedure/requisitioning supplies, etc.
_____ Facilities (Safety regulations, restroom, etc.)
_____ Probation
_____ Union Activity

SIGNATURE_____ Date_____
Employee's Supervisor and/or Personnel Representative

PD - 10 NEW 11-78

Distribution: Original: Employee's Copy; First Copy: Supervisor

EXAMPLE

STATE OF MONTANA

NEW EMPLOYEE ORIENTATION
PRE-REGISTRATION FORM

Complete this form and forward to:

Department of Administration
Training Section
Room 130, Mitchell Building
Helena, Montana 59601

Please pre-register the following employee(s) in your next available
NEW EMPLOYEE ORIENTATION TRAINING SESSION

It is undersood that the registration will be confirmed with a notification letter.

1. _____ Title _____ Department _____
   Division/Bureau _____ Local Address _____
2. _____ Title _____ Department _____
   Division/Bureau _____ Local Address _____
3. _____ Title _____ Department _____
   Division/Bureau _____ Local Address _____
4. _____ Title _____ Department _____
   Division/Bureau _____ Local Address _____
5. _____ Title _____ Department _____
   Division/Bureau _____ Local Address _____

Department _____ Division _____ or Bureau _____

Address _____ Agency Code _____

Date _____ Authorized Signature _____

PD - 13 NEW 1-79
Distribution: Original: Department of Administration, First Copy: Supervisor

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the Matter of the adoption of a rule concerning Exit Interview for State employees	NOTICE OF PROPOSED ADOPTION OF EXIT INTERVIEW RULE. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On or after April 14, 1979, the Department of Administration proposes to adopt a Rule concerning Exit Interview for State employees.

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

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. When an employee plans to resign or transfer from a State position, the employee should notify the immediate supervisor at least two weeks prior to the date of termination. Notification should be in writing to the supervisor with a copy to the agency personnel office. It is recommended that agencies conduct an exit interview with terminating employees. The exit interview can be helpful in revealing problem areas in agency personnel policies and practices; also in determining supervisory training needs.

RULE II. POLICY. The purposes of this policy are: (a) To provide opportunity for the terminating employee: (i) to reveal the precise reason(s) for the termination.

(ii) to provide an opportunity for the terminating employee to voice any concerns the employee may have been reticent to express before.

(iii) to elicit constructive criticism, suggestions and/or comments related to the employment experience.

(iv) to reveal and correct any misunderstanding the employee may have regarding employment conditions, assignments or supervisors.

(b) To review details of how the termination will affect life and hospitalization insurance, as well as other general benefits.

(c) To ensure return of any State property in the employee's possession and arrange for refund of any money the employee may owe the State (e.g., travel advances).

(d) To assure that necessary assignments and projects are completed or properly accounted for.

RULE III. PROCEDURE. (a) It is suggested that the agency personnel representative conduct the exit interview. Depending on the availability of the personnel representative and the concurrence of the employee, the supervisor may conduct the exit interview. The interview may be either in person or by telephone.

(b) Prior to scheduling the interview, matters such as return of property and finalizing projects should be considered.

(c) Appropriate personnel should be notified immediately to allow for the processing of the Payroll Termination Form and PERS Application for Withdrawal of Contributions and Refund (if appropriate). These forms should be reviewed by the employee with the designated personnel.

(d) The exit interviewer will schedule a definite appointment for the exit interview and notify the employee of the date and hour. The departing employee should be encouraged to complete the Exit Interview Form (attached) prior to the interview.

(e) The exit interview should be conducted in an open atmosphere. The employee should be encouraged to speak freely regarding State procedures so that the employee's reactions may be used to evaluate the State's employment and personnel policies.

(f) In the case of layoff, the employee must be informed regarding the reason(s) for release (refer to Policy 3-0155, Reduction in Work Force). The employing agency issues notice of the end of temporary assignments and layoffs.

(g) During the Interview: (i) Inform the employee concerning all matters regarding final pay. Any questions concerning unemployment and/or worker's compensation laws will be directed to the appropriate office.

(ii) Explain procedure and status of benefits if the employee is transferring to another State agency. For details refer to Policy 3-0210, Compensatory Time and Overtime - Policy 3-0305, Annual Vacation Leave and Policy 3-0310, Sick Leave.

(iii) The interviewer may review the Exit Interview Form with the employee and add comments. Pertinent areas noted during the interview requiring review and possible correction or change in the department should be brought to the attention of appropriate agency personnel. Also, any items relevant to personnel policies and practices should be brought to the attention of the Personnel Division.

(h) Personnel records of the departing employee are transferred to the inactive file for such period of time as provided in Chapter 1-1300 of the Montana Operations Manual, relating to records management.

RULE IV. CONCLUSION. (a) This Rule applies to all permanent full-time and part-time employees, except those independently contracted, and may apply to temporary or seasonal employees.

(b) If an employee resigns by telephone, the exit interview should be encouraged so that the employee can sign the appropriate forms and so that certain information can be collected.

(c) If necessary business can be accomplished without an exit interview, the employee may waive the interview in writing.

(d) This Rule shall be followed unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

4. The reason for this Rule is as follows: There is a need to provide exit interview procedures for a terminating employee. Adoption of these Rules will assure consistent application of exit interviews for such employees which can be helpful in revealing problem areas in agency personnel policies and practices; also in determining supervisory training needs.

5. Interested persons may submit their data, view or arguments concerning the proposed adoption to the Administrator, Personnel Division, Department of Administration, Room 130, 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 must make written request for a public hearing and submit his request along with any written comments to that office before April 12, 1979.

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, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 2-18-102, MCA (59-913, R.C.M., 1947). Implementation is based on Section 2-18-102, MCA (59-913, R.C.M., 1947).

David Lewis

David Lewis, Director
Department of Administration

Certified to the Secretary of State, MARCH 5, 1979.

EXAMPLE

STATE OF MONTANA

EXIT INTERVIEW

INSTRUCTIONS: The departing employee should be encouraged to complete parts I and II prior to the interview. The interviewer may review the form with the employee during the interview and make comments.
EMPLOYEE: Only complete those items applicable to the job. Your comments will be held in strict confidence. If you prefer, your signature is not necessary to the effectiveness of your comments. If necessary business can be accomplished without an exit interview, the employee may waive the interview in writing.

Name_____ Date_____
Classification Title_____ Pay Grade_____
Department_____ Division_____ Bureau_____
Section_____ Date Hired_____ Termination Date_____

PART I

1. Was your decision to leave influenced by any of the following? Please check all those applicable.

____ Leaving the city
____ Personal reasons
____ Returning to school
____ Dissatisfied:
  ____ type of work
  ____ salary
  ____ supervision
  other: _____
____ Health reasons
____ Family circumstances
____ Retirement
____ Secured better position:
  ____ out of State
  ____ in State

Interviewer's comments: _____

2. What was your opinion of:

	Excellent	Good	Fair	Poor
Cooperation within department	( )	( )	( )	( )
Cooperation with other departments	( )	( )	( )	( )
Orientation to job	( )	( )	( )	( )
Adequacy of training	( )	( )	( )	( )
Communication within department	( )	( )	( )	( )
Workload/job structuring	( )	( )	( )	( )
Your salary	( )	( )	( )	( )
Opportunity for advancement	( )	( )	( )	( )
Opportunity for creativity	( )	( )	( )	( )
Job postings	( )	( )	( )	( )
Transfer procedure	( )	( )	( )	( )
Performance appraisals	( )	( )	( )	( )
Physical working conditions	( )	( )	( )	( )
Equipment provided	( )	( )	( )	( )
Paid holidays	( )	( )	( )	( )
Paid vacations	( )	( )	( )	( )
Retirement plan	( )	( )	( )	( )
Life insurance	( )	( )	( )	( )
Health insurance	( )	( )	( )	( )
Other: _____	( )	( )	( )	( )

Interviewer's comments: _____

continued on next page

EXAMPLE

3. How would you rate your supervisor/manager on the following points?

	Always	Usually	Sometimes	Rarely
Demonstrates fair and equal treatment	( )	( )	( )	( )
Provides recognition on the job	( )	( )	( )	( )
Resolves complaints and grievances	( )	( )	( )	( )
Follows policies and practices consistently	( )	( )	( )	( )
Informs employees on matters that directly relate to their job	( )	( )	( )	( )
Encourages feedback; welcomes suggestions	( )	( )	( )	( )
Knowledgeable regarding output and accomplishments of staff	( )	( )	( )	( )
Exhibits willingness to admit and correct mistakes	( )	( )	( )	( )
Expresses instructions clearly	( )	( )	( )	( )
Develops cooperation	( )	( )	( )	( )
Other: _____	( )	( )	( )	( )

Interviewer's comments: _____

PART II

1. If you are going to another job, what does that job offer you that your present job did not? _____

2. What were the factors that contributed to your accepting a job with the State? Were your expectations realized? Has that changed? _____

3. What constructive comments would you have for management in regard to making this a better place to work?

4. What are some of the factors that helped make your employment enjoyable? _____

5. Would you recommend State employment to a friend as a place to work? If yes, why? If not, why? _____

6. Additional comments: _____

Interviewer's comments: _____

Interviewed by: _____ Date _____

Employee's signature: _____

PD - 8 NEW 11-78

Distribution: Original: Personnel File

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

In the Matter of The Amendment of Rules 24.15.004 Job Introduction Card and Rule 24.15.006 Advertising	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES 24.15.004 AND 24.15.006 (REGULATING PRIVATE EMPLOYMENT AGENCIES) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 27, 1979, the Department of Labor and Industry proposes to amend Rules 24.15.004 and 24.15.006 which regulate private employment agencies.

2. The rules as proposed to be amended, provide as follows (Stricken material is interlined, new material is underlined).

Section 24.15.004 JOB INTRODUCTION CARD (1) ~~The~~ A job introduction card is not required but, if one is utilized, it shall be assigned the same log number as the job order and shall contain the following information:

(a) Employment agency name and address.
(b) Applicant's full name.
(c) Name of person conducting the interview for the employer.
(d) Date and time of interview.
(e) Address of person conducting interview.
(f) A description of the job position applied for.
(g) Name of employment agency counselor making the referral.
(h) Notice to applicant if fee is employer paid.

Section 24.15.006 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) Ads worded so as to mislead the applicant regarding the nature of the position advertised.
(b) 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) 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.

(b) 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."

(c) 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.

(d) 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.

(e) 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.

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

(g) Whenever an employment agency advertises or states in its letters that employees 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 employees.

(h) Each job position that is advertised must ~~contain the~~ have a log number ~~in the ad~~.

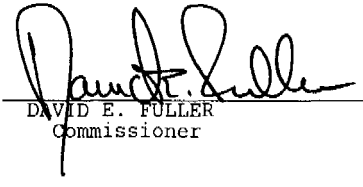
(i) An employment position will not be advertised on the same day under two or more different job descriptions.

3. The reason for the amendments is that on January 17, 1979, the Department of Labor and Industry received a demand from the Administrative Code Committee of the Montana Legislature through its staff attorney, Bob Pyfer, that these amendments be made by the Department of Labor and Industry.

4. Interested parties may submit their data, views, arguments, and comments concerning the proposed amendments in writing to the Labor Standards Division, Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana 59601. Written comments, in order to be considered, must be received no later than April 15, 1979.

5. The authority of the Commissioner of Labor and Industry to adopt the proposed amendments is found in Section 39-5-103 MCA (41-1423(1) R.C.M. 1947).

CERTIFIED TO THE SECRETARY OF STATE March 2, 1979

By: 
DAVID E. FULLER
Commissioner

108A:n

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the repeal of rule ARM 16-2.14(1)-S1400 and the adoption of rule ARM 16-2.14(1)-S14 , a rule for permits, construction and operation of air contaminant sources	NOTICE OF THE REPEAL OF RULE ARM 16-2.14(1)-S1400 AND ADOPTION OF RULE ARM 16-2.14(1)-S1415, PERMITS, CONSTRUCTION AND OPERATION OF CONTAMINANT SOURCES

TO: All Interested Persons

1. On October 12, 1978, the Board of Health and Environmental Sciences published notice of the proposed repeal of an existing rule governing issuance of permits for air pollution equipment and adoption of a new rule concerning permits for the construction and operation of air contaminant sources at page 1401 of the 1978 Montana Administrative Register, issue number 13.

2. The Board has repealed the existing rule and adopted the new rule as noticed with the following changes:

16-2.14(1)-S1415 PERMITS, CONSTRUCTION AND OPERATION OF AIR CONTAMINANT SOURCES (1) Permits required and exclusions. Except as hereafter specified, no person shall construct, install, alter or use any air contaminant source or stack associated with any source without first obtaining a permit from the Department or the Board. A permit shall not be required for the following:

(a) Residential, institutional, and commercial fuel burning equipment of less than ~~1,000,000 BTU/HR heat input~~

(i) 10,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or

(ii) 5,000,000 BTU/hr heat input if burning solid fuel;

(b) Residential and commercial fireplaces, barbeques and similar devices for recreational, cooking or heating use;

(c) Motor vehicles, trains, aircraft and other such self-propelled vehicles;

(d) Laboratory equipment used exclusively for chemical or physical analysis;

(e) Food service establishments;

(f) Any activity or equipment associated with the use of agricultural land or the planting, production, harvesting or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses);

(g) Ventilating systems used in buildings to house animals;

(h) Emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unobtainable;

(i) Any activity or equipment associated with the con-

struction, maintenance, alteration or use of roads, except for stationary sources, including but not limited to, rock crushers and asphalt plants, and roads associated with a source that is otherwise required to obtain a permit under this rule;

(j) Agricultural and forest ~~slash-burning~~ prescription fire activities (the adoption of this exclusion does not exempt such activities from regulation under the Open Burning Rule, ARM 16-2.14(1)-S1490); and

(k) Drilling rig stationary engine and turbines of less than:

(i) 2000 HP if burning natural gas, or

(ii) 1000 HP if burning liquid fuels; and

~~(k)~~(l) All other sources and stacks not specifically excluded which have the potential to emit less than ~~10~~ 25 tons per year of any pollutant for which a rule has been adopted in this subchapter.

(2) Definitions. For the purpose of this rule:

(a) "New or altered source or stack" means a source or stack associated with a source which has not been constructed or upon which construction has not commenced prior to the effective date of this rule. However, if the owner or operator of a source or stack has not commenced construction prior to the effective date of this rule, but the owner or operator has received a permit from the Department or the Board, then the source or stack shall not be considered a new or altered source or stack.

(b) "Existing source or stack" means a source or stack associated with a source which is in existence and operating or capable of being operated or which has a permit from the Department or the Board on the effective date of this rule.

(c) "Owner or operator" means the owner of a source or stack associated with a source or the authorized agent of the owner, or the person who is responsible for the overall operation of the source or stack.

(d) "Construct" or "construction" means on-site fabrication, erection or installation of a source or control equipment, including a reasonable period for startup and shakedown.

(e) "Best available control technology" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under the federal Clean Air Act as amended August 7, 1977 or the Montana Clean Air Act, which would be emitted from any proposed stationary source or modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event shall application of the best available control

technology result in emission of any contaminant which would exceed the emissions allowed by any applicable standard under ARM 16-2.14(1)-S14082 and S14084. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

(f) The term "lowest achievable emission rate" means for any source, that rate of emissions which reflects:

(i) the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(ii) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under ARM 16-2.14(1)-S14082 and S14084.

(3) Emission control requirements. The owner or operator of a new or altered source ~~or stack~~ for which ~~a construction~~ an air quality permit is required by this rule shall install on the new or altered source the maximum air pollution control capability which is technically practicable and economically feasible, except that: ~~the lowest achievable emission rate requirements of Section 173 of the Federal Clean Air Act Amendments of 1977 (P.L. 95-95) shall apply to any pollutant emitted from such sources and stacks if an area has been designated nonattainment for a particular pollutant.~~

(i) best available control technology shall be utilized; and

(ii) the lowest achievable emission rate shall be met to the extent and by such sources as may be required by the Federal Clean Air Act, as amended on August 7, 1977. All equipment shall be operated to provide the maximum air pollution control for which it was designed.

(4) Air quality permit and application requirements for existing sources and stacks.

(a) The owner or operator of an existing source or stack which was not in existence on November 23, 1968, shall apply for ~~an operating~~ an air quality permit on or before January 1, 1981. This subsection does not relieve the owner or operator of an existing source or stack from complying with the application requirements of subsection (5) of this rule if the owner or operator intends to alter, reconstruct or use the existing source or stack in a manner that would require the submission of an application ~~to construct or~~

~~operate~~ for an air quality permit for a new or altered source or stack.

(b) The owner or operator of an existing source for which an air quality permit is required by this rule shall apply for ~~an operating~~ an air quality permit on forms available from the Department and shall be subject to the signature requirements of subsection (5)(a). The information to be submitted shall include the following:

(i) Any information described in subsection (5)(b) of this rule which was not submitted as a part of any previous permit application reviewed by the Department;

(ii) Any information relating to the matters described in subsection (5)(b) of this rule which has changed or is no longer applicable; and

(iii) A certification by the applicant that the source or stack is being operated in compliance with the conditions of an existing permit if one has been issued.

~~(c)--An operating permit shall be granted to an existing source or stack which can satisfy the applicable requirements of subsection (7)(c) without the need for a hearing as provided in Section 69-3911(8) or additional environmental review under the Montana Environmental Policy Act unless it is demonstrated that new information o changed conditions exist which could significantly affect the operation of the source or stack or affect compliance with applicable rules or standards.~~

~~(d)~~(c) Nothing in this subsection shall require an applicant to submit information already filed with the Department. ~~In situations where~~ If the applicant believes information has already been submitted to the Department, the applicant shall so indicate and, wherever possible, shall specify the date upon which the information was submitted. Any information so submitted shall be considered part of the application.

(5) Permit and application requirements for new or altered sources and stacks.

(a) The owner or operator of a new or altered source shall, not ~~less~~ later than 180 days before construction begins, or if construction is not required not later than 120 days before installation, alteration or use begins, submit an application for ~~a permit to construct~~ an air quality permit on an application form provided by the Department. The air quality permit, if granted, shall authorize the construction and operation of the source subject to the conditions in the permit and to the requirements of this rule. The application form shall contain a certification by the person signing the application that all information contained therein is true ~~and an agreement that the person submitting the application assumes responsibility for the construction of the source or stack as described in the application~~. An unsigned or improperly signed application shall be considered incomplete. The following persons are authorized to sign an application on behalf of the owner or operator of a new or altered source or stack:

(i) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his authorized representative, if that representative is responsible for the overall operation of the source or stack;

(ii) An application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(iii) An application submitted by a municipal, state or federal or other public agency shall be signed by either a principal executive officer, appropriate elected official or other duly authorized employee; and

(iv) An application submitted by an individual must be signed by the individual or his authorized agent.

(b) The application for a an air quality permit to construct a new or altered source or stack shall include the following:

(i) A map and diagram showing the location of the proposed new or altered source and each stack associated with the source, the property involved, the height and outline of the buildings associated with the new or altered source, and the height and outline of each stack associated with the new or altered source;

(ii) A description of the new or altered source including data on expected production capacity, raw materials and major equipment components;

(iii) A description of the control equipment to be installed;

(iv) A description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air contaminants emitted, quantities and means of disposal of collected contaminants, and the air quality relationship of these factors to conditions created by existing sources or stacks associated with the new or altered source or stack;

(v) Normal and maximum operating schedules;

(vi) Adequate drawings, blueprints, specifications ~~and~~ or other information to show the design and operation of the equipment involved;

(vii) Process flow diagrams containing material balances;

(viii) A detailed schedule of construction or alteration of the source or stack;

(ix) A ~~detailed~~ description of the shakedown procedures and time frames that will be used at the source or stack; and

(x) Such other information requested by the Department which is necessary to ~~for the~~ review ~~of~~ the application and ~~a determination of~~ determine whether the new or altered ~~compliance~~ source will comply with applicable standards and rules.

(c) The owner or operator of a new or altered source shall, ~~not less than 120 days~~ before construction is scheduled to end as specified in the ~~permit to construct~~ air

quality permit, submit ~~an application for a permit to operate~~ additional information on ~~an application~~ a form provided by the Department. The information to be submitted shall include the following:

(i) Any information relating to the matters described in subsection (5)(b) of this rule which has changed or is no longer applicable; and

(ii) A certification by the applicant that the new or altered source or stack has been constructed in compliance with ~~the conditions of the construction permit~~ the air quality permit.

~~(d) An operating permit shall be granted to a new or altered source or stack which satisfies the requirements of subsection (7)(c) without the need for a hearing as provided in Section 69-3911(8) or additional environmental review under the Montana Environmental Policy Act unless it is demonstrated that new information or changed conditions exist which were not considered in originally issuing the permit to construct and which could significantly affect the operation of the source or stack or affect compliance with applicable rules or standards.~~

~~(e)~~(d) Nothing in this subsection shall require an applicant to submit information already filed with the Department. ~~In situations where~~ If the applicant believes information has already been submitted to the Department, the applicant shall so indicate and, wherever possible, shall specify the date upon which the information was submitted. Any information so submitted shall be considered part of the application.

(6) Public review of permit applications.

(a) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the procedures for public review shall be those required by the Montana Environmental Policy Act and the rules adopted by the Board and Department to implement the Act, ARM 16-2.2(2)-P2000 through P2080.

(b) Where the application for a permit does not require the compilation of an environmental impact statement, ~~the Department shall, pursuant to Section 69-3911(5), notify the applicant in writing within thirty (30) days after receiving the application if the application is incomplete. The notice shall specify a date by which the additional information must be submitted and shall describe the information which is needed.~~ an application shall be deemed to be complete and filed on the date the Department received it unless the Department notifies the applicant in writing within 30 days thereafter that it is incomplete. The notice shall list the reasons why the application is considered incomplete and shall specify the date by which any additional information requested shall be submitted. If the information is not submitted as required, the application shall be considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete and filed on the date the required additional information is received.

~~After an application is complete and filed, the Department shall:~~

~~(i) Notify the public of the receipt of a complete and filed application. For the purposes of complying with this subsection and subsection (6)(b)(iii), notice shall be sent to the local governing body within whose jurisdiction the source or stack is located and any member of the public who has requested a copy of such notices.~~

(i) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for permit. The notice shall be made not sooner than 10 days prior to submittal of an application nor later than 10 days after submittal of an application. Form of the notice shall be provided by the Department.

(ii) Within forty (40) days after receiving a complete and filed application for a permit, the Department shall make a preliminary determination whether the permit should be issued, issued with conditions or denied; and

(iii) After making a preliminary determination, the Department shall notify those members of the public who requested such notification subsequent to the notice required by subsection (6)(b)(i) and the applicant of the Department's preliminary determination. The notice shall specify that comments may be submitted on the information submitted by the applicant and the Department's preliminary determination to issue, issue with conditions or deny the permit. The notice shall also specify the following:

(A) Where a complete copy of the application and the Department's analysis of the applicant can be reviewed. One copy of this material shall be made available for inspection by the public in the air quality control region where the source or stack is located.

(B) A date by which all comments on the Department's preliminary determination must be submitted in writing within fifteen (15) days after notice is mailed.

(C) Notwithstanding the opportunity for public comment, a final decision must be made within sixty (60) days after a completed and filed application is submitted to the Department as required by Section 69-3911(7). The notice shall specify the date upon which the sixty (60) day period expires~~.~~, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the Board concerning the Department's decision.

(c) If a prevention of significant deterioration (PSD) rule has been adopted by the Board ~~on or before the effective date of this rule,~~ the following additional ~~public~~ review requirements shall apply to any source or stack which is subject to the PSD rule:

(i) The Department shall advertise in a newspaper of general circulation in the air quality control region affected

by the proposed source or stack that an application has been received, the preliminary determination made by the Department, the degree of increment consumption that is expected from the source or stack, how written comments may be submitted, and how the final determination of the Department may be appealed to the Board; and

(ii) The Department shall send a copy of the notice of public comment to the applicant, the Region VIII Administrator of the Environmental Protection Agency and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the governing body of the city and county where the source or stack would be located; any comprehensive regional land use planning agency, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or stack.

(7) Conditions under which permits may be issued.

(a) Any permit issued under the provisions of this rule may be issued with such conditions as are necessary to assure compliance with all applicable rules and standards.

(b) ~~A~~ An air quality permit to construct shall not be issued, to a new or altered source, except as provided in subsection (7)~~(d)~~(e) unless the applicant demonstrates that the source or stack can be expected to operate in compliance with the standards and rules adopted under the Montana Clean Air Act and the applicable regulations and requirements of the Federal Clean Air Act, ~~including but not limited to a demonstration that:~~

~~(i) The source or stack will not interfere with the attainment or maintenance of any federal ambient air quality standard; and~~

~~(ii) if a prevention of significant deterioration (PSD) rule has been adopted by the Board on the effective date of this rule, the source or stack will not cause the allowable incremental increase in ambient air quality levels to be exceeded as specified in the PSD rule.~~

~~(c) A permit to operate shall not be issued, except as provided in subsection (7)(d), unless the applicant demonstrates that:~~

~~(i) Construction has occurred in compliance with the terms and conditions of the construction permit if such a permit has been issued;~~

~~(ii) The source or stack can operate in compliance with applicable rules and standards; and~~

~~(iii) The source has operated in compliance with the conditions and terms of an existing permit.~~

(c) A new or altered source shall not commence operation, except as provided in subsection (7)(e), unless the information submitted by the applicant demonstrates that construction has occurred in compliance with the permit and that the source can operate in compliance with applicable rules

and standards of the permit.

(d) An air quality permit shall be issued to an existing source unless the Department demonstrates that the source does not operate in compliance with applicable rules or standards or an existing permit granted by the Board or Department.

~~(d)~~(e) The Department may issue ~~a permit to construct or operate~~ an air quality permit for a source or stack which cannot immediately comply with an applicable rule or standard. Any permit issued under this subsection shall be issued with a compliance schedule specifying interim construction and modification requirements that must be satisfied to achieve compliance with applicable rules and standards. Such a compliance schedule permit shall only be issued if it is demonstrated that the source or stack can operate or be expected to operate in compliance with applicable rules and standards within two (2) years after the date of issuance of the permit.

~~(e)~~(f) Commencement of construction or operation under any permit containing conditions shall be deemed acceptance of all conditions so specified, provided that nothing contained herein shall affect the right of the permittee to appeal the imposition of conditions to the Board as provided in Section 69-3911(8).

(8) Denial of permits. If the Department denies the issuance of ~~a permit~~ an air quality permit ~~to construct or operate~~ it shall:

(a) Notify the applicant in writing of the reasons why the permit is being denied and advise the applicant of his right to appeal the Department's decision to the Board as provided in Section 69-3911(8). Service of the Department's decision to deny the permit shall be made as provided in the Montana Rules of Civil Procedure except that the applicant may agree by written acknowledgement to service by mail; and

(b) Refuse to accept any further application from the applicant for that particular project until:

(i) The period for appeal to the Board has expired;

(ii) The Board has rendered a final decision in the matter if an appeal is undertaken; or

(iii) The applicant has agreed to adequately address the reasons for denial.

(9) Duration ~~and renewal~~ of permits. Air quality permits shall be valid until revoked or modified as provided in this rule, except that permits issued prior to construction of a new or altered source may contain a condition providing that the permit will expire unless construction is commenced within the time specified in the permit, which in no event may be less than one year after the permit is issued.

~~(a) Permits to construct shall be valid for two (2) years from the date of issuance. If the construction, installation or alteration of a source or stack for which a permit is issued is not completed within two (2) years, a renewal of the permit shall be required. For the purposes~~

~~of-computing-the-two-(2)-year-life-of-the-permit,-any-time-which-elapses-as-a-result-of-an-appeal-to-the-Board-or-an appropriate-court-shall-not-be-counted-as-part-of-the-two (2)-year-time-period.--Applications-for-renewal-of-the-permit shall-be-submitted-not-less-than-sixty-(60)-days-before-the expiration-date-of-the-permit-and-subject-to-the-informational and-application-review-requirements-of-subsections-(5)(c), (d)-and-(e)-of-this-rule.-~~

~~(b)--Permits-to-operate-shall-be-valid-until-revoked-or modified-as-provided-in-this-rule.--The-owner-or-operator-of such-a-source-or-stack-shall-certify-to-the-Department-every five-years-that-no-changes-of-operation-have-occurred-which would-increase-emissions-from-the-source-or-stack.--This-subsection-does-not-relieve-the-owner-or-operator-of-such-a--source-from-complying-with-the-application-requirements-of-subsection-(5)-of-this-rule-if-the-owner-or-operator-intends-to-alter,-reconstruct-or-use-the-existing-source-or-stack-in-a-manner-that-would-require-the-submission-of-an-application to-construct-or-operate-a-new-or-altered-source-or-stack.~~

(10) Revocation of air quality permits. A An air quality permit may be revoked for violations of any condition of a permit, rule, or standard adopted pursuant to the Clean Air Act of Montana, applicable Federal Clean Air Act regulation, or any provisions of the Montana Clean Air Act or applicable provisions of the Federal Clean Air Act. The Department shall notify the permittee of its intent to revoke the permit in writing. Service of the Department's intention to revoke shall be made as provided in subsection (8)(a) of this rule. The Department's decision to revoke a permit shall become final within fifteen (15) days after service of the notice unless the permittee requests a hearing before the Board. The hearing and judicial review of the Board's decision shall be governed by the Montana Administrative Procedure Act. The filing of a request for a hearing postpones the effective date of the Department's decision to revoke the permit until the conclusion of the hearing and issuance of a final decision by the Board.

(11) Modification of air quality permits. A An air quality permit may be modified for the following reasons:

(a) Changes in any applicable rules and standards adopted by the Board; or

(b) Changed conditions of operation at a source or stack which do not involve the construction, installation or use of a new source or stack. A determination of whether a permit should be modified because of changed conditions of operation shall be based upon a determination of whether total emissions from a source or stack will be increased as a result of the changed operations.

(c) The Department shall notify the permittee in writing of any proposed modifications of the permit. Service of the Department's intention to modify shall be made as provided in

subsection (8)(a) of this rule. The permit shall be deemed modified in accordance with the notice within fifteen (15) days after service of the notice unless the permittee requests a hearing before the Board. The hearing and judicial review of the Board's decision shall be governed by the Montana Administrative Procedure Act. The filing of a request for a hearing postpones the effective date of the modifications to the permit until the decision of the Board becomes final or judicial review has been concluded.

(12) Waivers. The Department may, as specified in Section 69-3911(3):

(a) Waive the requirements for submittal of information required in an application; and

(b) Waive or shorten the time required for the submission of an application.

(13) Transfer of air quality permits. After approval by the Department, a an air quality permit may be transferred from one location to another or from one person to another.

(14) General provisions.

(a) Air quality permits shall be made available for inspection by the Department at the location of the source or stack for which the permit has been issued.

(b) Nothing in this rule shall be construed as relieving any permittee of the responsibility for complying with any applicable Federal or Montana statute, rule or standard except as specifically provided in this rule.

3. Several industry commentors suggested that the list of excluded sources was too small and many types of small, insignificant sources would be unnecessarily required to get permits, resulting in a financial and manpower drain on the Department, beyond its capabilities. They suggested that the exemption based on the potential to emit 10 tons per year of a pollutant be increased to 50 or 100 tons per year. On the other hand, some commentors suggested that the list of sources contained in the current rule be expanded to cover sources currently not covered. One commentor stated that the Department would be put in the position of managing the operation of many diverse businesses. The Department stated that some sources, though emitting close to 10 tons per year, were nevertheless significant sources, depending upon related factors such as the existence of short stacks. The 10-ton limit, as opposed to a higher figure, would assure that virtually any significant source would receive the necessary review. It also contended that the proposal, if adopted, would put some additional demands on the Bureau's resources to review the additional covered sources, but not beyond the agency's available resources. The proposal would not put the Department in the position of managing businesses, but of merely reviewing the air pollution impact of the operations. However, the Board considered both viewpoints and compromised,

adopting the provision that sources with a potential to emit less than 25 tons per year instead of 10 tons should be excluded from the permit requirements, on grounds that the 25-ton limit would render the permit program more cost effective.

One mining company requested that either all fugitive dust producing sources be exempted or that the agricultural exemption be deleted. Another mining company requested that surface mining operations be exempted from the rule. The Board agreed with the Department regarding this comment, which stated that mining activities generate large quantities of controllable particulate matter on a continuous basis, in a fairly concentrated area and that such activities are appropriate for permit review. The rule permits the Department to tailor the control requirements to the specific case, as requested by some mining companies.

One oil industry representative suggested that several categories of oil field equipment be exempted. The Department reviewed the list suggested by the Chevron representative and concluded that most are excluded as a result of having less than 25 tons per year potential emissions and others would be exempted by a proposed change in Section 1 exempting certain drilling rigs. The Board agreed and included exemptions for certain oil field equipment.

The Forest Service suggested that the exemption for forest slash burning be changed to forest prescription fire burning. The Board concurred with this comment and modified the language.

One commentor stated that the proposed rule included office buildings, stores, motels, hotels, etc., with heating plants of greater than 1,000,000 BTU/hr, construction sites greater than 1 or 2 acres, roads, highways, etc. The Board agreed with the Department's proposed modification to the fuel burning equipment exemption, raising it to 10,000,000 BTU/hr for liquid or gaseous fuels and 5,000,000 BTU/hr for solid fuels. Roads and highways were already exempted in the original proposal. No change was made in regard to airports and parking lots and other such indirect sources, since they are not covered by the rule, as they do not directly have the specified emission potential and the associated mobile sources are specifically exempted.

Comments regarding the definitions [subsection (2)] requested the inclusion of federal definitions of "best available control technology (BACT)" and "lowest achievable emission rate (LAER)". The Montana Coal Council requested that the reference in them to federal new source performance standards and hazardous air pollutant standards be altered to refer to the comparable state rules, 16-2.14(1)-S14082 and S14084. The suggestion was to avoid automatic adoption of any changes in the federal rules without independent analysis by the Board and to avoid the need to amend the NSPS and NESHAPS rules and the permit rule in the event the

federal definitions changes. The Board agreed to include these definitions in subsection (2), and adopted a direct reference to the state NSPS and NESHAPS rules.

One comment suggested that the definitions from the PSD rule for "source", "commence construction", "demonstration", and "alteration" be included. The Department stated that the PSD definitions are not appropriate to this rule. The Board concurred and rejected this argument.

Those who commented on subsection (3) addressed the same topic as subsection (2), in regard to definitions of control technology. Commentors suggested that BACT and LAER requirements of the 1977 Federal Act be used for new or modified sources. The Board accepted this comment and included appropriate language in subsection (3) to apply the LAER requirements only to those sources and to the extent required by the 1977 Federal Act. This was the original intent, but the language is modified to make this clear.

One of the most common and vehement comments received on the proposed rule dealt with subsections (3), (4) and (5), which required a separate and distinct operating permit as well as a construction permit. The commentors considered this requirement onerous, unnecessary and ill-advised. The Department agreed in part with the commentors and proposed modifications deleting the requirement for a separate operating permit, but requiring the permitte to provide DHES, prior to operation, the same information and certification as would have been required for an operating permit. The proposed modification will require sources subject to the rule to obtain a single air quality permit, subject to a single hearing requirement, instead of the potential for two hearings befor the BHES. The Board concurred with the Department's recommendation and so modified the rule.

Another frequent comment was that existing sources should not be required to get a permit, or that if they were, the rule should apply only to sources in existence on the effective date of the rule. Other commentors suggested November 23, 1968, as the triggering date. Accordingly, the Board amended subsection (4)(a) to require air quality permits to be obtained by existing sources except those in existence prior to November 23, 1968.

Some commentors stated that subsection (4)(c) limited the rights of appeal of affected parties and should be deleted. The Board agreed and deleted this subsection.

Several commentors suggested that the assumption of responsibility requirements of (5)(a) was unnecessary and should be deleted. The Board agreed and has deleted this requirement.

Several people commented that subsection (5)(b)(iv) was confusing or not understandable. The Board made no changes, based on the Department's testimony explaining it. The problem phrase seemed to be "the air quality relationships of

these factors to conditions created by existing sources or stacks associated with the new or modified source or stack." This informational requirement is included to ensure that sufficient information, including dispersion modeling if necessary, is submitted to determine the overall impact on air quality of the proposed new or modified source.

One individual stated that the detailed drawings required by (5)(b)(vi) are not usually available at the time of application. The Board adopted an amendment allowing other information be submitted which showed the design and operation of the equipment involved.

A comment was made that the detailed description of startup and shakedown required by (5)(b)(ix) is not available until equipment is purchased, and that this information is not needed for a construction permit. The Department testified that the permit, as proposed, would authorize construction and operation of the source and, therefore, the information is necessary. The description doesn't have to be a startup or operating manual, but if no description is available, the waiver provisions of subsection (12) offer the opportunity for later submittal. The Board deleted the word "detailed" before "description" on suggestion of the Department.

Several comments suggested that (5)(b)(x) indicate that "such other information requested by the Department . . ." be limited to that necessary to determine compliance with rules and standards. The Board agreed and changed this subsection accordingly.

Several commentors made statements with respect to (5)(d), similar to those regarding (4)(c), that the proposed language limited the appeal rights of affected parties and should be deleted. The Board concurred, especially in light of the deletion of the separate operating permit.

One commentor suggested changes to subsection (5)(e) [was (d)] which would state that the air quality permit for a new or latered source would be valid until the Department demonstrated that construction had not occurred as approved and would affect compliance with rules or standards. Duration of permits is dealt with in subsection (9). The Department agreed with the comment regarding duration but did not agree with the comment that the Department must demonstrate non-compliance for a new or altered source. The construction of a new or altered source is a privilege, not a right, and as such it is incumbent on the applicant to demonstrate that the source will comply with standards. Therefore, the Board rejected the argument regarding demonstration of compliance, but amended subsection (9) to require construction for new or altered sources to begin within the time limit in the permit, or the latter would expire.

Several commentors stated that the proposed procedures for notifying the public of applications and intended actions

would not satisfy the requirements of the Administrative Procedure Act (APA), as all affected parties might not be notified through the proposed procedure. The commentors contend that a published legal notice of application and of preliminary decision would satisfy the notice requirements. Language was proposed requiring the Department to publish such notice. There exists considerable confusion regarding what constituted adequate notice for APA purposes. The proposed changes submitted by the commentors would almost certainly satisfy the APA requirements, but at a significant cost of time and money to the Department. Given the statutory time frame for permit actions, the Department must attempt to provide the opportunity for public input in the process without unduly burdening the applicant and retaining the time necessary for the Department to adequately review applications. The mere logistics of requiring the Department to publish legal newspaper notices on receipt of each application and each preliminary determination would reduce the time available for review. Such a procedure would also add considerable cost and resource demands. The Department proposed a solution to the problem by requiring the applicant to publish a legal notice of the application for permit. The Department would provide the form for the notice. Interested parties will be given the opportunity to participate and the Department will notify all those interested parties of its preliminary decision. This would be a minimal effort for the applicant and accomplish the goals. The Board considered both arguments and adopted the Department's proposal.

One commentor proposed some relatively minor changes for clarification in the language in (6)(b) regarding the notification of incompleteness. The Board agreed and has changed the language.

Three commentors requested the addition of some language in (6)(b)(iii)(C) that the notice of preliminary decision will contain the procedure for appealing Department decisions and where to obtain a copy of the final decision. The Board agreed and included such language.

One commentor stated that the proposed 15-day comment period is not sufficient time to prepare adequate comment. The Department responded that while 15 days is not much time, persons interested in commenting on a preliminary determination will have the opportunity to be involved prior to the preliminary determination. The time period is the same as currently allowed by statute for appeal of a Department decision, and the Department believed it was adequate. Further, any lengthening of the comment period would necessitate a shortening of the review time, which the Department felt was at the practical minimum already. Also, major projects would undergo EIS review, which provides a much longer comment period. The Board included some minor clarification changes as recommended by the Department in the rule, but the time frames were not changed.

Several people commented that compliance with PSD increments should be used as criteria only for those sources subject to PSD. The Department stated that this was the intent and the Board accepted this and made clarifying changes in the language.

Several commentors stated that it should be the Department's responsibility to make the demonstrations described in subsection (7)(b), not the applicant's. As previously stated, the Department strongly maintained that such demonstrations are the responsibility of the applicant for a new or modified source. A person wanting to build or expand an air pollution source should demonstrate that the source can be built in compliance and, after construction, that it was built and operates as approved. The Department's function is to review the applicant's demonstrations and actions to ensure they are within the framework of the rules and standards. Therefore, subsection (7) retained the source's demonstration responsibility.

Subsection (7)(c) was deleted because it dealt with criteria for granting operating permits which no longer exist as a separate entity. New language was added giving the Department post construction review of new and modified sources, consisting of assurances that construction will be in accordance with approved plans, and operation in compliance with applicable rules and standards.

Some commentors stated that, for existing sources, a similar demonstration to that referred to above should be a Department responsibility. The Board agreed with the comment and adopted the Department's recommendations regarding subsection (7)(d), stating that the air quality permits will be issued to existing sources unless the Department can demonstrate non-compliance.

Regarding subsection (8), denial of permits, several people commented that the refusal to accept further applications should be carefully limited to the specific project for which a permit was denied. The Department agreed and proposed appropriate changes, which the Board adopted.

One commentor stated that (8)(b) should be dropped entirely. The Board rejected this argument, accepting the Department's position that if issuance of a permit has been refused, an applicant should address the reasons for denial before resubmitting.

One commentor requested that language from subsection (11) on modification be included in subsection(8) to ensure continued operation until an appeal is resolved. The Board did not agree, as the Montana Clean Air Act states very explicitly the procedures for denial of permits, while the Act is not explicit regarding modifications. The Board included this type of procedure in the modifications section to clarify that procedure.

Most of the comments received on subsection (8) addressed

problems with the oeprating permits. As no operating permit is contained in the adopted rule, the comments are moot.

Many of those who commented on the duration of permits [subsection (9)] felt that two years, as originally proposed, was insufficient time for many if not most major construction projects. Different approaches were suggested, including a two-year construction period in the air quality permit. The Department recommended inclusion of a proposed approach providing for a permit of perpetual validity until revoked or modified, with the exception of a specified time period for construction of new or altered sources. The recommendation was based on the belief that the approach provides the most flexibility in dealing with large projects, while retaining a safeguard to insure that the technology requirements are not circumvented. The Board accepted the Department's recommendation.

Those commenting on subsection (10), regarding revocation, requested inclusion of a statement that the Board's hearing and any judicial review of its decision would be according to the APA. The Board agreed and adopted such a statement.

The Anaconda Company, supported by other commentors, proposed an additional subsection clarifying notification and appeal procedures for modifications. Based on the Department's recommendations, the Board agreed and included such a section.

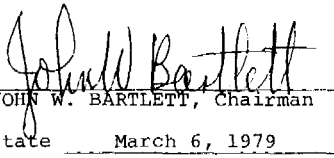
Refinery commentors stated that crude slate changes should not require permit modifications as long as compliance with applicable standards is maintained, and should not be considered changed operations. The reason for inclusion of such a requirement is precisely to ensure compliance with standards. Compliance reviews of applications are based on submitted information by the source. If a source submits data for review which does not reflect anticipate situations, compliance evaluations cannot address such anticipated situations. It is incumbent on the applicant to obtain permits for "worst-case" situations, not optimum ones. Thus, the Board felt no changes were necessary.

One commentor suggested that subsection (11) be deleted entirely in order to ensure the permittee continued operation after receiving the permit. The Department disagreed with this comment entirely, on grounds that provisions for permit modification must be included to allow for changing standards and source conditions. In fact, other commentors previously stated that such a provision must be included and proposed amendments by which sources are given adequate procedural assurances to prevent unilateral action or frivolous modifications by the Department. The Board agreed with the Department and the proposed amendment and so adopted it.

Regarding subsection (13), the Forest Service recommended that the Department specify what types of transfers

of location could be approved without the public review of subsection (6) and provide safeguards for non-attainment and Class I areas. The Department stated that this subsection is directed primarily toward two types of transfers. Permit transfers from one owner to another would not affect the Forest Services' concerns. The location transfers are primarily for temporary sources which are exempted from the PSD increment consumption. In any event, the initial permitting process for PSD, and for non-attainment areas will include the reviews and protection requested by the USFS. The Board concurred with the Department's statement and made no changes.

One commentor proposed retaining the existing rule and adding two sections -- one dealing with non-attainment areas and one preventing conflicts with the Federal Clean Air Act. These areas have been dealt with in the proposed rule. Other minor changes in terminology to reflect the single permit approach were recommended by the Department and adopted by the Board.



JOHN W. BARTLETT, Chairman

Certified to the Secretary of State March 6, 1979

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of a rule preventing the significant deterioration of air quality	)))	NOTICE OF THE ADOPTION OF RULE ARM 16-2.14(1)-S1418 (PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY)

TO: All Interested Persons:

1. On September 14, 1978, the Board of Health and Environmental Sciences published notice of the proposed adoption of a rule concerning the prevention of significant deterioration of air quality at page 1351 of the 1978 Montana Administrative Register, issue number 11.

2. The Board has adopted the rule as proposed with the following changes:

16-2.14(1)-S1418 PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

(1) Definitions. For the purposes of this rule, the following definitions are applicable:

(a) "Airborne particulate matter" means any particulate matter discharged into the outdoor atmosphere which is not discharged from a normal exit of a stack or chimney for which a source test can be performed in accordance with Method 5. Determination of Particulate Emissions from Stationary Sources, Appendix A, Part 60.275 (Test Methods and Procedures, Title 40, Code of Federal Regulations, Revised, July 1, 1977).

~~(a)~~(b) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:

(i) Applicable standards as set forth in 40 CFR Part 60 and Part 61,

(ii) The applicable state emission limitation, or

(iii) The emission rate specified as a permit condition.

~~(b)~~(c) "Applicable ambient air quality standard" means the concentration permitted under:

(i) the national secondary ambient air quality standards, or

(ii) the national primary ambient air quality standards.

~~(c)~~(d) "Baseline concentration" means that ambient concentration level reflecting actual air quality as of August 7, 1977, minus any contribution from major stationary sources and major modifications on which construction commenced on or after January 6, 1975. The baseline concentration shall include contributions from:

(i) The actual emissions of other sources in existence on August 7, 1977, except that contributions from facilities

within such existing sources for which a plan revision proposing less restrictive requirements was submitted on or before August 7, 1977, and was pending action by the Administrator of EPA on that date shall be determined from the allowable emissions of such facilities under the plan as revised; and

(ii) The allowable emissions of major stationary sources and major modifications which commenced construction before January 6, 1975, but were not in operation by August 7, 1977.

~~(d)~~ (e) "Best available control technology" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Federal Clean Air Act as amended ("the Act") which would be emitted from any proposed major stationary source or major modification which the ~~permitting authority~~ Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event shall application of the best available control technology result in emission of any contaminant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the ~~reviewing agency~~ Department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

~~(e)~~ (f) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals and either has:

(i) Begun, or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time; or

(ii) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

~~(f)~~ (g) "Construction" means fabrication, erection, instal-

lation, or modification of source.

~~(g)~~(h) "Facility" means an identifiable process, operation, or piece of process equipment.

~~(h)~~(i) "Federal land manager" means, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.

~~(i)~~(j) "Fixed capital cost" means the capital needed to provide all the depreciable components.

~~(j) "Fugitive dust" means particulate matter composed of soil which is uncontaminated by contaminants resulting from industrial activity. Fugitive dust may include emissions from haul roads, wind erosion of exposed soil surfaces and soil storage piles, and other activities in which soil is either removed, stored, transported, or redistributed.~~

(k) "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(l) "Indian reservation" means any federally-recognized reservation established by treaty, agreement, executive order, or act of Congress.

(m) "Major modification" means any physical change in, change in the method of operation of, or addition to a stationary source which increases the potential emission rate of any air contaminant regulated under the Act (including any not previously emitted and taking into account all accumulated increases in potential emissions occurring at the source since the effective date of this rule) by either 100 tons per year or more for any source category identified in subsection (l)~~(a)~~(n)(i) of this rule, or by 250 tons per year or more for any stationary source.

(i) A physical change shall not include routine maintenance, repair and replacement.

(ii) A change in the method of operation, unless previously limited by enforceable permit conditions, shall not include:

(A) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(B) An increase in the hours of operation;

(C) Use of an alternative fuel or raw material by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

(D) Use of an alternative fuel or raw material, if prior to January 6, 1975, the source was capable of accommodating such fuel or material; or,

(E) Use of an alternative fuel by reason of an order or rule under section 125 of the Act.

(F) Change in ownership of the source.

(n) "Major stationary source" means:

(i) Any of the following stationary sources of air contaminants which emit, or have the potential to emit, 100 tons per year or more of any air contaminant regulated under the Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants; and

(ii) Notwithstanding the source sizes specified in subsection (1)~~(a)~~(n)(i) of this rule, any source which emits, or has the potential to emit, 250 tons per year or more of any air contaminant regulated under the Act.

(o) "Necessary preconstruction approvals or permits" means those permits or approvals required under Federal and Montana air quality control laws and regulations.

(p) "Potential to emit" means the capability at maximum capacity to emit a contaminant in the absence of air pollution control equipment. "Air pollution control equipment" includes control equipment which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation. Annual potential shall be based on the maximum annual rated capacity of the source, unless the source is subject to enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of materials combusted or processed may be used in determining the potential emission rate of a source.

(q) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceed fifty percent of the fixed capital cost of a comparable entirely new facility or source. However, any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f)(1)-(3). A reconstructed source will be treated as a new source for purposes of this section, except that use of an alternative fuel or raw material by reason of an order in effect under

Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, or by reason of an order or rule under Section 125 of the Act shall not be considered reconstruction. In determining best available control technology for a reconstructed source, the provisions of 40 CFR 60.15 (f)(4) shall be taken into account in assessing whether a standard of performance under 40 CFR Part 60 is applicable to such source.

(r) "Source" means any structure, building, facility, equipment, installation or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control) which causes or may cause the emission of one or more air contaminants.

(s) "Temporary" means less than two (2) years.

(2) Ambient air increments. In areas designated as Class I, II, or III, increases in contaminant concentration over the baseline concentration, as determined by the cumulative results of air quality modeling of major stationary sources or major modifications, shall be limited to the following:

Contaminant	Maximum allowable increase (micrograms per cubic meter)
CLASS I	
Particulate matter:	
Annual geometric mean	5
24-hr maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
CLASS II	
Particulate matter:	
Annual geometric mean	19
24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
CLASS III	
Particulate matter:	
Annual geometric mean	37
24-hr maximum	75

Sulfur dioxide:

Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(3) Ambient air ceilings. No concentration of a contaminant shall exceed an applicable ambient air quality standard.

(4) Restrictions on area classifications.

(a) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

(i) International parks,

(ii) National wilderness areas which exceed 5,000 acres in size,

(iii) National memorial parks which exceed 5,000 acres in size, and

(iv) National parks which exceed 6,000 acres in size.

(b) Areas which were redesignated as Class I under federal regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this rule.

(c) Any other area, unless otherwise specified in the federal legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this rule.

(d) The following areas may be redesignated only as Class I or II:

(i) An area which as of August 7, 1977, exceeeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(5) Exclusions from increment consumption.

(a) The Department shall exclude the following concentrations in determining compliance with a maximum allowable increase:

(i) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(ii) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan; and

(iii) Concentrations of particulate matter attributable to the increase in emissions from construction or temporary emission-related activities.

(b) The Governor may direct the Department to exclude in determining compliance with a maximum allowable increase any increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration.

(c) In reference to subsection (5)(a) the following shall also apply:

(i) No exclusion of such concentrations shall apply more than five years after the effective date of the order to which subsection (5)(a)(i) refers or the plan to which subsection (5)(a)(ii) refers, whichever is applicable.

(ii) If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(6) Redesignation.

(a) All areas of Montana (except as otherwise provided under (4) of this rule) are designated Class II. Any designation shall be subject to the redesignation procedures of this subsection.

(b) A redesignation may be requested by the Department or by a municipality, county, or other general unit of local government on being petitioned by fifteen percent (15%) of the qualified electors residing within the jurisdiction of the local government unit. The area to be redesignated shall lie within the external boundaries of the local government unit, which shall be the petitioning unit. The petition signed by fifteen percent of the qualified electors shall include:

(i) A legal description of the boundary of the area proposed to be redesignated;

(ii) An explanation of the purpose of the petition and redesignation; and

(iii) A statement to the effect that those persons signing the petition desire the described area to be redesignated to either Class I, Class II, or Class III and such statement shall specify which class.

~~(b)~~(c) Requests for redesignation, other than those applicable to areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, shall be submitted to the Department on application forms available from the Department. The redesignation application shall

contain a written statement of reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation. Upon receipt of an application, the Department may request additional information necessary for review from the applicant.

~~After receipt of a completed application, the Department shall conduct an analysis of the environmental impact of the proposed redesignation as may be required by the Montana Environmental Policy Act and rules promulgated thereto.~~ The redesignation application shall be completed and submitted by the petitioning unit. In the case where the Department requests the redesignation, the Department shall complete the application required under this subsection. After satisfaction of such requirements and after the Department has consulted with the elected officials of local government units located in the area covered by the proposed redesignation, the Department shall make a recommendation on the application to the Board.

The Board shall make a decision on the redesignation application after conducting a public hearing which shall not be subject to the contested case procedures of the Montana Administrative Procedure Act. At least thirty days prior to the public hearing, the Department shall:

(i) notify other States, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation;

(ii) make available for public inspection a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation;

(iii) satisfy the notice requirements of 40 CFR §51.4; and

(iv) prior to the issuance of notice of hearing respecting the redesignation of an area that includes any federal lands, ~~the Department has~~ provided written notice to the appropriate federal land manager and ~~afforded~~ adequate opportunity (not in excess of 60 days) to confer with the Department respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the Department shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the federal land manager)~~, and~~.

~~(c)~~(d) Any area other than an area to which subsection (4) of this rule refers may be redesignated as Class III if:

(i) The redesignation would meet the requirements of provisions established in accordance with subsection (6)~~(b)~~(c) of this rule;

(ii) The redesignation, except any established by an Indian governing body, has been specifically approved by the Governor ~~the state~~, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session ~~(unless state law provides that such redesignation must be specifically approved by state legislation)~~ and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation (including resolutions where appropriate) concurring in the redesignation;

(iii) The redesignation would not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area or any applicable ambient air quality standard; and

(iv) Any permit application for any major stationary source or major modification subject to provisions established in accordance with subsection (11) of this rule which could receive a permit only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

(7) Stack Heights. The degree of emission limitation required for control of any air contaminant under this rule shall be determined by provisions of ARM 16-2.14(1)-S14086 (stack height rule).

(8) Review of major stationary sources and major modifications -- source applicability and general exemptions.

(a) No major stationary source or major modifications commencing construction after the effective date of this rule shall be constructed unless, as a minimum, requirements contained in the subparagraphs of subsections (9), (11), (13), and (15) of this rule have been met. Such requirements shall apply to a proposed source or modification only with respect to those contaminants for which the proposed construction would be a major stationary source or major modification.

(b) The requirements contained in the subparagraphs of subsections (9), (11), (13) and (15) of this rule shall not apply to a major stationary source or major modification with respect to a particular contaminant if the owner or operator demonstrates to the Department that:

(i) As to that contaminant, the source or modification is subject to the emission offset ruling (41 FR 55524) as it may be amended or to regulations approved or promulgated pursuant to Section 173 of the Act and

(ii) The source or modification would impact no area attaining the national ambient air quality standards (either

internal or external to areas designated as nonattainment under Section 107 of the Act).

(c) The Department may permit a portable facility which has received construction approval under requirements ~~equivalent to those~~ contained in the subparagraphs of subsections (9), (11), (13), (15), and (16) ~~and (17)~~ to relocate without being subject to such requirements if:

(i) Emissions from the facility would not exceed allowable emissions; and

(ii) Such relocation would impact no Class I area and no area where an applicable increment is known to be violated or would be violated due to the relocation of the facility; and

(iii) Notice is given to the Department at least thirty days prior to such relocation identifying the proposed new location and the probable duration of operation at such location.

(9) Control technology review.

(a) A major stationary source or major modification shall meet all applicable requirements of the Montana Clean Air Act and rules promulgated pursuant thereto and all applicable emission standards and standards of performance under 40 CFR Part 60 and Part 61.

(b) A major stationary source or major modification shall apply best available control technology for each applicable contaminant, unless the increase in allowable emissions of that contaminant from the source would be less than 50 tons per year, 1,000 pounds per day, or 100 pounds per hour, whichever is most restrictive.

(i) The preceding hourly or daily rates shall apply only with respect to a contaminant for which an increment, or national ambient air quality standard, for a period less than 24 hours or a period of 24 hours, as appropriate, has been established.

(ii) In determining whether and to what extent a modification would increase allowable emissions, there shall be taken into account no emission reductions achieved elsewhere at the source at which the modification would occur.

(c) In the case of a modification, the requirement for best available control technology shall apply only to each new or modified facility which would increase the allowable emissions of an applicable contaminant.

(d) Where a facility within a source would be modified but not reconstructed, the requirement for best available control technology shall not apply if no net increase in emissions of an applicable contaminant would occur at the source, taking into account all emission increases and decreases at the source which would accompany the modification, and no adverse air quality impact would occur.

(e) For phased construction projects the determination of best available control technology shall be reviewed, and

modified as appropriate, at the latest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(10) Exemptions from impact analysis.

(a) The Department **may** shall exempt a proposed major stationary source or major modification with respect to a particular contaminant from the requirements of subsections (11), (13), and (15), if:

(i) The increase in allowable emissions of that contaminant from the source or modification would impact no Class I area and no area where an applicable increment is known to be violated; and

(ii) The increase in allowable emissions of the contaminant from the source or modification would be less than 50 tons per year, 1,000 pounds per day, or 100 pounds per hour, whichever is most restrictive; or

(iii) The emissions of the contaminant are of a temporary nature including but not limited to those from a pilot plant, a portable facility, construction, or exploration; or

(iv) A source is modified, but no increase in the net amount of emissions for any contaminant subject to an applicable ambient air quality standard and no adverse air quality impact would occur.

(b) In determining for the purpose of subsection (10)(a)(ii) of this rule whether and to what extent a modification would increase allowable emissions, there shall be taken into account no emission reductions achieved elsewhere at the source at which modification would occur.

(c) In determining for the purpose of subsection (10)(a)~~(iv)~~(ii) of this rule whether and to what extent there would be an increase in the net amount of emissions of any contaminant subject to an applicable ambient air quality standard from the source which is modified, there shall be taken into account all emission increases and decreases occurring at the source since August 7, 1977.

(d) ~~The Department may provide that the~~ **The requirements** of subsections (11), (13), and (15) of this rule shall not apply to a major stationary source or major modification with respect to **emissions** airborne particulate matter from it which the owner or operator has shown to be ~~fugitive dust~~ native soil or unprocessed native mineral matter.

(11) Air quality review.

(a) The owner or operator of the proposed source or modification must demonstrate to the Department that allowable emissions increases from the source of or modification, in conjunction with all other applicable emissions increases or reductions, will not cause or contribute to air pollution in violation of:

(i) Any applicable ambient air quality standard in any air quality control region; or

(ii) Any applicable maximum allowable increase over the baseline concentration in any area.

(12) Air quality models.

(a) All estimates of ambient concentrations required under subsection (11) of this rule shall be based on the applicable air quality models, data bases, and other requirements specified in the Guidelines on Air Quality Models (OAQPS 1.2-080, U.S. Environmental Protection Agency, Office of the Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April 1978).

(b) Where an air quality impact model specified in the Guidelines on Air Quality Models is inappropriate, the model may be modified or another model substituted.

(c) A substitution or modification of a model shall be subject to public comment procedures developed in accordance with subsection ~~(17) of this rule.~~ (6)(b) and (c) of ARM 16-2.14(1)-S1415 (permit rule).

(d) Written approval of the Administrator of EPA must be obtained for any modification or substitution.

(e) Methods like those outlined in the Workbook for the Comparison of Air Quality Models (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April 1977) should be used to determine the comparability of air quality models.

(f) The Guidelines on Air Quality Models is incorporated by reference. On April 27, 1978, the Office of the Federal Register approved this document for incorporation by reference. A copy of the guideline is on file with the Department and in the Federal Register library.

(g) The documents referred to in this paragraph are available for public inspection at EPA's Public Information Reference Unit, Room 2922, 401 M Street SW, Washington, D.C. 20460, and at the libraries of each of the ten EPA Regional Offices. Copies are available as supplies permit from the Library Service Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711. Also, copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161.

(13) Monitoring.

(a) The owner or operator of a proposed source or modification shall, after construction of the source or modification, conduct such ambient air quality monitoring and reporting as the Department determines may be necessary to establish the effect which emissions from the source or modification of a contaminant for which ambient air quality standard exists (other than non-methane hydrocarbons) may have, or is having, on air quality in any area which such emissions would affect.

(b) As necessary to determine whether emissions from the proposed source or modification would cause or contribute

to a violation of an applicable ambient air quality standard, any permit application submitted after August 7, 1978, shall include an analysis of continuous air quality monitoring data for any contaminant emitted by the source or modification for which an applicable ambient air quality standard exists except non-methane hydrocarbons. Such data shall relate to, and shall have been gathered over, the year preceding receipt of the complete application, unless the owner or operator demonstrates to the Department's satisfaction that such data gathered over a portion or portions of that year or another representative year would be adequate to determine that the source or modification would not cause or contribute to a violation of an applicable ambient air quality standard.

(14) Source information.

(a) The owner or operator of a proposed source or modification shall submit to the Department all information necessary to perform any analysis or make any determination required under this rule.

(b) Such information shall include:

(i) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(ii) A detailed schedule for construction of the source or modification;

(iii) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied;

(c) The Department may request the owner or operator to provide information on:

(i) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(ii) The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

(15) Additional impact analyses.

(a) The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other

growth associated with the source or modification.

(16) Sources impacting Federal Class I area -- additional requirements:

(a) Denial -- impact on air quality related values. Federal land managers may present to the Department after preliminary determination required under subsection ~~(17)-of this-rule,~~ (6)(b) of ARM 16-2.14(1)-S1415 (permit rule), a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Department concurs with such demonstration, the Department shall not issue the permit.

3. The following comments were made regarding individual sections of the rule:

(a) Subsection (1), Definitions:

"Allowable emissions". The Exxon Company recommended that the phrase "maximum rated capacity" be deleted and "design capacity" be substituted. The Board disagreed and rejected the comments for the reason that many boilers or other types of equipment are often operated in excess of design capacity and the air quality review under the recommended substitution would then not be representative of actual conditions.

"Baseline concentration". The American Smelting and Refining Company (ASARCO) and the Montana Coal Council proposed that the definition of baseline concentration be changed to the definition of baseline concentration contained in the federal Clean Air Act, which establishes the baseline at the date of first application, rather than the single date proposed. The Department proposed the same definition as appears in EPA's rules, and preferred a set date rather than keeping track of a multitude of different starting dates. The Board rejected the comments based on the recommendations of the Department.

"Commence". Westmoreland Resources, Inc., proposed that the definition add "required under the State Implementation Plan" after "all necessary preconstruction approvals". Since "necessary preconstruction approvals or permits" is separately defined in subsection (1)(o), the Board rejected the amendment as unnecessary.

"Construction". The Department suggested amending the definition to conform to that proposed for the new permit rule, contending that the substance of the definition would remain substantially unaltered. Montana Power objected on grounds that the amendment would create confusion about when construction would be regarded as "commencing", while the Department felt that issue was sufficiently clarified by the separate definition of "commence". Montana Power also objected because

it felt inclusion of a startup and shakedown period within the definition was at odds with the basic purpose of the PSD rule to provide preconstruction review. Since the meaning of the definition as originally proposed is presently being litigated and since all parties, after conference, agreed the original proposal was preferable, the Board elected to retain it rather than adopt a new version and risk litigation over its meaning.

"Fugitive dust". The Anaconda Company and the Exxon Company recommended the following definition of airborne particulate matter in lieu of the proposed definition of fugitive dust:"'Airborne particulate matter' means any particulate matter discharged into the outdoor atmosphere which is not discharged from a normal exit of a stack or chimney for which a source test can be performed in accordance with Method 5. Determination of Particulate Emissions from Stationary Sources, Appendix A, Part 60.275 (Test Methods and Procedures, Title 40, Code of Federal Regulations, Revised, July 1, 1977)." The Department also recommended the change in order to conform to the definition in the airborne particulate rule adopted December 18, 1978, and to avoid the problem of determining whether dust is industrially contaminated or not. This definition was opposed by Cindi Williams, representing the Northern Powder River Basin EIS Project, who wanted to clarify the original proposed definition to retain a distinction between particulate from natural surface soil and particulate from strip-mine activities. EPA also disagreed on grounds it was broader than the federal definition of fugitive dust and in effect would exempt additional sources from PSD review. The Board concurred with the recommendation of the Department and adopted the substitute definition.

The Montana Coal Council and ASARCO proposed, in relation to the definition of fugitive dust, a new paragraph in subsection (1): "The definitions of major stationary source and major modification contained in paragraph (m) and paragraph (n) shall not be construed to include airborne particulate matter as defined in paragraph (j)." The Department did not agree with the foregoing proposal because it excluded sources of airborne particulate matter from the requirements of the PSD rule, including control technology review. The Board agreed and rejected the proposal based on the recommendations of the Department.

"Necessary preconstruction approval or permits". The Montana Power Company proposed that "under Federal and Montana air quality control laws and regulations" be deleted and the following be substituted: "by the permitting authority as a precondition to undertaking any activity under clause (i) and (ii) of subsection (e) of this section." The Board disagreed that this would add to clarification and rejected the comments.

"Potential to emit". The Montana Power Company proposed that the definition be amended as follows: ""'Potential to

emit' means the capability at maximum capacity, recognizing the effect of installed air pollution control equipment, to emit a contaminant. ~~in the absence of air pollution control equipment~~..." The Board disagreed with the Company's proposal since it would have greatly reduced the number of covered sources, and rejected the comments.

In addition, the Exxon Company proposed "design capacity" as it had for the "allowable emission" definition. The Board disagreed and rejected the proposal on the same basis as stated under the discussion of the definition of "allowable emissions", above.

(b) Subsection (2), Ambient Air Increments:

The Anaconda Company and the Exxon Company proposed that this subsection be amended as follows: "Ambient air increments. In areas designated as Class I, Class II, or Class III, increases in contaminant concentration over the baseline concentration, as determined by the cumulative results of air quality modeling of major stationary sources or major modifications, shall be limited to the following..." The Board concurred and adopted the proposal based on the recommendation of the Department that it was the only reasonable way to keep track of the increment consumption, in that it focuses on major sources and avoids the almost impossible job of estimating the effect of small sources, and that it represented EPA practice in fact.

(c) Subsection (5), Exclusions from Increment Consumption: Many comments were received in relation to (5)(a)(iii), requesting the Board to expressly exclude fugitive dust from agricultural and slash burning activities as a factor in determining compliance with a maximum allowable increase. The Board rejected the proposed amendment as unnecessary, based on the assertion of the Department that these sources are already excluded from consideration in the permit rule, 16-2.14(1)-S1400(1)(f), and the two rules are intended to be applied together.

Regarding (5)(b), the Continental Oil Company recommended that exclusion of emissions from sources outside the U.S. be mandatory rather than discretionary to correlate with the federal regulation, which allows the Governor to request the exclusion after an opportunity for public hearing. Since the federal regulation does not make such an exclusion mandatory, the Board declined to do so either.

(d) Subsection (6), Redesignation:

Many commentors were opposed to the requirement in the rule that the applicant submit "a written statement of reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation" because it imposed too great a financial and technical burden on the applicant. Furthermore, they felt, this burden would unduly restrict accessibility to the redesignation process.

Lyle Quick, a McCone County Commissioner, the Stillwater Protective Association, the League of Women Voters, the McCone Agricultural Protective Association, and the Northern Plains Resource Council supported the use of a citizens' petition to initiate the application process.

The Department reviewed these recommendations with the Lt. Governor's office and proposed the amendments to subsection (6) which appear in this notice, the most important of which allows citizens to petition a unit of local government, which in turn may submit a redesignation application to the Department. The Board agreed with the Department and adopted the proposed changes.

(e) Subsection (7), Stack Heights:

Cenex recommended that language from the federal regulation be substituted for the entire subsection. The Department felt Montana should not have one stack height provision under the PSD rule and a dissimilar provision under the stack heights rule already adopted by the Board, recommending instead that the stack height rule should be cross-referenced in the stack height subsection of the PSD rule. The Board rejected the Cenex proposal based on the recommendations of the Department.

(f) Subsection (8), Review of Major Stationary Sources and Major Modification--Source Applicability and General Exemptions:

Westmoreland Resources, Inc., recommended that (8)(a) read as follows, to clarify what sources it applied to: "(a) No major stationary source or major modifications commencing construction after the effective date of this regulation shall be constructed unless, as a minimum, requirements contained in the subparagraphs of subsection (9), (11), (13), and (15) of this rule have been met..." The Board agreed and adopted the recommendation, except that the term "rule" be used in lieu of "regulation".

Cenex commented that the rule failed to exempt non-profit health or education institutions from review as the federal requirements allow. Since these facilities are often major emitting sources, the Department believed that they should be subject to review. The Board rejected the proposal based on the Department's recommendation.

Cenex also commented that the relocation of a previously approved portable facility may have to undergo an additional ambient review according to the language of (8)(c)(ii). The Department disagreed that relocation would require repetition of ambient impact review. The relocation requirement stated in (8)(b)(ii) would simply be the requirement of a modeling review to determine whether or not violations would occur due to relocation. The predicted concentration attributable to the source must be compared to that allowable in the new area of relocation. The Board rejected the proposal by Cenex based

on the Department's recommendation.

(g) Subsection (10), Exemptions from Impact Analysis: The Exxon Company and the Anaconda Company proposed that (10)(a) be mandatory rather than discretionary. The Board agreed and adopted the proposed change.

Both the above companies also proposed that (10)(d) read as follows: "(d) ~~The Department may provide that the~~ The requirements of subsections (11), (13), and (15) of this rule shall not apply to a major stationary source or major modification with respect to ~~emissions~~ airborne particulate matter from it which the owner or operator has shown to be ~~fugitive dust~~ native soil or unprocessed native mineral matter." Elliot Rockler, Lame Deer, opposed any inclusion of coal dust within the fugitive dust category. The Board concurred with the change and adopted it.

Cenex suggested the following addition to subsection (10): "(e) The hourly or daily rates set in paragraph 10(a)(ii) of this section shall apply only with respect to a contaminant for which an increment or national ambient air quality standard, for a period of less than 24 hours or for a period of 24 hours, as appropriate, has been established." The Department reviewed this language in its initial drafting and found the phrase to be meaningless unless appled to nitrogen dioxide, which is not presently covered by the rule. If at such time nitrogen dioxide or a similar contaminant is covered, the Department felt the rule could then be amended. The Board concurred with the Department's recommendation and rejected the Cenex proposal.

The Montana Power Company proposed the Board adopt in the rule a variance procedure contained in the Federal Clean Air Amendments and in the federal regulation known as the Breaux Amendment which would involve not only specific language from 42 USC §7475(d)(2)(D), but also definitions for high terrain and low terrain. It was the Department's position that the Breaux Amendment applied only to federal lands and there was no necessity for the variance procedure to be provided by administrative rule promulgated by the Board of Health and Environmental Sciences. Dr. Robert Bell, Culbertson, supported the exclusion of the Breaux Amendment. The Board concurred with the Department's recommendation and rejected the Montana Power Company proposal.

Numerous comments were received from industries requesting the Board to abstain from enacting a PSD rule until the litigation over the federal regulation on PSD is settled. The Department desired to administer the PSD program in the state of Montana, which will be administered by the Environmental Protection Agency until Montana promulgates a rule. EPA requested that state implementation plan revisions on prevention of significant deterioration be submitted by March 19, 1979. The Department felt that it was doubtful that the litigation would be settled by that date and that all of the rules proposed are essential to demonstrate attainment in all areas

of the state by 1982. The PSD rule fulfilled a need to show maintenance of the standards in areas once these standards are attained. The Department and its working committees reviewed the areas of litigation and unclear areas in the federal regulations and clarified and streamlined the proposed state rule. On the whole, the Department believed there were too many advantages to the state rule such as the clear definitions, the 180-day permitting procedures, and the state redesignation procedures to wait, potentially, years for federal litigation and federal bureaucracy to arrive at the same point. The Board concurred with the Department's recommendation and adopted the rule.

The Department also noted at the public hearing various clerical errors that were corrected at that time. The Board concurred with the corrections to the rule.

John W. Bartlett

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State March 6, 1979

36-3.18(20)-S18500 - S1850
BOARD OF OIL AND
GAS CONSERVATION

ADOPTION OF EMERGENCY RULES

Statement of reasons for emergency.

The Board of Oil and Gas Conservation finds that these emergency rules should be adopted for the following reasons:

1. The Natural Gas Policy Act of 1978 authorizes the state agency having regulatory jurisdiction with respect to the production of natural gas to make certain determinations under the Act.

2. The Federal Energy Regulatory Commission has taken the position that the state agency should make such determinations on private and state lands within their respective states and has adopted rules and regulations governing such determinations by state agencies.

3. The Montana Board of Oil and Gas Conservation is the state agency having regulatory jurisdiction with respect to natural gas production in Montana and is authorized to make such determinations under the Natural Gas Policy Act.

4. Montana producers of natural gas are required to make application to the Board and receive a positive determination from the Board prior to charging the higher prices for natural gas production authorized under the Act.

5. The Act and rules and regulations adopted by the Federal Energy Regulatory Commission allow the retroactive collection of the prices authorized by the Act back to December 1, 1978, if the state determination procedure is functioning prior to March 1, 1979.

6. The retroactive collection of the authorized prices will substantially benefit the people of Montana by providing increase revenue through taxes and through royalties to the state and individual citizens.

7. If these rules are not adopted prior to March 1, 1979, the state determinations cannot be made and the public welfare will be damaged through loss of revenue to the state and its individual citizens.

Therefore having determined that the welfare of the people of Montana is in imminent peril and that the State of Montana is in danger of losing revenue, the Board of Oil and Gas Conservation adopts the following emergency rules:

Sub-Chapter 20

Montana Regulations to Implement
Natural Gas Policy Act

36-3.18(20)-S18500 APPLICATIONS FOR DETERMINATION (1) Any person owning an interest in the production of gas from a

well desiring a determination that natural gas from that well qualifies for a maximum lawful price as prescribed by Natural Gas Policy Act of 1978 (NGPA) or desiring a change in an existing determination or desiring any other determination or finding authorized by the NGPA, shall apply to the Board. Duplicate original copies of all applications shall be filed in both the Helena and Billings offices of the Board. Applications shall be made on the forms prescribed by the Federal Energy Regulatory Commission (FERC) and Board Form No. 15. All applications shall be executed so as to comply with the following:

(a) Signature. If the person filing an application under this rule is an individual, the filing shall be signed by such individual, or in the case of a minor or other legally disabled person, his duly qualified legal representative. If the person making such filing is a corporation, partnership, or trust, the filing shall be signed by a responsible official of the corporation, a general partner of the partnership, or the trustee of the trust. In the case of any other legal entity, the operator of the well may sign the application. An operator under a joint operating agreement may sign an application for a well covered by the operating agreement if notice of the application is given by the operator to all other parties to the joint operating agreement and that fact is certified in the application.

(2) The applicant shall furnish with the application original, photocopies or certified copies of all documents, technical data and records relied upon to support its application. Copies of the Board's official files and orders must be certified.

(3) The application shall contain information necessary to support the category or determination sought by the owner, including, but not limited to:

(a) The name and address of the operator of the well.

(b) The name and address of all non-operating owners.

(c) Well identification, location by legal subdivision, township and range, A.P.I. identification number, field and/or reservoir designation, if any.

(d) A designation of the categor(y)(ies) applied for and the specific NGPA sections relied upon.

(e) The supporting documents designated in subsection 4 herein and in applicable FERC regulations as minimum requirements for each category or determination applied for.

(f) Identification and addresses of all purchaser(s) of natural gas, and, where State, Federal or Indian mineral interests are involved, that information.

(g) A certificate of service indicating that copies of the application (less required supporting documents) have been served upon all working interest owners in the well or wells involved in the application and upon the Department of State Lands (if state owned mineral interests are involved) and upon all purchasers of gas from such well or wells. Names and addresses of all working interest owners and gas purchasers shall be provided.

(4) Documents and Technical Data Supporting Application.

(a) All applicants must comply with the minimum requirements imposed by the FERC from time to time in addition to those special requirements set forth herein. Additional documentation, technical data, or evidence may be required by the examiner.

(b) Special Documentation Required by the Board.

(i) New Gas Determinations under Section 102: (No special documentation required.)

(ii) 1,000 Feet Deeper Test. Directional drilling surveys shall be required only for wells which are purposely directionally drilled. However, if directional drilling surveys are voluntarily run, copies of the results thereof shall be submitted.

(iii) New Onshore Reservoirs. Copies of any directional drilling surveys or dip meter tests available to the applicant on any of the wells in (or within one mile of) the new reservoir shall be filed with the application.

(iv) New Onshore Production Wells Under Section 103. Copies of any statement provided by the petroleum engineer in any eligibility proceeding under Rule MAC 36-3.18 (10)-S18020 (Subpart 4(b)) or any other proceedings which modify the otherwise applicable spacing unit, such as Board Orders authorizing multiple wells in a spacing unit, shall be provided with the application.

(v) High Cost Natural Gas Wells. (No special documentation required.)

(vi) Stripper Wells Under Section 108:

(A) Application for Determination. (No special documentation required.)

(B) Notice by an Operator or Purchaser of an Increase in Production. (No special documentation required.)

(C) Determination of Increased Production Resulting From Enhanced Recovery Techniques. (No special documentation required.)

(D) Designation That a Well is Seasonally Affected. (No special documentation required.)

(E) Determination of Maximum Efficient Rate. If the application is for determination as to whether the well produced at its maximum efficient rate, the application shall be accompanied by the results of all openflow, four point, back pressure or other tests taken to ascertain the maximum efficient rate. The Board may require such further testing as deemed appropriate. (History: Sec. 4, Ch. 19, L. 1979 IMP, Sec. 4, Ch. 19, L. 1979 NEW EMERG. Eff. 2/27/79)

36-3.18(20)-S18510 OBJECTIONS TO APPLICATIONS. (1) Any interested person may submit objections to any application or express views thereon. Any expression of views is hereafter referred to as an objection. Objections must be in writing and may be supported by documentation and technical data in the same manner as the documentation and technical data submitted by the applicant. An objection notification must relate to one application and contain the following:

(a) The name and address of the objecting party;
(b) The docket number or subsidiary docket number with sufficient clarity to identify the application;
(c) Reasons for the objection and reference to any documentation, data or exhibits which objector is submitting with the objection and which objector asserts is proof of the reasons for the objection.

All objections, together with any documentation and technical data, must be filed by the 20th of the month in which the finding or determination is to be made, or the next working day if the 20th falls on a weekend or holiday. Any amendment to the objection or supporting documentation or data not received by the deadline shall be returned to the objecting party. (History: Sec. 4, Ch. 19, L. 1979 IMP, Sec. 4, Ch. 19, L. 1979, NEW EMERG. Eff. 2/27/79)

36-3.18(20)-S18520 ACTION ON APPLICATIONS. (1) Upon receipt of an application, the Board will assign a docket number or a subsidiary docket number which identifies the case as one of the applications for NGPA determination for the month involved. A list, in chronological order of receipt, will be maintained by the Board at both Helena and Billings, showing the docket number, or subsidiary docket number, the date of filing, the name of the applicant, the category or categories of determination applied for and the location by section, township and range of the well or wells to be considered in the determination. Such list shall be posted inside the Board offices in Helena and Billings at a location readily available to the public. All applications and supporting documentation, as well as the notice list, shall be available for examination during normal business hours at both the Helena and Billings offices of the Board. All applications for that month's determinations must be filed by the third working day of the month.

(2) Time of Action on Determinations. On the fourth Tuesday of each month, or on the following day if such day is a legal holiday, an examiner appointed by the Board shall make preliminary determinations, whether positive or negative, based solely upon the applications and any objections thereto timely filed during such month. Copies of the examiners determination shall be mailed within two days of the date of the determination by ordinary mail to the applicant and to all owners and purchasers identified on the certificate of service submitted in compliance with these rules, as well as to all objectors and all members of the Board. Any applications which are deficient because of failure of the applicant to comply with any of the regulations of the federal regulations or these rules shall be rejected by written notice to the applicant, informing the applicant of the deficiencies, but retaining the application and supporting documentation. The application shall be reconsidered on the following months determination date if the deficiencies are timely corrected. If the deficiencies are not corrected by the

date set for new filings the application shall be finally rejected and returned to the applicant.

If the application is unopposed and the preliminary determination by the examiner is positive, such determination when rendered shall become a final action of the Board and the examiner, for the Board, shall give written notice to the Federal Energy Regulatory Commission within 15 days of the determination. Such notice shall consist of the following:

(a) A list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(b) A statement indicating whether the matter was opposed before the Board;

(c) A copy of the application together with a copy or description of other materials in the record upon which the determination by the Board was made; and

(d) An affirmative finding that the information contained in the notice to the Commission pursuant to this section includes all of the information required to be filed by the applicant under these regulations and 18 CFR Part 274 (Subpart B) of the Federal regulations, and in any case in which other materials in the record constitute portions of such information, a copy of those portions of the record.

(3) If the application was opposed, or if the preliminary determination is a negative determination, the examiner shall withhold any notification to the Federal Energy Regulatory Commission until at least 20 days after the date of the preliminary determination, during which time the aggrieved party may solicit requests from two or more Board members that the determination be reviewed by the Board. Should two or more Board members request a review, the preliminary determination shall not become final until the Board shall have reviewed the matter at a regularly docketed do novo hearing and shall have issued its order. In accordance with Section 503(c)(4) of the NGPA, the board's final order shall not be subject to appeal or judicial review. Notice to the Federal Energy Regulatory Commission, as provided in Subpart (b) of this Rule, shall be given within 15 days of the order by the Board becoming final. (History: Sec. 4, Ch. 19, L. 1979 IMP Sec. 4, Ch. 19, L. 1979 NEW EMERG. Eff. 2/27/79)

36-3.18(20)-S18530 SPECIAL FINDINGS AND DETERMINATIONS (1) New Onshore Production Wells Under Section 103.

(a) Applications pursuant to 18 CFR Section 271.305(b) for a finding that a well is necessary to effectively and efficiently drain a portion of the reservoir covered by the spacing unit which cannot be effectively and efficiently drained by an existing well within the spacing unit, shall be treated as a spacing exception application under Section 60-129 (R.C.M. 1947) and be separately docketed and noticed for hearing before the Board as a spacing exception application, and, in addition, shall be

included in the list of applications posted pursuant to Rule III, above, for the month in which the hearing on the application shall be held. The list of applications shall be appropriately noted to the effect that the matter will be heard by the Board at its next regular hearing.

(b) Applications pursuant to 18 CFR Section 271.305(c) for a determination that gas produced from a well drilled after February 19, 1977 and before January 1, 1979 qualifies for the Section 103 price because the Board had explicitly or implicitly found, prior to commencement of the drilling, that the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the spacing unit, which portion of the spacing unit could not be effectively and efficiently drained by any existing well within the spacing unit, shall be accompanied by certified copies of all exhibits submitted to the Board or to the Petroleum Engineer in connection with the hearing or the eligibility proceeding which preceded commencement of drilling or issuance of the drilling permit. Upon review of the application plus the previously submitted exhibits and the prior order or finding by the Board or Petroleum Engineer, the examiner shall make a finding on whether the Board or Petroleum Engineer had theretofore made an explicit finding that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the spacing unit which could not be effectively and efficiently drained by any existing well within the proration unit. An affirmative finding by the examiner shall constitute the geologic evidence to be demonstrated in compliance with 18 CFR Section 274.204(f) or any successor regulation. If the examiner's finding is negative, the determination on the original application shall be postponed until the following month, during which time the applicant may submit to the examiner a certified transcript of the oral testimony, if any, taken at the previous hearing. Notice by ordinary mail of the negative finding shall be given the applicant within three (3) days of the issuance of the finding. If the transcript is not timely filed, the determination shall be negative. If the transcript is timely filed, the matter shall be reconsidered by the examiner at the ensuing month's regular NGPA determination date so as to ascertain whether the Board or the Petroleum Engineer had made or could have made an explicit affirmative finding on the matter, based on the evidence before it, prior to commencement of drilling or issuance of the drilling permit.

(2) Stripper Well Production.

(a) Maximum Efficient Rate of Flow Determinations. The examiner is authorized to establish maximum efficient rates of flow from any gas well utilizing any criteria proscribed by FERC or, if FERC has not proscribed criteria, the following:

(i) The well's open flow potential.

(ii) The well's flow potential into the nearest pipeline with pressures lower than the well, if any.

(iii) Pressure analysis (bottomhole, if advisable, or

wellhead).

(iv) Log and core analysis for information thickness, permeability, etc.

(v) Reservoir fracturing, whether natural or administered.

(vi) Reservoir model and analysis.

(vii) Other data which the examiner requires or considers pertinent.

(b) Seasonally Affected Wells. The examiner is authorized to make findings in accordance with 18 CFR Section 271.804(e)(2) that seasonal fluctuations of production from a well theretofore classified as a stripper well have not and cannot reasonably be expected to increase production levels above an average of 60 mcf per production day for any 12-month period. Such findings shall be based upon the reported history of production from such well plus analysis of any established maximum efficient rate of flow and any evidence of pressure differential which might cause temporarily increased production levels.

(c) Enhanced Recovery Techniques. The examiner is authorized to determine that an increase in production from a well theretofore classified as a stripper well is the result of the application of recognized enhanced recovery techniques. In the absence of controller, federal regulations or FERC interpretations, the examiner shall ascertain whether the particular enhancement technique involved in the determination is a recognized technique.

(d) General. The examiner shall treat any petition or application for determination that production in excess of an average of 60 mcf per production day for any 90-day production period was due to enhanced recovery techniques or to seasonal fluctuations as if it were an application for an initial determination under Rule 36-3.18(20)-S18500. (History: Sec. 4, Ch. 19, L. 1979, IMP Sec. 4. Ch. 19, L. 1979 NEW EMERG. Eff. 2/27/79)

CERTIFIED TO THE SECRETARY OF STATE February 27, 1979.

By R. A. Campbell per DR
(Name)

Chairman
(Title)

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the Amendment of ARM 40-3.38(6)-S3875 Apprentice Registration)	NOTICE OF AMENDMENT OF ARM 40-3.38(6)-S3875 APPRENTICE REGISTRATION

To: All Interested Persons:

1. On January 25, 1979, the State Electrical Board published a notice of proposed amendment of ARM 40-3.38(6)-S3875 concerning apprentice registration at pages 31 and 32 of the 1979 Montana Administrative Register, issue number 2.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board proposed revision of the rule after considering objections from the electrical industry, the Labor Standards Division, Apprenticeship Bureau, and from the Montana Administrative Code Committee. The Board understands that registration with the Apprenticeship Bureau is not and cannot be made mandatory under existing Federal and State law relating to that Bureau. As far as specifying the nature and scope of apprentice training is concerned and as far as specifying a supervisory ratio of licensed electricians over apprentices, the Board feels this should be the prerogative of the employer. However, because section 37-68-303 MCA (66-2817 R.C.M. 1947) requires that apprentices work with a licensed electrician, the Board feels it is reasonable to impose such requirement on site. The Board feels that giving the employer such training prerogatives, imposes upon him the responsibility of assuring that the training will meet the requirements of sections 37-68-102 (66-2803 R.C.M. 1947) and 37-68-305 (66-2807 R.C.M. 1947) MCA.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, March 6, 1979.

VOLUME NO. 38 OPINION NO. 10

PROBATION AND PAROLE - Parole Eligibility of Prisoners Designated As "Persistent Felony Offenders" or as "Non-Dangerous"; Parole Eligibility of Prisoners With No Designation.
SECTIONS - 46-18-404 and 46-23-201(1) MCA
SECTIONS - 95-2206.16 and 95-3214(1), R.C.M. 1947.

HELD: 1. Subject to the exceptions set forth in section 46-23-201(1), MCA (§95-3214(1), R.C.M. 1947) a prisoner who is sentenced to a time sentence for a crime committed on or after July 1, 1977, is ineligible for parole until he has served one-half of his full sentence, less good time, unless he has been designated a "non-dangerous offender" by the sentencing court.

2. A prisoner who has been designated as "non-dangerous" is ineligible for parole until he has served one-quarter of his full sentence, less good time.

3. Designation of a prisoner as a "persistent felony offender" has no significance for parole eligibility with respect to sentences imposed for crimes occurring on or after July 1, 1977. However, for crimes committed between July 1, 1975 and June 30, 1977, inclusive, designated persistent felony offenders must serve one-third of their sentences before they are eligible for parole

2 March 1979

Nick A. Rotering
Legal Counsel
Department of Institutions
1539 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Rotering:

You have requested an opinion concerning the following question:

> When is a prisoner serving a time sentence eligible for parole if he has not been designated a "non-dangerous" offender by the sentencing court?

Provision for "non-dangerous offender" designation is made in section 46-18-404, MCA (§95-2206.16, R.C.M. 1947), which was enacted in 1977. Laws of Montana (1977), ch. 340, sec. 5. The section provides in relevant part:

> (1) The sentencing court shall designate an offender a non-dangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:
>
> (a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; or
>
> (b) the court has determined, based on any pre-sentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.
>
> ***

Designation as a "non-dangerous offender" is tied to parole eligibility standards of part 2, chapter 23 of Title 46, specifically section 46-23-201(1), MCA (§95-3214(1), R.C.M. 1947). Section 46-23-201(1) provides that a prisoner is ineligible for parole until he has served a prescribed minimum of his sentence. As amended in 1977 (see Laws of Montana (1977), ch. 184, 340 and 580), it provides:

> (1) Subject to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community:
>
> (a) No convict serving a time sentence may be paroled until he has served at least one-half of his term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years.

(b) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

Prior to its amendment in 1977, section 46-23-201(1) had provided, generally, that persons serving time sentences were ineligible for parole until they had served one-quarter of their full sentence.

Section 46-18-404 and the 1977 amendments to section 46-23-201(1) have spawned three questions.

The first question is whether the increase in the length of time a prisoner is ineligible for parole can be applied to prisoners sentenced in connection with crimes committed prior to July 1, 1977. The recent case of State v. Azure, ____ Mont. _____, 587 P.2d 1297 (1978) held that it cannot.

> A law which eliminates or delays a defendant's parole elgibility after the criminal offense has been committed is ex post facto as applied to that defendant.

587 P.2d at 1298. See also State v. Gone, _____ Mont. _____, 587 P.2d 1291 (1978); and State ex rel. Nelson v. Ellsworth, 142 Mont. 14, 380 P.2d 886 (1963).

The second question concerns when a prisoner is eligible for parole if he has not been expressly designated as "non-dangerous" in a judgment of conviction. Section 46-23-201(1), MCA, provides express and unqualified guidance. It provides that a defendant serving a time sentence is ineligible for parole while serving the first one-half of his sentence, less good time, unless he has been designated a non-dangerous offender. Thus, designation as a non-dangerous offender must affirmatively appear from the judgment of conviction for a defendant to be eligible for parole after serving one-quarter of his sentence. Any prisoner who has not been expressly designated as "non-dangerous" in connection with a sentence proposed for a crime committed after July 1, 1977, is ineligible for parole until he has served one-half of his sentence, less good time.

The third question concerns the effect designation as a "persistent felony offender" has upon parole eligiblility.

In 1975, the legislature enacted provisions providing that persons designated as persistent felony offenders were ineligible for parole during the first one-third of their

sentences. Laws of Montana (1975), ch. 312, sec's 2 and 3. Since the legislature did not specify an effective date for the 1975 provisions, they became effective July 1, 1975. Section 102-2-201(1), MCA (section 43-507, R.C.M. 1947). The 1975 provisions were repealed in 1977 at the same time the legislature amended section 46-23-201(1) to provide that all prisoners serving time sentences, except those designated as "non-dangerous", are ineligible for parole during the first one-half of their sentences, less good time. Therefore, "persistent felony offenders" designation is significant only as to those prisoners sentenced in connection with crimes committed between July 1, 1975 and June 30, 1977, inclusive. It has no significance in connection with crimes committed on or after July 1, 1977.

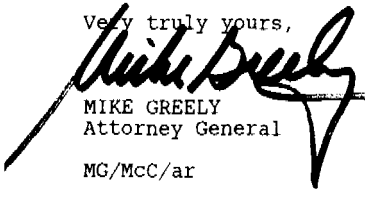
THEREFORE, IT IS MY OPINION:

1. Subject to the exceptions set forth in section 46-23-201(1), MCA (§95-3214(1) R.C.M. 1947) a prisoner who is sentenced to a time sentence for a crime committed on or after July 1, 1977, is ineligible for parole until he has served one-half of his full sentence, less good time, unless he has been designated a "non-dangerous offender" by the sentencing court.

2. A prisoner who has been designated as non-dangerous is ineligible for parole until he has served one-quarter of his full sentence, less good time.

3. Designation of a prisoner as a "persistent felony offender" has no significance for parole eligibility with respect to sentences imposed for crimes occurring on or after July 1, 1977. However, for crimes committed between July 1, 1975 and June 30, 1977, inclusive, designated persistent felony offenders must serve one-third of their sentences before they are eligible for parole.

Very truly yours,



MIKE GREELY
Attorney General

MG/McC/ar