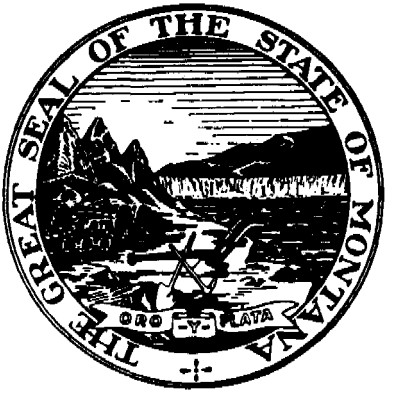
MONTANA ADMINISTRATIVE REGISTER

1984 ISSUE NO. 17
SEPTEMBER 13, 1984
PAGES 1199-1397



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

TABLE OF CONTENTS

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to the recruitment and selection of employees by state agencies	))))	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF RULES RELATING TO THE RECRUITMENT AND SELECTION OF EMPLOYEES BY STATE AGENCIES

TO: All Interested Persons.

1. On October 4, 1984, at 12:15 p.m., in Room 104, State Capitol Building, Helena, Montana, a public hearing will be held to consider the adoption of rules relating to the recruitment and selection of employees by state agencies.

2. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This policy may be cited as the recruitment and selection policy.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the State of Montana to:

(a) recruit, select, and promote employees on the basis of merit and job-related qualifications and without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin as provided in 49-3-201, MCA, except where marital status, age, sex, or physical or mental handicap is a bona fide occupational qualification reasonably necessary to the agency's operations.

(b) provide qualified applicants with a reasonable opportunity to learn about, to apply for, and to be considered for positions when external recruitment is conducted.

(2) Nothing in these rules is intended to preclude the use of recruitment and selection procedures which assist in the achievement of affirmative action objectives. Compliance with these rules does not relieve an agency of its affirmative action obligations or its obligations under other state or federal rules and regulations which govern recruitment and/or selection.

(3) It is the objective of this policy to:

(a) establish minimum standards for fair and consistent treatment of applicants and employees in recruitment, selection and promotion.

(b) ensure that recruitment, selection, and promotion activities are in compliance with:

(i) the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607;

(ii) the Standards for a Merit System of Personnel Administration, 5 CFR 900.601, as applicable; and

(iii) the veteran's and handicapped person's employment preference act, 39-30-101, et. seq., MCA, and the veteran's and handicapped person's preference policy ARM 2.21.1401,

et. seq., (also found at policy 3-0171, Montana Operations Manual, Volume III.)

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply: (1) "Application supplement" means any questionnaire or other material requested in addition to the state application, form PD-25, for the purpose of evaluating an applicant's job-related qualifications.

(2) "Bona fide occupational qualification" means an exception to the prohibitions against discrimination which is allowed where the reasonable demands of a position require an age, physical or mental handicap, marital status, or sex distinction. "Reasonable demands" is to be strictly construed, and the burden rests with an agency to demonstrate that the exemption should be granted, as provided in 49-2-402, MCA.

(3) "Continuous recruitment" means a procedure in which applications are solicited for a position or a class of positions on an on-going basis, regardless of whether a current vacancy exists.

(4) "External recruitment" means the soliciting of applications from any interested persons including current employees.

(5) "Internal recruitment" means the soliciting of applications which, at the discretion of the agency, is limited to current employees of the department, the division, or other appropriate internal unit or to employees in a reduction-in-force pool who have been laid off from the agency.

(6) "Job analysis" means a study of a position to determine the major duties or tasks, their importance to the job and the knowledges, skills, and abilities required to perform them.

(7) "Job-related" means criteria shown by a job analysis to be directly related to a specific task or tasks in a job or to be directly related to a qualification necessary to perform a specific task or tasks in a job.

(8) "Performance test" means a test which evaluates an applicant's knowledge, skill, or ability on a task very similar or identical to that required on the job, such as a typing test or driving test.

(9) "Qualifications" means knowledges, skills, and abilities required to perform a job and the education and experience believed to lead to them.

(a) Knowledge: a body of facts and information relating to a particular subject or subject area. Examples of knowledge include knowledge of law, accounting principles, laboratory procedures.

(b) Skill: a present competence to perform a learned psychomotor act. Examples of skills include typing, operating a front-end loader, drafting.

(c) Ability: a present competence to perform a function, physical or mental. Examples of abilities include problem solving ability, spatial ability, visual acuity.

(10) "Reference check" means an inquiry which:

(a) relates to an applicant's possession of job-related qualifications; and

(b) is made of persons able to evaluate the applicant's job-related qualifications, such as a former or current supervisor.

(11) "Structured interview" means a personal contact, either face-to-face or by phone, between an interviewer or panel of interviewers and the applicant for the purpose of evaluating the applicant's job-related qualifications. The questions are developed in advance along with model answers and rating criteria and are administered in a standardized manner.

(12) "Temporary employee" means a person hired for a temporary position, as that term is defined in 2-18-101, MCA, or a person not eligible to attain permanent status who is hired for a permanent position for a period of time not to exceed 9 months. The term does not include a current employee regularly assigned to a permanent position who is temporarily reassigned or promoted.

(13) "Work sample" means a product which results from an applicant's efforts and is representative of the applicant's level of competence in a specific area. A work sample may be requested at the time of application or may be produced during a performance exam. Examples include a brochure or a computer program prepared by the applicant outside the selection process or a budget prepared as part of a written exercise.

(14) "Written test" means a paper-and-pencil exam which evaluates job-related qualifications and may include, but is not limited to, true or false, multiple choice, fill-in-the-blank or essay items.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE IV EXTERNAL RECRUITMENT (1) The vacancy announcement will be sent to the job service for each permanent and seasonal position which is opened to external recruitment.

(2) Vacancy announcements for temporary positions as defined in 2-18-101, MCA, may be sent to the job service at the agency's discretion.

(3) When an agency fills a permanent position on a temporary basis, vacancy announcements may be sent to the job service at the agency's discretion.

(4) Positions filled by participants in on-the-job training, work experience or other programs conducted under federally authorized employment or training programs do not require posting with the job service.

(5) Vacancy announcements may be distributed to other recruitment sources in addition to the job service in a manner consistent with agency policy.

(6) An agency may restrict external recruitment advertising, including posting at the job service, to a geographic area; however, all properly completed applications received by the closing date must be considered, regardless of whether the applicant resides within that geographic area.

(7) External vacancy announcements will be posted for a period of time consistent with agency policy and for a period of no less than 5 working days. When determining the closing date of a job vacancy announcement, the agency shall:

(a) add 2 calendar days for transmittal of the job vacancy announcement when recruiting through the local job service and,

(b) add 4 calendar days for transmittal of the job vacancy announcement when recruiting beyond the local area.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE V EXTERNAL VACANCY ANNOUNCEMENTS (1) All external vacancy announcements will be printed on the form prescribed by the personnel division, department of administration and will contain at least the following minimum information. Additional information may be included at the agency's discretion.

(a) Job title. The working title should be used in addition to the classification title when it is more descriptive.

(b) Location of the job. Specify the geographic location as well as the agency work unit.

(c) Position number(s).

(d) A description of the essential duties obtained from a current job analysis, and not copied directly from a class specification.

(e) A description of the qualifications required to perform the essential duties of the job obtained from a current job analysis and not copied directly from the class specification.

(f) Requirements such as licenses, shift work, travel, unusual working conditions, etc.

(g) The selection procedures to be used to evaluate qualifications. Such procedures may include, but are not limited to, an evaluation of the application and application supplement, work samples, performance exams, written exams, structured interviews, reference checks, and the probationary period.

(h) Entrance salary and grade level as provided in the pay plan rules, policy 3-0505 (copies available from the department of administration, personnel division).

(i) Closing date. The closing date shall be that date by which application materials must be received at any job service office participating in recruitment or at the agency

for those agencies which accept materials directly from applicants, as well as from job service.

(j) The place(s) designated for receipt of applications.

(k) A list of all required application materials and forms.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE VI INTERNAL RECRUITMENT (1) An agency may use internal recruitment.

(2) Temporary employees may not be considered in the applicant pool when internal recruitment is conducted.

(3) Internal vacancy announcements shall be posted according to agency policy. It is recommended that internal vacancy announcements contain information similar to that required in rule V.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE VII NONDISCRIMINATION (1) As provided in 49-3-201, MCA, each agency shall promulgate written directives to ensure that the recruitment and selection process is free from bias.

(2) Each agency shall maintain records or other information which will disclose the impact its recruitment, tests, or other selection procedures have upon employment opportunities of persons by race, sex, ethnic group, and age. Records shall be maintained for a period of time consistent with the employee record keeping policy ARM 2.21.6601, et. seq., (also found at policy 3-0110, Montana Operations Manual, Volume III.)

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE VIII JOB ANALYSIS (1) Each selection procedure must be based on a job analysis.

(2) The minimum requirement for a job analysis is a current position description.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE IX DESIGN OF SELECTION PROCEDURES (1) An agency may use any selection procedure or combination of procedures which meets its needs so long as any procedure used is based on information obtained from the job analysis.

(2) Selection procedures shall be developed by persons familiar with the position.

(3) Selection procedures shall be developed in advance of any review of applicant qualifications.

(4) Selection procedures shall have written criteria against which applicant performance can be evaluated.

(5) Provision shall be made for periodic update and review of selection procedures.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE X ADMINISTRATION OF SELECTION PROCEDURES (1) All applicants remaining at each step in the selection process shall be treated consistently with regard to:

(a) content of the procedure applied;

(b) sequence of procedures;

(c) persons involved in administering the process;

(d) the maximum amount of time allotted wherever timed procedures are used.

(2) Consistent treatment does not mean identical treatment.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE XI EVALUATION OF QUALIFICATIONS (1) Persons involved in evaluating applicant's qualifications shall be individuals who are knowledgeable about the position being filled or other individuals who have been provided with specific selection criteria based on a job analysis prepared by individuals who are knowledgeable about the position being filled. Examples may include, the incumbent, the incumbent's supervisors, persons in the same class who have similar or identical duties, and the personnel officer.

(2) Whenever an agency requests the job service to screen applicants, the agency must provide the job service with information to make the judgments required.

(3) Evaluation techniques should permit an applicant to be compared against the requirements for the job as well as relative to the applicant pool.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE XII INTENTIONAL MISREPRESENTATION (1) Where an applicant has made intentional misrepresentation during the application process, the applicant may be excluded from further employment consideration with the State of Montana or may be removed from appointment.

(2) Applicants shall be notified that willful misstatements of qualification may exclude them from further consideration with the State of Montana or removal from appointment.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE XIII NOTIFICATION OF APPLICANTS (1) As provided in ARM 2.21.1428, an applicant claiming an employment preference shall be given a written notice of the hiring decision. The agency shall maintain a record of which applicants were notified and the date the notification was sent in accordance with ARM 2.21.1428.

(Auth. 39-30-106, MCA; Imp. 39-30-206 and 39-30-207, MCA)

RULE XIV DOCUMENTATION (1) The following materials shall be included among the documentation for each permanent or seasonal selection:

(a) the position description;

(b) a copy of the vacancy or posting announcement;

(c) a copy of newspaper or journal advertising, if any, and a list of all recruitment sources used;

(d) all applications, application supplement, and any other materials received or reviewed in the selection process;

(e) a copy of all selection procedures and any criteria used to evaluate performance.

(f) any written evaluations;

(g) the names and titles of any persons who participated in the design or administration of the selection procedures;

(h) records or other information regarding the impact of the procedures on the employment opportunities of protected classes.

(i) correspondence with applicants.

(2) The items mentioned in subsection (1)(a) through (i) must be retained for 2 years.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE XV ACCESS TO SELECTION MATERIAL (1) The amount of detail which an agency chooses to release regarding rating questions and criteria will depend on agency policy, anticipated need to reuse the materials, and resources available to develop new materials.

(2) Each applicant shall, upon request, be given an explanation of the specific job-related reasons that the applicant was not hired for the position.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE XVI CONFIDENTIALITY (1) All application and selection materials shall be confidential.

(2) An agency shall not release personal information relating to any applicant to any person not involved in administering the hiring process. Materials relating to selection decisions may be released by the agency to other parties upon the receipt of a properly executed administrative or judicial order.

(3) An agency may release general information about the successful applicant's qualifications upon request.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

RULE XVII CLOSING (1) Provisions of this policy not required by statute shall be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

3. The rules are proposed to be adopted in response to request from the Personnel Policy Network, a group made up of executive branch personnel officers and from persons with the responsibility to recruit and select state employees, to establish minimum requirements for fair and consistent treatment of applicants and employees in recruitment, selection, and promotion in accordance with applicable state and federal law and regulation.

4. The rules are proposed to be adopted to assist state agencies in the development of uniform recruitment and selection practices. The process of hiring and promoting employees has become increasingly complex as evidenced by the adoption of the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607 and the passage of the Veteran's and Handicapped Person's Preference Act, while at the same time, applicants have become more litigious.

Additionally, the Governmental Code of Fair Practices, 49-3-201, MCA, requires that "State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin" and that all state governments shall "promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local governments." The Department of Administration believes these rules will assist in its designated function to "insure that the entire examination process, including appraisal of qualifications is free from bias."

The Department of Administration is also required by 2-18-102, MCA to "foster and develop programs for the recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions..." These rules will help insure uniformity and consistency of practice among state agencies.

Since the Merit System Council's authority to write rules has been found unconstitutional and the Merit System Rules have been repealed, these rules will provide a part of the system of personnel administration in compliance with the Standards for a Merit System of Personnel Administration, 5 CFR 960.601, under which the Chief Executive has certified that the State of Montana operates.

5. Interested parties may submit their data, view or arguments concerning the proposed adoption of rules in writing to:

Dennis M. Taylor, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than October 12, 1984.

6. Mark Cress, Chief, Employee Relations Bureau, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to adopt these rules is based on 2-18-102, MCA, and the rules implement 2-18-102 and 49-3-201, MCA.

Morris Brusett

Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State, September 4, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHARMACY

In the matter of the proposed amendments of 8.40.404 concerning the fee schedule, and 8.40.1215 concerning additions, deletions, & rescheduling of dangerous drugs	))))	NOTICE OF PROPOSED AMENDMENTS OF 8.40.404 FEE SCHEDULE AND 8.40.1215 ADDITIONS, DELETIONS, & RESCHEDULING OF DANGEROUS DRUGS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 13, 1984, the Board of Pharmacy proposes to amend the above-stated rules.

2. The amendment of 8.40.404 will read as follows: (new matter underlined, deleted matter interlined)

"8.40.404 FEE SCHEDULE
(1) ...
(10) Copies of documents ~~10.00~~ 15.00
(11) ...
(12) ~~Application for e~~Examination fee ~~75.00~~ 100.00"
Auth: 37-1-134, 37-7-201, MCA Imp: 37-1-134, 37-7-302, MCA

3. The amendment is proposed to increase fees for copies of documents and examination fees commensurate with the costs. Additional fee for copies is to cover the cost of supplemental pages of statute and rule book. The increase in exam fees is due to the increase in board cost of the national exams.

4. The proposed amendment of 8.40.1215 will add a new subsection (5)(a)(i), (ii), (b) (i), and will renumber (a) as (c) and will read as follows: (new matter underlined, deleted matter interlined)

"8.40.1215 ADDITIONS, DELETIONS, & RESCHEDULING OF DANGEROUS DRUGS (1) ...
(5) ...
(a) Schedule I
(i) alfentanil under section 50-32-222 (1), MCA, opiates
(ii) sufentanil listed in section 50-32-222 (1) (rr), MCA, is rescheduled to Schedule II as listed below.
(b) Schedule II
(i) sufentanil under section 50-32-224 (2), opiates
~~(a)~~ (c) Schedule V.
(i) ...
Auth: 37-32-103, MCA Imp: 50-32-103, 222, 224, MCA

5. Alfentanil is added to Schedule I in the list of dangerous drugs. It is judged as having a high potential for abuse, and the drug has no currently accepted medical use in

treatment in the United States. Alfentanil was added to Schedule I by the U.S. Department of Justice, Drug Enforcement Administration.

Sufentanil is rescheduled from Schedule I to Schedule II. It has currently accepted medical use in treatment in the United States, but is judged to have a high potential for abuse and thus is placed in Schedule II. Sufentanil was rescheduled to Schedule II by the U.S. Department of Justice, Drug Enforcement Administration.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Pharmacy, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 11, 1984.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Pharmacy, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 11, 1984.

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

BOARD OF PHARMACY
D. WAYNE BOLLINGER, R.Ph.,
PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the proposed amendments of 8.56.402 concerning applications, 8.56.408 concerning duplicate or lost licenses, 8.56.410 concerning complaint process; proposed transfer to a new sub-chapter and amendment of 8.56.412 concerning temporary permits; proposed repeal of rules 8.56.401 concerning definitions, 8.56.405 concerning permit examinations, 8.56.406 concerning permits; and proposed adoption of new rules under a new sub-chapter for permits - rules concerning definition of a regional hardship, permit application under section 37-14-306 (1), MCA, permit restrictions, interpretive rules setting requirements for approval of physicians specializing in radiology, and verification of evidence that the temporary permit applicant can perform x-ray examinations without endangering the public health and safety and adoption of a new sub-chapter for unethical conduct	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF 8.56.402 APPLICATIONS, 8.56.408 DUPLICATE OR LOST LICENSES, 8.56.410 COMPLAINT PROCESS; PROPOSED TRANSFER AND AMENDMENT OF 8.56.412 TEMPORARY PERMITS; PROPOSED REPEAL OF 8.56.401 DEFINITIONS, 8.56.405 PERMIT EXAMINATIONS, 8.56.406 PERMITS, AND PROPOSED ADOPTION OF NEW RULES UNDER A NEW SUB-CHAPTER FOR PERMITS, RULES CONCERNING A DEFINITION OF REGIONAL HARDSHIP, PERMIT APPLICATIONS UNDER SECTION 37-14-306 (1), MCA, PERMIT RESTRICTIONS, INTERPRETIVE RULES SETTING REQUIREMENTS FOR APPROVAL OF PHYSICIANS SPECIALIZING IN RADIOLOGY, AND VERIFICATION OF EVIDENCE THAT THE TEMPORARY PERMIT APPLICANT CAN PERFORM X-RAY EXAMINATIONS WITHOUT ENDANGERING THE PUBLIC HEALTH AND SAFETY; AND ADOPTION OF A NEW SUB-CHAPTER FOR UNETHICAL CONDUCT

TO: All Interested Persons.

1. On Thursday, October 4, 1984, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce Building, 1430 9th Avenue, Helena, Montana to consider the proposed amendment, transfer, repeal, and adoption of the above-stated rules.

2. The proposed amendment of rule 8.56.402 will read as follows: (new matter underlined, deleted matter interlined)

"8.56.402 APPLICATIONS (1) All applications for licensure or permit shall be made on printed forms provided by the board office. Completed applications shall be examined for compliance with the board rules.

~~(a)~~ The information requirements which appear on the application form generally includes, applicant's educational

history, work experience, and verification of license or permits in other states.

~~(b) The board may, in its discretion, require statements of good moral character and references from all of the applicant's places of employment.~~

(2) ~~The board further requires that a~~All applications for a license shall be submitted to the board office with copies of the following documents:

(a) copy of board approved 24-month x-ray course certificate;

(b) copy of current A.R.R.T. wallet card;

(c) three names and addresses of persons who can attest to the applicant's good moral character;

(d) original certificate fee; and

(e) renewal license fee (based on biennial renewals)

~~(3) The board further requires that all applications for a permit shall be submitted to the board office with copies of the following documents:~~

~~(a) copy of board approved 24 hours x-ray course certificate;~~

~~(b) three names and addresses of persons who can attest to the applicant's good moral character;~~

~~(c) letter from a physician or administrator stating that the applicant is employed, and has at least 6 months practical experience in the x-ray profession;~~

~~(d) examination fee; and~~

~~(e) original permit fee.~~

~~(4)~~ (3) All applications and related data will be kept in permanent files and maintained by the board office.

~~(5)~~ (4) At any time within one year after date of notice of action by the board, a written request may be made for reconsideration of an application. After one year has expired from the date the application is received by the board, a new application must be submitted."

Auth: 37-1-131 (1), 37-14-202, MCA Imp: 37-14-302, MCA

3. The board is proposing the amendment to delete (1)(b) as it is in part a duplication of subsection (2)(c). The deletion of subsection (3) is in compliance with the attorney general's ruling, (40 Op. Atty. Gen. 50), dated May 5, 1984, declaring that portion of the rule invalid.

4. The proposed amendment of 8.56.408 will read as follows: (new matter underlined, deleted matter interlined)

"8.56.408 DUPLICATE OF LOST LICENSES (1) A registrant requesting a replacement certificate of registration, shall file with his request a sworn affidavit stating the reason for his request. A fee ~~of $25.00~~ shall be charged for a replacement certificate.

(2) A ~~fee of $35.00~~ shall be charged for duplicate or lost license or permit. Such requests shall be in written form stating the reason for issuance of a duplicate license or permit."

Auth: 37-14-202, MCA Imp: 37-14-309, MCA

5. The amendment is proposed to delete the reference to the fee amount, as it is covered in the fee schedule. Currently when the fee is changed, it requires a change to this rule as well. The amendment will eliminate the necessity of changing two rules whenever the fee is changed.

6. The proposed amendment of 8.56.410 will read as follows: (new matter underlined, deleted matter interlined)

"8.56.410 COMPLAINT PROCESS (1) Anyone wishing to ~~enter a complaint against a radiologic technologist~~ licensee or permit holder ~~shall~~ may do so to the board on forms provided by the department. The complainant may also provide a copy of the complaint to the radiologic technologist in question.

(2) ..."

Auth: 37-14-202, MCA IMP: 37-14-321, MCA

7. The amendment is proposed to clarify that the complaint process applies to both licensees (radiologic technologists) and permit holders.

8. The proposed transfer of rule 8.56.412 will transfer the rule from Sub-Chapter 4 to Sub-Chapter 6, a new sub-chapter containing permit rules. The rule is also being amended as follows: (new matter underlined, deleted matter interlined)

"8.56.412 TEMPORARY PERMITS (1) Any person applying for a temporary permit must file with the board office an application, which shall include:

(a) a letter from the administrator stating the regional hardship or emergency condition which exists in the area;

(b) a letter from the applicant stating the total number of x-rays which the department has taken in the past month and the total number of x-rays which the applicant assisted on;

~~(c) a letter from the applicant stating why he or she at this time is not able to take the examination and be issued a permit; and~~

~~(d)~~ a non-refundable temporary permit fee.

(2) The entire board shall review the application and information submitted before voting on the issuance of the temporary permit.

(3) If the board should deny the issuance of the temporary permit, the board shall write to the administrator stating the reason why the request was rejected."

Auth: 37-14-202, MCA Imp: 37-14-306 (3), MCA

9. The amendment is proposed to delete the reference to the examination per the attorney general's opinion. The transfer will place all permit rules under one sub-chapter making it easier for the user to locate information relative to permits.

10. Rule 8.56.401 is proposed to be deleted in its entirety. Full text of the rule is located at page 8-1561, Administrative Rules of Montana. Auth: 37-14-202; Imp: 37-14-202

11. The rule is proposed to be repealed in that subsection (1) exceeds the statutory definition of a radiologic technologist, subsection (2) relates to the permit rules, which the attorney general declared invalid.

12. Rule 8.56.403 is proposed to be repealed in its entirety. Full text of the rule is located at page 8-1562, Administrative Rules of Montana. Auth: 37-14-202, Imp: 37-14-304

13. The rule is redundant as it is covered by the statute, section 37-14-304, MCA.

14. Rule 8.56.405 and 8.56.406 are proposed to be repealed in their entirety. Full text of the two rules is located at page 8-1562 and 8-1563, Administrative Rules of Montana. Auth: 37-14-202, MCA.

15. These two rules are two of the permit rules declared invalid by the attorney general's opinion dated May 3, 1984.

16. The new rules under sub-chapter 6 will read as follows:

I. "DEFINITIONS (1) Regional hardship is defined as a case when there is no other facility in the area manned by a qualified radiologic technologist, radiologist, or permit holder."

Auth: 37-14-202, MCA Imp: 37-14-306 (3), MCA

II. "PERMIT APPLICATIONS AS PER SECTION 37-14-306 (1), MCA

(1) Applications for a permit under section 37-14-306 (1), MCA, must be submitted to the board office together with copies of the following documents:

(a) A statement from a board approved physician, specializing in radiology, that the applicant is capable of performing high-quality x-ray examinations without endangering the public health and safety. The statement must also specify those areas in which the applicant can safely perform x-ray examinations.

(b) original permit fee."

Auth: 37-1-131 (1), 37-14-202, MCA Imp: 37-14-306 (1), MCA

III. "REQUIREMENTS FOR APPROVAL OF PHYSICIAN SPECIALIZING IN RADIOLOGY (1) The physician specializing in radiology to be approved by the board under section 37-14-306 (1), MCA, must:

(a) be licensed to practice as a physician in the state of Montana and specialize in radiology;

(b) have no legal or disciplinary actions against him which relate to the propriety of the physician's profession or his fitness to practice the profession;

(c) submit an outline of his criteria for determining the permit applicant's knowledge and experience in the following areas: radiation protection and radiobiology, x-ray physics, anatomy, physiology, positioning, radiographic technique, darkroom procedures, and film critique."

Auth: 37-14-202, MCA Imp: 37-14-306 (1), MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

IV. "VERIFICATION OF ADEQUATE EVIDENCE THAT THE TEMPORARY PERMIT APPLICANT CAN PERFORM X-RAY EXAMINATIONS WITHOUT ENDANGERING THE PUBLIC (1) Adequate evidence that the person is capable of performing high quality x-ray examinations without danger to the public health and safety will be evidence of knowledge in the following areas: radiation protection and radiobiology, x-ray physics, anatomy, physiology, positioning, radiographic technique, darkroom procedures, and film critique. Verification of adequate knowledge will be successful answers to questions relating to those areas through an oral or written examination conducted by the board."

Auth: 37-14-202, MCA Imp: 37-14-306 (3), MCA

This rule is advisory only, but may be a correct interpretation of the law, Ch. 637, L. 1983.

V. "PERMIT RESTRICTIONS (1) A permit holder shall be excluded from all portions of special procedures where injectable contrast media is used."

Auth 37-14-202, MCA Imp: 37-14-301 (3), MCA

17. Rule I. is proposed to define regional hardship. Currently there is confusion as to what consists of a regional hardship. The definition should eliminate that confusion.

Rule II. is proposed to clarify what is required for a permit under section 37-14-306 (1), MCA in view of the recent attorney general's opinion.

Rule III. is an interpretive rule to outline what the board expects to use as criteria for determining how to approve those physicians specializing in radiology who will be verifying that individuals can perform high quality x-rays without endangering the public health and safety.

Rule IV. is an interpretive rule to outline the guidelines the board expects to use in determining whether adequate evidence exists that an individual applying under section 37-14-306 (3), MCA can perform high-quality x-rays without endangering the public health and safety.

Rule V. prohibits permit holders from all portions of special procedures where injectable contrast media is used.

The danger involved is such that the board feels the procedures should be limited to fully educated radiologic technologists.

18. The new sub-chapter 8 will contain rules concerning unethical conduct. At this time only one rule is proposed, which will read as follows:

VI. UNETHICAL CONDUCT For the purposes of implementing section 37-14-321, MCA, "unethical conduct" is defined by this board to include but not be limited to, the following:

(1) an act or acts committed by a licensee or permit holder which physically or mentally endangers any persons receiving the services of said licensee or permit holder.

(2) discrimination against a patient on the basis of age, sex, race, creed, social or economic status, handicap, personal attributes or the nature of health problems;

(3) unnecessary radiation exposure to patient and public;

(4) release of confidential patient information without permission;

(5) lack of respect for patient dignity and/or privacy;

(6) sexual harassment;

(7) alteration of patient records;

(8) withholding information relative to radiologic diagnosis or patient management from any individual authorized to have access to such information;

(9) performing radiologic procedures outside the scope of the license or permit;

(10) being impaired by the influence of alcohol or drugs while performing radiologic duties authorized by the license or permit;

(11) failing to report to the board any unethical conduct or illegal activities he or she may be aware of in the field of radiologic technology."

Auth: 37-14-202, MCA Imp: 37-14-321 (4), MCA

19. The board is proposing the rule to define unethical conduct per section 37-14-321 (4), MCA.

20. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Radiologic Technologists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than October 11, 1984.

21. Geoffrey L. Brazier, Attorney, Helena, Montana will preside over and conduct the hearing.

BOARD OF RADIOLOGIC TECHNOLOGISTS
LON ROMINGER, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 4, 1984.

BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rules 36.7.101 through 36.7.803 and the adoption of rules pertaining to administration of the Montana Major Facility Siting Act, long-range plans, waivers, notice of intent to file an application,application requirements,decision standards, centerlines, amendments, and monitoring.	)	NOTICE OF PUBLIC HEARINGS ON THE PROPOSED REPEAL OF RULES 36.7.101 THROUGH 36.7.803 AND THE ADOPTION OF RULES PERTAINING TO ADMINISTRATION OF THE MONTANA MAJOR FACILITY SITING ACT, LONG-RANGE PLANS, WAIVERS, NOTICE OF INTENT TO FILE AN APPLICATION, APPLICATION REQUIREMENTS, DECISION STANDARDS, CENTERLINES, AMENDMENTS, AND MONITORING.

TO: All Interested Persons

1. On October 9 and 11, 1984, public hearings will be held to consider the repeal of Rules 36.7.101 through 36.7.803 and the adoption of rules pertaining to administration of the Montana Major Facility Siting Act, long-range plans, waivers, notice of intent to file an application, application requirements, decision standards, centerlines, amendments, and monitoring. The public hearings will be held as follows:

A. October 9, 1984, at 2:00 p.m. and 7:00 p.m., in the Auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana.

B. October 11, 1984, at 2:00 p.m. and 7:00 p.m., in Library 148, Eastern Montana College, 1500 North 30th, Billings, Montana.

2. The proposed rules will replace 36.7.101 through 36.7.803, Administrative Rules of Montana.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) "Act" means the Montana Major Facility Siting Act, Title 75, Chapter 20, MCA.

(2) "Alternative technological component" means any alternate design for a process area or component of an energy generation or conversion facility, including, but not limited to, cooling systems, fuel handling or transport systems, pollution control systems, coal combustion, and heat transfer systems.

(3) "Alternative transmission technology" means any alternate design for a transmission facility including, but not limited to, underground construction, alternative voltage or conductor sizes, direct current transmission, and alternative circuit design or deployment.

(4) "Applicant" means a person filing an application with the department and any other entities that will jointly own, operate, market, and/or use the output or services of the facility applied for in the application.

(5) "Application" means an application to the department for a certificate of environmental compatibility and public need under 75-20-211, MCA.

(6) "Assistance" means public support or subsidies including, but not limited to, tax credits, accelerated depreciation, loan guarantees, low interest loans, price supports and price guarantees.

(7) "Associated facilities" is defined in 75-20-104(3), MCA.

(8) "Area of concern" means a geographic area or location specified in Rule LXVIII and Rule LXXXV where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems, but where formal public recognition or designation has not been granted.

(9) "Baseline data" means detailed information which describes the existing natural, physical, cultural, social, and economic environment.

(10) "Baseline study" means a detailed analysis of alternative sites or alternative routes and impact zones for purposes of impact assessment and comparison and selection of a preferred site or preferred route.

(11) "Board" means the board of natural resources and conservation.

(12) "Board of health" means the board of health and environmental sciences.

(13) "Block load" means the load of an energy consumer whose individual demand is 5 percent or more of the applicant's peak demand on a linear facility or the load of any other customer that an applicant serves under a specific contractual agreement rather than under a general rate category.

(14) "Candidate siting area" means a geographic area selected pursuant to Rule LXXIII that is located within an economically feasible siting area and is suitable for locating an energy generation or conversion facility.

(15) "Centerline" means:

(a) "Alternative centerline" means a nonsurveyed possible location for a linear facility which is determined following the granting of a certificate for the approved route;

(b) "Approved centerline" means the precise location for a linear facility that is approved by the board.

(16) "Centerline evaluation" means an analysis to determine the location of the centerline of a linear facility within the approved route.

(17) "Certificate holder" means an applicant that has been granted a certificate by the board.

(18) "Competitive utility" means a utility that has neither a legally protected service area nor a utility mandate to serve all demands for the energy form to be produced by a proposed facility.

(19) "Corridor" means:

(a) "Approved corridor" means an area of land of a width specified by the board that is generally suitable for siting a linear associated facility.

(b) "Study corridor" means a geographical area of variable width within the study area that is potentially suitable for siting a linear facility as determined by the reconnaissance and that contains one or more study routes.

(20) "Curtailable load" means an energy load that may be interrupted by a utility under contractual arrangement with a customer.

(21) "Decommission" means to permanently remove a facility from service, including any physical changes such as dismantling the facility at the end of its useful life and reclaiming the site or route.

(22) "Demand" means the quantity of energy that customers would be willing to purchase in a specific time period under given assumptions about the price of the energy and other economic factors.

(23) "Department" means the department of natural resources and conservation.

(24) "Department of health" means the department of health and environmental sciences.

(25) "Direct unit costs" means the annual costs of operating a facility including amortized capital costs, taxes, operating, maintenance, administrative, fuel and other variable costs of production, divided by the annual output of the facility. Direct unit costs are not adjusted for assistance.

(26) "Economically feasible siting area" means a geographic area where a facility could be located with a resulting levelized delivered cost of energy that is no more than thirty (30) percent higher than the lowest levelized delivered cost location for the facility.

(27) "End-use" means the ultimate use of energy including, but not limited to, such categories as space heating, water heating, electric motors, and process heat.

(28) "Energy conservation" means reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency in energy use, production or distribution.

(29) "Energy demand" means the demand by customers for kilowatt hours of electricity, thousand cubic feet of gas or

other quantities of energy, in a specific time period.

(30) "Energy resource" means a resource that can be converted into energy for ultimate end-use, either directly or by intermediate conversion into electricity, synthetic gas or synthetic liquid hydrocarbons. Energy resources include, but are not limited to, coal, natural gas, liquid hydrocarbons, nuclear, geothermal resources, wind, solar, biomass and falling water.

(31) "Energy technology" means a technology for converting an energy resource into the energy form to be produced by a proposed facility.

(32) "Exclusion area" means a geographic area specified in Rule LXVI and Rule LXXXIII legally designated for its environmental values and having legally defined boundaries wherein facility construction or operation is prohibited, excepting those portions of the area where permission to site a facility has been obtained from the legislative or administrative unit of government with direct authority over the area.

(33) "Facility" is defined in 75-20-104(10), MCA.

(34) "Impact zone" means the geographic area associated with a facility or associated facilities that would likely be affected by its construction, operation, maintenance or decommissioning at the preferred and reasonable alternative locations.

(35) "Inputs" means the basic resources, including materials, equipment, and labor required to construct and operate a facility.

(36) "Interruptible load" means a capacity load that may be interrupted by a utility under contractual arrangement with a customer.

(37) "Inventory" means the collection and mapping of environmental information within candidate siting areas or study corridors for the purpose of selecting alternative sites or alternative routes.

(38) "Levelized cost" means the present value of the real cost stream over the life of a project, amortized over the project life.

(39) "Levelized unit cost" means the levelized cost divided by the annual output of the project.

(40) "Linear facility" means an electric transmission line or a gas or liquid pipeline covered by the act.

(41) "Load center" means any substation or geographic concentration of substations within a 100 square mile area containing at least 5 percent of an applicant's load.

(42) "Long-range plan" means a person's plan for the construction and operation of facilities in the ensuing ten years, submitted to the department under 75-20-501, MCA.

(43) "Market area" means a geographic area where a significant portion of the output of a facility proposed by a competitive utility or nonutility would be sold.

(44) "Mitigation" means avoiding an impact by not taking a certain action or parts of an action, or minimizing impacts by limiting the degree or magnitude of an action and its implementation, or rectifying an impact by repairing, rehabilitating, or restoring the affected environment, or reducing or eliminating an impact over time by preservation and maintenance operations during the life of an action, or compensating for an impact by replacing or providing substitute resources or environments.

(45) "Monitoring data" means environmental information that is collected to measure changes resulting from construction, operation, maintenance or decommissioning of a facility approved by the board or that is collected to determine compliance with the conditions of the certificate issued by the board.

(46) "No action alternative" means the alternative of not building a proposed facility or any other facility to meet the need or solve the problem a proposed facility would address.

(47) "Nonutility facility" means a facility whose output, except for incidental sales, will be used to produce goods or services other than energy prior to first sale.

(48) "Nonutility" means an applicant for a nonutility facility.

(49) "Outputs" means the principal product of a facility and the by-products and wastes produced by the facility.

(50) "Paralleling" means locating a proposed linear facility generally within the corridor established by an existing linear utility, transportation or communication facility.

(51) "Peak demand" means the maximum instantaneous demand by customers for kilowatts of electrical power, or thousand cubic feet per hour of gas, or other rates of delivery of energy, under given assumptions about price and other economic variables.

(52) "Person" is defined by 75-20-104(11), MCA.

(53) "Reconnaissance" means a preliminary assessment of the study area based on published or readily available data used to select candidate siting areas or study corridors.

(54) "Road" means a way or course that is constructed or formed by substantial recontouring of, clearing, or other action designed to be permanent or intended to permit passage by most four-wheeled vehicles for a significant period of time.

(55) "Route" means a location for a linear facility as specified by a line one millimeter or less in width drawn on a 1:24,000 topographic map which is a strip of land approximately 80 feet wide.

(a) "Alternative route" means one of the alternative locations potentially suitable for the construction of a linear facility that the applicant has selected for baseline study.

(b) "Approved route" means a linear strip of land of a width specified by the board that contains one or more

alternative centerlines for a linear facility.

(c) "Preferred route" means the applicant's preferred location for a linear facility and the route for which a certificate is sought.

(d) "Study route" means a preliminary location for a linear facility considered by the applicant within a study corridor.

(56) "Sector of demand" means classes of customers served by a service area utility. Before January 1, 1988, the classes of customers are defined as the categories reported by a regulated utility to the state public service commission, the federal energy regulatory commission, or the rural electrification administration. After January 1, 1988, the classes of customers are residential, commercial, industrial, and agricultural; the latter three sectors are defined by the U.S. office of management and budget standard industrial classification codes. The commercial sector consists of groups 50 through 97; the industrial sector consists of groups 10 through 49; and the agricultural sector consists of groups 01 through 09. Rural residences not metered separately from agricultural loads may be included either on the residential or agricultural sector depending on the predominant usage of the energy form in question.

(57) "Sensitive area" means a geographic area or location specified in Rule LXVII and Rule LXXXIV where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems and where these values or constraints have received formal public recognition or designation or are in the process of being designated at the time the application is filed.

(58) "Service area utility" means a utility with a legally protected service area or body of customers for whom it has a conventional utility mandate to serve all loads for the energy form to be produced by a proposed facility. This includes, but is not limited to, investor-owned utilities, rural electric cooperatives, municipal electric utilities and public utility districts, and wholesale electricity suppliers with requirements contracts, participation agreements, or similar arrangements with these groups.

(59) "Significant adverse impact" means a detrimental change in the social, economic, cultural, physical or natural environment as a result of the construction, operation, maintenance, or decommissioning of a facility, as determined by the board on the basis of the impact's severity, duration, geographic extent, or frequency of occurrence or the uniqueness of the affected environmental value or its importance to the state and/or to society.

(60) "Site" means the parcel of land the applicant would acquire to construct the buildings, components, and nonlinear

associated facilities comprising an energy generation or conversion facility.

(a) "Alternative site" means one of the alternate site locations potentially suitable for the construction of an energy generation or conversion facility that the applicant has selected for baseline study.

(b) "Preferred site" means the applicant's preferred location for an energy generation or conversion facility and the site for which a certificate is sought.

(61) "Siting study" means an analysis conducted by the applicant to identify a preferred site or preferred route.

(62) "Study area" means the geographical region containing the locations where a proposed facility reasonably could be sited, considering the applicant's service area, the intended market area(s) of the product the facility produces or transports, and/or the electrical system problems that would be solved by the facility.

(63) "Utility facility" means a facility whose output will be marketed as energy.

AUTH: 75-20-105, MCA IMP: 75-20-104, and 75-20-105(2), MCA

RULE II PUBLIC RECORD--CONFIDENTIALITY Any records, materials, or other information furnished pursuant to the act or these rules are a matter of public record and are open to public inspection. Any records, materials, or information unique to an applicant which would, if disclosed, reveal methods or processes entitled to protection as trade secrets will be maintained as confidential if so required by a court of competent jurisdiction. The burden for obtaining such relief is upon the applicant.

AUTH: 75-20-105, MCA IMP: 75-20-105, MCA and Mont. Const. 1972, Art. II, Sec. 9

RULE III FORMAT (1) Documents required by the act and explained in these rules must be typed, printed, or otherwise legibly reproduced on 8 1/2" x 11" paper, or as otherwise approved in writing by the department.

(2) The text and attachments shall be consistently and consecutively numbered.

(3) Maps, drawings, charts, photographs or other illustrations may accompany a document as separate attachments that are sized and scaled appropriately to the material presented. Attachments must be identified as "attachment." An attachment comprising more than one sheet must be numbered "sheet _____ of _____."

(4) Documents must state the name, title, telephone

number, and post office address of the person to whom communications regarding the document are to be made.

AUTH: 75-20-105, MCA IMP: 75-20-105, MCA

RULE IV GENERAL REQUIREMENTS (1) A person contemplating construction of a facility in Montana in the ensuing ten years shall submit a long-range plan to the department on or before April 1 of each year, except that a rural electric cooperative may submit the information specified in 75-20-501(4), MCA in lieu of the long-range plan.

(2) A long-range plan must cover the ten year period beginning April 1 of the year in which the long-range plan is submitted.

(3) A person submitting a long-range plan shall submit 5 copies of the long-range plan at the time of filing to the department, capitol station, Helena, Montana 59620, and shall file the additional copies required for public notice pursuant to 75-20-501(3), MCA.

(4) To the extent that material required by Rule VII has been previously submitted in earlier long-range plans and is still accurate, it may be incorporated by reference.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE V IDENTIFICATION OF FACILITIES AND EXPECTED APPLICATION DATES In addition to the requirements of 75-20-501, MCA, the long-range plan must include the estimated date that construction will begin and be completed for each anticipated facility, and the approximate filing date for each anticipated application.

(1) In accordance with the act, sufficient time must be allowed for department study and board hearings between the application filing date and the date construction of the facility is expected to begin.

(2) For transmission facilities the long-range plan shall identify tentative end points and intermediate substations.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE VI SERVICE AREA UTILITIES, FORECASTED ENERGY DEMAND AND SUPPLY For a service area utility with a service area in Montana or a service area utility that is contemplating construction of a facility as defined by 75-20-104(10)(a), MCA, a long-range plan must include forecasted annual energy demand data and projected energy resources for each of the ensuing 20 years beginning with the present year for each state in its service area. Demand must be shown for each sector of demand as defined in Rule I. A long-range plan must include the following:

(1) A description of the methods and the assumptions used to make the forecasts, and the sensitivity of the forecasts to changes in the assumptions;

(2) A description of the generation and conversion resources including the general location, size and type purchases of energy, conservation and renewable energy use, or other methods by which the utility plans to balance loads and resources;

(3) Estimated costs of the planned facilities and a discussion of their accuracy; and

(4) An explanation of the planning methods and criteria that will be used to decide when new generation and conservation resources are needed, what types of resources should be built or acquired, and their size and location.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE VII SERVICE AREA UTILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS (1) A long-range plan for a service area utility must include either a copy of any and all contracts with regional power marketing agencies, and each pooling, interconnection, exchange, purchase and sale agreement to which the utility is a party, or the following information for each such agreement:

(a) a brief description of the obligations of and the benefits to the utility under the agreement;

(b) a list of all parties to the agreement;

(c) the time period during which the agreement is in effect;

(d) the amount of the relevant energy form to be exported and imported, and the rate and timing of delivery under the agreement; and

(e) the financial agreements.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE VIII SERVICE AREA UTILITIES, NEGOTIATIONS OVER RESOURCE ACQUISITION OR SALE, POOLING, INTERCONNECTION, TRANSMISSION, EXCHANGE, PURCHASE OR SALE OF ENERGY For a service area utility a long-range plan must include a description of all current and planned negotiations with respect to acquisition or sale of resources, pooling, interconnection, transmission, exchange, purchase or sale of energy. The description must include a list of the parties to any negotiations and the history and current status of the negotiations.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE IX PERSONS OTHER THAN SERVICE AREA UTILITIES, PROJECTED DEMAND A long-range plan from persons other than service area utilities contemplating construction of a facility as defined in 75-20-104(10), MCA, must include:

(1) A discussion of the projected marketability of the energy or product to be produced or transported, including:

(a) projected demand and estimated market price;

(b) potential markets;

(c) estimated production; and

(d) a description of the assumptions used to make the demand forcasts, including the effects of changes in the costs of alternative forms of energy and conservation, and other changes that may effect the demand for the output of the proposed facility.

(2) For energy generation and conversion facilities, a description of the process type to be used in the proposed facility.

(3) For energy generation and conversion facilities, a description of plans for transporting the output of the facility to potential markets.

AUTH: 75-20-105, MCA IMP: 75-20-501, MCA

RULE X WAIVER OF PROVISIONS OF CERTIFICATION PROCEEDINGS An applicant may request a waiver of any portions of the act, as provided for in 75-20-304, MCA.

AUTH: 75-20-105, MCA IMP: 75-20-304, MCA

RULE XI NOTIFICATION OF REQUEST FOR WAIVER The applicant shall submit a written notice of request for a waiver to the board, by certified mail or personal service. The notice must be accompanied by an affidavit of service showing that copies of the notice have been served on the department and the department of health and the units of local government and agencies listed in 75-20-211(3), MCA, and that public notice of the request for waiver has been given. Public notice shall be given to persons residing within the area in which any portion of the facility would be located if the waiver is granted. Notice shall be given by publication of a display ad containing a summary description of the facility and a summary of the contents of the request for waiver, once in each of three consecutive weeks in newspapers of general circulation in that area.

AUTH: 75-20-105, MCA IMP: 75-20-304, MCA

RULE XII CONTENTS OF NOTICE OF REQUEST FOR WAIVER PURSUANT TO 75-20-304(1), MCA For a waiver of provisions described in 75-20-304(1), MCA, the notice of request for waiver must contain the following information:

(1) An explanation of the need or demand for the proposed facility as described in Rule XXXV-LII of this chapter including a demonstration of the immediate and urgent need for the facility and nature of the consequences that would follow from a failure to obtain a waiver;

(2) A description of alternatives to the proposed facility which were considered and an explanation of the reasons for selecting the proposed facility;

(3) A description of the preferred site or preferred route for the proposed facility, alternative sites or routes which were considered, an explanation of the reasons for selecting the preferred site or route, and a description of the significant environmental advantages and disadvantages of the preferred and alternate sites or routes;

(4) A description of the circumstances which prevented the applicant from determining that a need for the proposed facility existed sufficiently in advance to comply with the requirements of the act; and

(5) A listing of the provisions of the act and this chapter for which the waiver is requested.

AUTH: 75-20-105, MCA IMP: 75-20-304(1), MCA

RULE XIII CONTENTS OF NOTICE OF REQUEST FOR WAIVER PURSUANT TO 75-20-304(2), MCA For a waiver to replace or relocate a facility or associated facility that has been damaged or destroyed as described in 75-20-304(2), MCA, the notice of request for waiver must contain the following information:

(1) A description of the event which caused the damage to or destruction of the facility or associated facility;

(2) A description of the extent of damage or destruction;

(3) A description of the effect on customers;

(4) An explanation of proposed actions to replace, repair or relocate the damaged or destroyed facility or associated facility; and

(5) A listing of the provisions of the act and this chapter for which the waiver is requested.

AUTH: 75-20-105, MCA IMP: 75-20-304(2), MCA

RULE XIV CONTENTS OF NOTICE OF REQUEST FOR WAIVER OF REQUIREMENTS RELATING TO CONSIDERATION OF ALTERNATIVE SITES PURSUANT TO 75-20-304(3), MCA For a waiver of provisions described in 75-20-304(3), MCA, the request for waiver must contain information satisfying 75-20-304(3)(d), MCA, which must include an analysis indicating a net positive effect on the county economy. The analysis must include a discussion, with supporting data, of the size of the population influx resulting from direct and indirect employment associated with facility construction and operation, and the cost of providing services

to the increased population. The discussion must include the facility's construction period and a portion of the facility's operational period adequate to address the following:

(1) The county's capability to supply construction and operational labor to the proposed facility, supported by data on the existing labor force, the supply of skilled labor within the county to meet the job requirements of the facility, and present and projected unemployment rates;

(2) Effects on local businesses of the increased income resulting from the facility's payroll;

(3) A fiscal analysis comparing increased tax revenue resulting from the facility with increased local expenditures necessitated by the population influx associated with the project, including the relative timing of expected expenditure requirements compared to expected tax increases, as determined by documented consultation with appropriate local government officials; and

(4) Economic impacts on residents resulting from changes in ambient environmental factors caused by the proposed facility.

AUTH: 75-20-105, MCA IMP: 75-20-304(3), MCA

RULE XV BOARD ACTION ON REQUEST FOR WAIVER (1) Within ninety days after receipt of the information required by Rule XII or XIV, the board shall give notice and set a date for a hearing.

(2) The board shall give notice and set a date for a hearing and render a decision as soon as practicable after receipt of the information required by Rule XIII.

AUTH: 75-20-105, MCA IMP: 75-20-304, MCA

RULE XVI CONTENT OF AN APPLICATION FOLLOWING RECEIPT OF WAIVER PURSUANT TO 75-20-304(3), MCA (1) An application for a facility which has been granted a waiver pursuant to 75-20-304(3), MCA, must contain applicable information required by Rule LXXV, LXXVII, and LXXVIII for the preferred site only.

(2) Information requirements for linear associated facilities are not affected by the waiver and must be addressed as applicable unless the applicant can demonstrate that less detailed information meets the requirements of Rule LXIV-XCVII, based on considerations of size or length of the linear associated facilities, the homogeneity of the geographic area that would be traversed by these facilities, or that impacts are not likely to occur.

AUTH: 75-20-105, MCA IMP: 75-20-211, 75-20-304(3) and 75-20-503, MCA

RULE XVII PURPOSE OF NOTICE The primary purpose of the notice of intent is to provide for early consultation and exchange of information between the potential applicant, the department, other affected agencies, and the public and to initiate preapplication planning.

AUTH: 75-20-105, MCA IMP: 75-20-214, MCA

RULE XVIII CONTENT OF NOTICE OF INTENT In addition to the information required by 75-20-214, MCA, the notice of intent for a facility must contain the study plans, scopes of work, and study methods that have been or will be used to gather the information required by the following rules:

(1) Service area utilities, Rule XXXV-LII;
(2) Competitive utilities, Rule LII-LV;
(3) Rule LVI-LXII; and
(4) Rule LXIV-XCVII.

AUTH: 75-20-105, MCA IMP: 75-20-214, MCA

RULE XIX CHANGES OR ADDITIONS TO NOTICE If a potential applicant desires to substantively change or add to a notice of intent after the notice is formally filed, the potential applicant shall inform the department of the substantive change or addition by certified mail or personal delivery.

AUTH: 75-20-105, MCA IMP: 75-20-214, MCA

RULE XX FILING FEE REDUCTION When an application is filed for a facility 12 months or more after the filing of a valid notice of intent concerning that facility, the applicant is entitled to a 5 percent reduction of the filing fee as provided by 75-20-214, MCA, if the facility type, size, and preferred location are not substantially changed from that specified in the notice.

AUTH: 75-20-105, MCA IMP: 75-20-214, MCA

RULE XXI REQUIREMENTS OF THE DEPARTMENT OF HEALTH AND BOARD OF HEALTH An application must contain the information required by the department of health and board of health to determine compliance with applicable standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations for the proposed facility pursuant to 75-20-216(3), MCA.

AUTH: 75-20-105, MCA IMP: 75-20-105, and 75-20-211, MCA

RULE XXII APPLICATION, NUMBER OF COPIES (1) The applicant shall submit 20 copies of the application at the time of filing to the department, capitol station, Helena, Montana 59620, and eight copies to the department of health, capitol station, Helena, Montana, 59620. The applicant may submit fewer copies, especially of maps, map overlays, exhibits, appendices, or attachments as defined in Rule XXIII(3)(g) and (h), upon prior written approval from the department. For the contact prints providing stereo coverage, required by Rule LXXVIII(6) and XCIII(4), two copies are sufficient.

AUTH: 75-20-105, MCA IMP: 75-20-105, MCA

RULE XXIII APPLICATION, FORMAT (1) An application shall be submitted in a loose leaf format, except for oversized material such as maps and map overlays.

(2) An application must contain an index cross-referencing the material contained in the application.

(3) An application shall be organized according to the following general categories:

(a) introductory material;
(b) description of the proposed facility;
(c) cost of the facility;
(d) explanation of the need for the facility;
(e) analysis of alternatives to the proposed facility;
(f) alternative siting study;
(g) environmental concerns;
(h) all maps larger than 8 1/2" X 11" in size and aerial photography shall be presented as an attachment entitled "attachment a: maps and aerial photography";
(i) technical reports, reference or source documents, and other supplementary material provided by the applicant shall be presented as separate, consecutively arranged attachments, beginning with "attachment b."

AUTH: 75-20-105, MCA IMP: 75-20-105, MCA

RULE XXIV DOCUMENTATION OF INFORMATION SOURCES An application must contain a list of sources of all information used in preparing the application. An application must specify when all field investigations were conducted.

AUTH: 75-20-105, MCA IMP: 75-20-105, and 75-20-211, MCA

RULE XXV SUPPLEMENTAL MATERIAL (1) The applicant shall submit supplemental material to the department and the department of health within 30 days after it becomes available following filing of an application. The applicant shall submit supplemental material in the form of substitute pages or insertions to the application as originally filed.

supplemental material includes information to update or finalize information submitted with the original application and the following:

(a) studies that an applicant routinely or periodically updates;

(b) changes in the application that result from a change in any statute, standard, permit requirement or implementation plan affecting the facility; and

(c) any other changes materially affecting the basis of need for the facility, the engineering design of the facility, the costs or the environmental impact of the facility.

(2) The penalty defined by 75-20-408, MCA, shall be imposed for failure to submit supplemental material available to the applicant but not known to the department or department of health, effective within 30 days of the date the material becomes available to the applicant. If the material is extensive, the applicant may within the 30-day period submit to the department or department of health a notice of intent to supplement the application with a description of the material to be supplied, and supply the material without undue delay in a time period agreed to by the applicant and the department.

AUTH: 75-20-105, MCA IMP: 75-20-105, and 75-20-211, and 75-20-213, MCA

RULE XXVI CHANGES IN AN APPLICATION (1) Pursuant to 75-20-213(2), MCA, an applicant may change or add to an application. The applicant shall inform the department and the department of health of the change or addition by certified mailing or personal service. The applicant shall describe the change in sufficient detail to allow the department to make the determination required by Rule XXVII and shall supply the information in the form of substitute pages or insertions to the application as originally filed.

AUTH: 75-20-105, MCA IMP: 75-20-105, and 75-20-211, and 75-20-213, MCA

RULE XXVII AMENDMENT TO APPLICATION--NEW APPLICATION (1) The department may determine that a change or addition to an application submitted by the applicant pursuant to Rule XXV or XXVI requires an amendment to the original application and additional filing fees as provided by 75-20-213, MCA, if the change or addition would be likely to involve the following:

(a) increased or significantly different environmental impacts than would have been likely based on the information contained in the original application;

(b) significant changes in the basis of the need for the facility; or

(c) significant changes in the economics of alternatives to the proposed facility as required by Rule LVI-LXII.

(2) The department may determine that a new application and filing fee is required if the extensive nature of a change or the timing of the notification of a change or addition to the original application would not allow the department, department of health or the other agencies listed in 75-20-216(5), MCA, to discharge their duties and responsibilities under the act and these rules under the statutory time requirements and filing fee or under contractural terms pursuant to 75-20-215(2), MCA. If a new application and filing fee is required, processing of the original application shall be terminated. If the total filing fee was paid at the time of filing, unexpended portions of the fee shall be returned to the applicant or credited to the new fee at the applicant's request if a new application is to be filed. For an application being processed under a contract pursuant to 75-20-215(2), MCA, the applicant shall be billed for the department's expenses up to the date of termination. Any studies completed or partially completed at the time of termination that are relevant to an amended or new application shall not be duplicated.

(3) The department shall inform the applicant in writing, within 30 days of receipt of information provided under Rule XXV or XXVI, of a determination that a change or addition to an original application requires an amendment or a new application.

(4) The applicant shall give notice upon filing an amendment or a new application as set forth in 75-20-211(3), (4) and (5), MCA.

(5) An amendment to an application shall explain any change or addition in a degree of detail comparable to that required for an original application.

AUTH: 75-20-105, MCA IMP: 75-20-105, 75-20-211, 75-20-213, 75-20-215, and 75-20-216, MCA

RULE XXVIII RELATED PROJECTS--SINGLE FACILITY Related projects that address the same or closely related needs that the proposed facility would address may constitute a single facility for purposes of compliance with the application provisions of these rules. An application must explain the relationship of the proposed facility to other facilities or projects planned or under construction and must address all portions of the facility.

AUTH: 75-20-105, MCA IMP: 75-20-105, and 75-20-211, MCA

RULE XXIX ALL FACILITIES, ESTIMATED COST OF FACILITY (1) An application for a facility defined in 75-20-104(10), MCA, must contain estimates and a description of total costs

and expenses attributable to the engineering, construction, and startup of the proposed facility and associated facilities up to the time of commercial operation.

(2) As used herein, engineering costs include all direct costs related to planning, design, permitting, quality control, and land acquisition. Construction costs include costs related to site or route preparation, erection and assembly, and commissioning costs. Cost estimates must be itemized as follows unless other categories are agreed to by the department:

(a) engineering and overhead costs, itemized by the following:

(i) architecture and engineering;

(ii) other technical support;

(iii) management and administration;

(iv) permitting;

(v) quality control; and

(vi) other;

(b) land acquisition costs;

(c) site or right of way preparation costs;

(d) plant costs, itemized by major process area and by major equipment. For propietary processes itemization by major process area is sufficient for the application;

(e) costs of transportation links;

(f) mitigation costs;

(g) contingency costs;

(h) front end royalty payments;

(i) initial loadings of coal, chemicals or materials;

(j) startup expenses;

(k) working capital; and

(l) any other costs necessary and incidental to the construction of the facility.

(3) The application must contain an explanation of the methods, including rules of thumb, used to estimate costs required by (2).

(4) An estimate must be presented of the accuracy of all cost estimates.

(5) Costs must be provided for all portions of the facility both in and outside Montana.

(6) All costs must be estimated by instantaneous total cost of construction escalated to the date of the projected start of construction. The total cost of construction must be adjusted to the construction expenditure schedule based on percentages of total cost incurred in each period and escalated to the date of incurrence. Cost escalation must be based on the most appropriate Handy Whitman or other industry recognized and department approved construction cost index.

AUTH: 75-20-105, MCA IMP: 75-20-215, MCA

RULE XXX ENERGY GENERATION AND CONVERSION FACILITIES ESTIMATED COST OF ENERGY OR PRODUCT. For purposes of comparing the proposed facility with alternatives, as required by 75-20-301(2)(c), MCA, a detailed analysis of the cost of energy or product from the facility must be presented in an application for an energy generation or conversion facility. This requires detail on the capital and operating costs and operational characteristics of the facility.

(1) Capital costs as of the date of full operation shall be calculated as the total of the escalated construction costs and compounded interest during construction.

(a) Escalated construction costs shall be calculated as specified in Rule XXIX(6).

(b) Information must be provided about the likely methods of financing the facility. Financing plans must be submitted, including information on the debt equity ratio and projected interest rate for the debt. Interest during construction on borrowed funds and accounting allowances for internally generated funds used during construction must be compounded throughout the construction schedule and capitalized in the cumulative facility cost up to the date of full operation.

(i) For service area utilities, the date of full operation means the date the facility is proposed to be placed in service.

(ii) For competitive utilities and nonutility facilities, the date of full operation means the date when debugging and plant shakedown is expected to be complete and the plant is available to produce at design capacity. Expected revenues during the buildup schedule, if significant, should be netted against operational costs during this period. Other standard methods of treating the buildup schedule may be used if they are fully explained.

(2) Amortization costs must be calculated by standard industry practice for the estimated life of the bonds or other borrowing, or for the economic life of the facility.

(3) Annual costs for the first, fifth and tenth operational year of the facility must be estimated. If current costs are used as a basis, they must be escalated, using an appropriate index or indices of recent cost inflation specified in Rule XXIX(6), to the appropriate year. The same index or other department approved index or indices must be used to escalate operating costs over the life of the facility to calculate the levelized cost of energy from the facility.

(a) Annual costs must be disaggregated by relevant categories, including, but not limited to, amortization, depreciation, taxes, insurance, interim replacements, any other capital-related annual costs, operational labor costs, operational material costs, fuel costs, fuel transportation costs, water, waste disposal costs, maintenance costs and decommissioning costs. Assistance shall be specified. Methods and assumptions used in estimating the costs must be explained.

(4) An application must contain a description of expected operational characteristics of the facility as follows:

(a) gross plant output, expected in-plant use of output, and expected net plant output when operating at full capacity;

(b) expected amount and timing of scheduled partial or total downtime for maintenance, rebuilding, or other purposes;

(c) estimated amount of unscheduled downtime associated with similar facilities, considering type, size, and location, based on historical data, if available, or probablistic failure analyses;

(d) for service area utilities, estimated amount of downtime due to availability of lower cost displacement energy.

(e) expected, or planned, operating levels over the course of the year; and

(5) Direct unit costs for the first, fifth and tenth full operational year must be calculated by dividing the appropriate year's costs by the expected annual net output of the facility during full operation.

(6) Levelized direct unit energy costs must be calculated.

(7) First, fifth and tenth year and levelized direct unit costs must be calculated in constant dollars for a specified year, preferably the year of application. The index used to convert nominal to constant dollars must be specified.

(8) Expected net output during full operation shall not exclude output lost during downtime discussed in 5(d).

(9) An application must contain estimates of the accuracy of all costs and operating characteristics.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-215, MCA

RULE XXXI LINEAR FACILITIES, ESTIMATED ANNUAL COSTS An application for a linear facility must contain a detailed analysis of the annual costs of the facility for purposes of comparing the facility with alternatives, as required by 75-20-301(2)(c), MCA, including detail on the capital and operating costs and operational characteristics of the facility.

(1) All estimated construction costs must be escalated to the appropriate date in the construction schedule as explained in Rule XXIX(6).

(2) An application must contain information about the likely methods of financing construction of the facility. For facilities taking longer than one year to construct, allowance for funds used during construction must be added to the escalated construction costs to calculate the capital costs as of the date the facility is placed in service.

(3) Amortization costs must be calculated by standard industry practice for the estimated life of the bonds or other borrowing, or for the economic life of the facility.

(4) Costs for the first, fifth and tenth full operational year of the facility must be estimated. If current costs are used as a basis they must be escalated, using an appropriate index or indices of recent cost escalation specified in Rule XXIX(6), to the first full operational year. The same index or other department approved index or indices must be used to escalate operating costs over the life of the facility.

(a) Annual costs must be disaggregated by relevant categories, including, but not limited to, amortization, depreciation, taxes, insurance, interim replacements, any other capital-related annual costs, operational labor costs, operational material costs, pumping costs, water costs, waste disposal costs, maintenance costs, and levelized decommissioning costs. Assistance shall be specified. All assumptions used in estimating the costs must be explained.

(5) An application must contain a description of expected operational characteristics of the facility, including the following information:

(a) design capacity;

(b) expected amount and timing of scheduled partial or total downtime for maintenance, rebuilding, or other purposes;

(c) estimated amount of unscheduled downtime based on historical data associated with similar facilities considering type, size, and location or based on probablistic failure analyses; and

(d) expected or planned monthly operating levels.

(6) For pipelines, energy transport costs for the first, fifth and tenth full operational year must be calculated by dividing the appropriate year's costs by the expected annual net throughput of the facility during full operation.

(7) For pipelines, levelized energy transport costs must be calculated by dividing levelized annual costs by the expected annual net throughput of the facility during full operation.

(8) First, fifth and tenth year and levelized costs must be calculated in constant dollars for a specified year, preferably the year of application. The index used to convert nominal to constant dollars must be specified.

(9) An application must contain an explanation of the methods, including rules of thumb, used to estimate costs and operating characteristics.

(10) An application must contain estimates of the accuracy of all costs and operating characteristics.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-215, MCA

RULE XXXII ALL FACILITIES, SERVICE AREA UTILITIES, COPIES OF CONTRACTS FOR PURCHASE OF MATERIALS OR SALE OF ENERGY FROM THE PROPOSED FACILITY (1) An application must contain copies of any contracts covering periods longer than one year to which

the applicant is a party for the purchase of equipment, fuel and/or water for the facility or for the sale of the facility's product or transportation services. For confidential treatment of contracts, see Rule II.

(2) If at any time after the date of the application but before receiving a certificate an applicant enters into any such contract, the applicant shall immediately supply a copy of the contract to the department.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-215, MCA

RULE XXXIII ALL FACILITIES, PRICING POLICY An application must contain a discussion of how the product or transportation services provided by the facility will be priced or how the costs of the facility will be recovered. Distinction should be made between pricing according to market value, and the use of rolled-in pricing, average cost pricing, or any other cost-based pricing method.

AUTH: 75-20-105, MCA IMP: 75-20-211, MCA

RULE XXXIV ALL FACILITIES, EVALUATION OF ECONOMIC COSTS AND BENEFITS To facilitate a comparison of the project and alternatives for the board's finding under 75-20-301(2)(c), MCA, an application must include information on the internal and external costs and benefits of the proposed facility.

(1) For internal costs the information provided under Rule XXIX and Rule XXX or XXXI is sufficient.

(2) For external costs the information provided under Rule LXXIX and XCIV or XCV is sufficient.

(3) Information on benefits must include, where relevant, benefits to the consumer, benefits to the applicant, and benefits to Montana.

AUTH: 75-20-105, MCA IMP: 75-20-211, MCA

RULE XXXV GENERATION AND CONVERSION FACILITIES, EXPLANATION OF NEED An application from a service area utility must explain the basis of need for the proposed facility by documenting the need for the energy to be produced by the facility, including an explanation of the existing resources available to the applicant, future resources for which major permits and regulatory approvals have been granted, the expected growth in energy demands in the applicant's service area, and the role of the proposed facility and other planned resources in serving the load growth. An application must include a discussion of the degree of uncertainty in the timing of the need for the proposed facility, the degree of uncertainty in the likely markets for sale of the output of the proposed facility in the event the facility is placed in

service before its output can be used in the applicant's service area, and contingency plans if need in the applicant's service area or markets for outside sales do not develop as expected. An applicant whose special circumstances make part or all of these requirements inappropriate should contact the department to determine special application requirements.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XXXVI GENERATION AND CONVERSION FACILITIES, RESOURCE FORECAST (1) An application from a service area utility must contain a resource forecast showing the existing and permitted resources and energy conservation which can be used to serve loads in the applicant's service area for the twenty-year period following the date of application for the proposed facility. The resource forecast must specify the following:

(a) generation or conversion and energy conservation resources;

(b) firm energy and nonfirm energy;

(c) applicant-owned resources, shares of partially owned resources, contracted purchases and sales and other transfers and trades;

(d) planned retirements, downratings and upgradings of existing resources;

(e) an explanation of the methods and assumptions used to evaluate firm resources, including hydroelectric planning criteria and thermal capacity factors; and

(f) reserves for each year.

(2) The resource forecast for service area gas utilities must specify the following:

(a) All owned and purchased gas sources, any transfers or trades, and energy conservation resources;

(b) Any expected declines or increases in production rates; and

(c) Reserves for each year.

(3) An application must contain an explanation of the methods and assumptions used in making the resource forecast.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XXXVII GENERATION AND CONVERSION FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS An application must contain the information specified in Rule VII. Material previously submitted to the department may be incorporated by reference, but must be updated as appropriate.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XXXVIII GENERATION AND CONVERSION FACILITIES, DATA REQUIREMENTS FOR ENERGY AND PEAK DEMAND An application from a service area utility must contain demand data for the service area where the energy produced by the proposed facility would be marketed.

(1) Historical annual energy and peak demand data must be provided in tabular form for each of the 20 years preceding the year of application. Historical data must be disaggregated by sector of demand as defined in Rule I. Electrical energy data may be provided in either megawatt-hours or average megawatts; peak data must be provided in megawatts. Gas energy data must be provided in billions of cubic feet per year; peak data must be provided in millions of cubic feet per hour.

(2) Forecasts of annual energy demand and annual peak demand must be provided in tabular form for the current year and for each of the 20 years following the date of application.

(a) Forecasts of annual energy demand must be disaggregated by sector of demand.

(b) The methods and assumptions used in making the forecasts and the sensitivity of the forecasts to changes in the key assumptions must be described, and relevant indicators of the statistical validity of the forecast must be provided. All equations and models used in making the forecast must also be provided.

(c) The amount of energy conservation ascribed to the applicant's energy conservation programs (see Rule XLIV) and the amount of price-induced energy conservation embodied in the forecast must be estimated.

(d) The degree of uncertainty in the forecast assumptions must be explicitly indicated by providing a reasonable range of forecast scenarios using alternate sets of assumptions or by other methods agreed to by the department.

(e) The most recent forecast available to the applicant must be provided, based on the most recent data available. The forecast shall be updated, revised and resubmitted to the department promptly as new forecasts are produced after an application is filed.

(3) The projected annual coincidental peak demand must be provided. An estimate of the coincidental peak demand of each sector of demand, based on the most current load study data available at the time the application is filed, must be provided.

(4) The projections required by (2) and (3) must be presented as a function of the price and rate structure of the energy form to be produced as well as other relevant economic and demographic variables, if these variables are significant determinants of the forecast. If these variables are not significant determinants of the forecast, an explanation of the reasons and evidence to that effect must be provided. If data are not reasonably available to estimate these relationships the applicant should consult with the department for alternatives.

(5) A discussion of any regional requirements for energy and capacity reserves relevant to the proposed facility must be provided.

(6) Wholesale electricity suppliers and retail suppliers with wholesale contracts must provide forecasts meeting the requirements of (1) through (5) for those customers with contracts to purchase the output of or shares in the proposed facility.

(a) These forecasts should indicate the amount of each customer's total load to be served by the applicant through the forecast period.

(b) Explanation of the terms of ownership or sale of power from the facility and contracts shall be provided.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XXXIX GENERATION AND CONVERSION FACILITIES, ASSESSMENT OF THE ROLE OF THE PROPOSED FACILITY IN MEETING ENERGY NEEDS An application from a service area utility must contain an assessment of the role of the proposed facility in meeting energy needs during its projected life, including the following:

(1) A description of the criteria used by the applicant in determining that the facility is necessary, and when it is necessary to meet the requirements of its customers or others, and any other analyses prepared by the applicant, by regional planning or coordinating agencies, or by others, that may relate to the need for the proposed facility;

(2) An explanation of all methods and assumptions used to prepare the assessment;

(3) A discussion of how the criteria described in (1) account for uncertainty in forecasts, uncertainty in operating availability, uncertainty in availability of hydroelectric energy, and uncertainty in completion schedules of resources currently planned or under construction;

(4) A discussion of the relationship of the facility to any regional plans, such as the northwest power planning council's "northwest conservation and electric power plan";

(5) A description of all facilities, other resources, energy conservation and major energy purchases existing or planned by the applicant for the 20-year period following the date of application, their relationship to the proposed facility, and an explanation of why the planned facilities are being built or the planned purchases are being made in the order planned.

(a) Data must be provided on the existing and projected peak resources and average resources under average conditions and under worst case planning criteria if applicable.

(6) Projected annual and monthly load-resource balances for the 20 years following the date of application.

(a) Monthly availability should be specified for each resource.

(b) Maintenance schedules should be indicated.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XL GENERATION AND CONVERSION FACILITIES, UNCERTAINTY ANALYSIS (1) An application must contain a discussion of the relationship between uncertainty in load growth and in the availability of existing and planned resources, and the schedule for placing the proposed facility in service, including the following:

(a) the date the proposed facility is needed to come into service, under alternate assumptions affecting the rate of growth of loads (see Rule XXXVIII);

(b) the effect on the date the proposed facility is needed to come into service, of alternate assumptions about the future availability of existing resources and resources for which major regulatory approvals and permits have been granted, resources for which regulatory approval and permits have been applied for but not yet granted, and other generation and energy conservation resources planned or considered by the applicant;

(c) the method that the applicant will use to determine when it is appropriate to begin construction of the proposed facility;

(d) the likely markets for sale of the output of the proposed facility in the event that the applicant has a surplus of energy after the facility is placed in service;

(e) the estimated price for the sale of the output of the facility to the markets identified in (d) and the range of possible prices and markets and their associated probabilities of occurrence and duration; and

(f) contingency plans, after the start of construction, to slow down or temporarily halt or terminate construction if loads or outside markets do not grow as expected.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLI ALL FACILITIES, RELIABILITY CRITERIA An application must contain a discussion of the applicant's system reliability including the following:

(1) A description of the existing and desired levels of generation, transmission and distribution reliability;

(2) An explanation of the rationale for the selection of the desired level of reliability;

(3) The planning assumptions and rules used to maintain the desired level of generation and transmission reliability; and

(4) The expected frequency of interruption of service to customers under current reliability criteria, and the extent to which that frequency of interruption is associated with outages of generation, transmission, and distribution facilities.

(5) An economic evaluation of alternate levels of reliability.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLII GENERATION AND CONVERSION FACILITIES, INTERRUPTIBLE AND CURTAILABLE LOAD DATA An application from a service area utility must identify annual peak and total annual energy for the most recent available year, separated into firm and interruptible peak loads, and firm and curtailable energy loads, including identification of each major interruptible or curtailable load customer or group of customers, the amount of the customer's interruptible or curtailable load, and an explanation of the conditions under which the loads may be interrupted or curtailed.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLIII GENERATION AND CONVERSION FACILITIES, DESTINATION AND DISTRIBUTION PATTERNS OF ENERGY TO BE PRODUCED An application from a service area utility must contain a description of the destination and transmission or transportation patterns of the energy to be produced for each of the first ten years of the proposed facility's operation. This information is required to provide for a comparison of alternatives to and alternative sites for the proposed facility and an evaluation of the extent to which the facility will lead to additional costs based on a need to expand the transmission or transportation system.

(1) For electric generation facilities, an application must contain relevant load flow diagrams for at least the first and fifth years after the facility is expected to become operational. If data sufficient to conduct load flow studies for a 5-year period after the facility is in operation are not available, projected peak load flows must be supplied in an alternative form agreed to in writing by the department. The load flow diagrams must be based on a model of the affected regional transmission system recognized by the interconnected neighboring utilities with which the applicant traditionally or historically cooperates and plans as described in the long-range plan.

(2) For energy generation or conversion facilities other than electric generation facilities, an application must contain a projection of volumes flowing through the affected regional pipeline or other fuel transport system, and where

relevant, flow rates in relation to the capacity of the component segments of the transport system. Flow rates and volumes must be projected for a five-year period after the facility is proposed to be placed in service.

(3) An application must contain a discussion of the adequacy of the existing bulk transmission or transportation system to handle projected flows with the facility in operation, and a discussion of the need for any capacity expansion.

(4) For facilities that would serve demands outside Montana, an application must report peak loadings and capacity for each affected segment of the interstate bulk transmission or pipeline system. This information is required to provide for an assessment of the effect on the incremental delivered cost of energy of requirements for additional transmission or transportation capacity.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLIV GENERATION AND CONVERSION FACILITIES, ENERGY CONSERVATION PROGRAMS An application from a service area utility must contain a general explanation of the applicant's efforts over the last 5 years, and current and planned efforts, to promote energy conservation. An application must compare and contrast these energy conservation programs with state, regional, and national energy conservation programs.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLV GENERATION AND CONVERSION FACILITIES, CATEGORIES FOR REPORTING CUSTOMER END-USE DATA (1) An application from a service area utility must provide demand data for the most recent year for end-uses which the product of the proposed facility could supply. Wholesale suppliers must provide this information for their contract customers. This information is required to provide a data base for the analysis of energy conservation and renewable energy alternatives in an applicant's service area.

(a) For the residential sector, categories include, at a minimum, building shell characteristics, appliance characteristics, appliance use patterns, and annual home fuel consumption by fuel for all fuels. Data on characteristics of the occupants that may significantly affect energy use must also be supplied.

(b) For the commercial and industrial sector, categories include, at a minimum, type and size of business operation, building shell characteristics, appliance and process equipment characteristics, patterns of operation, heating, ventilating, air conditioning system characteristics, and consumption of each type of fuel.

(c) For contract industrial customers, data for each contract customer must include at a minimum, a description of each major process use of the energy form to be produced by the proposed facility, estimates of the amount of the energy form consumed each year in each major process, and the energy use per unit of output of each major process or group of processes.

(d) For the agricultural sector, categories include, at a minimum, number and size of irrigation pumps, types and acreage of crops irrigated, hours of use, source, size of lift, estimation of amount of water applied, and amount of fuel consumed.

(2) The survey instruments, sample methods and sample size must be consistent with the best available methods for end-use studies.

(3) An application must contain a complete description of the methods used to collect energy end-use data, including the sample size, and, as appropriate, copies of the survey instrument(s).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLVI ELECTRIC TRANSMISSION LINES, EXPLANATION OF NEED An application for an electric transmission line must contain an explanation of the need for the facility, based on, but not limited to, one or more of the following conditions:

(1) Transient stability considerations under normal or contingent operating conditions;

(2) Power transfer capacity under normal or contingent operating conditions;

(3) Voltage drop in the transmission or subtransmission network under normal or contingent operating conditions;

(4) Reliability of service considerations; and

(5) Economy considerations.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLVII ELECTRIC TRANSMISSION LINES, TRANSIENT STABILITY CONSIDERATIONS For electric transmission lines where transient stability considerations are a basis of need, an application must contain the following information:

(1) An explanation of the normal or contingent operating conditions, under which a transient stability problem exists, identification of the criteria used to determine these conditions, and an explanation of the rationale for their use. Criteria for steady-state conditions include, but are not limited to, a single line outage during heavy winter or summer peak loads. Criteria for outage conditions include, but are not limited to, one line out on maintenance and another tripping on fault; and

(2) At least two stability studies, one to demonstrate the problem situation and one to demonstrate the solution.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XLVIII ELECTRIC TRANSMISSION LINES, POWER TRANSFER CAPACITY, VOLTAGE DROP For electric transmission lines where power transfer capacity or voltage drop is a basis of need, the application must contain an explanation of the problem situation including the following information:

(1) Where thermal rating is referenced, identification of both the normal and emergency thermal ratings and an explanation of their effect on power flows;

(2) Where normal transfer capacity of a transmission line is referenced, identification of a standard power factor and voltage drop limit;

(3) Where emergency power transfer capacity under contingent operating conditions is referenced, identification of the voltage drop and power factor acceptable for the period of contingency;

(4) Identification of any applicable design or operating voltage drop standards or legal or contractual voltage drop restrictions;

(5) A minimum of four load flow studies. The load flow studies must clearly indicate any assumptions made, including any relevant input data, and must include a single line diagram showing megawatts and megavolt amp reactance loads and flows and voltage levels for each study. The studies must include the following unless otherwise approved by the department:

(a) the base case, illustrating the problem;

(b) a study showing the immediate effect of the facility; and

(c) a study showing the effect of the facility five years later.

(6) 10-year historical and 10-year projected load growth at each point of distribution in the area that would be served by the facility, including the following:

(a) a description of the assumptions used in making the projection, and an evaluation of the extent to which load growth in the area to be served by the facility will follow or differ for the patterns shown in overall service area load growth of the applicant;

(b) if additional block loads equal to 10 percent or more of a given substation load are anticipated, a list of the total connected load and the after-diversity-maximum demand for each additional load. The ratio of the after-diversity-maximum to total connected load for the anticipated additional load must be compared to the same ratio for similar existing customers to establish the validity of the after-diversity load estimate;

(c) for substations which are delivery points for resale customers, the applicant may substitute the resale customer's forecast of load growth at that delivery point for the applicant's own forecast. In such cases an evaluation of the resale customer's forecasting method must be included; and

(d) an explanation of the amount of excess capacity which will be available after the proposed transmission line is built, under contingent and normal conditions, and an estimate of when additional reinforcement will be necessary.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE II ELECTRIC TRANSMISSION LINES, RELIABILITY OF SERVICE For electric transmission lines where reliability of service is a basis of need, an application must contain the following:

(1) The information required by Rule XLVIII(5) and (6);

(2) A description of the planning assumptions and rules by which the applicant attempts to maintain its desired level of generation and transmission reliability, an explanation of the rationale for the selection of the desired level of reliability and the following information:

(a) 10 years historical line outage data in the area to be served by the proposed facility including the duration, location, and cause of the outage, the load lost, and the number and type of customers affected, if known;

(b) a list of the types of customers in the area to be served or reinforced by the proposed facility that would be affected in the event of an outage on the existing transmission system, including identification of customers with special reliability requirements, and an indication of whether they have backup emergency generation.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE I ELECTRIC TRANSMISSION LINES, ECONOMY CONSIDERATIONS For electric transmission lines where economy considerations are a basis of need, an application must contain the following, as relevant:

(1) A system cost study for the ten years following the date the proposed line is to be placed in service, showing system costs with and without the proposed line;

(2) An analysis of markets and prices for surplus energy to be transmitted over the proposed line;

(3) An analysis of sources and prices for purchased energy to be received over the proposed line;

(4) An analysis of the demand for and price of wheeling services to be provided by the proposed line;

(5) Other economic analysis relevant to demonstrating the need, economic feasibility or financial viability of the proposed line;

(6) A discussion of the relationship of the capacity of the proposed facility to the size of projected flows over the facility; and

(7) If transmission capacity exists that could carry the desired energy or power flows without violating voltage drop, transfer capacity or other transmission planning criteria, a discussion of efforts by the applicant to reach an acceptable agreement with the owners of this transmission capacity to make it available to the applicant at reasonable cost and an explanation of why the proposed facililty is preferable to use of the existing facility.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LI OTHER LINEAR FACILITIES, EXPLANATION OF NEED Applicants for other types of linear facilities, such as pipelines, should contact the department for appropriate information requirements for determining need for the facility.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LII ALL FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE, AND SALE AGREEMENTS An application from an electric utility must contain the information listed in Rule VII and Rule VIII.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LIII MARKET ANALYSIS An application from a competitive utility must contain an analysis of markets for the primary product of the proposed facility and significant by-products, for 10 years after the expected first year of full operation of the facility. This analysis must include the following:

(1) A description of the market to be served; and

(2) A market demand forecast, derived from engineering and econometric analyses of observed consumption patterns in the proposed market area.

(a) All assumptions and methods used in preparing the forecast must be described in detail.

(b) All statistical analyses leading to the forecast must be provided.

(c) The degree of uncertainty in the forecast assumptions must be explicitly indicated by providing a reasonable range of

forecast scenarios using alternate sets of assumptions or by other methods agreed to by the department.

(d) The market demand forecast must be presented as a function of the price of the energy to be produced by the facility and of other economic and demographic variables. If price is not a significant determinant of the forecast, an explanation of the reasons and evidence to that effect must be provided.

(3) The market analysis shall be compared with published U.S. energy forecasts.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LIV MARKETABILITY FORECASTS (1) An application from a competitive utility must contain a forecast of the likely future price of the primary energy form produced by the facility and any significant by-products for at least 10 years from the expected first year of full operation of the facility and a projection of prices for the remainder of the plant life. The forecast shall be based on the forecast of demand required by Rule LIII and on a forecast of likely conditions of supply. Assumptions used to project prices beyond the 10-year forecast period must be provided.

(2) Direct unit costs for the first, fifth and tenth years of full operation, and energy production costs over the life of the facility, as calculated in Rule XXX, must be estimated with and without adjusting for assistance as defined in Rule I(7).

(3) Direct unit costs over the life of the facility must be compared with the expected prices of the energy form estimated in (1) above. The expected date must be specified when the price will become greater than the direct unit costs of production.

(4) A discussion must be provided of likely assistance as defined by Rule I(7). Direct unit costs over the life of the facility, adjusted for likely assistance must be compared with the expected prices.

(5) A discussion of the applicant's contingency plans if such assistance is not available must be provided.

(6) A detailed analysis must be provided which weighs the costs and benefits of the proposed facility to the applicant, to the citizens of Montana, to the citizens of the United States, and to the consumers of the output of the facility.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LV UNCERTAINTY ANALYSIS. An application from a competitive utility must contain a discussion of the uncertainty involved in the analysis of marketability, and price and the risks and benefits associated with alternate

outcomes and any contingency plans after the start of construction to slow down, temporarily halt, or terminate construction if markets do not develop as projected.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LVI SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) An application must contain an evaluation of the nature and economics of alternatives to the proposed facility, including alternative energy resources, energy conservation, alternative energy technologies, nonconstruction alternatives, alternative sizes and timing of facilities, the no action alternative, and alternative technological components for the proposed facility. An application must contain a comparison of alternatives leading to selection of the proposed facility as the preferred alternative, and an explanation of the reasons for selection of the proposed facility.

(2) An application must contain an evaluation of each alternative energy resource, energy conservation, or alternative energy technology that can individually or collectively produce or save at least one megawatt or one percent of the output of the proposed facility, whichever is greater. The evaluation must describe each alternative energy resource or energy conservation measure, the location and quantity of the resource available, and the constraints to its availability. Predictable daily and seasonal variations in the availability of an alternative energy resource or energy conservation must also be described.

(a) Alternative energy resources include, but are not limited to, coal, natural gas, liquid hydrocarbons, nuclear, solar, wind, geothermal resources, biomass, and falling water.

(b) Energy conservation includes any measures that reduce the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production or distribution.

(c) Alternative energy technologies include, but are not limited to, alternative combustion technologies, alternative coal conversion technologies, alternative boiler designs, cogeneration and alternative uses of waste heat, alternative wind, hydropower, and geothermal generation technologies, and the direct application of energy resources.

(3) An application must contain an evaluation of nonconstruction alternatives, including purchase of a share in another planned or existing facility, long-term purchase of energy or capacity from other utilities or suppliers, and increased use of contractually curtailable customer loads.

(a) For peaking facilities, nonconstruction alternatives include load management and peak load pricing, and increased

contractual interruptibility and curtailability of customer loads.

(4) An application must contain an evaluation of alternative size facilities and alternative timing and frequency of construction. The evaluation must include the alternative timing of appropriately sized plants using alternative energy resources and technologies as well as alternative sizing and timing of energy generation or conversion plants of the same type as the proposed facility, including those below the size thresholds in 75-20-104(10), MCA. The evaluation must also include alternative timing of any other energy generation or conversion units planned by the applicant, including those identified in the long-range plan filed with the department under Rule V or other planning documents of the applicant.

(5) An application must contain an evaluation of the no action alternative, wherein no action would be taken to meet the need or provide the services the proposed facility is designed to meet or provide.

(6) An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially reduce the cost or environmental impacts of the proposed facility, including, but not limited to, air and water pollution control systems, cooling systems, and transmission and distribution systems and those required by Rule LXXVII(8) and LXXVIII(8) and (9).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LVII SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY An application must contain an evaluation of relevant alternatives listed in Rule LVI, leading to a ranking of alternatives and selection of the proposed facility. The evaluation and selection may be made by any method preferred by the applicant.

(1) An application must include a detailed description of the methods and criteria used by the applicant to select the proposed facility given the capacity, availability, and types of alternatives, and to determine the proper size and timing of construction, in order to achieve maximum economies of scale and the applicant's desired level of reliability at the lowest economic cost.

(2) In addition to the applicant's criteria for comparison, all appropriate alternatives which have no insurmountable environmental, technical or other problems serious enough to warrant elimination from further consideration, must be ranked by the levelized delivered cost of energy, including known mitigation costs. Alternatives

whose levelized delivered cost of energy is not more than 50 percent higher than the cost of energy from the proposed facility, or which have significant environmental advantages over the proposed facility, must be compared on the basis of performance, system impact, and environmental impact as follows:

(a) performance criteria include:

(i) the first year and levelized delivered cost of energy, including known mitigation costs, incremental transmission costs and the effect of line losses;

(ii) financeability;

(iii) conversion efficiency;

(iv) the estimated on-line life of the alternative and the projected capacity factor during the on-line life of the alternative;

(v) reliability and reserve requirements;

(vi) availability;

(vii) planning flexibility and resource commitment;

(viii) operating flexibility; and

(ix) amount of demand that can be provided for by the alternative;

(x) constraints to implementation;

(b) system impact criteria include:

(i) incremental system cost;

(ii) impact on system reliability;

(iii) impact on system reserve requirements; and

(iv) impact on need for future expansion of the transmission and distribution system;

(c) environmental impact criteria include:

(i) significant environmental advantages and disadvantages; and

(ii) significant siting constraints.

(3) In comparing the no action alternative with the other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the output of the facility.

(4) An explanation must be given of the reasons for dropping any alternative from further consideration at any stage in the evaluation process.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LVIII SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVE LOAD-RESOURCE BALANCES (1) An application from a service area utility must contain an evaluation of alternative load-resource balances from the proposed facility and at least the two lowest levelized cost alternatives identified in Rule LVII.

(a) Alternative load-resource balances shall be constructed by varying the order in which the proposed facility

and alternatives, including conservation, are constructed or employed, with additional resources added as necessary to balance loads for a period of 20 years.

(b) Alternative load-resource balances shall be constructed to reflect load growth uncertainty.

(2) The alternative load-resource balances shall be evaluated by calculating the net present value of all costs for each alternative. Expected net present values for each alternative load-resource balance shall be calculated by a probability weighting of the results across alternative load growth scenarios, or by other methods agreed to by the department.

(a) The evaluation must account for differences in costs beyond the 20-year analysis period, reflecting differences in the remaining useful life of the alternative resources.

(b) The methods and assumptions used in calculating net present value, and the sensitivity of the resulting rankings of expected net present value of all costs to changes in key assumptions must be described, and any relevant indicators of the statistical validity of the rankings must be provided.

(c) A sensitivity analysis must be provided of the effect of alternate size and timing of facilities on the net present value of all costs.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LIX COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) An application must contain a discussion of reasonable alternative energy technologies to produce the same output as that of the proposed facility and an explanation of the rationale for the selection of proposed technology. Alternative energy technologies include, but are not limited to, alternative combustion technologies, alternative coal conversion technologies, combustion turbines, alternative boiler designs, cogeneration, and alternative uses of waste heat. Published tradeoff studies, if utilized in the selection process, may be cited by reference.

(2) An application must contain an evaluation of nonconstruction alternatives, including purchase of a share in another planned or existing facility and long-term purchase of energy or capacity from other utilities or suppliers.

(3) An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially reduce the costs or environmental impacts of the proposed facility, including, but not limited to, air and water pollution control systems, cooling systems, and transmission and distribution systems and those required by Rule LXXVIII(8) and 2316(8) and (9). Documentation for process tradeoff

studies performed by the applicant must be provided. Published tradeoff studies may be cited by reference. A description of the methods used to select the proposed designs for major process areas must be included.

(4) An application must contain an evaluation of alternate sized facilities of the same type as the proposed facility.

(5) An application must contain an evaluation of the no action alternative.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LX COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY (1) The application must contain a detailed description of the methods and criteria used by the applicant to compare alternatives and to select the proposed facility given the capacity, availability and type of alternatives, and to determine the proper size of the facility.

(2) In addition to the applicant's criteria for comparison, all alternatives listed in Rule LIX must be compared on the basis of performance and environmental impact.

(a) Performance criteria include:

(i) the first year and levelized delivered cost of energy or product, including incremental transmission or transportation costs calculated with and without assistance;

(ii) financeability;

(iii) the estimated on-line life of the alternative and the projected availability and capacity factor during the on-line life of the alternative;

(iv) reliability;

(v) conversion efficiency;

(vi) planning flexibility and resource commitment; and

(vii) constraints to implementation.

(b) Environmental impact criteria include:

(i) Significant environmental advantages and disadvantages; and

(ii) Significant siting constraints.

(3) In comparing the no action alternative with the other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the output of the facility.

(4) An explanation must be given of the reasons for dropping any alternative from further consideration at any stage in the evaluation process.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXI. SERVICE AREA UTILITIES, ELECTRIC TRANSMISSION LINES, EVALUATION OF ALTERNATIVES An application must contain an evaluation of the nature and economics of relevant alternatives to the proposed facility, which could in whole or in part address the problem or opportunity as described in Rule XLVI that the proposed facility is designed to address, including transmission alternatives, alternative energy resources, alternative transmission technologies, alternative levels of reliability and nonconstruction alternatives. The no action alternative must be evaluated. The evaluation must also include a comparison of alternatives leading to the selection of a preferred alternative and an explanation of the reasons for the selection of the proposed facility.

(1) An application for an electric transmission line must include an evaluation of transmission alternatives, including alternative end points and intermediate substation locations for the transmission line and upgrading or replacing an existing facility that would serve to provide the needed reinforcement that would be provided by the proposed facility. An application must also evaluate alternative timing of other electric transmission lines planned by the applicant, including those identified in the long-range plan filed with the department under Rule V or in other planning documents, which in whole or in part would address the problem situation or opportunity or provide the needed reinforcement that would be provided by the proposed facility. For each transmission alternative, a minimum of four load flow studies must be provided, as required by Rule XLVIII(5).

(2) Alternative energy resources and energy conservation alternatives are those that can individually or in combination offset or postpone the need for the proposed facility, or provide services comparable to the proposed facility. The evaluation must include a description of each alternative energy resource or energy conservation measure, the location and quantity available, any constraints to its availability and predictable daily and seasonal variations in the availability of the energy resource, if applicable.

(3) Alternative transmission technologies are those capable of providing comparable services or addressing the problem or opportunity the proposed facility is designed to address.

(4) An application based on reliability of service considerations must contain an evaluation of alternative levels of transmission reliability, and of the provision of backup generation to customers with particular needs for reliability.

(5) nonconstruction alternatives include the use of curtailable and interruptible load contracts with customers and load management. Evaluation should be made of the cost and feasibility of direct payments for increased interruptibility or load management.

(6) The no action alternative, means no facility would be constructed to meet the need or provide the services the proposed facility is designed to meet or provide.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXII SERVICE AREA UTILITIES, ELECTRIC TRANSMISSION LINES, CRITERIA FOR EVALUATION OF ALTERNATIVES (1) An application must contain the applicant's evaluation of all relevant alternatives listed in Rule LXI leading to a ranking and selection of alternatives and selection of the proposed transmission facility.

(a) An application must include a detailed description of the methods and criteria used by the applicant to select a facility which addresses the problem or opportunity situations identified as the basis of need (see Rule XLVI) at the lowest overall cost.

(2) In addition to the applicant's criteria for comparison, an application must include a ranking of all relevant alternatives which have no insurmountable environmental, technical or other problems serious enough to warrant elimination from further consideration, by levelized annual cost, including known mitigation costs. Alternatives whose levelized annual cost is not more than 50 percent higher than the proposed facility or 25 percent higher when the proposed facility is a transmission line 230 kv or higher and at least 30 miles long, or which have significant environmental advantages over the proposed facility, must then be compared based on performance, system impact, and environmental impact as follows:

(a) performance criteria include:

(i) total construction cost and levelized annual cost;

(ii) financeability;

(iii) reliability;

(iv) duration of the solution; length of time before additional reinforcement is needed; and

(v) constraints to implementation.

(b) system impact criteria include:

(i) for generation alternatives, the need for future expansion of the existing transmission and distribution system;

(ii) total transmission system losses;

(iii) effect, if any, on timing and need for constructing new generating facilities; and

(iv) effect on the ability of the applicant to take advantage of opportunities for economy transactions.

(c) environmental impact criteria include:

(i) significant environmental advantages and disadvantages; and

(ii) significant siting constraints.

(3) In comparing the no action alternative with other alternatives, the costs of no action shall include, if relevant, the net losses to consumers who would be deprived of the services of the facility.

(4) A full explanation must be given of the reasons for dropping any alternative from further consideration at any stage in the evaluation process.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXIII PIPELINE FACILITIES, EVALUATION OF ALTERNATIVES An application for a pipeline facility must contain an evaluation of alternatives, including, but not limited to, the use of alternative transportation modes, alternative starting points if the point of origin is a plant or facility for which a site must be chosen, alternative destination points, alternative diameter pipe, alternative flow rates, alternative rates of pumping or compressing, alternative size, number and location of pump or compressor stations, alternative pump or compressor fuels and fuel sources, alternative pipe wall thickness and alternative pipe material, and the no action alternative.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXIV ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY An application for an energy generation or conversion facility must contain an alternative siting study and baseline environmental data as specified in Rule LXIV-Rule LXXX. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize similar transportable energy resources. An alternative siting study and equivalent environmental baseline data is required for all energy generation or conversion facilities defined by 75-20-104(10), MCA. Applicants for energy generation or conversion facilities that employ nontransportable energy resources must consult with the department concerning the alternative siting study and baseline data requirements.

(1) The alternative siting study for an energy generation or conversion facility must include:

(a) delineation of the study area (see Rule LXIX);

(b) analysis of delivered cost of energy in the study area (see Rule LXX;

(c) identification of economically feasible siting areas (see Rule LXXI);

(d) a reconnaissance of the study area (see Rule LXXII);

(e) selection of candidate siting areas (see Rule LXXIII);

(f) an inventory of the candidate siting areas (see Rule LXXIV and LXXV);

(g) selection of alternative sites (see Rule LXXVI);

(h) a baseline study of alternative sites, including baseline data collection and impact assessment (see Rule LXXVII and LXXVIII);

(i) a comparison of alternative sites (see Rule LXXIX); and

(j) selection of the preferred site (see Rule LXXX).

(2) An application must contain the information required by Rule LXXXI(3) for the following new linear facilities or upgrades of existing linear facilities that are proposed in association with each of the alternative sites, unless the applicant can demonstrate that less detailed information meets these requirements, based on considerations of voltage, capacity, or length of the associated facilities, the homogeneity of the geographic area that would be crossed by these facilities or that impacts are not likely to occur.

(a) Associated facilities that transport major volumes of materials, including fuel and water required by the facility to produce energy or other primary products.

(b) Associated facilities that transmit or transport the energy or primary products of a facility to load centers or to a point of interconnection with a transmission or transportation system.

(3) An application must contain a summary of the results of consultation with appropriate government agencies to identify their concerns about the proposed facility's possible locations or effects on the environment, and the way the applicant considered these concerns in identifying preferred and alternative sites for the facility.

(4) An application should include only information that is relevant to evaluation of the impacts of and alternative locations for the facility. If any of the information required by Rule LXIV-LXXX or 75-20-503, MCA is not included, an application must contain a discussion of the rationale behind omitting them.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXV ENERGY GENERATION AND CONVERSION FACILITIES, PREFERRED SITE CRITERIA Preferred site(s) conform to the criteria listed in 75-20-301(2)(i) and 304(3)(a), MCA and are located:

(1) In areas where transportation requirements will be compatible with other human activities;

(2) Where new associated linear transmission or transportation facilities are as short as possible and conform to the preferred route criteria listed in Rule LXXXII;

(3) Where there is probable community acceptance and cooperative participation in the siting of the facility;
(4) Where there will be a net positive effect on the economy of local communities;
(5) In areas with adequate public and private services to meet the demands created by construction and operation of the facility;
(6) In geologically stable areas in flat or gently rolling terrain;
(7) Where opportunities exist for energy conservation or use of by-products, including waste heat;
(8) In areas which meet the criteria for class II waste disposal areas listed in ARM 16.14.505;
(9) Where a water supply is obtainable from existing or planned industrial water storage;
(10) In areas where atmospheric conditions and topography are favorable for dispersion of airborne pollutants; and
(11) In accordance with applicable local, state, or federal management plans where public lands are concerned.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXVI ENERGY GENERATION AND CONVERSION FACILITIES, EXCLUSION AREAS The following exclusion areas within the study area shall be eliminated from further consideration for siting the facility unless the legislative or administrative unit of government with direct authority over the area gives the applicant permission to locate the facility there. Information concerning the locations of exclusion areas is required by the reconnaissance and is considered throughout the alternative siting study.
(1) National wilderness areas.
(2) National primitive areas.
(3) National parks.
(4) Rivers in the national wild and scenic river system.
(5) National wildlife refuges and ranges.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXVII ENERGY GENERATION AND CONVERSION FACILITIES, SENSITIVE AREAS Facilities should not be sited in sensitive areas unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in a sensitive area would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information concerning the locations of sensitive areas are divided among the

reconnaissance, the inventory, and the baseline levels of the siting study. Any sensitive areas initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative sites, and in the assessment of impacts required by the baseline study if any of these areas are within the impact zone of an alternative site.

(1) For the reconnaissance, the sensitive areas are as follows:

(a) state game ranges and game management areas;

(b) state parks and national and state monuments;

(c) national and state recreation areas;

(d) rivers under active study for inclusion in the national wild and scenic river system;

(e) roadless areas of 5,000 acres or greater in size, managed by federal or state agencies to retain their roadless character;

(f) areas designated class I under prevention of significant deterioration provisions of the clean air act of Montana or areas under active consideration for such designation;

(g) areas designated as "non-attainment" under the clean air act of Montana;

(h) designated critical habitat for state or federally listed threatened or endangered species;

(i) national historic landmarks, and national register historic districts and sites; and

(j) rivers and streams in the state recreational waterway system.

(2) For the inventory, the sensitive areas are as follows:

(a) land areas covered by conservation easements where the presence of the facility would be incompatible with a management plan established by a local, state or federal agency;

(b) public and private airports and airfields and any controlled airspace associated with them, and other air traffic hazard areas identified by the Montana aeronautics division and the federal aviation administration;

(c) designated visually sensitive areas;

(d) unique habitats and natural areas, including areas designated by the national park service, the USDA forest service, the bureau of land management, or the state of Montana as national natural landmarks, natural areas, research natural areas, areas of critical environmental concern, special interest areas, research botanical areas, and outstanding natural areas;

(e) national register eligible historic districts and sites;

(f) national trails;

(g) municipal watersheds;

(h) designated one hundred year floodplains;

(i) military installations, including, but not limited to, military bases, command centers, missile silos, and radar towers;

(j) agricultural experiment stations; and

(k) streams and rivers designated class I and II by the Montana department of fish, wildlife and parks.

(3) For the baseline study, the sensitive areas are as follows:

(a) habitats occupied at least seasonally by resident state or federally listed threatened and endangered species;

(b) viewsheds of scenic overlooks and scenic highways; and

(c) state or federal waterfowl production areas.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXVIII ENERGY GENERATION AND CONVERSION FACILITIES, AREAS OF CONCERN Facilities should not be sited in areas of concern unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in an area of concern would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information about the locations of areas of concern are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Any areas of concern initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative sites, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative site.

(1) For the reconnaissance, the areas of concern are as follows:

(a) specially managed buffer areas surrounding exclusion areas;

(b) active faults showing evidence of post-miocene movement; and

(c) mountain valleys subject to a high frequency of atmospheric conditions conducive to poor dispersion of air pollutants

(2) For the inventory, the areas of concern are as follows:

(a) areas of rugged topography defined as areas with slopes greater than 15 percent;

(b) the winter distribution of elk, deer, and pronghorn and areas where they concentrate during severe winters as designated by the Montana department of fish, wildlife, and parks, bureau of land management, or USDA forest service;

(c) major elk summer security areas which are any forested areas greater than 1/2 mile in minimum radius, more than 1/2 mile from an existing road, and designated by the Montana department of fish, wildlife and parks, bureau of land management, or USDA forest service as elk summer range;

(d) habitats occupied at least seasonally by mountain sheep as designated by the Montana department of fish, wildlife and parks;

(e) any undeveloped land or water areas that contain known natural features of unusual scientific, educational or recreational significance;

(f) areas with geologic units or formations that show a high probability of including significant paleontological resources;

(g) sites with evidence of contemporary use that have religious or heritage significance and value to Indians as defined by Rule LXXV(8);

(h) rivers and streams under active study for inclusion in the state recreational waterway system; and

(i) proposed national natural landmarks under active study.

(3) For the baseline study, the areas of concern are as follows:

(a) individual residences located outside of incorporated cities and towns;

(b) major public buildings, including schools;

(c) one hundred year flood plains defined as areas of land adjacent to a stream channel with a one percent or less probability of being flooded in any given year;

(d) riparian forests defined as a stand of mature cottonwood or mixed cottonwood-conifer forests greater than 100 meters long and 10 meters wide where average canopy height is 50 feet or more and average density of mature trees is greater than 20 stems per acre that occurs along a waterway;

(e) nesting colonies, defined as five or more pairs within 40 acres, of white pelicans, great blue herons, double-crested cormorants, gulls, or terns;

(f) sage grouse and sharp-tailed grouse breeding areas, the winter distribution of sage grouse and sharp-tailed grouse, and areas where they concentrate during severe winters as designated by the Montana department of fish, wildlife and parks; and

(g) habitats occupied at least seasonally and critical to species listed as "species of special interest or concern" by the Montana department of fish, wildlife and parks and the US fish and wildlife service.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXIX ENERGY GENERATION AND CONVERSION FACILITIES, DELINEATION OF THE STUDY AREA (1) An application must identify the study area and its boundaries. The study area must contain the locations of sources of major inputs to the proposed facility and the destinations of the output of the facility, including the following:

(a) for service area utility applicants with a service area outside Montana, the applicant's entire service area, the entire state of Montana, and any areas between Montana and the service area where the facility could be constructed with a reasonable likelihood that the levelized annual delivered cost of the energy to the load or market centers to be served would be no more than 30 percent greater than the least cost location where the facility could be constructed or where significant environmental advantages such as those listed in Rule LXV justify additional costs;

(b) for service area utility applicants with a service area located wholly in Montana, the applicant's entire service area and any additional areas inside or outside Montana where the facility could be constructed with a reasonable likelihood that the levelized annual delivered cost of the energy to the load or market centers to be served would be no more than 30 percent greater than the least cost location where the facility could be constructed or where significant environmental advantages such as those listed in Rule LXV justify additional costs;

(c) for competitive utilities and nonutilities, all major load or market areas to be served by the proposed facility;

(d) reasonable alternative sources of coal for the proposed facility:

(i) the reasonableness of an alternative coal source is based on the comparative costs of mining, transportation, treatment and compliance with existing regulations; and

(ii) the reasonableness of an alternative coal source cannot be determined solely on the basis of ownership.

(e) reasonable alternative sources of water for the proposed facility:

(i) reasonable water sources are determined based on availability and the cost of acquisition, transportation treatment and compliance with existing regulations;

(f) existing bulk transmission or transportation segments where there is available capacity to accommodate the output of the proposed facility, either directly or by displacement in order to serve the load or market areas listed in (a)-(c).

(2) An application must contact a map of the study area depicting the locations listed in (1).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXX ENERGY GENERATION AND CONVERSION FACILITIES, ANALYSIS OF DELIVERED COST OF ENERGY IN THE STUDY AREA. (1) An application must contain estimates of the following costs and graphical representations of these costs, depicted by selected iso-cost lines, a cellular-based format, or other methods approved in writing by the department.

(a) The estimated costs of supplying coal to the proposed facility located at any point in the study area, from the lowest cost coal source for that point.

(b) The estimated costs of providing cooling water to the proposed facility located at any point in the study area, from the lowest cost water source for that point.

(c) The estimated costs of constructing, operating and maintaining the proposed facility at any point in the study area, based on the differences, if any, in labor costs associated with distances to population centers, any differences in facility design required to comply with air quality requirements, and any other differences in facility design associated with different locations for the proposed facility.

(d) The estimated costs of transmitting or transporting the energy or product of the proposed facility from any point in the study area to the load or market areas described in Rule LXIX (1)(a),(b), or (c), including the costs of construction of any necessary transmission or transportation links and the present value of any line losses and wheeling costs, through the minimum cost transmission arrangements associated with any point in the study area.

(e) Any other appropriate cost categories as determined by the applicant.

(2) An application must contain a composite of the delivered levelized cost of energy from the facility located at any point in the study area, based on the costs required by (1)(a)-(e).

(3) An application must contain a description of the cost analysis, the methods and assumptions used to develop the information required by (1) and (2), and a discussion of the accuracy of the cost estimates.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXI ENERGY GENERATION AND CONVERSION FACILITIES, IDENTIFICATION OF ECONOMICALLY FEASIBLE SITING AREAS (1) Based on the cost calculations required by Rule LXX, the applicant must identify, on the map required by Rule LXIX(2), the location where the facility could be constructed at the minimum delivered levelized cost of energy in the study area.

(2) The applicant must specify the cost associated with the location specified in (1).

(3) The applicant must identify economically feasible siting areas on the map required by Rule LXIX(2). Economically feasible siting areas are defined by cost contours or cells that indicate the areas where the delivered levelized cost of energy from the facility would be no more than 30 percent higher than the minimum cost location identified by (1) or areas that have significant environmental advantages such as those listed in Rule LXV that justify additional costs.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXII ENERGY GENERATION AND CONVERSION FACILITIES, RECONNAISSANCE An application must contain a reconnaissance of the study area prescribed by Rule LXIX to select candidate siting areas that are generally suitable for siting the facility.

(1) For the portion of the study area located in Montana, an application must contain a base map with the study area delineated on USGS topographic maps at a scale of 1:250,000.

(2) The reconnaissance must include overlays to the base map required by (1) of the exclusion areas listed in Rule LXVI, the sensitive areas listed in Rule LXVII(1) and the areas of concern listed in Rule LXVIII(1) that occur in the portion of the study area located in Montana.

(3) For the portion of the study area located outside Montana where economically feasible siting areas were identified by Rule LXXI(3), the applicant shall consider exclusion areas equivalent to those listed in Rule LXVI, sensitive areas equivalent to those listed in Rule LXVII(1), and areas of concern equivalent to those listed in Rule LXVIII(1).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXIII ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF CANDIDATE SITING AREAS (1) The applicant shall select at least three geographically distinct candidate siting areas of at least 10 miles in minimum radius with boundaries that lie within an economically feasible siting area identified in Rule LXXI(3), based on consideration of the following:

(a) exclusion areas, sensitive areas, and areas of concern identified pursuant to Rule LXXII(2) and (3);

(b) the preferred site criteria listed in Rule LXV;

(c) refinements of the cost estimates required by Rule LXX based on the information provided pursuant to Rule LXXII(2) and/or (3) and any factors that influence the cost of the facility, including the costs of the following:

(i) coal and water delivery systems, including rail spurs, pipelines, reservoirs, wells, conveyor and conduit systems;

(ii) energy or product delivery systems, including transmission or transportation facilities;

(iii) pollution control systems and other mitigation measures; and

(iv) other associated facilities or facility components.

(d) engineering concerns; and

(e) other factors important to the applicant.

(2) If only one candidate siting area is selected, based on (1), that area shall be at least 30 miles in radius and be located within an economically feasible siting area identified in Rule LXXI(3).

(3) The applicant shall delineate the boundaries of the candidate siting areas with lines on the base map required by Rule LXXII that are accurate to within 0.5 mile (0.80 km). For portions of the study area located outside Montana, any candidate siting areas shall be delineated on the map required by Rule LXIX.

(4) An application must contain an explanation of the methods used to select the candidate siting areas, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale behind selecting the areas.

(5) If any portion of an economically feasible siting area is located outside Montana, the applicant shall select at least one candidate siting area outside Montana. An applicant choosing candidate siting areas outside Montana must select at least two candidate siting areas within Montana.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXIV ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, GENERAL REQUIREMENTS (1) An application must contain an inventory of the candidate siting areas identified in Rule LXXIII to select alternative sites suitable for siting the facility.

(2) An application must contain base maps of the candidate siting areas. The base maps shall provide coverage at a scale of 1:62,500 or 1:24,000 of the geographic area within the candidate siting areas. The applicant shall provide one mylar copy of each base map to the department. USGS 15 or 7.5 minute topographic maps, enlarged or reduced to the appropriate scale if necessary, shall be used to create the base maps, insofar as possible. Where such topographic coverage is not available, USGS advance or final 7.5 minute orthophoto quads or the best available published maps with a scale of 1:125,000 or 1:100,000, enlarged to the appropriate scale if necessary, shall be used.

(3) The sensitive areas listed in Rule LXVII(1) and (2), the areas of concern listed in Rule LXVIII(1) and (2), and the environmental information required by Rule LXXV shall be

delineated on the minimum number of overlays to the base maps of the candidate siting areas. The overlays shall clearly portray the required information. The applicant shall organize and present the required information on overlays according to the categories listed in Rule LXXIX(3)(c)-(e) and (h)-(m) to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged as specified in (2). All overlays shall clearly show section lines or corners and township and range locations.

(4) For candidate siting areas selected pursuant to Rule LXXIII that are located outside Montana, the applicant shall consider sensitive areas equivalent to those listed in Rule LXVII(1) and (2) and areas of concern equivalent to those listed in Rule LXVIII(1) and (2).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXV ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION An application must contain the following environmental information for the geographic area within each candidate siting area.

(1) An application must contain one or more overlays depicting the location of the following land use and land cover categories. A minimum map resolution of 20 acres is required unless otherwise specified in any individual category below. Linear features required by (e),(f), and (g) and boundaries of any other land cover or land use categories shall be accurately mapped to within one-tenth mile. The applicant may combine information on an overlay provided that mapped categories are clearly distinguishable. All overlays shall clearly show section lines or corners and township and range locations.

(a) Cities, towns, and unincorporated communities, and residential clusters of 5 or more dwelling units per 20 acres.

(b) Designated residential growth areas.

(c) The developed areas adjoining city and town boundaries.

(d) Industrial and commercial areas located outside of cities, towns and unincorporated communities.

(e) Existing federal and state highways and designated and existing county roads.

(f) Railroads and railroad right-of-way.

(g) Electric transmission lines of 161 kilovolts (kv) or greater voltage design.

(h) Nontimbered rangeland.

(i) Dry cropland.

(j) Prime and unique farmland.

(k) Mechanically irrigated land and other irrigated land.

(l) Irrigation canals carrying at least 50 cfs of water.
(m) Permitted surface mining areas.
(n) Forested lands.
(o) Standing water bodies, including any lake, wetland marsh or reservoir, and intermittent water bodies and internally drained basins that reach a surface area of 10 acres or more at least one year out of ten.

(2) An application must contain an overlay showing the following land ownership categories:
(a) public land, by management agency; and
(b) tribal and Indian reservation land;

(3) An application must contain an overlay depicting the following slope categories at a minimum map resolution of 20 acres and contour intervals of 80 feet or less, unless different categories are approved in writing by the department:
(a) 0≥5 percent;
(b) 5≥15 percent;
(c) greater than 15 percent

(4) An application must contain an overlay showing the following areas that are 20 acres or greater in size, active mass movement areas that clearly exhibit downslope movement of soil or rock material, including earth flows, landslides, active soil creep and solifluction; and slopes with conditions conducive to instability, but where past failure is not apparent.

(5) An application must contain an estimate of the population in each population center identified on the overlay(s) required by (1)(a).

(6) An application must contain a narrative description of existing social characteristics and characteristics of the local economy of the communities within the candidate siting areas and within a reasonable commuting distance of each candidate siting area. Projected future social and economic conditions should the facility not be built must also be discussed. The following information is required in the description:
(a) the relationship of current land uses to economic and social activities in the area;
(b) existing federal, state and local government land use plans and other local legal restrictions affecting land uses;
(c) population and demographic characteristics;
(d) social structures, values and lifestyles that may be affected by the construction and operation of the facility and identification of any sub-groups that may be differentially affected by the project;
(e) the local economy, income characteristics, labor force participation characteristics, the availability of skilled and semi-skilled labor, prevailing wage levels, and employment and unemployment rates;
(f) the availability, adequacy, capacity and cost of public services, including roads, education, health, social, public safety, and sanitary services;

(g) fiscal characteristics of local governments and school districts, including descriptions of revenue and expenditures; and

(h) the availability, adequacy, capacity and cost of private services, including housing, health and retail and wholesale goods and services.

(7) An application must characterize the nature and magnitude of public concerns about the facility based on contacts with representative groups of persons residing in the candidate siting areas and any areas potentially affected by population increases resulting from construction and operation of the facility, and/or comments received at any scoping and other public meetings the applicant may hold, and comments from local service providers and public officials. The application must also identify alternatives to the proposed facility suggested by the public and must identify man-made and natural environmental features the public feels would be affected by the facility.

(8) An application must contain an overview of the history and prehistory of the candidate siting areas, including the following:

(a) documentation that a file search has been conducted to identify the types of potentially significant historical, archaeological, architectural, and paleontological resource sites likely to be encountered in the candidate siting areas and a statement indicating the amount of previous survey work conducted in the candidate siting area;

(b) a summary of the nature of the existing historical, archaeological, or paleontological data base and identification of any inadequacies such as a lack of previous survey work in the candidate siting areas that could complicate efforts to fully define all significant classes of sites or properties and to anticipate their occurrence;

(c) identification of sites likely to be encountered in the candidate siting areas and an assessment of the potential for sites to yield information of significant value to historic and prehistoric research; and

(d) a map at a scale of 1:125,000 indicating the location and the extent of previous survey work, based on the results of (a) and including a legend showing level of intensity, the reference date of survey, the sponsor, resultant report, the type of resource and the boundaries of each site, when available.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXVI ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF ALTERNATIVE SITES (1) The applicant shall select at least three alternative sites for baseline study based on consideration of the following:

(a) exclusion areas, sensitive areas, and areas of concern identified by Rule LXVI, Rule LXVII(1), (2), and (3), and Rule LXVIII(1), (2) and (3);
(b) the preferred site criteria listed in Rule LXV;
(c) the information required by Rule LXXV;
(d) cost;
(e) engineering criteria; and
(f) other factors important to the applicant.

(2) The applicant shall select for study at least one alternative site from each candidate siting area where the facility could be constructed with a levelized delivered cost of energy that is no more than ten percent higher than the minimum cost location based on the refined cost estimates required by Rule LXXIII(1)(c). At least two alternative sites shall be located within Montana.

(3) An application must contain an explanation of the methods used to select the alternative sites, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale for selecting the alternative sites.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXVII ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of at least three alternative sites and their impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facility, to identify mitigation strategies, and to select the preferred site.

(2) The applicant shall depict each alternative site, and the locations of all on-site and off-site associated facilities, as appropriate, using symbols or lines approximately one-half millimeter or less in width drawn on a 1:24,000 topographic base map. The applicant shall provide one mylar copy of this base map to the department. For any areas where 1:24,000 topographic base maps are not available, USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used, or where these are not available, USGS advance or final 7.5 minute orthophoto quads shall be used. Where none of these are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 100,000, enlarged to 1:24,000 if necessary, shall be used.

(3) An application must contain one set of 1:4800 topographic maps showing the locations, as applicable, of the generators, emission control devices, condensers, shift conversion facilities, reactors, stacks, catalyst production and regeneration facilities, cooling towers, water storage ponds, waste disposal ponds, roads, parking areas, railroad spurs, substations, pumping stations, on-site pipelines, coal

storage facilities, any other structures or buildings, nonlinear associated facilities, and any existing structures for each alternative site, noting structures that would be relocated or destroyed.

(4) An application must contain an overlay or overlays, as appropriate, to the base map required by (2) of the baseline data required by Rule LXXVIII that can be mapped, the exclusion areas listed in Rule LXVI, the sensitive areas listed in Rule LXVII(1),(2), and (3), and the areas of concern listed in Rule LXVIII(1),(2) and (3) that are within the impact zones associated with each alternative site. The applicant shall organize the information according to the categories listed in Rule LXXIX(3)(c)-(e) and (h)-(m) and shall present the information on the minimum number of overlays to the base map. The applicant shall provide one mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations.

(5) An application must contain one set of black and white contact prints at a scale of 1:48,000 or 1:24,000 that provide complete aerial stereo coverage of the alternative sites, the geographic area within a five mile radius of each alternative site, and the proposed locations of associated facilities. These photos shall be taken during a season of full foliage no more than three years prior to filing the application unless otherwise approved by the department. An application must contain advance or final USGS 7.5' orthophoto quads, where available, for the impact zones or portions of impact zones that are not covered by the aerial photos. However, this requirement does not apply to the impact zones associated with assessment of social and economic impacts required pursuant to Rule LXXVIII(3)(b), (4) and (5).

(6) For each alternative site, or for the proposed site for any facility for which a waiver has been obtained pursuant to 75-20-304(3), MCA, the applicant must certify in the application that purchase options or access for purposes of conducting the studies required by these rules have been obtained.

(7) An application must contain, for each alternative site, information required by the department of health and board of health to determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction pursuant to 75-20-216(3), MCA.

(8) An application must identify and discuss mitigation to reduce or eliminate significant adverse impacts of the facility at each alternative site, including, but not limited to:

(a) alternative pollution control strategies, equipment and/or facilities;

(b) alternative strategies, equipment and/or facilities for reducing water consumption;

(c) alternative locations of associated facilities; and

(d) plans to reduce adverse impacts on local communities, including, but not limited to, plans for meeting the service needs of the work force and maintaining the existing quality of services;

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXVIII ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application must contain baseline data and an assessment of the projected cumulative short and long-term changes and impacts that would result from construction, operation and maintenance of the facility and associated facilities for each alternative site and the impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and site-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative sites as required by Rule LXXIX and selecting a preferred site as required by Rule LXXX. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by Rule LXXVII(2) that will clearly portray the information.

(1) An application must contain an overlay depicting the land use information required by Rule LXXV(1) and the following information for an impact zone that includes the area within 5 miles of each alternative site:

(a) platted subdivisions and land areas designated by local school boards for future school development;

(b) communication facilities, including television and radio towers, microwave facilities, and law enforcement and emergency network facilities; and

(c) beehives and apiaries.

(i) Locations of beehives, apiaries, and leaf-cutter bee boards for the field season prior to submitting the application must also be identified within the vegetation impact zones defined by (14).

(2) An application must contain a description of the anticipated construction crew for the proposed facility by size, skill, and wage levels, the variation in size as it relates to the construction schedule, and any significant variations in these factors among the alternative sites. These data must also be provided for the permanent work force, except that variations in size, if any, shall be described as they relate to the operation and maintenance schedule.

(3) An application must contain an assessment of land use impacts of the facility on agricultural, residential, commercial, industrial, mining, and public land uses based on the information required by (1). An application must specify

land uses for which there are no significant differences in impacts among the alternative sites. The assessment of land use impacts must address the following:

(a) for an impact zone that includes the area within a 5-mile radius of each alternative site, the compatibility of the facility with existing land use activities, potential changes in or interference with existing uses of Land, and potential inhibiting or preclusive effects on potential future uses of land;

(b) for an impact zone that includes the area within approximately 50 miles of each alternative site, unless the applicant shows that potential land use impacts would be confined to a smaller area, the land use changes expected to result from project-induced population growth and economic development; an analysis of the nature of land use changes expected to result from project construction and operation; probable locations of land use changes; the nature and amount of existing land uses that could reasonably be expected to be displaced; and land use conflicts likely to result from such changes. This assessment must include a description of any measures the applicant proposes to reduce adverse effects on existing land use activities;

(c) for an impact zone that includes the area within approximately 50 miles of each alternative site, impacts on agricultural activities resulting from facility-related population and economic growth and changes in air and water quality, changes in agricultural land productivity and operational characteristics, and profitability of livestock, crop and apiarian operations in the impact area. The requirements listed in (7), (13), (14), (17), and (22)-(25) that refer to cropland and to water used for agricultural purposes shall satisfy appropriate parts of this requirement; and

(d) for an impact zone that includes any areas where coal trains would significantly increase rail traffic in residential areas and at road crossings, an application must contain an assessment of safety hazards, noise impacts, and interference with public travel.

(4) An application must contain a detailed qualitative and quantitative assessment of social impacts and impacts of the facility on the economy, public and private services, and the fiscal affairs of local governments and school districts for an impact zone that encompasses the area within approximately a 50-mile radius of each alternative site. At a minimum, the assessment must expand upon and refine information required by Rule LXXV(6). An application must specify any economic, social, public or private services or fiscal characteristics for which there are no significant differences in impacts among the alternative sites. An application must describe the social and economic impacts, if any, on persons involved in

agricultural operations and the impacts of changes in agriculture on the overall social and economic characteristics of the impact zone.

(5) An application must contain an assessment of public attitudes and concerns about the potential impacts of the facility that is based on representative views of persons residing within approximately a 50-mile radius of each alternative site. The assessment must also include summaries of correspondence and summaries of personal interviews, if they are conducted, and other information the applicant has collected that records the comments and concerns public officials, local residents and other individuals and groups have raised about the facility. Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct must also be included. The assessment must address the following:

(a) concerns about social, socioeconomic, and land use changes the facility could cause;

(b) concerns about natural environmental features that may be adversely affected by the facility;

(c) issues relating to the facility that may divide communities, cause individual resentment and frustration, and result in public debate; and

(d) issues relating to the facility of particular concern to landowners and residents of the area within 5 miles of each alternative site.

(6) An application must contain the following earth resource data:

(a) An overlay showing where ground disturbance would occur if the facility were constructed at each alternative site;

(b) For an impact zone that includes the area within one mile of each alternative site, a detailed geologic map at a scale of 1:4800 and cross sections sufficient to show geologic formations and features potentially affected by seismic activity.

(7) An application must contain an assessment of potential impacts of the facility and associated facilities on earth resources for each alternative site. The impact assessment must address soil erosion and sedimentation for all areas that would be disturbed by construction activities, including those outside the alternative site boundaries. Mass movement must be addressed for the areas where the facility and associated facilities would be located. Alterations of soil characteristics that could reduce productivity or fertility, including compaction or mixing of soil horizons and reclamation, must be addressed for any disturbed areas that would be reclaimed. Reclamation of waste disposal sites must also be addressed. For areas of seismic risk, the assessment applies to an impact zone that includes the area within one mile of each alternative site. Only construction activities

that would occur in floodplains are subject to the requirements of (e) below.

(a) An overlay depicting wind and water erosion risk and a discussion of the potential impacts considering soil characteristics, slope, predicted amount of disturbance and climatic conditions.

(b) An overlay and discussion of mass movement potential, including consideration of existing mass movement areas, bedrock geology and soils, slope aspect, vegetation, and groundwater conditions.

(c) A detailed assessment of seismic risk and a description of the probable behavior of the substrate and surficial materials during an earthquake measuring 5.0 or more on the Richter scale, including any mass movement, differential soil compaction, settling or liquifaction. The assessment should include the following:

(i) a description of any recorded earthquakes that may have affected an alternative site, including the date of occurrence, the magnitude and highest intensity, and a description of the epicenter location or region of highest intensity; and

(ii) an estimate of local intensity of the greatest probable seismic event that may affect each alternative site and an estimate of the probable magnitude and duration of vertical and horizontal acceleration and other probable ground motions likely to occur.

(d) A reclamation and revegetation plan including a discussion of any constraints. Reclamation includes any site restoration, such as recontouring, reducing compaction, restoration of segregated topsoils, installation of soil erosion control structures and successful establishment of vegetative cover in areas disturbed by facility construction, including waste disposal sites. Constraints to reclamation include any physiographic or geologic feature or physical property of soil that hinders or prohibits reclamation.

(e) For any construction activities that would occur in 100-year floodplains, a description of the potential for damage to the facility or associated facilities from construction in the floodplain, and an assessment of the potential for adverse impacts to the environment resulting from construction, operation and maintenance of the facility and associated facilities in the floodplain.

(8) An application must contain data concerning the proposed, and if applicable, alternative fuel sources for the facility, and an analysis of the differences in fuel sources among the alternative sites, if any, including the following:

(a) a chemical and radiological content analysis, including a discussion of comparative differences;

(b) costs and types of pollution control facilities and strategies that would be required;

(c) the amount and relative toxicity of waste products that would be produced;

(d) the amount and type of fuel handling facilities that would be required and the area of land required for storage;

(e) heat content and consumption rate; and

(f) difficulty of acquisition, including lease, purchase, and/or transportation arrangements.

(9) An application must contain the following data relating to the design of the facility for each alternative site:

(a) possibilities and difficulties of disposal of process water, solid or hazardous wastes, and any legal restrictions that would increase the difficulty and cost of compliance with air and water quality standards;

(b) a description of advantages or disadvantages relative to opportunities for using existing transmission or transportation capacity to transport inputs to or outputs from the proposed facility and to accommodate additional facilities; and

(c) A description of opportunities for using waste heat or providing other useful by-products from the facility.

(10) An application must contain visual resource and viewer sensitivity data for each alternative site from any recreation area, residential area, national register or national register eligible site identified by Rule LXVI, Rule LXVII and Rule LXVIII. For an impact zone that includes the area from which the facility would be clearly visible, not to exceed 30 miles from the proposed facility, the following information is required:

(a) identification and an overlay of key observation points and a description of criteria used to select these points; where one or more of the areas referenced above are in close proximity and would afford similar views of the proposed facility, a representative observation point may be designated;

(b) a description and evaluation of viewer characteristics, including proximity to the facility, orientation, estimated number of viewers, and duration of view; where a characteristic does not warrant differentiation, an application shall contain an explanation of the reasons;

(c) a description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape;

(d) a description and categorization of levels of sensitivity (the relative degree of viewer interest in the visual resource);

(e) a description and evaluation of the opportunities for and effectiveness of available topographic screening; and

(f) photographs taken from selected observation point(s) toward the alternative sites, showing in profile or outline form the visible portion of the proposed facility. The photographs must show the full range of study area visual

characteristics and must be accompanied by or cross-referenced to appropriate data provided for (c), (d) and (e); and

(g) a description of the methods used to categorize and describe the impacts risk to potential viewers, as required by (a)-(f).

(11) An application must contain a general assessment of the dispersion patterns of the visible portion of the plume from the proposed facility for an impact zone that includes the area within approximately a 30-mile radius of each alternative site, including, to the extent practicable, a description of relative opacity and the potential occurrence of reduced visibility conditions.

(12) An application must contain an assessment of the potential types and levels of visual resource impacts for each alternative site, including, to the extent practicable, plume visibility impacts, based on integration of the information required by Rule LXXVIII(10) and (11).

(13) An application must address the deposition patterns or concentrations of the following emissions from the facility for each alternative site as follows:

(a) a description of measures proposed to control entry of dust into the atmosphere;

(b) an overlay showing isopleths of cooling tower salt deposition in pounds per acre per year that includes the following concentrations: greater than 30, 10, 3 and 1 pound(s) per acre per year;

(c) a map at a scale of 1:250,000 of the geographical area within 50 miles of each alternative site, with the following overlays:

(i) locations of the predicted maximum one-hour, three-hour, 24-hour, growing season (April-August), and annual concentrations of sulfur dioxide, with the predicted value clearly indicated for each location;

(ii) isopleths of the maximum one-hour average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading;

(iii) isopleths of the maximum three-hour average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading;

(iv) isopleths of the maximum 24-hour average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading;

(v) isopleths of the maximum growing season (April-August) average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations

predicted for the study area, with all land areas in the highest 10th percentile indicated by shading;

(vi) isopleths of the maximum annual average sulfur dioxide concentration, showing at least five intervals between the highest and lowest concentrations predicted for the study area, with all land areas in the highest 10th percentile clearly indicated by shading; and

(vii) as appropriate, the maximum annual concentrations and five isopleths spaced at equal concentration intervals in between the maximum and minimum concentrations for cobalt, total suspended particulates, volatile organic compounds, lead, asbestos, nitrogen oxides, beryllium, mercury, vinyl chloride, fluoride, sulfuric acid mist, hydrogen sulfide, and total reduced sulfur, if any of these pollutants will be emitted from the proposed facility in a significant amount as defined by ARM 16.8.921(30)(a).

(14) An application must contain the following baseline data concerning cropping patterns and natural vegetation for each alternative site and an impact zone that includes the water intake, storage and/or discharge points and structures, and a one-mile buffer zone surrounding these associated facilities, areas receiving cooling tower salt deposition greater than 10 lbs/acre/yr, areas receiving the highest 10th percentile of one-hour, three-hour, 24-hour, growing season and annual sulfur dioxide concentrations and any other pollutants as depicted on the overlays required by (13), and areas within a one-mile radius of high one-hour, three-hour, 24-hour, growing season and annual sulfur dioxide or other pollutant deposition:

(a) an overlay of natural vegetation and land cover, delineating community types based upon one or two dominant species and one or two understory species. The minimum resolution of any mapping category shall be 10 acres. For each vegetation and land cover category, the following information is required:

(i) locations of sampling plots or transects;

(ii) 35 mm oblique color transparencies of a representative stand of each category;

(iii) identification of dominant species, and subdominant species, if present, estimated canopy coverage classes, and canopy cover of the dominant and, if applicable, the subdominant species;

(iv) a list of plant species encountered within each category;

(v) the percent coverage of bare ground, litter, and lichens;

(vi) an estimate of site productivity using such measurements as soil characteristics, yield capability classes, or net primary production. Production estimates must be based on the peak of the growing season, and must indicate the animal

unit months (AUM's) that the type is supporting and the AUM's that the community type could sustain;

(vii) for forested areas, an estimate of tree density, basal area and average crown height;

(viii) an indication of successional stage, trend, and factors presently influencing natural vegetative production, including disease and lack of moisture;

(ix) environmental factors, including slope, aspect, soil type, grazing pressure, fire history, condition and trend, including an explanation of relationships between vegetation types and soil types;

(b) on the overlay required by (a) the distribution of ponderosa pine and any other plant species of comparable or greater sensitivity to sulfur dioxide;

(c) on the overlay required by (a) the distribution of old growth forests that have never been harvested and that contain at least 10 percent canopy coverage of conifers greater than 5 dm at breast height;

(d) documentation concerning the presence, distribution, and abundance of plant species listed as threatened or endangered;

(e) for cultivated areas, baseline data concerning the variety of crops, farming practices, trend data including increases and decreases in the acreage devoted to certain crops, and typical harvest rates in bushels per acre and pounds per acre.

(f) the types and distribution of ornamentals including windbreaks, Christmas tree farms, and commercial greenhouses; and

(g) discussion of soil characteristics, including ph, ion exchange capacity, base saturation, soil nutrient deficiencies or excesses, and/or selenium problems.

(15) An application must contain the following baseline data concerning terrestrial wildlife for each alternative site, within a three-mile impact zone around each alternative site, and within the vegetation impact zone defined by (14):

(a) a list of vertebrate species that have been documented to occur in the impact zones and estimates of their abundance:

(b) a list of species that are listed as threatened, endangered, or species of special interest or concern to wildlife management agencies and have been documented in the impact zones or whose geographic ranges overlap the impact zones;

(c) for the species listed in (b) above, baseline data on seasonal distribution, habitat requirements and characteristics, and estimated abundance;

(d) for species whose distribution patterns are not homogeneous throughout the impact zones, an overlay showing seasonal distribution patterns, migration routes, and critical or special use sites;

(e) waterfowl production areas owned or managed by state or federal wildlife agencies and areas with high waterfowl population densities including prime waterfowl habitat as designated by Montana department of fish, wildlife and parks and any areas identified by the Montana department of fish, wildlife and parks or the US fish and wildlife service as waterfowl concentration areas; and

(f) a description of any existing conditions that stress wildlife populations or limit abundance, including harassment, disease, weather, fires, development, hunting or poaching pressure.

(16) An application must contain the following baseline data concerning aquatic life and habitats for each alternative site and an impact zone that includes lakes, rivers, and streams, and a representative sample of ponds, springs, wetlands, or marshes located within the vegetation impact zone defined by (14) and any water habitats within one mile upstream and fifteen miles downstream of water withdrawal or discharge points, and within five miles downstream of construction activities. Any overlays required by this section must be cross-referenced, as appropriate, to the surface water overlay required by (22):

(a) a list of aquatic vertebrates of documented or suspected occurrence, including references to the sources of information;

(b) a list of species listed as threatened or endangered, or species of special interest or concern to wildlife management agencies;

(c) for the species required by (b), a description and overlays, as appropriate, including the following:

(i) relative abundance, including where possible, estimates of population size, distribution, and growth rates;

(ii) spatial and temporal distribution;

(iii) movements, resident or migratory;

(iv) distribution of special use sites, including spawning or rearing areas, by season;

(v) existing and potential recreational or commercial use;

(vi) any existing conditions that limit abundance, including pollution, irrigation runoff, withdrawals or dewatering effects, upstream flow regulation or depletion, barriers to movement, and/or overharvest;

(vii) habitat requirements, including minimum flow requirements and suitability of habitats within the impact zone;

(viii) food requirements and preferred sources;

(ix) distribution and abundances of life stages that may be susceptible or fatally affected by project-related disturbances.

(d) for waters in the impact zone, as applicable, a description of seasonal fishing use and harvest and a discussion of the economic importance of the fishery resource;

(e) a description of abiotic habitat characteristics of all waters in the impact zone, including water quality, water quantity, seasonal variation, thermal stratification characteristics of lakes and reservoirs, bottom characteristics, and for running waters, a flow duration hydrograph;

(f) a description of biotic characteristics of waters in the impact zone, including the following:

(i) type, extent, and condition of riparian vegetation;

(ii) typical macroinvertebrate communities, including species composition and relative abundance;

(iii) aquatic and semi-aquatic macroflora; and

(iv) periphyton, neuston, and plankton if any.

(17) An application must contain an assessment of the potential impacts to biological resources for each of the alternative sites, including wildlife, fisheries and vegetation in the impact zones as defined by (14), (15) and (16). The assessment must include:

(a) a list of species and/or habitats of greatest susceptibility to project-related disturbances, including fisheries, wildlife and vegetation concerns identified by the applicant and appropriate managing agencies, and an explanation of the rationale and assumptions used to generate the list;

(b) an evaluation of the anticipated impacts to each species or habitat listed in (a), including a description of biological impacts that would occur in the sensitive areas or areas of concern listed in Rule LXVII(1)(a)-(e), (h), (j), (2)(d), (j) and (k), (3)(a) and (c), and Rule LXVIII(1)(a), (2)(b)-(e), (h), and (3)(d)-(g);

(c) identification of areas, in consultation with Montana department of fish, wildlife and parks, where hunting or fishing pressure is likely to increase significantly as a result of the project, and a description of any impacts to game species or any changes in hunting or fishing regulations that might result from the increase in hunting pressure;

(d) identification of areas, in consultation with Montana department of fish, wildlife and parks, where wildlife populations would be adversely affected by increased human population density, increased traffic, increased human activity, or by displacement, and a description of significant impacts to wildlife species that likely would result from these habitat changes, including changes in size, distribution and reproduction of aquatic and terrestrial wildlife populations;

(e) identification of areas, in consultation with Montana department of fish, wildlife and parks and department of health, where pollutants may enter a stream or watercourse as a result of failure of dikes, dams, pipelines, or any other cause, and an asssessment of the impacts to aquatic life and habitats that would result from any such failure;

(f) an assessment based on current literature of the potential effects of emissions on vegetative communities,

including crops and ornamental plants, in the impact zones, including direct effects of emissions on foliage, reduction in productivity of soils, and changes in phenology of agricultural species;

(g) a description of the method used to evaluate the impact risk to fisheries, wildlife, and vegetation at the alternative sites; and

(h) documentation that agencies with management responsibility for any affected biological resources have been consulted concerning impacts and mitigation, and a description and evaluation of the mitigation measures suggested by these agencies.

(18) Based on the cultural resource description required by Rule LXXV(8), an application must contain cultural resource data for each alternative site and its impact zones. The impact zones include lands where surface disturbance that occurs during construction and operation of the facility would directly affect the integrity of cultural resources and known sites from which the facility would be clearly visible from a distance of 30 miles or less where the values of the cultural resources may be significantly affected by the visual presence of the facility. An application must contain the following data:

(a) a detailed description of specific properties likely to be affected by the facility, based on the results of an in-depth archival and documentary research effort;

(b) based on the results of (a) and appropriate field checking of site boundaries, a discussion of the accuracy of the overview predictions required by Rule LXXV(8) concerning:

(i) site densities and distribution;

(ii) the presence or absence of sites, trails, and properties; and

(iii) site integrity and existing modern intrusions;

(c) For any cultural resource sites or properties identified or more fully defined by the information required by (a) and (b), a discussion, based on consultation with state historic preservation office, of the potential eligibility of these sites or properties for listing on the national register.

(19) An application must contain an assessment of the potential impacts of the facility on cultural resources for each alternative site. The assessment must address the potential for physical destruction or degradation during construction or operation of the facility. Cultural resource-related information required by (12) and (21) will satisfy the visual and recreation-related impact requirements of this section. In addition, for each potentially affected cultural resource property or site defined by Rule LXVII(1)(i) and (2)(e) or by Rule LXVIII(2)(f) and (g), and for any properties or sites identified by (18)(c) that may be potentially eligible for listing on the national register, the

assessment must include a discussion of whether the facility would significantly affect the qualities for which these sites or properties were listed or could be listed.

(20) An application must contain baseline data concerning recreation areas for each alternative site and its impact zones. For the recreation areas defined by Rule LXVI, LXVII(1)(b)-(e), (i) and (j), and (2)(d), national natural landmarks where recreation is listed as a current site use, (2)(e) and (f), and by LXVIII(1)(a) and (2)(e) and (h), the impact zone includes the area within a 30 mile radius of the facility if the facility is within view or within a ten-mile radius if not within view of the facility. For the recreation areas listed in (a) and (b) below, the impact zone includes the area within a 5-mile radius of each alternative site.

(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay identifying any recreational areas or locales where public recreational use occurs within the impact zone other than those specifically referenced above.

(b) An application must include an overlay showing fishing access areas, public and private campgrounds and intensive outdoor recreation areas such as ski areas, local parks and picnic areas.

(c) An application must contain a list of the recreation areas located within the impact zones for each alternative site, cross-referenced to the overlays required by Rule LXXVII(4) and by (a) and (b) above, a description of each area, including any prominent recreational facilities and aesthetic features, a description of how the area is used for recreation and, if available, identification of the types of users of the area and a use level estimate.

(d) An application must contain a description of any plans to create new or upgrade existing recreation facilities.

(21) An application must contain an assessment of the potential adverse impacts of the facility on the recreation settings defined by (20) for each alternative site. The assessment shall be limited to recreation areas likely to be affected by the facility. Information provided in response to (12) concerning aesthetic impacts on recreation settings may be cross-referenced as appropriate. For each recreation setting or area that would be significantly affected, an application must contain the following information:

(a) a description of how the recreation area or setting would be affected, including aesthetic impacts of the facility;

(b) a description of how recreational activities and experiences at each area or setting could change as a result of the facility and the potential for use of the area or setting to be curtailed or terminated, or for some user groups to be affected more than others;

(c) a description of the relationship of each affected area or setting to the local and regional supply of recreation opportunities, including a discussion of whether an affected area or setting is unusual or unique in its region, by virtue of its providing opportunities unavailable elsewhere; and

(d) documentation that agencies with recreation management responsibility for each affected area or setting have been consulted concerning the impacts and mitigation, and a description and evaluation of the mitigation measures suggested by these agencies.

(22) An application must contain the following baseline data for surface waters for each alternative site:

(a) an overlay showing ponds, lakes, rivers, streams, springs, wetlands or marshes that could be affected by construction activities, atmospheric dispersal of pollutants, or water withdrawals or discharges, including any downstream areas where solid or liquid pollutants may enter surface waters as a result of accidental failure of any dikes or dams or any other cause. The overlay shall include, as appropriate and available, the name of each stream or other water body and its department of health water quality classification.

(b) data sufficient to determine the normal and seasonal variability in water quality and stream flow and/or changes in lake or reservoir elevation, if available; and

(c) an estimate of the amount of water needed and the source(s), for consumptive and nonconsumptive uses to construct, operate, and maintain the facility.

(23) An application must contain an assessment of impacts of the facility on surface water quantity and quality, stream banks and stream hydrology, and water users for each stream or other water body identified on the map required by (22)(a), including the following information:

(a) a description of how flows and/or water elevations would change as a result of facility construction, operation, and maintenance;

(b) an assessment of impacts on existing water rights, if any;

(c) an assessment of predicted water quality changes and discharges resulting from facility construction, operation, and maintenance including impacts on water users due to changes in water quality;

(d) an overlay showing the location of riparian vegetation buffer strips that would be left undisturbed, and the location of any proposed sediment control structures, and an assessment of the risk of stream sedimentation, including plans to control sediment production; and

(e) a monitoring plan for determining potential impacts during operation.

(24) An application must contain baseline data concerning groundwater quantity and quality within an impact zone that includes the area within one mile of each alternative site and

one mile down-gradient or down-slope from any waste storage facilities located off-site except where artesian or confined conditions dictate a larger impact zone. The following data are required:

(a) A detailed description of aquifer characteristics, water quality and existing uses; and

(b) Cross sections illustrating the geology, depth to water, and locations of existing wells, and wells proposed by the applicant cross-referenced to or included in the overlay required by (6)(b).

(25) An application must contain an assessment of impacts of the facility on groundwater quantity and quality, including effects of water withdrawals and discharges based on the information required by (24), a specific discussion of the potential effects of the facility on existing water users, and a monitoring plan for determining potential impacts during operation.

(26) An application must contain the following baseline data concerning potential noise, radio and television interference, and electrical effects of the facility as applicable for each alternative site.

(a) An assessment of potential noise impacts of the facility, including an estimate of average noise expressed on an a-weighted day-night scale at the property boundary;

(b) For electric generation facilities, an assessment of the potential for the facility to cause radio and television interference and interference with any other communication systems;

(c) A description of mitigation measures to reduce noise and interference with communication systems.

(27) An application must contain an assessment of occupational health and safety considerations, including a list of hazardous substances workers may be exposed to, anticipated conditions of exposure, and a description of measures that are proposed to reduce exposure and adverse effects.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXIX ENERGY GENERATION AND CONVERSION FACILITIES, COMPARISON OF ALTERNATIVE SITES An application must contain a comparison of the alternative sites which includes the following:

(1) A summary of significant adverse impacts of the proposed facility for each of the alternative sites, and the impact zones around them as determined by the baseline study conducted pursuant to Rule LXXVII and Rule LXXVIII.

(2) A description of the degree to which significant adverse impacts can be mitigated for each alternative site.

(3) A ranking of the alternative sites from best to worst for each of the following categories and an indication of the

relative differences among the alternative sites for each category.

(a) Levelized delivered cost of energy, including environmental costs and mitigation costs;

(b) Reliability (see Rule XLI);

(c) Land use considerations;

(d) Socioeconomic considerations;

(e) Earth resources;

(f) Fuel sources;

(g) Engineering considerations;

(h) Visual resources;

(i) Biological resources;

(j) Historical, archaeological and paleontological resources;

(k) Recreation;

(l) Water resources;

(m) Any other categories important to the applicant.

(4) A comparative ranking of the alternative sites from best to worst and an indication of the magnitude of the differences between sites, considering all of the categories listed in (3) consistent with the requirements of Rule LXXX(5).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXX ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF THE PREFERRED SITE. The applicant must select a preferred site from the alternative sites selected in accordance with Rule LXXVI. An application shall contain a discussion of the rationale used to make the selection, including the following:

(1) The applicant's selection criteria and how they were applied;

(2) An explanation of how the preferred site criteria listed in Rule LXV were applied. If weighting of the criteria is used in order to select the preferred site, an application must identify the relative weights given to each criterion and the reasons for assigning each weight;

(3) An explanation of how exclusion areas listed in Rule LXVI were considered in selecting the preferred site;

(4) An explanation of how sensitive areas listed in Rule LXVII and areas of concern listed in Rule LXVIII were considered in selecting the preferred site; and

(5) A discussion of the relative importance of the categories listed in Rule LXXIX(3) and identification of any categories that were considered more important than others in selecting the preferred site. An application must clearly explain any weighting system used to portray differences in

importance among the categories in selecting the preferred site.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXI LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY. An application for a linear facility must contain an alternative siting study and baseline environmental data as specified in Rule LXXXI-Rule XCVII.

(1) The alternative siting study for an electric transmission line or a pipeline must include:

(a) delineation of the study area (see Rule LXXXVII);

(b) a reconnaissance of the study area (see Rule LXXXVIII);

(c) selection of study corridors (see Rule LXXXIX);

(d) an inventory of the study corridors (see Rule XC and 2340);

(e) selection of study routes (see Rule XCII);

(f) selection of alternative routes (see Rule XCII);

(g) a baseline study of alternative routes, including baseline data collection and impact assessment (see Rule XCIII, XCIV, XCV);

(h) a comparison of alternative routes (see Rule XCVI);

(i) selection of the preferred route (see Rule XCVII).

(2) The alternative siting study shall include any alternative routes for the facility which have alternative end points or combinations of end points identified according to Rule LXI and LXII that would meet the need the proposed facility is intended to address, and would have a levelized annual cost no more than 50 percent higher (25 percent higher for transmission lines 230 kV or greater voltage and 30 miles or longer) than the levelized annual cost of the facility or would have significant environmental advantages over the facility, with the end points proposed by the applicant.

(3) An application for a proposed generation or conversion facility as defined by 75-20-104(10)(a), MCA, must contain the applicable information required by Rule LXXXI-XCI to select and evaluate study corridors for proposed new or upgraded linear facilities that would be associated with the generation or conversion facility if it were located at the applicant's preferred or alternative sites, unless the applicant can demonstrate that less detailed information meets these requirements, based on considerations of voltage, capacity, or length of the linear associated facilities, the homogeneity of the geographic area that would be traversed or the likelihood that no impacts will result from these associated facilities. Linear associated facilities affected include those that transport major amounts of materials, including fuel and water, required by the generation or conversion facility to produce energy or other primary products, and those that transmit or

transport the energy or primary products of a facility to load centers or to a point of interconnection with a transmission or transportation system. Based on the applicable information required by Rule LXXXI-XCI, the applicant shall compare the study corridors and select a preferred corridor or corridors, as appropriate, for the linear associated facilities. An application must contain the following:

(a) a summary of the most important adverse impacts of each linear associated facility for each of the study corridors;

(b) a ranking of the study corridors from best to worst for each of the impact and cost categories listed in Rule XCVI(3), including an indication of the relative differences among the study corridors for each category, and a comparative ranking of the study corridors considering all of the categories; and

(c) an explanation of the applicant's reasons for selecting the preferred corridor(s), and an explanation of the consideration given to the applicable preferred route criteria listed in Rule LXXXII, exclusion areas listed in Rule LXXXIII, sensitive areas listed in Rule LXXXIV and areas of concern listed in Rule LXXXV or LXXXVI.

(4) An application must contain a summary of the results of consultation with government agencies to identify their concerns over the proposed facility's possible locations or effects on the environment, and the way the applicant considered these concerns in identifying preferred and alternative routes for the facility.

(5) An application should include only information relevant to evaluation of the impacts of and alternative locations for the facility. If any of the information required by Rule LXXXI-XCVII or 75-20-503, MCA is not included, an application must contain an explanation that may include, but is not limited to, the length, voltage, capacity, and/or design of the facility, the homogeneity of the area that would be traversed or the likelihood that no adverse impacts would occur.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXII LINEAR FACILITIES, PREFERRED ROUTE CRITERIA. Preferred routes conform to the criteria listed in 75-20-301(2)(i), MCA, and are located:

(1) For electric transmission lines:

(a) where there is the greatest potential for local acceptance of the facility;

(b) where they utilize or parallel existing utility and/or transportation corridors to the greatest extent practicable;

(c) to allow for selection of a centerline, which, to the greatest extent practicable is located in nonresidential areas;

(d) on rangeland rather than cropland and on nonirrigated or flood irrigated land rather than mechanically irrigated land;

(e) in logged areas rather than undisturbed forest, in timbered areas,

(f) in geologically stable areas with nonerosive soils in flat or gently rolling terrain;

(g) in roaded areas where existing roads can be used for access to the facility during construction and maintenance;

(h) so they cross floodplains where structures need not be located on the floodplain;

(i) in areas where the facility is least visually incompatible with the landscape.

(j) a safe distance from residences and other areas of human concentration; and

(k) in accordance with applicable local, state, or federal management plans when public lands are crossed.

(2) For pipelines:

(a) conform to the criteria listed in (1)(b), (e), (f), (g), (i), (j) and (k); and

(b) cross lands which can be returned to their original condition through recontouring, conservation of topsoil and reclamation.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXIII LINEAR FACILITIES, EXCLUSION AREAS The following exclusion areas within the study area shall be eliminated from further consideration for siting the facility unless the legislative or administrative unit of government with direct authority over the area gives the applicant permission to locate the facility there. Information concerning the locations of exclusion areas is required by the reconnaissance and is considered throughout the alternative siting study.

(1) National wilderness areas.

(2) National primitive areas.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXIV LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, SENSITIVE AREAS Sensitive areas should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or that siting the facility in or through a sensitive area would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for

information concerning the locations of sensitive areas are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Any sensitive areas initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative routes, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative route.

(1) For the reconnaissance, the sensitive areas are as follows:

(a) national wildlife refuges and ranges, state game ranges and game management areas;

(b) national and state parks and monuments;

(c) national and state recreation areas;

(d) rivers in the national wild and scenic rivers system and rivers under active study for inclusion in the system;

(e) roadless areas of 5,000 acres or greater in size, managed by federal or state agencies to retain their roadless character;

(f) rivers and streams in the state recreational waterway system;

(2) For the inventory, the sensitive areas are as follows:

(a) communication facilities, including television and radio towers, microwave facilities, and law enforcement and emergency network facilities;

(b) military installations, including, but not limited to, military bases, command centers, missile silos, and radar towers;

(c) land areas covered by conservation easements where the presence of the facility would be incompatible with a management plan established by a state or federal agency;

(d) public and private airports and airfields, and any controlled airspace associated with them, and other air traffic hazard areas identified by the Montana aeronautics division and the federal aviation administration;

(e) designated visually sensitive areas;

(f) state or federal waterfowl production areas;

(g) unique habitats and natural areas, including areas designated by the national park service, the USDA forest service, the bureau of land management, or the state of Montana as national natural landmarks, natural areas, research natural areas, areas of critical environmental concern, special interest areas, research botanical areas, outstanding natural areas;

(h) designated critical habitat for state or federally listed threatened or endangered species;

(i) national historic landmarks, and national register historic districts and sites;

(j) national register eligible historic districts and sites;

(k) national trails;
(l) municipal watersheds; and
(m) streams and rivers designated class I and II by the Montana department of fish, wildlife and parks;
(3) For the baseline study, the sensitive areas are:
(a) schools and land areas designated by local school boards for future school development;
(b) agricultural experiment stations;
(c) scenic overlooks and scenic highways;
(d) habitats occupied at least seasonally by resident state or federally listed threatened and endangered species.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXV LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, AREAS OF CONCERN Areas of concern should not be crossed by a facility unless the applicant can demonstrate that no significant adverse impacts would result, or that mitigation of significant adverse impacts is possible, or unless siting the facility in or through an area of concern would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigation, than siting the facility in an alternative location. Requirements for information about the locations of areas of concern are divided among the reconnaissance, the inventory and the baseline levels of the siting study. Areas of concern initially identified by either the reconnaissance or the inventory shall be considered throughout the remainder of the alternative siting study, in the selection of alternative routes, and in the assessment of impacts required by the baseline study if any of these areas is within the impact zone of an alternative route.
(1) For the reconnaissance, the areas of concern are as follows:
(a) for substations, switching stations, and/or terminus points, active faults showing evidence of post-miocene movement;
(b) areas of rugged topography defined as areas with slopes greater than 30 percent; and
(c) specially managed buffer areas surrounding exclusion areas.
(2) For the inventory, the areas of concern are as follows:
(a) cities, towns and unincorporated communities, and residential clusters of 5 or more dwelling units per 20 acres;
(b) mechanically irrigated land, other irrigated and dry cropland;
(c) prime and unique farmland and orchards;
(d) permitted surface mining areas;
(e) highly erodible soils and areas with severe reclamation constraints, defined as soils developed on

cretaceous shales, intrusives and certain lacustrine deposits;

(f) limited access areas in mountainous or rugged terrain, defined as areas with slopes greater than 15 percent, located more than 1/2 mile from an existing road;

(g) the winter distribution of elk, deer, moose, pronghorn, mountain goat and bighorn sheep and areas where they concentrate during severe winters, as designated by the Montana department of fish, wildlife and parks, the bureau of land management, and the USDA forest service;

(h) major elk summer security areas which are any forested areas greater than 1/2 mile in minimum radius, more than 1/2 mile from an existing road, and designated by the Montana department of fish, wildlife and parks, the bureau of land management, and the USDA forest service as elk summer range;

(i) habitats occupied at least seasonally by mountain sheep and mountain goat as designated by the Montana department of fish, wildlife and parks;

(j) sage grouse and sharp-tailed grouse breeding areas, the winter distribution of sage grouse and sharp-tailed grouse, and areas where they concentrate during severe winters as designated by the Montana department of fish, wildlife and parks;

(k) areas with high waterfowl population densities including prime waterfowl habitat as designated by the Montana department of fish, wildlife and parks and any areas identified by the Montana department of fish, wildlife and parks or US fish and wildlife service as waterfowl concentration areas or low-level feeding flight paths;

(l) any undeveloped land or water areas that contain known natural features of unusual scientific, educational or recreational significance;

(m) areas with geologic units or formations that show a high probability of including significant paleontological resources;

(n) sites with evidence of contemporary use that have religious or heritage significance and value to Indians as defined by Rule XCI(8);

(o) standing water bodies, including any lake, wetland, marsh or reservoir, and intermittent water bodies and internally drained basins that reach a surface area of 20 acres or more at least one year out of ten;

(p) surface supplies of potable water; and

(q) rivers and streams under active study for inclusion in the state recreational waterway system.

(3) For the baseline study, the areas of concern are:

(a) individual residences not included within one of the urban or residential clusters defined by (2)(a) and major farm support buildings and livestock calving or lambing areas;

(b) snow avalanche chutes and track areas, including the trenches, troughs and corridors through which snow and ice passes;

(c) riparian forests defined as a stand of mature cottonwood or mixed cottonwood-conifer forests greater than 100 meters long and 10 meters wide where average canopy height is 50 feet or more and average density of mature trees is greater than 20 stems per acre that occurs along a waterway;

(d) old growth forests greater than 10 acres in size that have never been harvested and that contain at least 10 percent canopy coverage of conifers greater than 5 dm at breast height;

(e) nesting colonies, defined as 5 or more pairs within 40 acres, of white pelicans, great blue herons, double-crested cormorants, gulls, or terns;

(f) habitats occupied at least seasonally and critical to species listed as "species of special interest or concern" by the Montana department of fish, wildlife and parks, and the US fish and wildlife service.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXVI LINEAR FACILITIES, PIPELINES, SENSITIVE AREAS AND AREAS OF CONCERN For pipelines, sensitive areas and areas of concern include:

(1) For the reconnaissance, the sensitive areas listed in Rule LXXXIV (1) and the areas of concern listed in Rule LXXXV (1)(c); and

(a) active faults showing evidence of post-miocene movement;

(2) For the inventory, the sensitive areas listed in Rule LXXXIV(2)(c) and (e)-(1) and the areas of concern listed in Rule LXXXV(2); and

(a) moderately rugged topography defined as areas with slopes greater than 15 percent;

(3) For the baseline study, the sensitive areas listed in Rule LXXXIV(3) and the areas of concern listed in LXXXV; and

(a) for any liquid pipeline crossing of a river or stream that is located within 15 miles upstream of a stream or stream reach designated class I by the Montana department of fish, wildlife and parks or a diversion for a municipal water supply.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXVII LINEAR FACILITIES, DELINEATION OF THE STUDY AREA (1) An application must identify the study area or areas that include the following, considering the electrical load(s) to be served and/or electrical problem(s) or opportunities to be addressed by the facility, or the market area for the product that would be transported by the facility:

(a) all reasonable end points for the facility within Montana;

(b) for facilities with end points outside Montana, all reasonable points for exiting Montana; and

(c) a geographical area between the end points or exit points of sufficient width to include all reasonable study corridors.

(2) An application must identify the factors used to determine the boundaries of the study area. Relevant information provided pursuant to Rule XLIV and 36.7.2216 may be referenced.

(3) An application must contain a base map of the study area delineated on USGS topographic maps at a scale of 1:250,000.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXVIII LINEAR FACILITIES, RECONNAISSANCE An application must contain a reconnaissance of the study area prescribed by Rule LXXXVII to select study corridors generally suitable for siting the facility.

(1) For electric transmission lines, the reconnaissance must include overlays to the base map required by Rule LXXXVII(3) of the exclusion areas listed in Rule LXXXIII, the sensitive areas listed in Rule LXXXIV(1), and the areas of concern listed in Rule LXXXV(1) that occur in the study area.

(2) For pipelines, the reconnaissance must include overlays to the base map required by Rule LXXXVII(3) of the exclusion areas listed in Rule LXXXIII and the sensitive areas and areas of concern listed in Rule LXXXVI (1) that occur in the study area.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE LXXXIX LINEAR FACILITIES, SELECTION OF STUDY CORRIDORS (1) The applicant shall select study corridors, based on consideration of the following:

(a) exclusion areas, sensitive areas and areas of concern identified pursuant to Rule LXXXVIII;

(b) the preferred route criteria listed in Rule LXXXII(1) or (2);

(c) cost; and

(d) reliability and engineering concerns and other factors important to the applicant.

(2) The applicant shall delineate the boundaries of the study corridors with lines on the base map required by Rule XC(2) that are accurate to within 0.10 mile (0.16 KM).

(3) An application must contain an explanation of the methods used to select the study corridors, an explanation of how the considerations listed in (1) were incorporated, and a

discussion of the rationale for selecting the study corridors.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XC LINEAR FACILITIES, INVENTORY, GENERAL REQUIREMENTS (1) An application must contain an inventory of the study corridors identified in Rule LXXXIX to select study routes suitable for siting the facility.

(2) An application must contain base maps of the study corridors. The base maps shall provide coverage at a scale of 1:62,500 or 1:24,000 of the geographic area within the study corridors. The applicant shall provide one mylar copy of each base map to the department. USGS 15 or 7.5 minute topographic maps, enlarged or reduced to the appropriate scale if necessary, shall be used to create the base maps, insofar as possible. Where topographic coverage is not available, USGS advance or final 7.5 minute or orthophoto quads or the best available published maps with a scale of 1:125,000 or 1:100,000, enlarged to the appropriate scale if necessary, shall be used.

(3) For electric transmission lines the exclusion areas listed in Rule LXXXIII, the sensitive areas listed in Rule LXXXIV(1) and (2), the areas of concern listed in Rule LXXXV(1) and (2), and the environmental information required by Rule XCI that can be mapped shall be delineated on the minimum number of overlays to the base maps of the study corridors. The overlays shall clearly portray the required information. The applicant shall organize and present the required information on overlays according to the categories listed in Rule XCVI(3)(c)-(e) and (g)-(l) to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged or reduced as specified in (2). All overlays shall clearly show section lines or corners and township and range locations.

(4) For pipelines, the exclusion areas listed in Rule LXXXIII and the sensitive areas and areas of concern listed in Rule LXXXVI(1) and (2) that occur in the study corridors shall be delineated on the minimum number of overlays to the base map. The overlays shall clearly portray the required information. The applicant shall organize and present the required information on overlays according to the categories listed in Rule XCVI(3)(c)-(e) and (g)-(l) to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged or reduced as specified in

(2). All overlays shall clearly show section lines or corners and township and range locations.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCI LINEAR FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION An application must contain the following environmental information for the geographic area within each study corridor.

(1) An application must contain one or more overlays depicting the location of the following land use and land cover categories. A minimum map resolution of 20 acres is required unless otherwise specified in any individual category listed below. Linear features required by (c), (d), (e), and (f) shall be accurately mapped to within one-tenth mile. The applicant may combine information on an overlay provided that mapped categories are clearly distinguishable. All overlays shall clearly show section lines or corners and township and range locations.

(a) the developed areas adjoining city and town boundaries;

(b) designated residential growth areas;

(c) existing federal and state highways, and designated and existing county roads;

(d) railroads and railroad right-of-ways;

(e) pipelines 5 inches or greater in diameter;

(f) electric transmission lines of 50 kv or greater voltage design;

(g) nontimbered rangeland;

(h) industrial and commercial areas located outside of cities, towns and unincorporated communities; and

(i) forested lands.

(2) An application must contain an overlay showing the following land ownership categories:

(a) public land, by management agency;

(b) tribal and Indian reservation land.

(3) An application must contain an overlay depicting the following slope categories, at a minimum map resolution of 20 acres and contour intervals of 80 feet or less, unless different categories are approved in writing by the department:

(a) 0≥15 percent;

(b) 16≥30 percent; and

(c) greater than 30 percent.

(4) An application must contain an estimate of the population in each population center identified on the overlay(s) required by Rule LXXXV(2)(a).

(5) An application must contain a narrative description of existing social characteristics and characteristics of the local economy of the communities within and near the study corridors. Projected future social and economic conditions

should the facility not be built must also be discussed. The following information is required in the description for facilities of 230 kv or greater voltage. For facilities of less than 230 kv, a cursory discussion of the following information categories is sufficient:

(a) the relationship of current land uses to economic and social activities in the area;

(b) existing federal, state and local government land use plans and other local legal restrictions affecting land uses;

(c) population and demographic characteristics;

(d) social structures, values and lifestyles that may be affected by the construction and operation of the facility and identification of any sub-groups that may be differentially affected by the project;

(e) the local economy, income characteristics, labor force participation characteristics, the availability of skilled and semi-skilled labor, prevailing wage levels, and employment and unemployment rates;

(f) the availability, adequacy, capacity and cost of public services, including roads, education, health, social, public safety, and sanitary services;

(g) fiscal characteristics of local government and school districts, including descriptions of revenue and expenditures; and

(h) the availability, adequacy, and capacity of housing and private sector health services.

(6) An application must characterize the nature and magnitude of public concerns about the facility based on contacts with representative groups of persons residing in the study corridors, and/or comments received at any scoping and other public meetings the applicant may hold, and comments from local service providers and public officials. The application must also identify alternatives to the proposed facility suggested by the public and must identify man-made and natural environmental features the public feels would be affected by the facility.

(7) An application must contain an overlay that identifies visually sensitive areas which are defined as those areas of highest visual quality and lowest visual compatibility with the facility based on the following:

(a) a description and an overlay of land areas categorized according to visual quality, considering the variety, harmony, naturalness, uniqueness and other appropriate characteristics of the study corridors; and

(b) a description and an overlay of land areas categorized according to visual compatibility with the facility, considering vegetation, slope, landform definition, and other appropriate characteristics of the study corridors; for pipeline facilities, the degree of revegetation potential must also be included.

(8) An application must contain an overview of the history and prehistory of the study corridors, including the following:

(a) documentation that a file search has been conducted to identify the types of potentially significant historical, archaeological, architectural, and paleontological resource sites likely to be encountered in the study corridors and a statement indicating the amount of previous survey work conducted in the corridors;

(b) a summary of the nature of the existing historical, archaeological, or paleontological data base and identification of any inadequacies such as a lack of previous survey work in the study corridors that could complicate efforts to fully define all significant classes of sites or properties and to anticipate their occurrence;

(c) identification of sites likely to be encountered in the study corridors and an assessment of the potential for sites to yield information of significant value to historic and prehistoric research; and

(d) a map at a scale of 1:125,000 indicating the location and the extent of previous survey work, based on the results of (a) and including a legend showing level of intensity, the reference date of survey, the sponsor, resultant report, the type of resource and the boundaries of each site, when available.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCII LINEAR FACILITIES, SELECTION OF ALTERNATIVE ROUTES (1) The applicant shall select at least three alternative routes within the study corridors for baseline study based on consideration of the following:

(a) exclusion areas, sensitive areas and areas of concern identified by Rule LXXXIII, Rule LXXXIV(1), (2) and (3), and Rule LXXXV(1), (2) and (3);

(b) the preferred route criteria listed in Rule LXXXII(1) or (2);

(c) the environmental information required by Rule XCI;

(d) cost, reliability, engineering concerns; and

(e) other factors important to the applicant.

(3) An application must contain an explanation of the methods used to select the alternative routes, an explanation of how the considerations listed in (1) were incorporated, and a discussion of the rationale for selecting the study routes.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCIII LINEAR FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of at least three alternative routes and their impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facilities, to

identify mitigation strategies, and to select the preferred route.

(2) The applicant shall depict each alternative route, the locations of any intermediate substations, compressor stations or pump stations (for pipelines), and all impact zones defined in Rule XCIV or XCV using lines one millimeter or less in width drawn on a 1:24,000 topographic base map. The line delineating each alternative route should identify a tentative, environmentally suitable location for the facility. The applicant shall provide one mylar copy of this base map to the department. For any areas where 1:24,000 topographic base maps are not available, USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used, or where these are not available, USGS advance or final 7.5 minute orthophoto quads shall be used. Where none of these are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 100,000, enlarged to 1:24,000 if necessary, shall be used.

(3) An application must contain an overlay or overlays, as appropriate, to the base map required by (2) of the baseline data required by Rule XCIV or XCV that can be mapped, the exclusion areas listed in Rule LXXXIII, the sensitive areas listed in Rule LXXXIV(1),(2), and (3) and the areas of concern listed in Rule LXXXV(1),(2), and (3) that are within the impact zones associated with each alternative route. For pipelines, the exclusion areas listed in Rule LXXXIII, and the sensitive areas and areas of concern listed in Rule LXXXVI(1),(2) and (3) that are within the impact zones associated with each alternative route shall be included. The applicant shall organize the information according to the categories listed in Rule XCVI(3)(c)-(e) and (g)-(l) and shall present the information on the minimum number of overlays to the base map. The applicant shall provide one mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations.

(4) An application must contain one set of black and white contact prints at a scale of 1:48,000 or 1:24,000 that provide complete aerial stereo coverage of the alternative routes. These photos shall be taken during a season of full foliage no more than three years prior to filing the application unless otherwise approved by the department. An application must contain advance or final USGS 7.5' orthophoto quads, where available, for the impact zones or portions of impact zones that are not covered by the aerial photos. However, this requirement does not apply to the impact zones associated with the assessment of social and economic impacts required pursuant to Rule XCIV(4) and (5).

(5) An application must contain, for each alternative route, information required by the department of health and board of health to determine compliance with all standards,

permit requirements, and implementation plans under their jurisdiction pursuant to 75-20-216(3), MCA.

(6) An application must contain, where feasible, a tabulation of the amount, type and/or linear miles of any exclusion areas, sensitive areas, areas of concern and mapped baseline data required by Rule XCIV or XCV, that would be crossed by each alternative route or that are located within the impact zones.

(7) An application must identify and discuss mitigation to reduce or eliminate significant adverse impacts of the facility along each alternative route, including, but not limited to:

(a) alternative construction methods, techniques, and/or equipment;

(b) reclamation and facility maintenance methods;

(c) localized alternative route adjustments and alternative structure locations where significant adverse impacts may be avoided or minimized;

(d) alternative seasonal timing of construction;

(e) alternative facility or structure designs, height, span length, and alternative facility or structure materials; and

(f) alternative methods of crossing streams.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCIV LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application must contain baseline data and an assessment of the projected cumulative short and long-term changes and impacts that would result from construction, operation and maintenance of the facility for each alternative route and the impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must identify general and route-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative routes as required by Rule XCVI and selecting a preferred route as required by Rule XCVII. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by Rule XCIII(2) that will clearly portray the information.

(1) An application must contain an overlay depicting land use information required by Rule XCI(1) and the following data for an impact zone that includes the area within one mile of each alternative route for facilities of 230 kv or less voltage, and includes the area within two miles of each alternative route for facilities of greater than 230 kv:

(a) platted subdivisions;

(b) major public buildings.

(2) An application must contain a description of the anticipated construction crew by size, skill, and wage levels, the variation in size as it relates to the construction schedule, and any significant variations in these factors among the alternative routes. If applicable, these data must also be provided for the permanent work force, except that variations in size, if any, must be described as they relate to the operation and maintenance schedule.

(3) An application must contain an assessment of the impacts of the facility on agricultural, residential, commercial, industrial, mining, and public land uses in the impact zone that is within one mile of each of the alternative routes, based on the information required by Rule XCIII(3) and Rule XCIV(1). The assessment of impacts on uses of land must address the compatibility of the facility with existing land use activities, potential changes in or interference with land uses that may occur as a result of the facility, nuisance effects, and potential inhibiting or preclusive effects of the facility on land use improvements or transitions from one type of land use to another. An application must specify any land uses for which there are no significant differences in impacts among the alternative routes.

(4) An application must contain an assessment of social impacts, if any, and any important impacts of the facility on the economy and on public and private services for an impact zone that encompasses the area potentially affected by each of the alternative routes, based on the information required by Rule XCI(5). An application must specify any economic, social or public or private service characteristics for which there are no significant differences in impacts among the alternative routes.

(5) An application must contain an assessment of public attitudes and concerns about the potential impacts of the facility, that is based on representative views of persons residing in the impact zone defined by the applicant pursuant to (4) for each alternative route. The assessment must include summaries of correspondence and summaries of personal interviews, if they are conducted, and other information the applicant has collected that records the comments and concerns public officials, local residents and other individuals and groups have raised about the facility. Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct must also be included. The assessment must address the following:

(a) concerns about social, socioeconomic, and land use changes the facility could cause;

(b) concerns about natural environmental features that may be adversely affected by the facility;

(c) issues relating to the facility that may divide communities, cause individual resentment and frustration, and result in public debate; and

(d) issues relating to the facility of particular concern to landowners and residents in close proximity to any of the alternative routes considered.

(6) An application must contain an overlay depicting preliminary road locations for each alternative route, with particular emphasis on areas with slopes greater than 15 percent.

(7) An application must contain an assessment of potential impacts of the facility on the earth resources along each alternative route and its impact zone. The impact assessment must address erosion, sedimentation, mass movement, and alterations of soil characteristics that could reduce productivity or fertility, including compaction or mixing of soil horizons. The impact zone shall consist of feasible locations for new or substantially upgraded access roads and the area between each alternative route and the associated access roads. The assessment must include an estimate of the mileage of access roads crossing each category of mapped information requested below. The information requirements are as follows:

(a) an overlay of wind and water erosion risk and a discussion of the potential impacts considering soil characteristics, slope, predicted amount of disturbance and climatic conditions;

(b) an overlay and discussion of mass movement potential, including consideration of existing mass movement areas, bedrock geology and soils, slope aspect, vegetation, and groundwater conditions; and

(c) an overlay and discussion of constraints to reclamation and revegetation potential. Reclamation includes any site restoration, such as recontouring, reducing compaction, restoration of segregated topsoils, installation of soil erosion control structures, and weed control and successful establishment of vegetative cover in areas disturbed by facility construction. Constraints to reclamation include any physiographic or geologic feature or physical property of the soils that hinders or prohibits reclamation.

(8) An application must contain the following data relating to the engineering of the facility for each alternative route:

(a) a description of any engineering differences among the alternative routes as they relate to the feasibility of expanding the transmission capacity of the facility through multiple circuiting or design modifications, or relating to whether the width of the proposed right-of-way is sufficient to accommodate future transmission lines;

(b) a discussion and appropriate drawings of alternative structure types and technologies that would be required by the engineering differences among alternative routes, if any;

(c) a discussion of problems posed by poor or seasonally restricted access;

(d) a discussion of compatibility or interference problems the facility may impose on existing transmission, transportation or communication facilities in close proximity to an alternative route, if any;

(e) for substation locations, a description of seismic risk, including the risk of damage from an event with a Richter magnitude greater than 5.5;

(f) an overlay depicting designated 100-year floodplains that would be crossed by the facility, a description of the potential for damage to the facility from construction in the floodplain, and an assessment of the potential for adverse impacts to the environment resulting from construction, operation and maintenance of the facility in the floodplain; and

(g) an assessment of aeronautical hazards created along each alternative route and an assessment of any applicable mitigation measures.

(9) An application must contain viewer sensitivity data for any exclusion area, recreation area, national register or national register eligible site identified by Rule LXXXIII and LXXXIV(1)(b)-(f), (2)(g), (i), (j), (k), and (m), and any residential area, highway or county road identified by Rule LXXXIV(3)(c), Rule LXXXV(2)(a) and (3)(a) and Rule XCI(1) from which the facility would be clearly visible. The following baseline data are required only for the referenced areas, sites and state or federal highways and county roads located within an impact zone which is defined as within 5 miles of an alternative route for a facility greater than 230 kv, or within 3 miles of an alternative route for a 161 kv to 230 kv facility or within 2 miles of an alternative route for a facility less than 161 kv:

(a) identification and an overlay of key observation points and a description of criteria used to select these points;

(b) identification and an overlay of areas where the facility would be visible from appropriately grouped observation points;

(c) a description and evaluation of viewer characteristics, including proximity to the facility, orientation, estimated number of viewers, and duration of view; where a characteristic does not warrant differentiation, an application shall contain an explanation of the reasons;

(d) a description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape, including any visually sensitive areas identified by Rule XCI(7);

(e) a description and categorization of levels of sensitivity (the relative degree of viewer interest in the visual resource);

(f) a description and evaluation of the opportunities for and effectiveness of available topographic and vegetative screening; and

(g) a description of the methods used to categorize and describe impact risk to potential viewers, as required by (a)-(f).

(10) An application must contain an assessment of the potential types and levels of visual resource impacts for each alternative route, based on integration of visual quality and visual compatibility information required by Rule XCI(7) with viewer characteristics information required by Rule XCIV(9). The assessment must include a description of the potential alteration, visual quality and compatibility of lands affected by the facility, including a discussion of the methods used to integrate visual quality and visual compatibility data.

(11) An application must contain a description of existing biological resources, including fisheries, wildlife, and vegetation, and an assessment of the potential impacts to these resources for each of the alternative routes, access roads, and other associated facilities. The assessment must include, but shall not be limited to, increased hunting and fishing pressure, habitat alteration, increased access to secure habitat, displacement, shifts in feeding or migration patterns, project-related interference with special use areas, wirestrikes and other mortality, and sedimentation and blockage of streams. An application must contain the following information:

(a) for an impact zone that includes the area within one mile of each alternative route, a list of species and/or habitats of greatest susceptibility to project-related impacts, including fisheries, wildlife and vegetation concerns identified by the applicant and appropriate managing agencies, and an explanation of the rationale and assumptions used to generate the list;

(b) an evaluation of the anticipated impacts to each species or habitat listed in (a), including a description of biological impacts which would occur in the sensitive areas listed in Rule LXXXIV(1), (2)(f), (h), and (m), (3)(b) and (d) and the areas of concern listed in LXXXV(1)(c), (2)(g)-(l) and (q), (3)(c)-(f) located within the impact zone specified in (a);

(c) a general assessment of impacts due to increased hunting and fishing pressure and increased access to secure habitat which may occur in the general vicinity of each alternative route but outside the impact zone specified in (a);

(d) a description of the method used to evaluate the impact risk to fisheries, wildlife, and vegetation of the alternative routes; and

(e) documentation that agencies with management responsibility for any affected biological resources have been consulted concerning impacts and mitigation and a description and evaluation of the mitigation measures suggested by these agencies.

(12) Based on the cultural resource overview required by Rule XCI(8), an application must contain cultural resource data for each alternative route and its impact zones. The impact zones include any lands where construction and operation of the facility, including construction of access roads, may directly affect the integrity of cultural resources and known sites from which the facility would be clearly visible where the values of cultural resources may be significantly affected by the visual presence of the facility. An application must contain the following data:

(a) a detailed description of specific properties likely to be affected by the facility, based on the results of an in-depth archival and documentary research effort;

(b) based on the results of (a) and appropriate field checking of impact zones, a discussion of the accuracy of the overview predictions required by Rule XCI(8) concerning:

(i) site densities and distribution;

(ii) the presence or absence of sites, trails, and properties; and

(iii) site integrity and existing modern intrusions;

(c) for any cultural resource sites or properties identified or more fully defined by the information required by (a) and (b), a discussion, based on consultation with the state historic preservation office, of the potential eligibility of these sites or properties for listing on the national register.

(13) An application must contain an assessment of the potential impacts of the facility on cultural resources for each alternative route. The assessment must address the potential for physical destruction during construction or operation of the facility. Cultural resource-related information required by (9) and (10) will satisfy the visual impact requirements of this subsection. The assessment must include the following:

(a) for each potentially affected cultural resource property or site listed as a sensitive area or as an area of concern by Rule LXXXIV(2)(i) and (j) and LXXXV(2)(m) and (n), and for any properties or sites identified by (12)(c) which may be eligible for listing on the national register, a discussion of whether the facility would affect the qualities for which these sites or properties were listed or could be listed; and

(b) identification of special construction methods and topographic screening that could eliminate or reduce impacts, and a discussion of the likelihood of success of each measure in reducing impact.

(14) An application must contain the following baseline data concerning recreation areas and sites along each alternative route and their impact zones. The impact zone for recreation is defined by (9), except all recreation areas and sites within one mile of an alternative route for a facility 230 kv or less voltage, and all recreation areas and sites within two miles of an alternative route for a facility greater

than 230 kv must be included regardless of whether the facility would be visible from the recreation area or site. Recreation areas and sites are listed in Rule LXXXIII, LXXXIV (1)(b)-(f), (2)(g) national natural landmarks where recreation is listed as a current site use, (k), and (m), and by (a) and (b) below.

(a) Based on consultation with appropriate local, state, and federal agencies, an application must include an overlay of any recreational areas or sites where public recreational use occurs within the impact zone other than those specifically referenced above.

(b) An application must include an overlay showing any fishing access areas, public and private campgrounds and intensive outdoor recreation sites such as ski areas, local parks and picnic areas, located within the impact zones.

(c) An application must contain a list of the recreation areas and sites located within the impact zone for each alternative route cross-referenced to the overlays required by Rule XC(3) and (a) and (b) above, a description of each area or site, including any prominent recreational facilities and aesthetic features, a description of how the area or site is used for recreation and, if available, identification of the types of users of the area or site and a use level estimate.

(15) An application must contain an assessment of the potential adverse impacts of the facility and access roads on the recreation areas or sites defined by (14) for each alternative route. The requirements of rule are limited to recreation areas or sites that would be affected by the facility. Information provided in response to (10) concerning aesthetic impacts on recreation areas and sites should be cross-referenced as appropriate. For each recreation area or site that would be affected, an application must contain the following information:

(a) a description of how access to or within each recreation area or site could be affected by adding new or upgrading existing access roads;

(b) a description of how the recreation area or site would be affected including aesthetic impacts of the facility and access roads;

(c) a description of how the facility would be located relative to recreational use of each area or site;

(d) a description of how recreational activities and experiences at each area or site could change as a result of the facility and the potential for use of the area or site to be curtailed or terminated, or for some user groups to be affected more than others;

(e) a description of the relationship of each affected area or site to the local and regional supply of recreation opportunities, including a discussion of whether an affected area or site is unusual or unique in its region by virtue of its providing opportunities unavailable elsewhere;

(f) documentation that agencies with recreation management responsibility for each affected area or site have been consulted concerning the impacts and mitigation, and a description and evaluation of the mitigation measures suggested by the agencies.

(16) An application must contain an overlay showing, as appropriate and available, the names of perennial streams crossed and their department of health water quality classifications for each alternative route and impact zones as defined by (7).

(17) An application must contain an assessment of potential impacts to water resources, including surface and ground water quality, potential impacts to water users, stream hydrology and stream banks for each alternative route and an impact zone as defined by (7). The assessment must also specifically address any impacts that may occur on municipal watersheds and supplies of potable water.

(18) An application must contain the following baseline data concerning potential noise, radio and television interference and electrical effects of the facility as applicable for each alternative route:

(a) a description of the potential for the facility to induce electrical currents in metal objects on or adjacent to the right-of-way;

(b) an assessment of potential noise impacts of the facility and substations, including an estimate of average noise expressed on an A-weighted day-night scale (L_{DN}) at the right-of-way edge for facilities of 230 kv or greater voltage and at the property boundary of all substations located within 500 feet of residences or in subdivided areas.

(c) an assessment of the potential impacts of the electrical and magnetic fields generated by the facility;

(d) an assessment of the potential for the facility to cause radio and television interference and interference with any other communication systems;

(e) a description of mitigation measures to reduce noise, electric and magnetic fields, induced currents, and interference with communication systems.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCV LINEAR FACILITIES, PIPELINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT An application for a pipeline must contain baseline data and an assessment of the projected cumulative short and long-term changes and adverse impacts that would result from construction, operation and maintenance of the pipeline for each alternative route and the associated impact zones whose boundaries are specified in the following sections, unless different impact zone boundaries are approved in writing by the department. The applicant must

identify general and route-specific mitigation measures to reduce or eliminate these impacts. This information shall serve as a basis for evaluating and comparing alternative routes as required by Rule XCVI and selecting a preferred route as required by Rule XCVII. Baseline data that require mapping shall be presented on the minimum number of overlays to the base map required by Rule XCIII(2) that will clearly portray the information. An application must contain the information required by Rule XCIV(1)-(7), (8)(c) and (f), (10), (12), (13), and (15) and the following:

(1) An application must contain the following data relating to the engineering of a facility for each alternative route:

(a) a description of any engineering differences among the alternative routes, if any, relative to their ability to accommodate future pipelines or other linear facilities;

(b) a discussion and appropriate drawings of alternative facility designs and technologies that would be required due to engineering differences among alternative routes, if any;

(c) an overlay showing the locations along each alternative route where the following operations or conditions are expected to occur and a tabulation of the miles of each alternative route that would cross each category:

(i) rock trenching that requires drilling and blasting;

(ii) rock trenching that requires heavy ripping equipment, but not drilling and blasting; and

(iii) cliffs and talus that would constrain construction.

(d) seismic and geologic data sufficient to justify the facility design along any portion of an alternative route that is within one mile of an active fault or in areas of recorded seismic activity with a Richter magnitude greater than 5.5;

(e) a description of the seismic risk associated with each alternative route for the pipeline and for all above-ground associated facilities, based on the potential recurrence, rate, magnitude, and intensity of seismic events as well as ground accelerations and local geologic and soil conditions.

(2) An application must contain the visual resource information required by Rule XCIV(9), except that the information is required only for exclusion areas and the referenced recreation areas, national register or national register eligible sites, residential areas, and federal and state highways or county roads that are located within 3/4 of a mile and within view of the right-of-way and other pipeline facilities in forested areas along each alternative route. In nonforested areas the application shall contain visual resource information adequate to determine the level of impact.

(3) An application must contain the applicable biological resource information required by Rule LXXXVI and Rule XCIV(11) and the following information for each alternative route and the associated impact zones specified below:

(a) a map at a scale of 1:4800 and a minimum resolution of two acres showing existing vegetation community types and land cover, based upon one or two dominant species and one or two understory species for the following impact zones:

(i) areas within a 0.5-mile radius of pump or compressor stations for pipelines larger than 10" diameter;

(ii) crossings of streams designated class I or II by the Montana department of fish, wildlife and parks and/or of any waterway with an average annual discharge of 1,000 cfs or more;

(b) an overlay to the base map required by Rule XCIII(2) showing migration routes between winter-spring and summer-fall habitat for elk, deer, moose, bighorn sheep, mountain goat and pronghorn that intersect each alternative route and data indicating the timing and use of these migration routes;

(c) a detailed description of aquatic habitat, fish populations, special use sites such as spawning areas, and angler use for any of the following stream reaches:

(i) a reach of any perennial waterway extending two miles downstream from any trenched pipeline crossing of the stream;

(ii) any additional waters where aquatic habitats could be adversely affected by siltation, sedimentation, or increases in turbidity caused by pipeline trenching or construction adjacent to a perennial stream;

(iii) for liquid product pipelines, any additional waters where aquatic habitats could be adversely affected by a liquid product spill or leak;

(iv) a reach of any stream from which hydrostatic testing water is to be withdrawn, extending 1/4 mile upstream and five miles downstream from the point of withdrawal;

(v) a reach extending 1/4 mile upstream and five miles downstream from any point on any perennial stream where hydrostatic testing discharge water would reach the stream.

(d) for liquid product pipelines, a detailed assessment of the consequences of a spill or leak downstream of each crossing of a perennial waterway, including a description of the principal resources that would be affected, the magnitude of the impact to fishery resources and habitat, and a description of proposed spill detection, containment, and cleanup techniques; and

(e) for any wetlands or other waterfowl habitat downstream from a river crossing that could be adversely affected by a liquid product spill or leak, information on seasonal abundance and species composition of waterfowl populations.

(4) An application must contain a list of the noxious weeds that occur along the route, an assessment of the impact the facility would have on the dispersion of these weeds, and a description of the weed control measures that would be used to mitigate the impacts.

(5) An application must contain the information on recreation areas and sites required by Rule XCIV(14), except that the impact zone differs and is specified in (2) above.

(6) An application must contain the information on stream locations required by Rule XCIV(16), except that intermittent waterways that have specific names must also be included.

(7) An application must contain the water resource information required by Rule XCIV(17) and an assessment of stream crossing impacts for each perennial stream crossed by an alternative route, including, but not limited to, estimates of the extent of floodplain disturbance, anticipated stream flow during construction, streambed excavation, and the duration and timing of instream activities.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCVI LINEAR FACILITIES, COMPARISON OF ALTERNATIVE ROUTES An application must contain a comparison of the alternative routes which includes the following:

(1) A summary of the most important adverse impacts of the proposed facility for each of the alternative routes, and the impact zones as determined by the baseline study conducted pursuant to Rule XCIV or XCV.

(2) A description of the degree to which the most important adverse impacts can be mitigated for each alternative route.

(3) A ranking of the alternative routes from best to worst for each of the following categories, and an indication of the relative differences among the alternatives for each category.

(a) levelized annual costs, including environmental costs and mitigation costs:
(b) reliability;
(c) land use considerations;
(d) socioeconomic considerations;
(e) earth resources;
(f) engineering considerations;
(g) visual resources;
(h) biological resources;
(i) historic, archaeologic and paleontologic resources;
(j) recreation;
(k) water resources; and
(l) any other categories that are important to the applicant.

The applicant may combine or add to the categories as appropriate.

(4) A comparative ranking of the alternative routes from best to worst and an indication of the magnitude of the differences between routes, considering all of the categories listed in (3) consistent with the requirements of Rule XCVII(3).

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCVII LINEAR FACILITIES, SELECTION OF THE PREFERRED ROUTE The applicant must select a preferred route from the alternative routes selected in accordance with Rule XCII. An application shall contain a discussion of the rationale used to make the selection, including the following:

(1) The applicant's selection criteria and how they were applied;

(2) An explanation of how the preferred route criteria listed in Rule LXXXII(1) or (2) were applied. If weighting of the criteria is used in order to select the preferred route, an application must identify the relative weights given to each criterion and the reasons for assigning each weight.

(3) A discussion of the relative importance of the categories listed in Rule XCVI(3) and identification of any categories that were considered more important than others in selecting the preferred route. An application must clearly explain any weighting system used to portray differences in importance among the categories in selecting the preferred route.

(4) An explanation of how exclusion areas listed in Rule LXXXIII were considered in selecting the preferred route.

(5) An explanation of how sensitive areas listed in Rule LXXXIV or Rule LXXXVI and areas of concern listed in Rule LXXXV or Rule LXXXVI were considered in selecting the preferred route.

(6) A specific explanation of the opportunities for the facility to parallel or share existing utility or transportation rights-of-way, and if such opportunities were not chosen as part of the preferred route, an explanation of the reasons.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCVIII ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN An application for an energy generation or conversion facility must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation, maintenance, and decommissioning, and to assess reliability and construction and operation costs of the proposed facility at the preferred site as specified in Rule XCIX-Rule CII. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize transportable energy resources. An equivalent description and design is required for all energy generation or conversion facilities defined by 75-20-104(10), MCA. Applicants for energy generation or conversion facilities that employ nontransportable energy resource must consult with

the department concerning facility description and design requirements.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE XCIX ENERGY GENERATION AND CONVERSION FACILITIES, DESIGN CHARACTERISTICS (1) An application must include a list of any reports, documents, studies, or calculations that indicate that the preliminary design specifications and performance objectives for the major components or process areas of the facility are adequate and can be maintained in the continuous operation of the facility. Design peak operating volume must be described, including the length of time the various levels of peak operation can be sustained.

(2) An application must identify design features that were selected to reduce adverse environmental impacts.

(3) An application must describe any design features that are oversized to accommodate future increases in plant capacity.

(4) The engineering description required by (1) must include the following major facility components or process areas as applicable: boilers, reactors, generators, condensers, shift conversion facilities, cooling facilities, emission control devices, stacks, and catalyst production and regeneration facilities.

(5) An application must contain a description of associated facilities, including:

(a) transportation systems: a description of any major existing or new transportation system or terminal that would be used during the construction, operation, maintenance or decommissioning of the proposed facility; and an estimate of the type, duration, and intensity of that use;

(b) transmission facilities: a description meeting the requirements of Rule CIII and CIV, for facilities of 230 kv and larger; for facilities smaller than 230 kv, a general description of the components listed in Rule CIII is sufficient;

(c) communication installations: microwave towers;

(d) fuel-handling systems: the source of the fuel to be used by the facility and a description of equipment and portions of the site that will be used to store, prepare and transfer the fuel to the point of consumption;

(e) water-supply systems: all sources of water to be used by the facility, structures that would pump, convey, store, or treat the water, proposed drainage or flood control structures, and a description of the processes used to deliver water to and discharge water from the site, including operation and monitoring plans for water-supply reservoirs, ponds, and other diversions for municipal or industrial use;

(f) waste-handling systems: all waste-handling systems, both on and off-site, including a description of the collection, storage, treatment, disposal processes and monitoring procedures and plans for each system, consistent with the requirements of Rule C(5) ("Operation and Maintenance Analysis"); and

(g) any other permanent structures or installations, and temporary structures or installations that would be used only during the construction phase.

(6) An application must contain a topographic map at a scale of 1:4800 showing the proposed location of all facility structures and nonlinear associated facilities at or associated with the preferred site.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE C ENERGY GENERATION AND CONVERSION FACILITIES, CONSTRUCTION DESCRIPTION (1) An application must include a preliminary construction schedule and description of typical equipment, and a description of the sequential steps involved in carrying out major construction activities, including site preparation and an estimate of the amount of ground disturbance. The schedule must include associated facilities and relocations or development of transportation and other public use facilities necessitated by project construction, and methods of maintaining service during these activities.

(2) An application must contain a description of the following:

(a) plans for construction camps for the crew, if any, and any other temporary facilities used during construction;

(b) the methods the applicant will use to reclaim any temporary facilities;

(c) a schedule showing the anticipated timing of activities; and

(d) methods the applicant will use for fire control.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CI ENERGY GENERATION AND CONVERSION FACILITIES, OPERATION AND MAINTENANCE ANALYSIS (1) An application must contain a general description of operation and maintenance of the proposed facility under normal conditions, including types and scheduling of expected maintenance and inspections.

(2) An application must contain a discussion of the ability of the proposed facility to withstand possible destructive natural phenomena such as earthquakes, floods, and accidents; equipment malfunction or failure; a description of structural problems, and safety problems, or adverse environmental effects that may result from facility failure due

to natural phenomena or accidents, and design features that will be incorporated or contingency measures that will to be taken to reduce the problems.

(3) An application must discuss the environmental effects, if any, of operating the facility at less than full capacity, including effects on the operation of associated facilities and the resulting effects on air and water quality due to changes in the levels or composition of emissions and waste streams.

(4) An application must contain a descriptive analysis of materials such as air, water, coal and chemical compounds that would flow into the proposed facility, including an analysis of fuel materials used for start-up of the facility. The analysis must include at least the following:

(a) consumption rate;

(b) detailed chemical and radiological content of all input materials;

(c) heat content of fuel materials; and

(d) material and energy flow diagrams, including heat and radiant energy flows, to illustrate the path of major materials through the facility, qualitatively and quantitatively.

(5) An application must contain a qualitative and quantitative analysis of all materials that are projected to flow out of the facility. The analysis must include detailed chemical content of all output material based on the best information available, including material with radiological content. The method of using, treating, dispersing and disposing of materials in each of the following categories shall be discussed, including the method of monitoring the use, treatment, dispersal, disposal and ultimate reclamation of waste sites, as applicable, for each of the following categories:

(a) products and by-products such as gas and hydrocarbon liquid;

(b) waste materials; including gases, liquids, and solids;

(c) energy forms such as heat that escape during processing; and

(d) for coal conversion facilities which are proposed to produce more than one major product, the capability for alternative fuels production or capacity to alter the product mix of facility outputs.

(6) An application must contain an estimate of the on-line life of the facility and the projected operating capacity during the on-line life.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CII ENERGY GENERATION AND CONVERSION FACILITIES, DECOMMISSIONING METHODS An application must contain a description of the projected method and environmental effects

of decommissioning the proposed facility at the end of its useful life, or explain why decommissioning the facility is not foreseen.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CIII LINEAR FACILITIES, DESIGN CHARACTERISTICS (1) An application must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation and maintenance and reliability of the proposed facility located on the preferred route.

(2) An application must contain a list of any reports, documents, studies, or calculations indicating that the preliminary design specifications and performance objectives for the major components of the facility are adequate and can be maintained in the continuous operation of the facility.

(3) An application must identify facility design features that were selected in order to reduce adverse environmental impacts.

(4) For an electric transmission facility, an application must contain an engineering description of major facility components, including the following: structure design and materials; height range of structures; approximate number of structures per mile; ground wire configurations; types and designs of markers and other warning devices; number and spacing of conductors; and location, size, and overall plan of new and modified substations, including present and future land requirements.

(5) For an electric transmission facility, an application must contain specifications for design peak voltage and amperage under adverse climatic conditions and under expected peak loading conditions.

(6) For an electric transmission facility, an application must include an estimate of potential noise levels, radio and television interference, and electric and magnetic field strengths during wet and dry weather, if any. This information must be provided for cross-sections of the right-of-way, and must include maximum conditions under the conductors and at the edge of the right-of-way, and attenuation rates beyond the edge of the right-of-way. This information is also required at the property boundaries surrounding each substation, and must include estimates of attenuation rates beyond the property boundaries.

(7) For an electric transmission facility, an application must contain the information necessary to demonstrate that the facility can meet the standards of the national electric safety code.

(8) For pipelines, an application must contain an engineering description of the facility, including conduit size

and thickness, tensile strength, test and operating pressure, methods of joining sections of conduit, trenching depth, amount of ground cover over the pipeline, the location, size and overall plan for new or modified pumping and compressor stations, cathodic protection systems, and other safety features. Facility design specifications or criteria must also be provided for the normal and maximum transmitting or pumping capacity and pressure of compressor stations and pump stations.

(9) For pipelines, an application must contain a description of quality control and testing procedures and the information necessary to demonstrate that the facility can meet industry and U.S. department of transportation pipeline standards.

(10) An application must contain a topographic map at a scale of 1:4800 showing the locations of all proposed substations, compressor stations, or pump stations at the proposed end points of the facility if these points are in Montana, and along the applicant's preferred route.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CIV LINEAR FACILITIES, ELECTRIC TRANSMISSION FACILITIES, CONSTRUCTION DESCRIPTION (1) An application must contain a preliminary construction schedule, a description of typical construction equipment to be used, and a description of the steps involved in carrying out major construction activities, including plans for and use of staging areas, right-of-way clearing, access road construction, structure assembly, and conductor and sock line stringing.

(2) An application must contain an estimate of the amount of ground disturbance resulting from construction at a representative structure site, pulling site, and reel site.

(3) An application must contain a description of the types and sizes of roads needed to build and maintain the facility, and an estimate of the road mileage and preliminary road locations required to construct the facility on the preferred route.

(4) An application must contain a description of the minimum and maximum right-of-way widths for which easements would be purchased for the cleared right-of-way, the minimum and maximum widths of any additional construction easements, a description of the criteria used to determine right-of-way widths, and a description of any land use restrictions that would be placed on the permanent easement.

(5) An application must contain a description of the camps planned for the construction crew, if any, and how they will be operated.

(6) An application must contain a description of the reclamation methods the applicant will use and the scheduled timing of activities proposed to restore the right-of-way.

(7) An application must contain a description of methods the applicant will use for fire control.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CV LINEAR FACILITIES, PIPELINE FACILITIES, CONSTRUCTION DESCRIPTION (1) An application must contain a preliminary construction schedule, a description of typical construction equipment to be used, an estimate of total equipment needs and a description of sequential construction operations, such as right-of-way clearing, trenching, pipe installation and backfilling, including estimates of the duration and length in miles of each operation and a description of plans for and use of staging areas.

(2) An application must contain an estimate and discussion of the width of the level work pad needed for construction operations.

(3) An application must contain an estimate of the area of ground disturbance resulting from construction activities, including an estimate of mileage of flat terrain where no cut and fill excavation would be needed and estimates of mileage of terrain where cut and fill excavation to construct a level work pad would be required.

(4) An application must contain a description of the types and sizes of roads needed to build and maintain the facility, an estimate of the road mileage and preliminary road locations required in addition to the right-of-way, if any, in order to construct the facility on the applicant's preferred route, and an estimate of how much the roads will be used.

(5) An application must contain a description of the minimum and maximum construction right-of-way widths and the widths of permanent easements, a description of the criteria used to determine the widths, and a description of any land use restrictions that would be placed on the permanent easement.

(6) An application must contain a discussion of the proposed and alternative methods of trenched stream crossings, including specification of equipment types, estimates of the width and depth of trenching, and estimates of the scour depth supported by a discussion of the methods and calculations used to make the estimates.

(7) An application must contain a discussion of the proposed and alternative methods of and conceptual designs for overhead stream crossings, if any.

(8) An application must contain a description of the camps planned for the construction crew, if any, and how they will be operated.

(9) An application must contain a description of the reclamation methods that will be used to restore the right-of-way, including a description of the proposed method

for segregating topsoils from the remaining excavated material on sidehills and over the ditch.

(10) An application must contain a description of methods the applicant will use for fire control.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CVI LINEAR FACILITIES, OPERATION AND MAINTENANCE DESCRIPTION (1) An application must include a description of operation and maintenance procedures for the proposed facility under normal and emergency conditions, including types and scheduling of anticipated maintenance and inspections. For electric transmission facilities, an application must contain a description of methods the applicant will employ to resolve complaints from nearby residents regarding unacceptable noise and radio and television interference.

(2) An application must contain a discussion of the ability of the proposed facility to withstand destructive natural phenomena such as mass movement, earthquakes, floods, icing conditions and high winds or accidents, a description of the environmental impacts and/or public safety problems resulting from facility failure due to natural phenomena and accidents, and a general discussion of measures proposed to reduce the problems.

(3) An application must contain a description of the methods the applicant will employ to control land uses on the right-of-way, including encroachment of buildings.

(4) An application must contain a description of the right-of-way management procedures that will be used, including vegetation and weed control, herbicide use, and the scheduled timing of the proposed management activities.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CVII LINEAR FACILITIES, DECOMMISSIONING METHODS An application must contain a description of the projected method for decommissioning the proposed facility at the end of its useful life and environmental effects that would result from decommissioning, or explain why decommissioning the facility is not foreseen.

AUTH: 75-20-105, MCA IMP: 75-20-211, and 75-20-503, MCA

RULE CVIII STANDARDS FOR APPROVAL OF FACILITIES In making the findings required by 75-20-301, MCA to grant a certificate under the act or determine substantive compliance with the act, the board must find that certain standards will

be met. The board must make simultaneous findings that the proposed facility will meet all relevant standards in order to grant a certificate or determine substantive compliance.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CIX ENERGY GENERATION AND CONVERSION FACILITIES, SERVICE AREA UTILITIES, NEED STANDARD In order to find that there is a need for an energy generation or conversion facility, as required by 75-20-301(2)(a), MCA, that is proposed by a service area utility as defined by Rule I, the board must find that the output of the facility is needed by finding and determining either:

(1) That the full output of the facility will be used to balance firm loads and firm resources within the applicant's service area(s) during at least one of the five years following the date the proposed facility is to be placed in service, and will continue to be so used for the remainder of the forecast period. This finding is based on a comparison of the most likely load growth forecast scenario required by (a) with the resource forecast required by (b). In making this finding the board shall:

(a) Adopt a forecast of energy and peak load growth in the applicant's service area for at least the 20 year period following the date of application. In addition to the geographic territories that have historically constituted the service area, other areas may be added to the extent that firm sales for resale have been contractually made prior to the date of application for the proposed facility, providing that such sales for resale are continuing to be contractually served as of the date of application and there is no reason to expect the sales will not be continuing at the time the facility is expected to come on-line.

(i) The load growth forecast must explicitly indicate the degree of uncertainty in the forecast assumptions by providing a reasonable range of forecast scenarios using alternate sets of assumptions.

(ii) The load growth forecast must distinguish firm and interruptible capacity loads and firm and curtailable energy loads.

(iii) The load growth forecast must be based on an analysis of price and economic and demographic factors affecting load growth, unless the board finds that these factors are not significant determinants of load growth.

(iv) The load growth forecast must include sales by sector of demand, system losses and internal use by the applicant.

(b) Adopt a resource forecast for the applicant's service area showing the existing and permitted resources that could be used to serve loads in the service area, for at least the 20 year period following the date of application.

(i) The resource forecast must include generation or conversion and energy conservation resources.

(ii) The resource forecast must include owned resources, shares of partially-owned resources, contracted purchases and other transfers and trades.

(iii) The resource forecast must indicate planned retirements, downratings and upratings of existing generation facilities.

(iv) The resource forecast must distinguish firm energy and nonfirm energy.

(v) The applicant's firm energy resources shall be evaluated as follows:

(A) hydroelectric plants: at median and critical water, as defined in section 2, part 1, of the agreement for coordination of operations among power systems of the pacific northwest, contract no. 14-02-9822, or for hydroelectric plants not covered by the above contract, as specified by the board;

(B) coal plants: 70 percent annual capacity factor;

(C) nuclear plants: 70 percent annual capacity factor;

(D) oil-fired and gas-fired plants existing as of September 1980: 25 percent annual capacity factor or as limited by permit, unless exemptions are granted under the fuel use act of 1978, or unless the fuel use act is amended to permit higher levels of use;

(E) oil-fired and gas-fired plants proposed after September 1980: 17 percent annual capacity factor, unless exemptions are granted under the fuel use act of 1978, or unless the fuel use act is amended to permit higher levels of use; and

(F) all others: as specified by contract, or if not governed by contract, a documented estimate shall be used.

(2) If the finding required by (1) cannot be made, that the expected benefits of constructing a facility of the size proposed, warrant the resource commitment, based on a finding and determination of the following:

(a) the benefits associated with constructing a facility of the size proposed, as opposed to a facility for which the finding required by (1) can be made;

(b) the likely market for and price of the output to be produced in excess of that which would be used in the applicant's service area; and

(c) the degree of uncertainty surrounding the benefits found in (a) and the markets found in (b).

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CX ENERGY GENERATION AND CONVERSION FACILITIES, COMPETITIVE UTILITIES, NEED STANDARD In order to find that there is a need for an energy generation or conversion facility, as required by 75-20-301(2)(a), MCA, that is proposed

by a competitive utility as defined by Rule I, the board must find that the output of the facility is needed, by finding and determining either:

(1) That the energy from the facility will be marketable at a price that will recover the direct unit costs of production within five years after the facility is to be placed in service; or

(2) If the finding required by (1) cannot be made, that the expected benefits to the applicant and to the state of Montana warrant the resource commitment by the applicant and the state, based on a finding and determination of the following:

(a) the date that the energy will be marketable at a price that will recover the direct unit costs of production;

(b) the length of time, and the cumulative financial shortfall from the time the facility is placed in service, until the energy can be sold at a price that recovers the full unit cost of production;

(c) the sufficiency of the applicant's financial resources to cover the financial shortfall;

(d) the amount of assistance, if any, likely to be required during the period the facility is operating at a loss;

(e) The likelihood that required assistance identified in (d) will be available; and

(f) The resource commitment of the applicant and the state of Montana if the assistance identified in (d) is not forthcoming.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXI ENERGY GENERATION AND CONVERSION FACILITIES, MINIMUM IMPACT STANDARD In order for the board to find that an energy generation or conversion facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA:

(1) The board must find and determine:

(a) That the facility will result in lower delivered cost of energy to customers than any other alternative identified in Rule LVI and LVII that is relevant to the proposed facility, or if the board finds that another alternative would result in lower delivered costs of energy to consumers, that the advantages of the proposed facility outweigh the additional costs to consumers.

(b) That the net present value of costs, including monetary costs of construction, operation, and mitigation to the applicant, any external monetary costs, and the value of all reasonably quantifiable unmitigated environmental impacts is lower for the proposed facility than for any other alternative. Other available alternatives include alternative

energy resources, alternative technologies, alternative sizing and timing of facilities, nonconstruction alternatives, and the no action alternative. The cost of the no action alternative includes the costs to consumers of being deprived the output of the facility.

(i) Full consideration must be given to alternative sources of energy and energy conservation as specified in 75-20-503(1), MCA. These may include some alternatives that were not considered by the applicant.

(c) That nonquantifiable environmental impacts are not significantly adverse to alter the finding required by (b).

(d) That all mitigation measures included in the mitigation plan in (h) have been incorporated in the cost finding required by (b).

(e) That the site for the facility complies with the preferred site criteria listed in Rule LXV in a manner that results in less cumulative adverse environmental impact and economic cost than siting the facility at any alternative location, unless the board finds and determines the reasons why any criterion should not be met.

(f) That the facility will not be located in one of the exclusion areas listed in Rule LXVI.

(g) That reasonable alternative locations for the facility were considered in selecting the site pursuant to Rule LXIX, Rule LXXI, Rule LXXIII and Rule LXXVI.

(h) That the site for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility at any alternative site, based on the following:

(i) identification of any probable significant adverse environmental impacts;

(ii) identification of reasonable mitigation for these significant adverse impacts;

(iii) adoption of an acceptable mitigation plan based on measures identified in (ii) including environmental specifications that will be included in conditions to the certificate; and

(iv) adoption of an acceptable monitoring plan, including a reclamation plan that will be included in conditions to the certificate.

(i) If in making the finding required by (h), the site for the facility will be located in one or more of the sensitive areas listed in Rule LXVII or the areas of concern listed in Rule LXVIII, either that no significant adverse impacts would result in the areas.

(i) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics for which the sensitive areas or areas of concern are designated have been identified;

(ii) that mitigation found reasonable by the board for these significant adverse impacts, if any, has been identified;

(iii) that a mitigation plan acceptable to the board based on the measures identified in (ii), including environmental specifications, has been identified and will be included in conditions to the certificate; and

(iv) that a monitoring plan acceptable to the board, including a reclamation plan, has been identified and will be included in conditions to the certificate.

(j) that a corridor (corridors) for any linear associated facility (facilities) has (have) been identified, that an acceptable time period for selection of a centerline within the corridor (corridors) has (have) been specified, and that the corridor (corridors) is (are) of sufficient width to permit the applicant to propose and the board to find and determine an acceptable centerline (centerlines) pursuant to the requirements of Rule CXVI-CXXI (centerlines) and the findings required by Rule CXV.

(2) The board shall condition its approval of a facility on the following standards:

(a) average noise levels, as expressed by an A-weighted day-night scale, must not exceed 55 decibels at the property boundary of the site in residential or subdivided areas;

(b) the facility must comply with environmental specifications developed for the facility; and

(c) any other standards the board deems important must be met.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXII ALL FACILITIES, UTILITIES, PUBLIC INTEREST, CONVENIENCE AND NECESSITY STANDARD (1) In order for the board to find that a proposed facility will serve the public interest, convenience and necessity as required by 75-20-301(2)(g), MCA the board must find and determine that the discounted net present value of all benefits (less all costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(a) the findings required by Rule CIX or CX;

(b) the cumulative environmental impacts of the facility, as determined for CXI(h);

(c) the benefits to the applicant, the state of Montana, the applicant's customers, and any other entities benefitting from the facility;

(i) benefits include internal benefits and external benefits; nonmonetary benefits must be quantified to the extent possible.

(d) the effects of the economic activity resulting from the proposed facility;

(e) the costs of the facility including all internal costs of construction and operation and any mitigation costs, plus all other external costs and unmitigated environmental costs;

non-monetary costs must be quantified to the extent reasonably possible; and

(f) any other factors the board considers relevant.

(2) In making this finding the board shall consider the effects of the facility on the public health, welfare and safety.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXIII ELECTRIC TRANSMISSION LINES, SERVICE AREA UTILITIES, NEED STANDARD In order to find that there is a need for an electric transmission facility as required by 75-20-301(2)(a), MCA, that is proposed by a service area utility as defined by Rule I, the board must find that the services of the facility are needed by finding and determining the following:

(1) For facilities that insufficient power transfer capacity under normal operating conditions is a stated basis of need in the application, either that:

(a) the transfer capacity of the proposed facility will be required within two years of the date the proposed facility is to be placed in service; or

(b) that the proposed facility has a lower net present value of all future costs than any other alternative or alternatives that could resolve the problem situation the proposed facility is designed to resolve.

(2) For facilities that insufficient power transfer capacity under contingent operating conditions is a stated basis of need in the application, that:

(a) there is or will be a power transfer capacity shortage under contingent conditions that will be rectified by the proposed facility within two years of the date the proposed facility is to be placed in service; and

(b) the contingent conditions under which existing transfer capacity is insufficient, are sufficiently likely to occur to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs of the facility.

(3) For facilities that transient stability under normal operating conditions is a stated basis of need in the application, that there is or will be a transient stability problem under normal operating conditions, that will be rectified by the proposed facility within two years after the date the proposed facility is to be placed in service.

(4) For facilities that transient stability under contingent operating conditions is a stated basis of need in the application, that:

(a) there is or will be a transient stability problem under contingent operating conditions that will be rectified by the proposed facility within two years of the date the proposed facility is to be placed in service; and

(b) the contingent conditions under which the transient stability problems arise are sufficiently likely to occur to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs.

(5) For facilities that excessive voltage drop under normal operating conditions is a stated basis of need in the application, that:

(a) there is, or will be within two years after the proposed facility is to be placed in service, an excessive voltage drop that will be rectified by the proposed facility; and

(b) the applicable design or operating voltage drop criteria used to justify the proposed facility are reasonably likely to result in benefits in excess of costs.

(6) For facilities that excessive voltage drop under contingent operating conditions is a stated basis of need, that:

(a) there is or will be within two years after the proposed facility is to be placed in service a problem of excessive voltage drop under contingent operating conditions which will be rectified by the proposed facility; and

(b) the applicable design or operating voltage drop criteria and the expected frequency and duration of the contingent operating conditions under which the problem exists are such as to give a reasonable assurance that the expected benefits of the proposed facility exceed the costs of the facility.

(7) For facilities that reliability of service is a stated basis of need in the application:

(a) that the reliability criteria of the applicant will be violated within two years of the date the proposed facility is to be placed in service if the proposed facility is not built or some other solution is not implemented; and

(b) that the value of the savings from reduced outage plus any value for general reliability of service, over the life of the facility, is reasonably likely to exceed the cost of the proposed facility.

(8) For facilities that economy considerations are a stated basis of need:

(a) that the expected benefits of the proposed facility exceed the costs of the facility given:

(i) the difference between expected system costs with and without the line;

(ii) the expected location and size of markets and price for surplus power; and

(iii) the expected source, quantity and price of purchased economy energy;

(b) that the benefits of the line warrant the resource commitment associated with it given the degree of uncertainty surrounding the benefits, likely markets, and economy purchases identified in 8(a); and

(c) if transmission capacity exists that could carry the desired energy power flow without violating voltage drop, transfer capacity or other transmission planning criteria, that:

(i) the existing capacity is not available to the applicant at reasonable cost;

(ii) the applicant has made every reasonable effort to reach agreement with the owners of the existing capacity;

(iii) no agreement has been reached with the owners of the existing capacity; and

(iv) no means exist for reaching a reasonable agreement with the owners of the existing capacity or for otherwise gaining access at reasonable terms to the existing capacity.

(9) For all facilities, that any forecast of loads used to project need for the proposed facility is either consistent with the overall projected load growth for the entire service area of the applicant or if the forecast is different than the projected load growth in the service area, that it is consistent with available information about loads and load growth in the area to be served by the proposed facility.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXIV LINEAR FACILITIES, MINIMUM IMPACT STANDARD In order for the board to find and determine that a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA:

(1) The board finds and determines:

(a) that the expected net present value of all costs, including monetary costs of construction to the applicant, any external monetary costs, and the value of all reasonably quantifiable environmental impacts is lower for the proposed facility than for any other available alternative. Other available alternatives include transmission alternatives, alternative energy resources and energy conservation, alternative transmission technologies, alternative levels of transmission reliability and the no action alternative;

(b) that nonquantifiable environmental impacts are not significantly adverse to alter the finding required by (a);

(c) that all mitigation measures included in the mitigation plan in (g) have been incorporated in the cost finding required by (a);

(d) that the route for the facility complies with the preferred route criteria listed in Rule LXXXII in a manner that will result in less cumulative adverse environmental impact and economic cost than siting the facility in an alternative location, unless the board finds why any criterion should not be met;

(e) that the route for the facility will not cross one of the board's designated exclusion areas listed in Rule LXXXIII;

(f) that reasonable alternative locations for the facility were considered in selecting the route, pursuant to Rule LXXXVII, Rule LXXXIX, Rule XCII and Rule XCII;

(g) that the route for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility on any alternative route, based on the following:

(i) identification of any probable significant adverse environmental impacts;

(ii) identification of reasonable mitigation for these significant adverse environmental impacts;

(iii) adoption of an acceptable mitigation plan based on the measures identified in (ii), including environmental specifications, that will be included in conditions to the certificate; and

(iv) adoption of an acceptable monitoring plan, including a reclamation plan, that will be included in conditions to the certificate.

(h) If in making the finding required by (g), the route for the facility crosses one or more of the sensitive areas listed in Rule LXXXIV or LXXXVI, or the areas of concern listed in Rule LXXXV or LXXXVI, either that no significant adverse environmental impacts would result in the area(s); or

(i) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics that the sensitive areas or areas of concern are designated have been identified;

(ii) that reasonable mitigation for these significant adverse environmental impacts has been identified;

(iii) that an acceptable mitigation plan based on the measures identified in (ii), including environmental specifications, has been identified and will be included in conditions to the certificate; and

(iv) that an acceptable monitoring plan, including a reclamation plan, has been identified, and will be included in conditions to the certificate.

(i) that the route for the facility is of sufficient width to permit the applicant to propose and the board to find and determine an acceptable centerline pursuant to the requirements of Rule CXVI-CXXI of this chapter and the findings required by Rule CXV.

(2) The Board must condition its approval of a facility on the following standards:

(a) for electric transmission facilities, that average noise levels, as expressed by an A-weighted day-night scale (L_{DN}) will not exceed:

(i) 50 decibels at the edge of the right-of-way in residential and subdivided areas unless the affected landowner waives this condition;

(ii) 55 decibels at the edge of the property boundaries of substations in residential and subdivided areas.

(b) for electric transmission facilities, that the facility will not seriously degrade, obstruct, or repeatedly interrupt radio or television reception and that the facility will comply with federal communications commission standards;

(c) for electric transmission facilities, that the facility will adhere to the national electric safety code regarding transmission lines.

(d) for electric transmission facilities, that the electric field at the edge of the right-of-way will not exceed one kilovolt per meter measured one meter above the ground in residential or subdivided areas unless the affected landowner waives this condition, and that the electric field at road crossings under the facility will not exceed seven kv per meter measured one meter above the ground.

(e) for electric transmission facilities, that the facility will comply with the identification and marking standards established by the federal aviation administration.

(f) for pipeline facilities, that compliance with applicable U.S. department of transportation pipeline standards will be achieved.

(g) for all linear facilities, that the facility will comply with environmental specifications developed for the facility.

(h) for all linear facilities, that the location of the centerline within the approved route is subject to final approval by the board.

(i) for all linear facilities, that the applicant shall submit a centerline application pursuant to Rule CXVI-CXXI within one year of the board's granting a certificate.

(j) for all linear facilities, that any other standards the board deems important will be met.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-503, MCA

RULE CXV LINEAR FACILITIES, MINIMUM IMPACT STANDARD FOR CENTERLINES Pursuant to Rule CXVI, a linear facility may not be constructed until the board has approved a centerline within the approved route or, in the case of a linear associated facility, within the approved corridor. In order for the board to find and determine that a centerline for a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301(2)(c), MCA, the board must make the findings required by Rule CXIV for the centerline.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXVI CONDITIONAL APPROVAL OF ROUTES OR CORRIDORS (1) Any certificate granted to build a linear facility in an approved route or a linear associated facility in an approved corridor is subject to final approval of the location of the centerline by the board. Unless a certificate states otherwise, a certificate holder may not begin building a linear facility or linear associated facility without having obtained the board's approval of the centerline.

(2) The precise boundaries of an approved route or approved corridor shall be delineated by lines approximately one millimeter wide on USGS topographic maps at a scale of 1:24,000. The route or corridor may be described according to bearing descriptions, range, township and section numbers. The map and, if applicable, the route or corridor description, shall be part of the certificate granted by the board.

(3) The procedural requirements of the centerline evaluation for a linear facility or a linear associated facility shall be specified in the certificate.

(4) The costs incurred by the department and board in evaluating and approving the centerline shall be reimbursed by the filing fee or other fee established by contract between the applicant and the department.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXVII CENTERLINE EVALUATION IN AN APPROVED ROUTE OR CORRIDOR--GENERAL REQUIREMENTS (1) The centerline evaluation is required to select a centerline for the linear facility in the approved route or the linear associated facility in the approved corridor that will result in less cumulative adverse environmental impact and economic cost than siting the facility on any alternative centerline.

(2) Centerlines shall not cross sensitive areas or areas of concern specified by Rule LXXXIV and LXXXV or Rule LXXXVI, unless the certificate holder can demonstrate that no significant adverse environmental impacts would result, or that mitigation of significant adverse environmental impacts is possible, or unless siting the facility in or through a sensitive area or area of concern would result in less cumulative adverse environmental impact and economic cost, including the cost of mitigation, than siting the facility in an alternative location.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXVIII ELECTRIC TRANSMISSION LINES, CENTERLINE EVALUATION IN AN APPROVED ROUTE, INFORMATION REQUIREMENTS The certificate holder shall prepare and submit the following information for its preferred centerline and any alternative

centerlines that may be identified by the certificate holder or the department. The certificate holder may cross-reference any information required by Rule LXXXIV, LXXXV, XCIV and LXXXV that was supplied in the application and that meets any of the following requirements.

(1) The certificate holder shall submit to the department a base map of the approved route. USGS 7.5 minute topographic maps or USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used to create the base map. Where these are not available, USGS advance or final 7.5 minute orthophoto quad maps shall be used. Where none of these maps are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 1:100,000 shall be photographically enlarged to 1:24,000. The base map must contain the following information:

(a) the boundaries of the route approved by the board;

(b) an overlay to the map of any sensitive areas or areas of concern listed in Rule LXXXIV-LXXXV that are located within the approved route; and

(c) an overlay showing the boundaries and ownership of parcels of land 10 acres or more in size within the route.

(2) The certificate holder shall submit to the department a preferred centerline on an overlay to the base map required by (1). The certificate holder shall also submit to the department the following information:

(a) a list of all landowners within 1/4 mile of the preferred centerline, their addresses, and telephone numbers;

(b) alternative centerlines or portions of alternative centerlines where any such deviations from the preferred centerline would be acceptable to the certificate holder and/or where any such deviations may result in less cumulative adverse environmental impacts and economic costs, including the costs of mitigation;

(c) preliminary locations for all access roads that would be required to construct and operate the facility along the preferred centerline and any alternative centerlines that are identified, delineated by lines approximately one millimeter wide on the base map required by (1); additions to the base map required by (1) shall be provided as necessary to include any access roads that may be located outside the boundaries of the route approved by the board;

(d) tentative locations of all structures that would be built in sensitive areas, areas of concern or areas where public concerns about the facility have been expressed; and

(e) a summary of any landowner, general public and government agency concerns or environmental issues or problems identified by the certificate holder and the mitigation measures the certificate holder proposes to address these concerns.

(3) An overlay to the base map required by (1) showing individual residences and major farm support buildings within

1/4 and 1/2 mile of each alternative centerline, and a numerical tabulation of the data, cross-referenced appropriately to the overlay.

(4) For areas identified by the department and areas where public concerns have been expressed, an overlay to the base map required by (1) showing all fence lines 1/4 mile or greater in length and an overlay showing structures used for irrigation;

(5) For any preliminary access road locations that are identified pursuant to (2)(c), the earth resource information required by Rule XCIV(7) and the water resource information required by Rule XCIV(16) and (17).

(6) Identification and supporting documentation of any specific problems or concerns associated with crossings of streams and highways as determined through consultation with Montana department of fish, wildlife and parks and the Montana department of highways.

(7) For any exclusion areas, recreation areas, national register or national register eligible sites, residential areas, state and federal highways or county roads referenced in Rule XCIV(9) that are within one mile of the preferred and alternative centerlines and have been specified by the department, the certificate holder shall submit the following visual resource information:

(a) identification and mapping of key observation points; where one or more of the areas referenced above are in close proximity and would have similar views of the proposed facility, a representative observation point may be designated;

(b) identification and mapping of areas where the facility would be visible from appropriately grouped observation points;

(c) a description and evaluation of viewer characteristics including proximity to the alternative centerlines, orientation, number of viewers, and duration of view; where a characteristic does not warrant differentiation, the certificate holder shall provide the reasons;

(d) a description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape;

(e) a description and categorization of levels of sensitivity, the relative degree of viewer interest in the visual resource;

(f) one or more photographs taken from selected observation point(s) toward the alternative centerlines, sufficient to show the full range of view characteristics, with a description of pertinent information from (c),(d) and (e) accompanying each photograph;

(g) integration of the information gathered in (a) through (f) and any appropriate information required by Rule XCIV(9) and (10) to predict and compare impact levels of alternative centerlines on the visual resource.

(8) Locations of all known nests of raptorial birds within one-half mile of alternative centerlines.

(9) The results of an on-the-ground survey of cultural resources, based on the importance of the sites and the degree of potential adverse impact that could occur identified pursuant to Rule XCIV(12) and (13), and an overlay of any historical, archaeological, architectural and paleontological sites identified. The survey results shall be submitted on site survey forms that identify the adverse impacts.

(10) The following information concerning noise, radio and television interference, and electrical effects:

(a) for transmission facilities of 230 kv or greater voltage, a description of present noise conditions at residences located within 1000 feet of each alternative centerline;

(b) for transmission facilities of 230 kv or greater voltage, an overlay showing the locations of railroad routes and telephone communication lines within one mile of each alternative centerline where the centerline would potentially parallel these facilities;

(c) a description of existing radio reception at individual houses located within 1000 feet of each alternative centerline considering existing interference conditions.

(11) The certificate holder shall submit a summary of the major adverse impacts of the preferred centerline and any alternatives or portions of alternative centerlines, a discussion of proposed mitigation to reduce the adverse impacts, and an explanation of the reasons the preferred centerline was selected.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXIX PIPELINES, CENTERLINE EVALUATION IN AN APPROVED ROUTE, INFORMATION REQUIREMENTS The certificate holder shall prepare and submit the following information for its preferred centerline and any alternative centerlines that may be identified by the certificate holder or the department. The certificate holder may cross-reference any information required by Rule LXXXVI, XCIV, and XCV that was supplied in the application and that meets any of the following requirements.

(1) The information required by Rule CXVIII(1)(i) and (iii), (2)-(9) and (11); and

(2) An overlay to the base map required by (1) of any sensitive areas or areas of concern listed in Rule LXXXVI that are located within the approved route.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXX LINEAR ASSOCIATED FACILITIES, CENTERLINE EVALUATION IN AN APPROVED CORRIDOR, INFORMATION REQUIREMENTS The information requirements for the centerline evaluation of a

linear associated facility in an approved corridor shall be specified in the certificate for a facility as defined by 75-20-104(10)(a), MCA.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXXI FINAL CENTERLINE APPROVAL The board shall issue an order approving a final centerline. The approved centerline shall be included in the certificate.

(1) At the time the board approves the final centerline, a final set of environmental specifications, including site-specific measures, shall be identified and included in the certificate.

(2) At the time the board approves the final centerline, the board may specify in the certificate that construction and reclamation bonds must be posted by the certificate holder in a manner that will permit the board to access the bonds for purposes of ensuring that the conditions of the certificate are met.

(3) The precise location of the final centerline, preliminary locations for all access roads, and, for electric transmission lines, preliminary locations for the structures, shall be delineated by lines approximately one millimeter wide and by symbols, respectively, on USGS topographic maps at a scale of 1:24,000 and described according to range, township and quarter-section numbers.

AUTH: 75-20-105, MCA IMP: 75-20-301, and 75-20-302, MCA

RULE CXXII NOTIFICATION OF PROPOSED CHANGE OR ADDITION TO A FACILITY OR ASSOCIATED FACILITY FOR WHICH A CERTIFICATE HAS BEEN GRANTED If a certificate holder desires to change or add to a facility or associated facility for which a certificate has been granted, the certificate holder shall file a notice for a certificate amendment with the department and department of health by certified mail or personal delivery. Changes or additions subject to these requirements include the following:

(1) Any change in location or design or any addition to a facility or an associated facility that could reasonably be expected to result in a material increase in any environmental impact;

(2) Any change in location or design or any addition to a facility or an associated facility that could reasonably be expected to result in impacts to new geographic areas or human, animal or plant populations that were not evaluated prior to the issuance of the certificate;

(3) Any change in or addition to a facility or an associated facility affecting compliance with a condition of the certificate; and

(4) Any change in or addition to a facility or associated facility that would materially change the basis of any finding required by Rule CVIII-CXV.

AUTH: 75-20-105, MCA IMP: 75-20-219, MCA

RULE CXXIII CONTENTS OF NOTICE TO AMEND A CERTIFICATE The certificate holder shall provide drawings, analyses, maps, and other information at a level of detail equivalent to that required in an application to describe any proposed change to a facility in a notice for amendment to a certificate. Material pertaining to a proposed amendment to a certificate that was previously submitted in an application or during the board's hearing on the facility may be referenced.

AUTH: 75-20-105, MCA IMP: 75-20-219, MCA

RULE CXXIV CERTIFICATE AMENDMENT PURSUANT TO CHANGE IN DEPARTMENT OF HEALTH OR BOARD OF HEALTH PERMIT An amendment affecting, amending, altering or modifying a decision, opinion, order, certification or permit issued by the department of health or board of health under the applicable statutes administered by those agencies in accordance with 75-20-219(5), MCA, shall be adopted by the board and incorporated as a certificate amendment, as follows:

(1) Within 10 days of the issuance of an amendment by the department of health or board of health, the certificate holder shall serve the board with a certified copy of the amendment;

(2) The board shall issue a notice of proposed action to modify the certificate to fully and completely incorporate the amendment authorized by the department of health or board of health;

(3) Upon the timely filing of a request for hearing, the board shall hold a show-cause hearing why the proposed action should not be taken. A request for hearing may be made by any person affected by the proposed action;

(4) A person requesting a show-cause hearing shall file with the board all testimony, evidence and exhibits in writing that it intends to present at the hearing within 15 days after filing a request for hearing. Failure to comply with this rule shall be deemed a waiver of a person's request for hearing and of rights to participate in the hearing, if any;

(5) If no show-cause hearing is requested or required, the board shall take the proposed action as set forth in the notice pursuant to (2);

(6) A show-cause hearing, if any, shall be limited to issues over which the board has jurisdiction.

AUTH: 75-20-105, MCA IMP: 75-20-219, MCA

RULE CXXV DECISIONS ON CERTIFICATE AMENDMENTS (1) In order for the board to determine that an amendment to a certificate should be granted or modified, the board must find and determine that the amendment will not materially alter the findings required by Rule CVIII-CXV that were the basis for granting the certificate.

(2) In making the findings required by (1), the board shall limit itself to consideration of the proposed change or addition to the facility contained in the notice for the certificate amendment.

AUTH: 75-20-105, MCA IMP: 75-20-219, MCA

RULE CXXVI MONITORING REQUIRED BY CERTIFICATE (1) As required by 75-20-303(3)(a)(v), MCA, the certificate shall include a plan for monitoring environmental effects of the facility and associated facilities. The plan shall specify the types of monitoring data and activities required, and the terms and schedules of monitoring data collection, and assign responsibilities for data collection, inspection, reporting, or other activities required to effectively monitor the facility and associated facilities.

(2) The certificate holder shall reimburse the department for all costs incurred relative to the monitoring plan approved by the board in accordance with 75-20-402, MCA.

(3) All activities of the certificate holder or the certificate holder's representative during preconstruction, construction, reclamation, operation, maintenance and decommissioning of the facility shall be conducted in accordance with the environmental specifications and conditions to the certificate approved by the board.

AUTH: 75-20-105, MCA IMP: 75-20-301, 75-20-303, 75-20-402, MCA

RULE CXXVII ELECTRIC TRANSMISSION LINES, MONITORING REQUIREMENTS (1) Within 15 days of the board's approval of a centerline, the department shall designate an environmental inspector to monitor compliance with the environmental specifications and any other conditions contained in the certificate. The environmental inspector shall be the certificate holder's liaison with the department on all subsequent activities related to the facility.

(2) Within 15 days of the board's approval of a centerline, the certificate holder shall designate a chief field representative to be the department's liaison with the certificate holder on all subsequent activities related to the facility.

(3) The certificate holder shall submit to the department a notice of intent to begin construction at least 45 days prior to the commencement of construction activities on the facility.

(4) The certificate holder shall submit the following information to the department at least 30 days prior to the commencement of construction of any segment of the project. Any information previously submitted in an application or during the centerline evaluation of the facility may be referenced.

(a) On orthophoto mosaics or plan and profile maps, or on available USGS 7.5' topographic maps, at a scale of 1:24,000, the location of the following:

(i) the centerline;

(ii) all construction and maintenance access roads;

(iii) structures;

(iv) clearing backlines, staging sites, and pulling sites, if known;

(v) borrow pits;

(vi) campsites; and

(vii) storage or other buildings.

(b) a list of contractors, an estimate of the number of workers, and a description of the types of heavy equipment that will be employed, and a proposed schedule of construction activities for each segment of line.

(5) The certificate holder shall promptly notify the department of any changes or updates in the schedule after the initial schedule is submitted.

(6) If a construction bond is required by the certificate, the certificate holder shall submit to the department proof that the construction bond has been obtained at least 15 days prior to the commencement of construction. Pursuant to the certificate, this bond may be held until construction is complete and the board has determined that all environmental specifications have been followed, that cleanup is complete, that damage has been repaired, and that recontouring, site restoration, and revegetation are progressing satisfactorily.

(a) In the event the department finds that the certificate holder is not correcting damage created during construction in a satisfactory manner, the department may file a forfeiture of bond report with the board.

(b) The board shall subsequently determine the amount and disposition of all or a portion of the bond to correct any damage that has not been corrected by the certificate holder.

(7) For electric transmission lines greater than 230 kv, the certificate holder shall hold a preconstruction conference at least 15 days prior to commencement of construction activities to brief the following persons regarding the content of the environmental specifications required by the certificate, to identify any specific geographical areas of concern where special construction precautions may be required, and to explain the role of the environmental inspector:

(a) the certificate holder's field representative;

(b) all contractors involved in the facility;

(c) the contractors' environmental inspectors, if any;

(d) representatives of affected local, state, and federal agencies; and

(e) the environmental inspector.

(8) The certificate holder shall submit a written notice to the department describing the date and nature of proposed construction activities in any problem area specified at the preconstruction conference at least 5 days prior to beginning the activity.

(9) If a construction and reclamation bond is required by the certificate pursuant to Rule CXXI(2), at the time the construction bond is released by the board, the certificate holder shall submit proof that the reclamation bond has been obtained. Pursuant to the certificate, portions of this bond or bonds may be held for one year and five years, respectively, or until the board determines that revegetation and road closures adequately meet the requirements specified in the certificate and in (10) below.

(a) in the event the department finds that revegetation has not attained the growth required after one year or five years specified in (10) below, the department may find the certificate holder in substantive noncompliance with the terms of the reclamation bond and may file a forfeiture of bond report with the board.

(b) the board may subsequently determine the amount and disposition of all or a portion of the bond or bonds to achieve satisfactory reclamation and revegetation.

(10) The following standards for reclamation shall be used to determine reclamation bond release or to determine that expenditure of the reclamation bond is necessary to meet the requirements of the certificate, unless otherwise determined by the board:

(a) in rangeland, coverage of desirable perennial plant species excluding, specifically, species recognized as noxious weeds, shall be 30 percent or more of that on adjacent rangeland of similar slope and topography the year following revegetation, and 90 percent or more of the coverage of adjacent rangeland of similar slope and topography within five years following revegetation;

(b) in forested land, revegetated land exclusive of the right-of-way or permanent roads, shall be planted with trees by the end of five years so that the approximate stand density of the adjacent forest will be attained at maturity.

(11) At the direction of the board, the department may formulate and carry out a plan to ensure that the standards in (10)(a) and (b) are accomplished.

(12) In the event that the department finds the contractor responsible for construction of the facility to be in violation of the construction and mitigation standards or any of the conditions of the certificate, and finds that the certificate holder cannot or will not take appropriate action to correct

the problem, the department shall immediately file an incident report with the certificate holder and the board, as follows:

(a) the incident report shall describe the nature, location, date, and extent of the violation and the sections of the construction and mitigation standards or conditions to the certificate that have been violated, and recommend corrective actions.

(b) upon receipt of an incident report, the certificate holder shall immediately correct the violation or immediately file with the department a statement explaining why the violation may not be corrected.

(c) immediately upon correction of any violation described in an incident report, the department shall file a compliance report with the certificate holder and the board stating that the problem has been satisfactorily resolved.

(d) failure by the certificate holder to comply with the directives of an incident report shall result in appropriate enforcement action taken in accordance with 75-20-408, MCA.

AUTH: 75-20-105, MCA IMP: 75-20-301, 75-20-303, 75-20-402, MCA

4. The need for the proposed rules is as follows:

RULE I DEFINITIONS

The rule is needed to define terms that are used throughout the rules. Some of the terms are defined in the Major Facility Siting Act but are included to make the rules more complete and understandable.

RULE II CONFIDENTIALITY

Material submitted under the Major Facility Siting Act is usually of public record. A provision for protection of trade secrets or proprietary processes usually used in major facilities must be stated since there is a number of ways to accomplish this by the applicant, Department, or Board. Some consistent approach is necessary.

RULE III FORMAT

These rules are necessary to describe a consistent format for the review and reference of the application documents during evaluation of and hearings on the application.

RULE IV TO IX LONG-RANGE PLANS

These rules are needed to specify the requirements only generally described in the statute on long-range plans. The rules specify that the long-range plans include those planning tools normally used by applicants that include forecasts, long term agreements for service and resource acquisition, and pooling and exchange agreements. This information is needed to understand the long-range plans of utilities so that appropriate planning can be made for staffing to evaluate the applications, formulate state policy in energy matters, provide information to local governments and other groups, both private

and government, for formulating their own resource plans and uses. There is a need to describe the level and detail of information concerning forecasts in these rules since a forecast can be very general or very specific depending on the purpose it is to serve.

RULE X TO XVI WAIVERS

The rules need to specify the administrative details expected of the applicant and the board to carry out the general requirements of the statutory requirements. The contents of an application need to be explicitly specified so that the details of a waiver can be considered by the Board and can be adequately described in a notice for public hearing to others.

RULE XVII TO XX NOTICE OF INTENT TO FILE AN APPLICATION

The rules are needed to describe the specific contents required to complete a notice of intent to file an application for a certificate. The purpose of the rules is to specify the information necessary to give direction or focus to the applicant in his evaluations and data gathering so that a cost saving is realized during the evaluation of the application by the Department and its Board.

RULE XXI TO XXXIV GENERAL REQUIREMENTS FOR APPLICATION

These rules are needed to specify application copies and format so that the application can be easily and quickly evaluated to determine if the application is complete. The rules are needed to describe the form and content of changes and amendments to an application for certificate and how the change or amendment is considered by the Department. These rules are needed to specify the items necessary to describe total cost and categorization of those costs for a facility. The components are identified in these rules since the evaluation of the application requires that components of a facility are compared to items that include the environmental impacts, mitigation plans, alternate locations, and alternatives. This requires detail as specified in these rules on capital and operating cost and operational characeristics and benefits of the facility.

RULE XXXV TO LV NEED

Section 75-20-3012(a), MCA requires the Board to find and determine the basis of need for a facility prior to issuance of a certificate. Rule XXXV through LV specify the information required of the applicant for the Department to analyze and subsequently the Board to find the basis of need.

The Department defines need for a generation and conversion facility as the need for the output for the facility. 75-20-104(13), MCA defines a utility as any person engaged in the production, storage, sale, delivery, or furnishing of energy in any form for ultimate public use, which is somewhat different than the traditional definition of a utility. Recognizing the inherent difference between an energy producer in the open market and an energy producer with a captive market

and a mandate to serve all loads, the Department created two classes of utilities with different reporting requirements for each.

Service area utilities are those with the traditional utility mandate to serve all loads and a protected service area. The information required for determining need for those utilities is identification of the future loads to be served, the resources available to serve the loads, and the role of the facility in balancing loads and resources. Recognizing that forecasting is not a precise science, an analysis of uncertainty in the forecasts is required of the applicants. Further information is required on the destination of the output and how the output will be transported. Also in the need section certain information on alternatives to meet the need must be provided. This information is on customer end-use for evaluating conservation and information on interruptible and curtailable loads.

Need for transmission lines is defined as the existence of a problem or opportunity to be addressed by the facility. The type of information required depends on the reason for building the facility. Need is defined in five different categories: transient stability; insufficient power transfer capacity; voltage drop, reliability; and opportunities for economy transactions.

Competitive utilities, the other category of utility, have neither a mandate to serve loads nor a protected service area. Information for determining need for these applicants is an evaluation of the markets to be served by the output of the facility, the likely marketability of the output of the facility, and an evaluation of the uncertainty in the markets and marketability of the output of the facility.

RULE LVI TO LXIII APPLICATION REQUIREMENTS, EVALUATION OF ALTERNATIVES

The rules are needed because an application must contain an evaluation of the nature and economics of alternatives to the proposed facility. The rules are necessary to identify the list, extent, and limit which alternatives must be considered.

Because of differences among generation and conversion facilities, transmission facilities and pipelines, rules are necessary to describe the expected evaluation and comparison of alternatives.

RULE LXIV TO XCVII APPLICATION REQUIREMENTS: ALTERNATIVE SITING STUDY

The rules are needed to describe a standard siting methodology for evaluating and selecting a site for a facility. Because of the difference in siting linear facilities, a standard siting methodology is described also. An alternative siting study is necessary to identify a site to accommodate the facility that will minimize adverse environmental impacts and economic costs. The preferred siting

criteria, areas of concern, and sensitive areas need to be specified in rules to identify the considerations by the applicant, the Department and the Board.

The rules are needed to define the baseline information and data necessary to evaluate the preferred and reasonable alternative locations or routes for a facility.

RULE XCVIII TO CVII FACILITY DESCRIPTION AND DESIGN

These rules are needed to specify the specific requirements for describing the construction, operation, and maintenance of a facility and its design. The information is necessary to properly evaluate and compare the required items that include mitigation plans, environmental impacts, reclamation plans, and alternatives that are required for the evaluation and considerations by the Department and the Board for a certificate.

RULE CVIII TO CXV DECISION STANDARDS

The statute describes the findings necessary for certification in broad general terms. These rules are needed to specify the siting criteria for a facility considered by the Board. The Department can focus its recommendations on the specific expectations identified in the rules. Also, the applicant is able to prepare its application and select the facility utilizing the expectation and standards established by the Board in these rules.

RULE CXVI TO CXXI LOCATION OF CENTERLINE

These rules are needed to specify the baseline data requirements and evaluations to locate a centerline within an approved route. A centerline evaluation is the last step in the standard siting methodology proposed in these rules. The centerline process is designed to ensure that persons residing in the area crossed by the approved route are notified of the Department's and certificate holder's efforts to determine a centerline location for the facility and to ensure that these persons are given an opportunity to participate in the process.

RULE CXXII TO CXXV AMENDMENTS TO CERTIFICATES

These rules are needed to specify the specific contents of a notice of amendment and how the amendment is considered by the Board, including when an amendment stemming from a Department of Health or Board of Health order or requirement is considered.

RULE CXXVI TO CXXVII FACILITY MONITORING

The rules are needed to describe the detail of the monitoring plan expected of the applicant and how the monitoring plan is accomplished and enforced.

The agency proposes to repeal 36.7.101 through 36.7.803 because the rules are outdated by and repetitious of proposed Rule I through CXXVII.

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

Written data, views, or arguments may also be submitted to Leo Berry, Director, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, 59620, no later than October 19, 1984.

6. Leo Berry has been designated to preside over the October 9 and 11, 1984 public hearings.

7. The authority and implementing sections are listed at the end of each rule. The authority to repeal 36.7.101 through 36.7.803 is based on 75-20-105, MCA, and implements 75-20-105.

for Robert J. Robinson

Gordon Holte, Chairman
Board of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59620

Certified to the Secretary of State September 4, 1984.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rule 42.27.211, relating to nonexemption from the gasoline tax.	NOTICE OF PROPOSED REPEAL of Rule 42.27.211 relating to nonexemption from the gasoline tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1984, the Department of Revenue proposes to repeal rule 42.27.211 relating to nonexemption from the gasoline tax.

2. The rule as proposed to be repealed can be found on page 42-2731 of the Administrative Rules of Montana.

3. Rule 42.27.211 is proposed to be repealed because it is no longer necessary. Prior to 1969, § 84-1802, R.C.M. 1947, required governmental entities to submit a valid gasoline tax exemption certificate to a dealer and at that time the dealer would deduct the gasoline tax from the purchase price. When the act was amended in 1969, the section relating to exemption certificates was deleted. The existing rule 42.27.211 addresses only United States Exemption Certificates. Because all governmental agencies at the present time pay the gasoline tax to the State, the rule is proposed to be repealed.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 12, 1984.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than October 12, 1984.

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

7. The authority of the Department to repeal the rule is based on § 15-70-104, MCA, and the rule implements section 15-70-202, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 09/04/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.27.102 and 42.27.103 relating to gasoline distributor's bonds and statements.	NOTICE OF PROPOSED AMENDMENT of Rules 42.27.102 and 42.27.103 relating to gasoline distributor's bonds and statements.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1984, the Department of Revenue proposes to amend rules 42.27.102 and 42.27.103 relating to gasoline distributor's bonds and statements.

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

42.27.102 DISTRIBUTOR'S BOND (1) Gasoline distributors must furnish the department of revenue a corporate surety bond executed by the distributor as principal with a corporate surety authorized to transact business in this state or other collateral security or indemnity. The total amount of bond or collateral security or indemnity shall be equivalent to twice the distributor's estimated monthly gasoline tax ~~computed on the yearly average of previous year's sales~~ , but never less than ~~$1,000~~ $2,000 and in no case greater than ~~$200,000~~ $500,000.
AUTH: 15-70-104, MCA; IMP: 15-70-202, MCA.

42.27.103 DISTRIBUTOR'S STATEMENTS (1) Every distributor shall file a monthly Distributor's Gasoline License Tax Report, Form ~~12~~ MF-32, within the time prescribed by 15-70-205, MCA. Supporting detail schedules 1, 2, 3, 4, 5, 6, 6A, and 6B are to accompany ~~the~~ Form ~~12~~ MF-32, together with all letters of explanation of credit deductions and the remittance to cover the amount of license tax due.

(2) Remains the same.
AUTH: 15-70-104, MCA; IMP: 15-70-205, MCA.

3. Rule 42.27.102 is proposed to be amended because Chapter 624 (L. 1983) increased the gasoline tax rate from nine cents per gallon to 15 cents per gallon. Section 15-70-202, MCA, specifies that a gasoline distributor must file a security (bond) with the Department, and it gives the Department the authority to determine the required amount of the bond. However, the required amount may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this State each month. Because of the increase in the gasoline tax, effective July 1, 1983, the Department believes the existing rule is not adequate to secure compliance and payment of all taxes, interest, and penalties due. The proposed increase in the minimum amount of the required bond will cover the gasoline

distributor's increased tax liability.

Rule 42.27.103 is proposed to be amended to correct a misprint. The correct form to be used in filing a monthly Distributor's Gasoline License Tax Report is Form MF-32 and not Form 12 as indicated.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 12, 1984.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than October 12, 1984.

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

7. The authority of the Department to make the proposed amendments is based on § 15-70-104, MCA, and the rules implement §§ 15-70-202 and 15-70-205, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 09/04/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.28.402, 42.28.403, 42.28.404, and 42.28.405 relating to special fuel dealers.	NOTICE OF PROPOSED AMENDMENT of Rules 42.28.402, 42.28.403, 42.28.404, and 42.28.405 relating to special fuel dealers.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1984, the Department of Revenue proposes to amend rules 42.28.402, 42.28.403, 42.28.404, and 42.28.405 relating to special fuel dealers.

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

42.28.402 MONTHLY REPORTS (1) Every special fuel dealer shall on or before the ~~25th day of each~~ last day of the month following the month to which it relates, file with the department, on forms supplied by the department, a report accounting for all fuel received, sold, distributed, and used and indicating the amount of use fuel tax collected during the immediate preceding calendar month, together with such other information as the department may require. The report shall be accompanied by a tax remittance, if any, payable to the ~~state of Montana~~ department of revenue for the amount of tax due.

(2) Remains the same.

AUTH: 15-70-104 MCA; IMP: 15-70-325 MCA.

42.28.403 DEALER RECORDS -- AUDIT ~~(1)~~ Every dealer shall maintain a complete stock summary of the gallons of special fuel handled each month which reflects inventories, receipts, deliveries to special fuel users, other disbursements, and loss or gain. The stock summary shall be supported by:

(a) physical inventories of bulk storage tanks taken at the close of each calendar month;

(b) meter readings for pumps through which the fuel is dispensed taken at the close of each calendar month;

(c) a record of fuel receipts together with invoices, bills of lading, and other documents relative to the acquisition of fuel; and

(d) a record of fuel disbursements together with the invoices required herein, as well as bills of lading and other documents relative to the disbursements of fuel.

~~(2)--Every dealer not maintaining records in this state so that an examination of such records may be made by the department shall be required to make the necessary records available to the department upon request at a designated office within this state or, in lieu thereof, to agree to pay as reimbursement to the department subsistence and travel allowance at the rates prescribed by statute of this state to proceed to any out-of~~

~~state office at which records are prepared and maintained to make such examination.~~
AUTH: 15-70-104 MCA; IMP: 15-70-323 and 15-70-324 MCA.

42.28.404 DEALER INVOICES (1) An invoice shall be issued at the time of each fuel disbursement. Each of these invoices shall be prenumbered, identifying the seller by business name and location, and shall indicate the following:

(a) the name~~, permit or~~ and vehicle identification number of the person receiving the special fuel ~~, or, if off highway use is intended, the name and address of the purchaser and the statement, non-highway use~~ . If the sale is made ex-tax, a notation must be made on the invoice as to type of delivery, such as: barrel, can, reefer, etc.;

(b) the date of sale;

(c) the number of gallons withdrawn or sold;

(d) the price per gallon and total amount charged;

(e) if the fuel is delivered into a United States government vehicle or a city, county, or school district vehicle.

(2) The sale to those agencies referred to in subsection (1)(e) is nontaxable, and the agency to which the fuel is sold must be listed on the invoice.
AUTH: 15-70-104 MCA; IMP: 15-70-323 MCA.

42.28.405 SPECIAL FUEL DEALER TAX RETURNS (1) The department of revenue is hereby authorized to accept special fuel dealer tax returns~~, upon request from the dealer,~~ without requiring a listing of all individual sales made by those dealers whose tax records are acceptable for proper audit by the department. Upon written request the department will examine the dealer's records prior to granting written authority to file tax returns as provided by this section. In those cases where individual sales listings are not required, the department of revenue shall accept receipted gallons or metered sales in computing the tax liability. The department reserves the right to approve or refuse such requests.
AUTH: 15-70-104 MCA; IMP: 15-70-325 MCA.

3. Rule 42.28.402 is being amended to bring it into conformity with § 15-70-325, MCA, which specifies the proper filing date for returns and with § 15-70-322, MCA, which provides that payments of special fuel user tax must be made to the Department of Revenue.

Rule 42.28.403 is being amended because Chapter 16 (L. 1983) eliminated the requirement in § 15-70-324, MCA, that a taxpayer pay the costs of an out-of-state motor fuel audit. Consequently, subsection (2) is no longer necessary.

Rule 42.28.404 is being amended to clarify the language found in the rule. The Department proposes to replace the words "non-highway use" with "barrel, can, reefer, etc." at the end of subsection (1)(a). The present language of the rule seems to put the dealer in the position of accounting for the user's use

of the fuel. It also implies that the dealer could sell ex-tax fuel into a motor vehicle fuel supply tank if the purchaser intends to travel on other than public roads.

During an audit of "non-highway use" invoices, a dealer cannot be expected to remember why he did not assess tax on a sale made from one to five years before. However, a notation on the invoice such as "barrel, can, or reefer" is adequate verification that the sale without tax was proper.

Rule 42.28.405 is being amended in order to clarify that the dealer must make a written request for the alternate reporting method and that the reporting method may not be utilized by the dealer prior to receipt of written authorization from the Department.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 12, 1984.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than October 12, 1984.

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

7. The authority of the Department to make the proposed amendments is based on § 15-70-104, MCA, and the rules implement §§ 15-70-323, 15-70-324, and 15-70-325, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 09/04/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.28.105 and 42.28.121 relating to special fuel user tax.	NOTICE OF PROPOSED AMENDMENT of Rules 42.28.105 and 42.28.121 relating to special fuel user tax.
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1984, the Department of Revenue proposes to amend rules 42.28.105 and 42.28.121 relating to the special fuel user tax.

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

42.28.105 WHAT CONSTITUTES SPECIAL FUEL (1) Fuel taxable under the Special Fuel Tax Act includes diesel fuel, ~~liquid petroleum gas (propanes and butanes),~~ stove oils, heating oils, burner fuels, or any other combination of fuels used for the propulsion of motor vehicles, except fuels subject to the Basic Gasoline License Tax ~~as provided for in the Distributors Gasoline License Tax Act~~ .

AUTH: 15-70-104 MCA; IMP: 15-70-301 MCA.

42.28.121 QUARTERLY REPORTS - TAX PAYMENT (1) Every special fuel user shall, on or before the last day of the month following the close of a calendar quarter, file with the department of revenue a report showing the amount of fuel used during the calendar quarter. Reports shall be accompanied by a remittance payable to the ~~state treasurer~~ department of revenue for the amount of tax due and payable.

(2) Remains the same.

AUTH: 15-70-104 MCA; IMP: 15-70-322, 15-70-325, and 15-70-327 MCA.

3. Rule 42.28.105 is proposed to be amended to delete "liquid petroleum gas (propanes and butanes)" from the definition of special fuel. The reason for the change is to eliminate the conflict with § 15-70-301(6), MCA, the Special Fuel Tax Act, which excludes lpg. from the definition of special fuel.

Rule 42.28.121 is proposed to be amended to clarify that payments of the special fuel user tax should be made directly to the Department of Revenue as required by § 15-70-322, MCA.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 12, 1984.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Fenny at the above address no later than October 12, 1984.

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

7. The authority of the Department to make the proposed amendments is based on § 15-70-104, MCA, and the rules implement §§ 15-70-301, 15-70-322, 15-70-325, and 15-70-327, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 09/04/84

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.28.301, 42.28.302, 42.28.312, 42.28.313, 42.28.321, and 42.28.324 relating to special fuel permits.	NOTICE OF PROPOSED AMENDMENT of Rules 42.28.301, 42.28.302, 42.28.312, 42.28.313, 42.28.321, and 42.28.324 relating to special fuel permits.
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1984, the Department of Revenue proposes to amend rules 42.28.301, 42.28.302, 42.28.312, 42.28.313, 42.28.321, and 42.28.324 relating to special fuel permits.

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

42.28.301 PERMIT REQUIRED (1) Any person who uses special fuel ~~other than gasoline~~ to propel a motor vehicle upon the highways of this state is required to make written application for and obtain a special fuel user's permit.

(2) remains the same.

AUTH: 15-70-104 MCA; IMP: 15-70-302 and 15-70-303 MCA.

42.28.302 PERMIT DETAILS (1) and (2) remain the same.

(3) "Permanent lease" means a lease of more than 30 days with exclusive use. "Temporary lease" means a lease of less than 30 days, or more than 30 days without exclusive use.

(a) Except as herein provided, every special fuel user shall be liable for the tax on special fuel used in motor vehicles permanently leased to him and operated on the highways of this state to the same extent and in the same manner as his own vehicles; provided that a lessor who is engaged exclusively in the business of leasing for compensation motor vehicles and equipment he owns without drivers to other carriers, may be deemed to be the special fuel user.

(b) Without exception, the lessor is responsible for reporting the operation of all units leased to other users on a temporary lease basis.

AUTH: 15-70-104 MCA; IMP: 15-70-302 MCA.

42.28.312 COMPLIANCE BONDS (1) At the time a ~~special fuel user~~ person wishes to become licensed ~~in Montana and receive a special fuel user's permit and has not yet filed a corporate surety bond or posted a cash bond with this agency,~~ as a Montana special fuel user and has not yet submitted a bond and application, he may post a $100 cash compliance bond on each vehicle at any weigh station. ~~This $100 provides 30 days temporary authority for the vehicle listed.~~ A cash compliance bond(s) may also be posted by those persons who enter and remain within the state

for a period not to exceed 30 days to complete a temporary project, provided that all special fuel purchased must include the state tax. Compliance bonds provide 30 days temporary authority for the vehicle listed.

(2) ~~The $100 compliance bond is posted with the proper authorities with the intent that the special fuel user shall make application for a special fuel user's permit and file a $500 corporate surety bond or a cash bond within 30 days of issuance of the compliance bond. When the special fuel user complies with all motor fuel tax division licensing requirements and files a fuel tax return for the 30-day period covered by the compliance bond on the vehicle involved, the $100 will be refunded subject to approval of the motor fuel tax division. Upon determination by the motor fuel tax division that the licensing requirements have not been met within the 30-day period, the $100 bond will be immediately forfeited.~~ Refund of the compliance bond(s) will be considered only for those users who submit proper bond and special fuel user application within 30 days of the issuance of the compliance bond. Failure to submit a tax report for the period of the compliance bond on or before the last day of the month following the calendar quarter in which the compliance bond was posted will result in forfeiture of the compliance bond. The report of operations for the period covered by the compliance bond may be incorporated with the tax return for the balance of the quarter in which the special fuel user license was issued.

(3) Those users who post a cash compliance bond, and receive annual filing authority when a license is issued, must file a tax return for the period of the compliance bond within 30 days of the expiration date of the compliance bond. Failure to submit a tax return within the time provided will result in forfeiture of the compliance bond(s).

AUTH: 15-70-104 MCA; IMP: 15-70-304 and 15-70-308 MCA.

42.28.313 TERMINATION OF ~~PERMITS~~ LICENSE OR PERMIT (1) Upon ceasing operations in Montana, each special fuel user shall:

(a) submit a final return together with the original and all copies of the vehicle permit;

(b) pay all tax, penalty, and interest due; and

(c) ~~requesting~~ request cancellation of the special fuel user's license or permit. ~~In order to cancel a Montana fuel tax account and be released of any further obligation, a return must be filed for each calendar quarter, up to and including the quarter that the permit issued by the department is returned to the motor fuel tax division and the user shall remit and pay all tax, penalty, and interest required to be collected and which have accrued from the amount of fuel used up to and including the date of cancellation.~~ Any attempt to use a cancelled license or permit will be considered a violation of the special fuel tax act and subject the user to the penalty provisions thereof.

(2), (3), and (4) remain the same.

AUTH: 15-70-104 MCA; IMP: 15-70-306 MCA.

42.28.321 REQUIRED RECORDS -- AUDITS (1) Remains the same.

~~(2)--Every special fuel user or other person not maintaining records in this state so that an audit of such records may be made by the department shall be required to make the necessary records available to the department upon request, at a designated office within this state, or, in lieu thereof, shall agree to pay, as reimbursement, subsistence and travel allowance at the rate prescribed by statute of this state to proceed to any out-of-state office at which the records are prepared and maintained to make such an examination.~~

AUTH: 15-70-104 MCA; IMP: 15-70-323 and 15-70-324 MCA.

42.28.324 FAILURE TO MAINTAIN RECORDS (1) Remains the same.

(2) The department of revenue shall, in the event a special fuel user fails to retain the required records, make estimates of the miles traveled, special fuel purchases, and average miles per gallon ~~that the user's vehicle travels~~ in order ~~that it may~~ to determine the special fuel user tax ~~due~~ liability. ~~These estimates will be based upon the department of revenue's general knowledge of what are the operations of the trucking industry and what it knows of the general operation of the specific user.~~

These estimates will be based, whenever possible, on records for a portion of the operations of the user's vehicles consuming special fuels or other available information indicating fuel usage by the vehicles for which reports are being made. In those cases where the records are not adequate to verify the average miles per gallon (ampg) reported and the average cannot be estimated, an ampg of 4.5 will be used.

~~(3) In those cases where a special fuel user fails to retain the required records, the department of revenue shall advise the special fuel user of those standard estimates of miles per gallon, miles traveled, and fuel consumed which are normally utilized by the department in ascertaining the special fuel user tax in such cases.~~ If, within 30 days of the date the department issues an assessment based on the ampg of 4.5, the user provides the department with adequate records to verify or estimate fuel usage for the user's vehicles, the department will review the records and adjust the assessment to the extent necessary.

AUTH: 15-70-104 MCA; IMP: 15-70-306 and 15-70-323 MCA.

3. Rule 42.28.301 is proposed to be amended because it conflicts with § 15-70-301(6), MCA, of the Special Fuel Tax Act and rule 42.28.105 in that it incorrectly implies that a special fuel permit is required for vehicles powered by liquid petroleum gas.

Rule 42.28.302 is being amended to add an explanation of the fuel tax liability accrued while operating under a permanent or temporary lease. Lease reporting requirements are presently not defined by statute or rule. The new language is a statement of the Division's practice in regard to lease operations. The lease reporting requirements of the Motor Fuel Division coincide with the requirements of the majority of other states.

Rule 42.28.312 is being amended to clarify existing policy and to specify additional circumstances when a compliance bond may be posted. The present rule provides that a compliance bond may be posted only by those users who intend to apply for a special fuel user license. Occasionally a fuel user has no intention of becoming licensed as a special fuel user and therefore, is not allowed to post a compliance bond even though such a posting is in the best interest of the taxpayer and the State. Recently, for example, the United States State Department contracted with a Canadian firm to drill test holes north of Scobey, Montana. The contract was of 10 days duration at a site located six miles within Montana. The contractor was willing to comply with any licensing requirements, however, the only choices were to either become licensed as a special fuel user or purchase a 72-hour temporary trip permit. A license cannot be issued within ten days and the nearest place to purchase trip permits was the scalehouse at Culbertson, a round trip distance of 188 miles. The proposed change in this rule will provide the opportunity for such users to post compliance bonds. The other proposed changes will clarify reporting procedures and establish filing deadlines for posting a compliance bond.

Rule 42.28.313(1) provides that when a special fuel user requests cancellation of his special fuel user license but fails to return his vehicle permit, he is liable for payment of tax, interest, and penalty until the permit expires or is returned. This requirement served a valid purpose until January 1, 1980, at which time applicable statutes were amended to allow fuel permits to be photocopied. Prior to 1980, an individual fuel permit was issued for each vehicle. The permit identified the vehicle for which it was issued and was not valid for use in any other vehicle. Therefore, the required return of all vehicle permits upon cancellation of license was a reasonable guarantee that such vehicles could not continue to operate after cancellation.

Effective January 1, 1980, special fuel users receive one original vehicle permit. They must then place a photocopy of the original in each vehicle that they operate. Upon cancellation or revocation of license, any user who may be so inclined, could make several copies before returning the original permit. Therefore, the requirement of returning the permit is no longer a reasonable guarantee that the vehicle will not continue to operate. The present division policy of estimating tax and the assessment of penalties against users who fail to return their permits has not resulted in collection of a significant amount of revenue. However, the pursuit of this policy causes ill will and irritation toward the department on the part of the users and their bonding companies.

The proposed change to rule 42.28.313 still requires that the user must return the original permit and all copies thereof, but does not provide for assessment of tax and penalties if the other requirements of cancellation have been met.

The proposed change would not have an adverse impact on the trucking industry, but would, in fact, improve working relationships with individual users and their bonding companies.

There is a potential for a slight loss of revenue if the proposed change is adopted. However, the revenue loss may well be offset by the elimination of the division costs for collection of such revenue.

Rule 42.28.321 is proposed to be amended because Chapter 16 (L. 1983) eliminated the requirement in § 15-70-324, MCA, that a taxpayer pay the costs of an out-of-state motor fuel audit. Subsection (2) therefore is no longer necessary.

Rule 42.28.324 is proposed to be amended in order to allow the Department to estimate average miles per gallon (ampg) in those cases where actual mileage cannot be accurately determined. It is the practice of the Motor Fuel Division of the Department to use an estimated ampg of 4.50. This figure compares favorably with estimated ampg factors utilized by other states which range between 4.00 and 5.00 mpg. Montana's northern climate and mountainous terrain dictates that Montana use an average miles per gallon figure less than the maximum used by other states.

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

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 12, 1984.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than October 12, 1984.

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

7. The authority of the Department to make the proposed amendments is based on § 15-70-104, MCA, and the rules implement §§ 15-70-302, 15-70-303, 15-70-304, 15-70-306, 15-70-323, and 15-70-324, MCA.

EILEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 09/04/84

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

In the matter of the amendment of Rules 46.5.904, 46.5.905 and 46.10.404 pertaining to day care for children of recipients in training or in need of protective services.	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.5.904, 46.5.905 AND 46.10.404 PERTAINING TO DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES

TO: All Interested Persons

1. On October 4, 1984, at 10:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.5.904, 46.5.905 and 46.10.404 pertaining to day care for recipients in training or in need of protective services.

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

46.5.904 DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Day care payment will be made for children of recipients who are attending employment related training or in need of protective services day care unless otherwise provided. AFDC recipients who attend WIN training shall be referred for WIN related day care.

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

(e) Title IV-A day care payment shall not exceed ~~$104~~ $196 per month, per child for children in licensed or registered day care facilities.

(f) The recipient shall choose his day care provider.

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

(c) Day care payments shall not exceed ~~$104~~ $196 per month except in unusual circumstances when additional day care is approved by the department for the protection of the children.

AUTH: Sec. 53-4-111 and 53-4-503 MCA
IMP: Sec. 53-4-514 MCA

46.5.905 DAY CARE RATES (1) Full day care services are paid at a rate of ~~$7.00~~ $7.50 per day per child in care in day care homes. The maximum rate for group day care homes is ~~$7.50~~ $8.00 per child per day of care. The maximum rate for centers is ~~$8.00~~ $8.50 per child per day of care. These rate increases shall be paid beginning August 16, 1983~~4~~.

(2) Part-time care is paid at a rate of ~~70¢~~ 75¢ per hour per child in day care homes, ~~75¢~~ 80¢ per hour per child in group day care homes, and ~~80¢~~ 85¢ per hour per child in all centers up to a maximum of a full day or night care rate.

(3) Extra meals are paid at a rate of ~~60¢~~ 75¢ per child per meal, upon the written approval of the department.

(4) Special child or exceptional child day care is paid at a rate determined by the day care facility, parent of the child, and the social worker up to a maximum of ~~$8.00~~ $10.00 per day or per night care; and upon approval by the department. Part-time care may be provided at a rate of up to a maximum of $1.00 per hour per child, up to a maximum of a full day or night care special rate of $8.00 and subject to the same requirements as applied to the daily rate.

(5) Day care operators will be allowed to claim a day's care only when actually provided to the child, unless the child is enrolled in the center.

AUTH: Sec. 53-4-111 and 53-4-503 MCA
IMP: Sec. 53-4-514 MCA

46.10.404 TITLE IV-A DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES

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

(f) Day care payments shall not exceed ~~$184~~ $196 per month per child except in unusual circumstances when additional day care is approved by the department for the protection of children.

(g) Full day care services are paid at a rate of ~~$7.00~~ $7.50 per day per child in care in day care homes. The maximum rate for group day care homes is ~~$7.50~~ $8.00 per child per day of care. The maximum rate for centers is ~~$8.00~~ $8.50 per child per day of care.

(h) Part time care is paid at a rate of ~~70¢~~ 75¢ per hour per child in day care homes, ~~75¢~~ 80¢ per hour per child in group day care homes and ~~80¢~~ 85¢ per hour per child in day care centers up to a maximum of a full day or night care rate.

(i) Upon written approval of the department, the following services are also eligible for payment under Title IV-A day care:

(i) extra meals at a rate of ~~60¢~~ 75¢ per meal per child; and

(ii) exceptional child care, as defined in ARM 46.5.903, at a maximum of ~~$8.00~~ $10.00 per day per child for full-time care or $1.00 per hour per child for part-time care.

(j) Title IV-A day care is available for care provided in licensed or registered day care facilities only.

(k) The recipient shall choose his day care provider.

AUTH: Sec. 53-4-212 and 53-4-503 MCA
IMP: Sec. 53-4-211 and 53-4-514 MCA

3. The rules are proposed to be amended to provide for an increase in the day care payment rates consistent with the testimony and legislative history relating to the appropria-

tions contained in HB 447, and to make such other changes as are necessary to achieve uniformity within the rules regulating day care payments.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than October 12, 1984.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 4, 1984.

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

In the matter of the amendment of Rules 46.2.201, 46.2.202, 46.2.206, 46.2.209, 46.2.210 and 46.2.211 pertaining to overall departmental rules, definitions and fair hearings	)))))	NOTICE OF PUBLIC HEARING ON THE PROPROSED AMENDMENT OF RULES 46.2.201, 46.2.202 46.2.206, 46.2.209, 46.2.210 AND 46.2.211 PERTAINING TO OVERALL DEPARTMENTAL RULES, DEFINITIONS AND FAIR HEARINGS

TO: All Interested Persons

1. On October 5, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.2.201, 46.2.202, 46.2.206, 46.2.209, 46.2.210 and 46.2.211 pertaining to overall departmental rules, definitions and fair hearings.

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

46.2.201 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

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

(e) an action by the department to deny, terminate or fail to renew ~~certification or~~ a provider agreement for the medicaid program to any skilled nursing facility or intermediate care facility~~;~~;

(f) an action by the department to deny, terminate or fail to renew certification or licensure of a provider.

(3) "Authorized representative" means legal counsel, relative, friend or other spokesman specifically authorized by the claimant in writing or by law to represent the claimant in matters pertaining to the receipt of benefits from this department, but it does not include an employee of the department.

(4) "Benefit" means~~:~~ any form of assistance provided by or through the department to an eligible recipient under the administrative rules of Montana, Title 46.

~~(a) financial assistance provided for in Title 53, Chapter 4, MCA (Aid to Dependent Children);~~

~~(b) financial assistance provided for in Title 53, Chapter 3, MCA (General Relief Assistance);~~

~~(c) social services provided for under Title XX of the United States Social Security Act;~~

~~(d) medical assistance provided for in Title 53, Chapter 6, MCA (Medicaid);~~

~~(e) medical assistance provided for in Sections 53-3-103 and 53-3-105 MCA;~~

~~(f)--vocational-rehabilitation-services-provided-for-in Title-53,-Chapter-7,-MCA;~~

~~(g)--services-to-the-blind-provided-for-in-Title-53, Chapter-7,-Part-3,-MCA;~~

~~(h)--food-stamp-allotments-provided-for-in-6-CFR-Parts 271-274,-(Food-Stamps);~~

~~(i)--participation--by--a--skilled--nursing--facility--or intermediate-care-facility-in-the-medicaid-program;~~

(5) "Board" means the Board of Social and Rehabilitation Appeals provided for in section 2-15-2203, MCA.

~~(6)--"CFR"--means--the--United--States--Code--of--Federal Regulations;~~

~~(7)~~ (6) "Claimant" means an applicant for or recipient of benefits from the department whether an individual or household and includes the claimant's authorized representative.

~~(8)~~ (7) "He" and other words used in the masculine gender include the feminine and the neuter.

~~(9)~~ (8) "Hearing officer" means an individual hired or appointed by the Department to conduct a hearing under the authority of the Montana Administrative Procedure Act and this chapter.

~~(10)~~ (9) "Local office" means a county ~~welfare~~ department, a regional office, a bureau if there is no regional office, or a division if there is neither a regional office nor a bureau.

~~(11)~~ (10) "Local supervisor" means a county ~~welfare~~ director or his designee, a regional supervisor, a bureau chief if there is no regional supervisor, or a division administrator if there is neither a regional supervisor nor bureau chief.

(11) "Medical assistance provider" means any individual or organization providing services to eligible claimants under Title 46, Chapters 12 or 25 of the administrative rules of Montana.

(12) "Provider" means ~~a-skilled-nursing-facility-(SNF)-or intermediate-care-facility-(ICF)~~ an individual or organization authorized by the department to provide services to a person eligible for benefits.

AUTH: Sec. 53-2-201, 53-2-803, 53-3-102, 53-4-111, 53-6-111, and 53-6-113 MCA
IMP: Sec. 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, and 53-6-111 MCA

46.2.202 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department ~~affecting benefits--provided--by--or--through--the--department~~ shall be afforded the opportunity for a hearing ~~before-the-board-after timely-and-adequate-notice~~ as provided in this chapter.

~~(1)~~ (a) A request for a hearing is any clear written expression, ~~oral or written,~~ by the claimant ~~or provider~~ or an authorized representative to ~~present his case to a higher authority~~ contest an adverse action, except that a request for hearing concerning food stamp benefits may be oral.

~~(2)~~ (b) The freedom to request a hearing shall not be interfered with in any way. The local office shall assist a claimant who ~~needs~~ seeks help in requesting a hearing.

~~(3)~~ (c) The claimant ~~or provider~~ shall have a reasonable time from an adverse action, not to exceed 90 days, in which to request a hearing.

~~(4)~~ (d) Cases in which the sole issue is one of state or federal policy may be consolidated for a single group hearing. Each claimant shall be permitted to present his own case.

(2) Providers contesting actions by the department to deny, terminate or fail to renew certification or licensure, shall be granted the right to hearing as provided in this chapter.

(a) A request for a hearing from a provider must be submitted in writing within 30 days of receipt of notice of the department's adverse action.

(3) Providers contesting the rate of reimbursement for skilled nursing and intermediate care services shall be granted the right to a hearing as provided in ARM 46.12.1210.

(4) Medical assistance providers contesting actions by the department to withhold or suspend payments or sanction a provider in accordance with ARM 46.12.400 et. seq. shall be granted the right to hearing.

(5) There is no opportunity for hearing on departmental activities not defined as an adverse action in ARM 46.2.201(2).

AUTH: Sec. 53-2-201, 53-2-803, 53-3-102, 53-4-111, 53-6-111, and 53-6-113 MCA
IMP: Sec. 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, and 53-6-111 MCA

46.2.206 CONTINUATION OF BENEFITS Subsections (1) through (5) remain the same.

(6) ~~A provider who is denied, terminated or not renewed provider status shall not be eligible for medicaid payments pending the appeal of the adverse action by the provider. However, the provider shall be eligible to bill medicaid for covered services for the period covered by the adverse action if the appeal is decided in the provider's favor.~~ If an adverse action is taken against a provider, payments may be withheld pending the final hearing decision.

AUTH: Sec. 53-2-201, 53-2-803, 53-3-102, 53-4-111, 53-6-111, and 53-6-113 MCA
IMP: Sec. 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, and 53-6-111 MCA

46.2.209 HEARING PROCEDURE Subsections (1) through (4)(f) remain the same.

(5) Discovery shall be available to the parties. The department of social and rehabilitation services hereby adopts and incorporates by reference attorney general's model rule 13 found in ARM 1.3.217 which sets forth the procedures for discovery in contested cases. A copy of the model rule may be obtained by contacting either the Attorney General's Office, State Capitol, Helena, Montana 59604 or Department of Social and Rehabilitation Services, Office of Legal Affairs, 111 Sanders, P.O. Box 4210, Helena, Montana 59604.

AUTH: Sec. 2-4-201 MCA
IMP: Sec. 2-4-602 MCA

46.2.210 PROPOSAL FOR DECISION BY HEARING OFFICER Subsections (1) through (1)(b) remain the same.

(c) forty-five (45) days if the hearing involved denial, or termination ~~or nonrenewal of provider participation in the medicaid program,~~ of certification or licensure.

Subsections (2) through (3) remain the same.

AUTH: Sec. 53-2-201, 53-4-111, 53-6-111, and 53-6-113 MCA
IMP: Sec. 53-2-306, 53-4-112, and 53-6-111 MCA

46.2.211 NOTICE OF APPEAL, FILING AND SERVICE OF BRIEFS AND BOARD REVIEW OF PROPOSAL FOR DECISION (1) A copy of the proposal for decision shall be mailed to the claimant or provider, the local office and all other parties.

~~(a) If the proposal for decision is adverse to the claimant or provider, an opportunity shall be afforded to him to file exceptions and present briefs and oral argument to the board by the filing of a request for such opportunity with the Department's local office within ten (10) days of the mailing of the proposal for decision.~~

~~(b) If a county welfare director or a division administrator disagrees with a proposal for decision, he may, within ten (10) days of its mailing, request an opportunity to file exceptions and briefs with the Board but may not present oral argument.~~

~~(c) A board of county commissioners, if it disagrees with a proposal for decision and if it was an original party in the appeal by virtue of the involvement of county funds in the benefits, may request, within ten (10) days of the mailing~~

~~of--the--proposal--for--decision,--an--opportunity--to--file exceptions-and-present-briefs-and-oral-argument-to-the-board.~~

(2) If a party disagrees with the proposal for decision, a request for board review may be made by filing notice of appeal to the Montana Department of Social and Rehabilitation Services, Office of Fair Hearings, P.O. Box 4210, Helena, Montana 59604. The notice of appeal must be received by the office of Fair Hearings within fifteen (15) days of the mailing of the proposal for decision.

(a) Parties may file briefs no later than five (5) days before the meeting of the board for review.

(i) Copies of all briefs shall be served upon all parties.

(ii) An original and four (4) copies of each brief shall be filed with the Chairman, Board of Social and Rehabilitation Appeals, P.O. Box 4210, Helena, Montana 59604.

(b) Oral arguments are permitted if so requested by any of the parties. The request for oral argument must be made within thirty (30) days from the date of the hearing officer's proposal for decision. Notice of this request shall be served upon all parties.

(3)~~(2)~~ If a request for ~~an--opportunity--to--file exceptions-and-present-briefs-and-oral-argument-to-the~~ board review is not ~~filed~~ received within ~~ten-(10)~~ fifteen (15) days of the date of mailing of the proposal for decision, the proposal for decision shall become final without further action by the board, unless a party can show that the failure to request ~~an opportunity-to-file-exceptions-and-present briefs-or-oral-argument~~ board review was for good cause.

(4)~~(3)~~ If a request is ~~filed~~ received within the specified time period, the board shall consider the proposal for decision, the exceptions filed, briefs or oral argument presented and the record of the hearing, and shall:

(a) notify the claimant, the local office and any other party of the board's decision~~;~~; and

~~(i)--within-sixty-(60)-days-from-the-date-of-the-request for-hearing-in-an-appeal-involving-benefits-received-under-the food-stamp-program;-or~~

~~(ii)--within--ninety--(90)--days--from-the--date--of--the request-for-hearing-in-an-appeal-involving-benefits-under-a program-other-than-the-food-stamp-program.~~

(b) notify the claimant or provider or other party of his right to judicial review.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113, and 53-7-102 MCA
IMP: Sec. 53-2-201 and 53-2-606 MCA

3. The rules are proposed to be amended as the Department has found clarification needed in certain areas of the fair hearing rules. The definitional rule is proposed to be amended in order to more clearly define terminology used in

the fair hearing rules. To make clear and direct the reader to the appropriate provider hearing rules found in Title 46 of the Administrative Rules of Montana, the proposed rules include a new section which sets out the fair hearing rights of a provider.

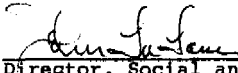
The fair hearing rules provide that a claimant or provider shall have a reasonable time from an adverse action, not to exceed 90 days, in which to request a hearing. In order to establish this 90-day time limit, the proposed rule is being amended to require a written request for a hearing.

Section 2-4-602, MCA requires each agency to provide in its rules of practice for discovery procedures prior to a contested case hearing. Therefore, a subsection has been added to the hearing procedures to include discovery provisions.

The appeal procedures are proposed to be amended to provide for a more reasonable time period in which to file a notice of appeal. Further, parties involved in the appeal process often question the time frame to be used for submitting briefs. As the rules are not clear, a briefing schedule has been provided.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than October 12, 1984.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 4, 1984.

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

In the matter of the amendment of Rules 46.5.604, 46.5.606, 46.5.609 and 46.5.672 pertaining to licenses, license revocation and denial, and confidentiality of records and information	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.5.604, 46.5.606, 46.5.609 AND 46.5.672 PERTAINING TO LICENSES, LICENSE REVOCATION AND DENIAL, AND CONFIDENTIALITY OF RECORDS AND INFORMATION

TO: All Interested Persons

1. On October 4, 1984, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.5.604, 46.5.606, 46.5.609 and 46.5.672 pertaining to licenses, license revocation and denial, and confidentiality of records and information.

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

46.5.604 LICENSES

Subsections (1) through (5)(e) remain the same.

(f) If subsections (a), (b), (c), (d) or (e) **happen** occur in a licensed foster home, the foster parent(s) shall notify the licensing social worker within 48 hours. The licensing social worker will re-evaluate the home within 30 days to determine whether there should be any change in the licensing status.

Subsections (6) and (7) remain the same.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 41-3-1142 and 41-3-1103(1)(b) MCA

46.5.606 LICENSE REVOCATION AND DENIAL (1) The department, after written notice to the applicant or licensee, may deny, suspend, restrict, revoke or reduce to a provisional status a license upon finding that:

(a) the YCF is not in compliance with fire safety standards; or

(b) the YCF is not in substantial compliance with any other licensing standards established by this rule; or

(c) the YCF has made any misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility~~.~~; or

(d) the YCF has failed to use the foster care payments for the support of the foster child~~.~~; or

(e) the YCF or its staff have been named as the perpetrator in a substantiated report of abuse or neglect; or

(f) the YCF failed to report an incident of abuse or neglect to the department or its local affiliate as required by section 41-3-201, MCA.

(2) At the discretion of the department and for protection of the child(ren) in placement the child(ren) may be moved immediately upon receipt of a report of sexual or physical abuse by the YCF.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 41-3-1103(1)(b) and 41-3-1142 MCA

46.5.609 CONFIDENTIALITY OF RECORDS AND INFORMATION

(1) All records maintained by a YCF and all personal information made available to a YCF pertaining to an individual child ~~are~~ must be kept confidential and are not available to any person, agency or organization except as specified in subsections (2) through (4) ~~of this section below.~~ of this rule.

Subsections (2) through (4) remain the same.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 41-3-1103(1)(b) and 41-3-1142 MCA

46.5.672 YOUTH FOSTER HOME, DISCIPLINE

Subsections (1) through (9) remain the same.

(10) A report shall be completed and sent to the placing agency and licensing social worker by any foster parent involved in physical punishment.

AUTH: Sec. 41-3-1103(2)(c) MCA
IMP: Sec. 41-3-1103(1)(b) and 41-3-1142 MCA

3. This rule is necessary to clarify the meaning of existing rules and to justify licensing sanctions against youth care facilities involved in reported incidents of child abuse and neglect. Such sanctions are necessary to protect children placed in licensed youth care facilities.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than October 12, 1984.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 4, 1984.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 4.3.204 (2) specifying amounts of Junior Agriculture Loans.	))))	NOTICE OF THE AMENDMENT OF RULE 4.3.204 (2)

TO: All Interested Persons:

1. On July 26, 1984, the Department of Agriculture published notice of a proposed amendment to rule 4.3.204 (2) concerning the maximum loan amounts to individuals or organizations through the Junior Agriculture Loan Program at page 1082 of the 1984 Montana Administrative Register, issue number 14-7/26/84.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is based on Section 80-2-106, MCA, and the rule implements Section 80-2-103, MCA.

KEITH KELLY, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, September 4, 1984

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 20.11.108, 20.11.109, 20.11.112-115 and 20.11.118 concerning reimbursement policies.	))))	NOTICE OF AMENDMENT OF RULES 20.11.108, 20.11.109, 20.11.112-115 and 20.11.118 Reimbursement Policies

TO: All Interested Persons.

1. On May 17, 1984, the Department of Institutions published notice of proposed amendments to rules 20.11.108, 20.11.109, 20.11.112-115 and 20.11.118 concerning the reimbursement policies at page 790 of the 1984 Montana Administrative Register, issue number 9.

2. The hearing was held at 10:00 a.m. on Friday, June 8, 1984, in Room 315 of the Department of Institutions, 1539 11th Avenue, Helena, Montana. No persons other than Reimbursement Bureau staff appeared at the hearing. Mr. Nick Rotering, hearings officer, accepted into the record a written memorandum from Mary Jane Wunderwald, Chief of the Reimbursement Bureau, which supported the Department's position that the proposed amendments be adopted. Mrs. Wunderwald also submitted exhibits into the record which she stated were documents and forms used by the Department in implementing the rules. She requested that these exhibits be adopted as as integral part of the rules and this was concurred in by the hearings officer. The exhibits have been integrated into the rules by the adoption of the following new rule.

20.11.119 ADOPTION OF FORMS The forms listed below are adopted and made a part of these rules for all purposes. Copies of printed forms will be supplied by the reimbursement bureau of the department of institutions upon request.

(1) Confidential Financial Statement
(2) Letter - Request for Annual Re-evaluation
(3) Admission Letter
(4) Letter - Request for Confidential Financial Statement
(5) Notice of Decision in the Matter of the Request for Re-evaluation
(6) Request for Department Review for Modification of Care and Maintenance
(7) Food and Clothing - Monthly Allowances.

AUTH: Sec. 53-1-403 MCA IMP: Sec. 53-1-405, 406 MCA

3. Prior to the hearing, no written comments were received. However, the Department was contacted by Greg Petesch, Staff Attorney for the Legislative Code Committee concerning whether or not there was an adequate statement of the reason for the notice. Mr. Petesch was assured of the necessity for the amendments to the existing rules due to requests by persons affected by the rules for more clarity of

the rules.

4. The authority for the rules is Sec. 53-1-403, 405 MCA and the rules implement Sec. 53-1-106, 53-1-401, 405, 406, 407, 408 MCA.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State August 30, 1984.

BEFORE THE MONTANA HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules governing maternity leave under the Montana Human Rights Act	NOTICE OF THE ADOPTION OF RULES GOVERNING MATERNITY LEAVE - 24.9.1201 - 24.9.1207

TO: All Interested Persons:

1. On March 29, 1984, the Montana Human Rights Commission published notice of proposed adoption of rules concerning maternity leave under the Montana Human Rights Act at page 482 of the 1984 Montana Administrative Register, issue number 6 and page 949 of the 1984 Montana Administrative Register, issue number 12.

2. The Commission has adopted Rule 24.9.1201. DEFINITIONS, Rule 24.9.1202. TERMINATION OF EMPLOYMENT DUE TO PREGNANCY PROHIBITED, and Rule 24.9.1206. PREGNANCY-RELATED DISABILITIES TO BE TREATED AS TEMPORARY DISABILITIES as proposed.

The Commission has adopted Rule 24.9.1203 RIGHT TO REASONABLE LEAVE OF ABSENCE with minor editorial changes but substantially as proposed.

The Commission has adopted Rule 24.9.1204 MANDATORY LEAVE FOR UNREASONABLE LENGTH OF TIME PROHIBITED, Rule 24.9.1205 VERIFICATION OF DISABILITY and Rule 24.9.1207 RETURN TO EMPLOYMENT AFTER MATERNITY LEAVE with the following changes:

Rule 24.9.1204 MANDATORY LEAVE FOR UNREASONABLE LENGTH OF TIME PROHIBITED Section 49-2-310(5), MCA provides that no employeer may require an employee to take a mandatory maternity leave for an unreasonable length of time. The reasonableness of the length of time for which an employee is required to take a mandatory maternity leave shall be determined on a case by case basis. However, the employer shall have the burden of proving that a maternity leave for a ~~longer~~ period of time other than that prescribed by the employee's medical doctor is reasonable, and in no case shall an employee be required to take an uncompensated maternity leave for a longer period of time than a medical doctor who has actually examined the employee shall certify that the employee is unable to perform her employment duties. Neither this section nor any other section of these regulations shall prohibit an employer and employee from mutually agreeing, in the case of the particular employee, to a longer period of maternity leave, either compensated or uncompensated than ~~is permitted~~ would be required by this regulation. However, no employer may enter into a general agreement with any group or association of employees which requires a longer period of mandatory maternity leave than is permitted by this regulation.

Rule 24.9.1205 VERIFICATION OF DISABILITY In any case where an employee makes a claim against her employer for any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to

plans maintained by her employer, including any insurance or other disability plans referred to in 24.9.1206 and the claim is based on a disability covered by and defined in Title 49, Chapter 2, MCA, and these regulations, the employer may require that the disability be verified by medical certification by a physician competent to treat and diagnose the particular disability, that the employee is, or at the time for which the claim is made, was unable to perform her employment duties. For purposes of obtaining this medical certification the employer may require that the claimant submit to a physical or mental examination by a medical doctor to verify the claimed disability by medical certification. ~~In cases where a dispute in medical evidence exists, the commission shall determine the weight and credibility of the testimony of the physicians involved.~~

Rule 24.9.1207 RETURN TO EMPLOYMENT AFTER MATERNITY LEAVE Section 49-2-311, MCA requires that an employee who has signified her intent to return at the end of her maternity leave of absence shall be reinstated to her original job or an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it unreasonable or impossible to do so. **Any** ~~private employer who claims that his circumstances have so changed as to make compliance with Section 49-2-311, MCA impossible or unreasonable shall have the burden of proving his claim based upon all evidence.~~

3. Pursuant to a specific request, the Commission held a public hearing on the proposed rules on July 26, 1984. One member of the public testified in favor of the rules as proposed at the hearing. Several written comments were also received.

A written comment was received which objected to the use of the word and the concept of "disability" in discussing pregnancy and maternity. The Commission has interpreted the intent of the Montana legislature in enacting §§49-2-310 and 49-2-311, MCA, as providing for a leave to cover the period of time during which the employee is temporarily unable to perform the duties of her position because of pregnancy, childbirth, and related conditions. The disability is not limited to physical disability and the concept of disability is certainly broad enough to encompass the need for rest after delivery. The Commission believes it was not the intent of the legislature to mandate a leave for parenting or family adjustment.

Comments were received which suggested that the rules set a maximum period of time for an employer mandated maternity leave and set a guideline as to what constitutes a reasonable period of time for a leave sought by the employee. The Commission has deliberately avoided setting a minimum or maximum length of time in the rules because reasonableness must be determined on the basis of the facts in an individual situation. To set either a minimum or maximum amount of time as reasonable requires the adoption of assumptions about an

"average" pregnant woman employed in an "average" position. This stereotyping is the antithesis of discrimination law.

Several comments were received that the first sentence of Rule 24.9.1204 improperly paraphrased the statute. The rule as adopted has been amended in response to these comments.

Several comments were received which suggested that the rules set forth whether the employer may choose the physician for purposes of Rules 24.9.1204 and 24.9.1205 and whether the employer has the responsibility to pay for an examination for the purpose of verifying disability. The Commission has deliberately avoided setting forth such requirements. The Commission will require that with respect to choice of physician for examinations and payment for examinations, the employer's normal personnel policies for temporary disabilities will apply as set forth in Rule 24.9.1206.

A comment was received which asked whether the rules apply to adoption of children as well as natural childbirth. The rules do not apply to adoption as the adopting parent is rarely, if ever, disabled due to pregnancy.

A comment was received which requested that the rules address the situation which occurs when the employee does not wish to take a leave, yet is unable to perform her duties because of her pregnancy. An employer is permitted to require that an employee take a mandatory leave for a reasonable period of time. In addition, an employer may treat a pregnant employee with performance problems in the same manner as other employees. If reasonable accomodation (such as light duty) is made for employees with other temporary disabilities, the same accomodation must be made for pregnant employees.

A comment was received which expressed concern that employees will abuse their right to maternity leave by failing to return to work within a reasonable period after delivery. Rule 24.9.1201 establishes that the availability of leave is dependent on disability. An employer may require medical verification that an employee is disabled in order to qualify for maternity leave.

A comment was received which objected to the Commission requiring that the burden of proof of establishing that it is unreasonable to reinstate an employee after a leave rests with the employer. Rule 24.9.1207 as adopted eliminates this language regarding burden of proof. The same commentor contended that Rule 24.9.1207 was inadequate in that it does not address the practical problems that frequently occur such as whether the date of return to work should be determined by the employer's or employee's convenience and what circumstances would justify the employer not allowing return to work. The Commission believes that the question regarding length of the leave is adequately covered in Rule 24.9.1201(2), which defines maternity leave. The timing of return to work is dependent upon the length of the leave as defined in that rule. The Commission believes that the circumstances which will make it impossible or unreasonable for the employer to reinstate the employee will vary on a case-by-case basis.

A comment was received which objected to the rules as presupposing the validity of the statute in light of pending litigation. This comment also stated that the Commission had failed to propose rules which conformed as much as possible to the federal guidelines. The Commission acknowledges that the proposed rules presuppose the validity of the statute. The order of the District Court for the Eighth Judicial District declaring the statute invalid has been stayed by the Supreme Court, however. The Commission disagrees with the contention that no attempt has been made to conform the rules to the federal guidelines.

A comment was received objecting to the overall implementation of the proposed rules on the grounds that they promote discrimination for postpartum mothers rather than eliminate discrimination against postpartum mothers. This objection was overruled by the Commission. The objection is based upon disagreement with the statute rather than the rules.

Comments were received from the Administrative Code Committee suggesting several editorial and grammatical changes. Some of these changes have been incorporated in the rules as adopted.

4. The authority for the rules is Section 49-2-204, MCA, and the rules implement Sections 49-2-310 and 49-2-311, MCA.

HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
Anne L. MacIntyre
Administrator
Human Rights Division

Certified to the Secretary of State September 4, 1984.

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

In the matter of the adoption of rules requiring certification of blasters on strip or underground coal or uranium mines	))))	NOTICE OF ADOPTION OF RULES FOR CERTIFICATION OF COAL OR URANIUM MINE BLASTERS - 26.4.1260 - 26.4.1263

TO: All Interested Persons.

1. On March 15, 1984, the Board of Land Commissioners and Department of State Lands published notice of proposed adoption of rules requiring certification of blasters on strip or underground coal or uranium mines at page 420 of the Montana Administrative Register, Issue No. 5.

2. The agency has adopted the proposed rules with the following changes:

26.4.1260 (RULE I) REQUIREMENTS FOR THE CONDUCT OF BLASTING OPERATIONS (1) No later than twelve months after the effective date of the U.S. Department of the Interior, Office of Surface Mining's final approval of blaster certification program for Montana, each operator shall conduct each blasting operation under direction of an individual who has been certified by the department pursuant to this subchapter and who is familiar with the operation's blasting plan and site-specific blasting performance standards. The certified blaster's responsibilities include, but are not limited to, determining blasting pattern, hole pattern, type and quantity of explosives, maintenance of blasting records, and safety of employees involved in the storage, transportation, and use of explosives.

(2) A certified blaster may not delegate the direction of blasting operation to any individual who is not a certified blaster.

(3) A certified blaster and at least one other person must be present during the detonation of each blast.

(4) A certified blaster shall immediately exhibit on-site or at the mine office his certificate to any authorized representative of the department or the Office of Surface Mining upon request.

(5) Operators shall require that persons who are not certified blasters receive direction and on-the-job training from a certified blaster before those persons assist in the storage, transportation, and use of explosives. AUTH: 82-4-204(3), 205(7), and 231(3)(e), MCA; IMP: 82-4-231(3)(e), MCA.

26.4.1261 (RULE II) CERTIFICATION OF BLASTERS (1) - (3) same as proposed rules.

(4) Certification shall expire three years after issuance. The department shall recertify if the blaster:

(a) submits to the department, at least 60 days prior to the expiration of his certification, an application for recertification on a form provided by the department;

(b) has successfully completed 24 hours of refresher training ~~by a qualified blasting instructor~~ during the certification period;

(c) has conducted or directed blasting operations within the 12 months immediately preceding the date of application for recertification or receives a grade of 80% or better on a recertification examination. The only new developments that the department may include in the recertification examination are those that have been included in annual supplements to the training manual. The applicant for recertification may take the examination twice.

(5) Same as proposed rule. AUTH: 82-4-204(3), 205(7) and 231(3)(e), MCA; IMP: 82-4-231(3)(e), MCA.

26.4.1262 (RULE III) BLASTER TRAINING COURSES (1) In order to qualify for certification or recertification, an applicant must successfully complete training or refresher courses meeting the requirements of (2) or (3) below.

(2) A blaster training course must provide 24 hours of training and discuss practical applications of:

(a) use of explosives, including:

(i) selection of the type of explosive to be used;

(ii) determination of the properties of explosives which will produce desired results at an acceptable level of risk;

(iii) handling, transportation and storage;

(b) design of blasts, including:

(i) geologic and topographic considerations;

(ii) blast hole design;

(iii) pattern design, field layout, and timing of blast holes;

(iv) field applications;

(c) loading of blast holes, including priming and boostering;

(d) use of initiation systems and blasting machines;

(e) effects of blasting vibrations, airblast, and flyrock, including:

(i) monitoring techniques;

(ii) methods to control adverse effects;

(f) use of secondary blasting;

(g) discussion of current federal and state rules applicable to the use of explosives;

(h) maintenance of blast records;

(i) determination of blasting schedules;

(j) design and use of preblasting surveys including availability, coverage, and use of in-blast design;

(k) requirements of blast plans;

(l) signs, warning signals, and site control;

(m) identification of unpredictable hazards including:

(i) lightning;

(ii) stray currents;

(iii) radio waves; and

(iv) misfires.

(3) A blaster refresher course must familiarize the blaster with new developments contained in the yearly supplement to the department's training manual and shall refresh the blaster's knowledge in one or more of the topics listed in (2) above. AUTH: 82-4-204(3), 205(7) and 231(3)(e), MCA; IMP: 82-4-231(3)(e), MCA.

26.4.1263 (RULE IV) SUSPENSION OR REVOCATION OF BLASTER CERTIFICATION (1) and (2) same as proposed rules.

(3) If the department has probable cause to believe that a certified blaster has committed any of the acts prohibited in (1) above and that the blaster's certification should or must be suspended or revoked, the department shall notify the blaster and his employer in writing by certified mail at the address contained in the blaster's application for certification or at a subsequent address of which the blaster has notified the department in writing. The blaster does not defeat service by refusing to accept or failing to pick up the notice. The notice shall advise the blaster of the department's proposed action, the alleged facts upon which the proposed action is based, and the blaster's right to request a hearing. If the department determines that suspension of the blaster's certification is reasonably necessary in order to protect human life or limb or the environment, it may suspend the certification until the hearing is held; provided, however, that no such suspension may be in effect for longer than 45 days. At the close of the hearing, the hearing officer may, based on a finding that the department will probably prevail and that continued suspension is reasonably necessary, continue the suspension until a final decision is made. AUTH: 82-4-204(3), 205(7), 231(3)(e), MCA; IMP: 82-4-231(3)(e), MCA.

3. The Office of Surface Mining, National Park Service, U.S. Forest Service, United Mine Workers of America, and Westmoreland Resources, Inc. submitted comments. The following is a summary of the comments received, the commenter, and the response to the comments:

RULE I REQUIREMENTS FOR THE CONDUCT OF BLASTING OPERATIONS

(1) Comment: The state should certify shooters as well as blasters. (United Mine Workers)

Response: Shooters are protected by the requirement that certified blasters train and supervise shooters. No additional certification has been provided.

(2) Comment: Exploding bridge wire caps and blasting machines should be required because they are extremely safe. (U.S. Forest Service)

Response: The proposed rules are for certification of blasters. The Department has not proposed to amend the rules regulating how blasting operations are conducted. The comment requests action beyond the scope of proposed rules. The requested amendment has not been made.

(3) Comment: A certified blaster should be responsible for determining blasting pattern, hole pattern, type of explosive, maintenance of records, and the safety of the people involved in the transportation and placement of blasting agents. (United Mine Workers)

Response: Rule I(1) requires that blasting operations be conducted under the direction of a certified blaster. Although this requirement probably encompasses the activities listed above, the Department has specifically listed them to remove any doubt.

(4) Comment: Subsection (2) should be amended to state that a "certified blaster in charge" rather than a "certified blaster" may not delegate direction of a blasting operation. (National Park Service)

Response: The language objected to is taken verbatim from the federal rules. A blaster who is not in charge could not delegate direction of the blasting operation. The proposed amendment is therefore unnecessary and has not been made.

(5) Comment: Subsection (3) which requires a "blaster and at least one other person," to be present during the detonation of a blast, should be amended to require the presence of a "blaster and a maximum of one other person." (National Park Service)

Response: The language objected to is taken verbatim from the federal rules. The purpose of requiring more than one person to be present during a blast is to provide assistance in case one person is injured. The operator should have the discretion to require more persons to be present. The proposed amendment has not been made. However, the word "certified" has been added before "blaster" in (3) and (4) for clarification.

(6) Comment: Subsection (3) should be amended to require the certified blaster to be present during the placing of booster, delays, wiring, and tying in of the shot as well as the detonation of the blast. (United Mine Workers)

Response: Subsection (5) requires the certified blaster to train those who work with explosives. MSHA requirements also apply. These provisions are adequate to ensure safety. To require the certified blaster to be present during the placing of booster, delays, wiring, and tying in of the shot is not necessary.

(7) Comment: Subsection (5) should be amended to require persons who assist in the use, transportation and storage of explosives to receive direct supervision and on-the-job training for one to three years. (National Park Service)

Response: The present rule requires that the certified blaster direct and train those persons. A certified blaster familiar with the personnel and blasting operation is better situated to determine the amount of training and supervision needed. The proposed amendment has not been made.

RULE II CERTIFICATION OF BLASTERS

(1) Comment: Certification of blasting should be incorporated with the mine foreman's certificate. (United Mine Workers)

Response: Rule II(2)(c)(i) provides that the Department can accept a surface coal mine foreman certification if it determines that the examination for that certification is equivalent to the Department's blaster certification test. An amendment to the rules is not necessary.

(2) Comment: In paragraph (4)(c) the words "are those" should follow "the recertification examination." (Westmoreland)

Response: This typographical error and another in Rule IV(3) have been corrected.

(3) Comment: Paragraph (4)(b) should be changed to require that for recertification the blaster should have completed 40 instead of 24 hours of refresher training, and this training should include eight hours of field performance training. (National Park Service)

Response: The Department is of the opinion that the field performance training is not necessary. To obtain the initial certification, the appli-

cant must have had two years of experience. To qualify for recertification, he must have conducted blasting operations within the previous 12 months. Also, eight hours/year of training is adequate to keep the blaster current on new developments in this field. The recommended amendment has not been adopted.

RULE III BLASTER TRAINING COURSES

(1) Comment: Subsection (1) requires an applicant for certification to provide a statement by a qualified blasting instructor that the applicant has completed a training course. The qualifications of the instructor should be set forth in the rule. (Office of Surface Mining)

Response: The requirement that the course be taught by a qualified blasting instructor has been eliminated on the assumption that applicants will choose competent instructors to enable them to pass the certification examination. The requirements that the course incorporate the Department's manual and that an applicant pass the test insure the competence of certified blasters.

(2) Comment: Paragraph (2)(b) should specify a required number of hours of initial training. (Office of Surface Mining)

Response: The Department has determined that 24 hours of training would be adequate and has amended the rule accordingly.

(3) Comment: Paragraph (2)(j) does not include the requirement, contained in 30 C.F.R. 850.13(b)(10)(i)-(iii), that course include availability, coverage, and use of in-blast design. (Office of Surface Mining)

Response: Thirty C.F.R. 850.13(b)(10) requires a state program to contain this requirement. The proposed language has been added.

RULE IV SUSPENSION OR REVOCATION OF BLASTER CERTIFICATION

No comments were received.

4. The authority of the department to adopt the proposed rules is based on 82-4-231(3), 205(7), and 231(3)(a), MCA, and the rules implement section 82-4-231(2)(e), MCA.

Dennis Hemmer, Commissioner
Department of State Lands

Certified to the Secretary of State this 24th day of August, 1984.

VOLUME NO. 40 OPINION NO. 63

EMPLOYMENT SECURITY - Unemployment benefits, disqualification for receipt of termination or separation allowance;
MONTANA CODE ANNOTATED - Sections 39-51-2306(1)(a), 39-51-2306(1)(b).

HELD: Under section 39-51-2306(1)(a), MCA, an individual who receives a severance allowance upon separation from employment is disqualified for unemployment benefits for the entire period of time that the allowance was intended to cover.

27 August 1984

David L. Hunter, Commissioner
Department of Labor and Industry
Lockey and Roberts
Helena MT 59620

Dear Mr. Hunter:

You have requested my opinion on the following question:

> Under section 39-51-2306(1)(a), MCA, is an individual who receives a severance allowance upon separation from employment disqualified for unemployment benefits only for the week in which the allowance was actually received, or is the individual disqualified for the entire period of time that the allowance was intended to cover?

Section 39-51-2306(1), MCA, provides in pertinent part:

> Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:
>
> (a) wages in lieu of notice or separation or termination allowance;
>
> ....

Your inquiry may be illustrated by the following example. An employee receives $250 a week in wages. Upon being laid off, the employee becomes eligible to receive $1,000 a month severance pay for the first two months that he is unemployed. The individual receives the allowance in two monthly checks of $1,000 each, and each check is received on the first of the month. Your question is whether receipt of a monthly check disqualifies the unemployed worker only for the week in which the check was actually received, or whether each check is to be viewed as approximately four weeks' worth of severance pay, disqualifying the individual for the entire four-week period following receipt of the check.

The Montana Supreme Court has not construed the particular subdivision of the statute which gives rise to your inquiry. However, the Court considered an analogous situation in Keller v. Reeder, 149 Mont. 322, 425 P.2d 830 (1967). In that case, an employee was injured in an industrial accident and was awarded a lump sum disability payment of $5,600 under the workers' compensation law. Although paid in one lump sum, the award represented disability payment for 175 weeks at the rate of $32 per week. The injured worker filed for unemployment benefits during the 175-week period, but was turned down by the Unemployment Compensation Commission, which notified the worker that he was disqualified for the entire 175-week period that the disability award covered. The worker's appeal eventually reached the Montana Supreme Court, and the Court examined the statutory language that is presently contained in section 39-51-2306(1)(b), MCA. That section provides that an individual is "disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of...compensation for disability under the workers' compensation law." The Court agreed with the Commission's determination that the worker was disqualified for the entire 175-week period, notwithstanding the fact that the award was received in one lump sum:

> Rendering to the statute just common sense and ordinary meaning, we point out not only the Commission but likewise the courts are limited by the statute. It is most apparent that the Commission could not legally allow the claim under the facts in this cause, and neither

could the courts have sustained an award, had it been made as a matter of law.

Keller, 149 Mont. at 324, 425 P.2d at 831. In Keller, the terms of the lump sum settlement designated the award as payment at a fixed weekly rate over a specified period of time--$32 per week for 175 weeks. I conclude that a severance allowance that can similarly be considered as payment covering a specific period of time following receipt of the allowance would also disqualify an individual for unemployment benefits for the entire period the severance allowance is intended to cover.

A basic rule of statutory construction is that language used in statutes must be reasonably and logically interpreted, giving words their usual and logical meaning. Matter of McCabe, 168 Mont. 334, 339, 544 P.2d 825, 828 (1975). Section 39-51-2306(1)(a), MCA, mandates that "an individual shall be disqualified for...any week with respect to which he is receiving or has received...[severance payments]." An individual who, for example, receives a $1,000 severance payment check on the first of the month, intended as a severance allowance for that entire month, must be disqualified for every week in the month with respect to which the severance payment was received and intended to cover. Those courts in other jurisdictions that have considered this issue have arrived at the same conclusion. See, e.g., West Jordan v. Dept. of Employment Security, 656 P.2d 411 (Utah 1982); Thornbrough v. Gage, 350 S.W.2d 306 (Ark. 1961); Globe-Democrat Publishing v. Industrial Commission, 301 S.W.2d 846 (Mo. Ct. App. 1957).

THEREFORE, IT IS MY OPINION:

Under section 39-51-2306(1)(a), MCA, an individual who receives a severance allowance upon separation from employment is disqualified for unemployment benefits for the entire period of time that the allowance was intended to cover.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 64

CITIES AND TOWNS - Special improvement districts--collection of assessments, when;
SPECIAL IMPROVEMENT DISTRICTS - Collection of assessments, when;
TAXATION - Special improvement districts--collection of assessments, when;
MONTANA CODE ANNOTATED - Sections 7-12-4188, 15-16-103.

HELD: The City of Belgrade is required to make semiannual collections of special improvement district assessments only when both of the following conditions are met: (1) The SID bond specifies annual interest payments, and (2) the bond was issued after July 1, 1981.

28 August 1984

William A. Schreiber
City Attorney
5 North Broadway
Belgrade MT 59714

Dear Mr. Schreiber:

You have asked my opinion on a question I have phrased as follows:

> Pursuant to section 15-16-103, MCA, is the City of Belgrade, which collects its own special improvement assessments, required to make semiannual collections instead of annual collections?

The statutes that answer your question come from two separate titles and must be reconciled. In order to do this, we must apply several basic principles of statutory construction.

> [L]egislative intent must first be determined from the plain meaning of the words used; and if the language is plain, unambiguous, direct and certain, the statute speaks for itself. All provisions of a statute shall be given effect, if possible. [Citation omitted.] This Court presumes that the legislature would

> not pass meaningless legislation; and must harmonize statutes relating to the same subject, giving effect to each. [Citation omitted.]

Crist v. Segna, 622 P.2d 1028, 1029, 38 St. Rptr. 150 (1981).

> When specific statutory language conflicts or is inconsistent with general statutory language, the specific statutory language will prevail to the extent of any repugnancy. [Citation omitted.]

Ingram-Clevenger, Inc., v. Lewis and Clark County, 636 P.2d 1372, 1374, 38 St. Rptr. 1696 (1981).

The two statutes that deal directly with the collection of assessments for special improvement districts are sections 7-12-4188 and 15-16-103, MCA. The former statute requires that SID assessments be paid annually, with a provision for a deferral of half the payment for six months at the option of the municipal governing body. The latter statute requires that SID assessments be paid in two installments in cases where a specific type of SID bond has been issued. That bond must: (1) specify annual interest payments, and (2) have been issued after July 1, 1981. Both of these conditions must be met. Harmonizing these two statutes, I conclude that semiannual payments of SID assessments are only required when the SID bond involved meets the two requirements of section 15-16-103, MCA. Your question implies that if a city collects its own SID assessments it may be distinguished from other cities on the issue of annual versus semiannual payments. I do not agree.

THEREFORE, IT IS MY OPINION:

> The City of Belgrade is required to make semiannual collections of special improvement district assessments only when both of the following conditions are met: (1) The SID bond specifies annual interest payments, and (2) the bond was issued after July 1, 1981.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 65

FEES - Recoupment of license fees;
GAMBLING - Authority of municipality to adopt ordinance regulating gambling activity;
GAMBLING - Recoupment of license fees;
LICENSE FEES - Recoupment of;
ORDINANCES - Authority of municipality to adopt ordinance regulating gambling activity;
ORDINANCES - Recoupment of license fees;
MONTANA CODE ANNOTATED - Sections 7-1-112(5), 23-5-101(1), 23-5-104(1), 23-5-105, 23-5-108, 23-5-109, 23-5-142, 23-5-301 to 23-5-332.

HELD: Municipalities are not required to refund any portion of prepaid, annual license fees tendered in connection with the use or possession of electronic poker game machines for the period following issuance of the Montana Supreme Court's decision in Gallatin County v. D&R Music & Vending.

30 August 1984

Thomas P. Meissner
City Attorney
305 Watson
Lewistown MT 59457

Dear Mr. Meissner:

You have requested my opinion concerning the following question:

> In view of the recent Montana Supreme Court decision in Gallatin County v. D&R Music and Vending, does section 23-5-321(2), MCA, which specifies that annual license fees "shall be prorated," require the municipal licensing authority to pay back or refund that portion of the license fee for the period after which video poker machines are barred from use?

Your letter states that the City of Lewistown has enacted an ordinance pursuant to authority granted under

section 23-5-321, MCA, of the Montana Card Games Act, that the ordinance imposes a license fee which is specified as nonrefundable and that the ordinance uses a calendar year, rather than a July 1 to June 30 fiscal year, as the license period. License fees were accepted under the ordinance for electronic poker game machines. In some instances the fees were paid for all or a portion of 1984 without any express reservation of recoupment rights should the Card Games Act, §§ 23-5-301 to 332, MCA, be construed as not authorizing such games; in other instances licensees purported to reserve the right to seek a refund of prepaid fees for any period after the games were declared unlawful. The license fees were paid in late 1983 or early 1984 before the issuance of Gallatin County v. D&R Music & Vending, 41 St. Rptr. 224, 676 P.2d 779 (Feb. 3, 1984). A response to your question requires analysis of D&R Music & Vending's effect and common law principles governing recoupment of tax or license fee payments.

In D&R Music & Vending the Supreme Court held that: (1) Electronic poker games do not constitute "poker" as that term is used in the Card Games Act; (2) electronic poker machines are slot machines as defined in section 23-5-101(1), MCA; and (3) the Card Games Act does not authorize the playing of poker in which the house competes against a single player. The effect of D&R Music & Vending was to render the use or possession of electronic poker machines unlawful and subject to criminal sanctions. See §§ 23-5-104(1), 23-5-105, 23-5-108, 23-5-109, MCA. Because the electronic poker games are a prohibited form of gambling, local governments have no authority to sanction the use or possession of the machines by ordinance. §§ 7-1-112(5), 23-5-142, MCA. Section 23-5-321, MCA, which permits counties and municipalities to adopt ordinances regulating games allowed under the Card Games Act, is thus inapplicable to a determination of whether a recoupment right exists here. Moreover, even if section 23-5-321, MCA, were applicable, it does not require refund of license fee payments under the circumstances here.

There are no Montana statutes dealing with the recoupment of license fee payments to municipalities. Consequently, any recoupment rights must be derived from common law. The generally accepted common law rule was recently restated in City of Rochester v. Chiarella, 58

N.Y.2d 316, 323, 461 N.Y.S.2d 244, 246-47, 448 N.E.2d 98, 100, cert. denied, 104 S. Ct. 102 (1983):

> Generally, the voluntary payment of a tax or fee may not be recovered.... When a payment is made under a mistake of law, with actual or constructive knowledge of the facts,...it is incumbent upon the taxpayer to demonstrate that payment was made involuntarily.... Payment of a tax under appropriate protest will ordinarily suffice to indicate the involuntary nature of the payment.... The failure to register a formal protest, however, will be excused in cases in which the payment is made under duress or coercion. The duress necessary to indicate involuntariness is present in circumstances where payment of a tax is necessary to avoid threatened interference with present liberty of person or immediate possession of property....

See, e.g., Manufacturer's Casualty Insurance v. Kansas City, 330 S.W.2d 263, 265-66 (Mo. Ct. App. 1959); Universal Film Exchanges v. Board of Finance and Revenue, 409 Pa. 180, 185 A.2d 542, 544-45 (1962), cert. denied, 372 U.S. 958 (1963); Isberian v. Village of Gurnee, 72 Ill. Dec. 78, 116 Ill. App. 3d 146, 452 N.E.2d 10, 14 (1983); Coca Cola Company v. Coble, 293 N.C. 565, 238 S.E.2d 780, 782 (1977); Occidental Life of California v. State, 92 N.M. 433, 589 P.2d 673 (1979); Apostol v. Anne Arundel County, 288 Md. 667, 421 A.2d 582, 585 (1980); see generally Annots., 64 A.L.R. 8 (1930), 84 A.L.R. 294 (1933), 80 A.L.R. 2d 1040 (1961). Montana appears to follow the general rule. North Butte Mining v. Silver Bow County, 118 Mont. 618, 620, 169 P.2d 339, 340 (1946) ("'[i]n the absence of a statute giving a right of recovery for taxes paid under mistake of law, the fact that the tax was paid under a mistake of law with knowledge of the facts is not itself a ground for allowing the maintenance of an action to recover it back'"); First National Bank v. Sanders County, 85 Mont. 450, 465, 279 P. 247, 252 (1929) (tax payment voluntarily made under an illegal statute may not be recovered); First National Bank v. Beaverhead County, 88 Mont. 577, 294 P. 956 (1930). Importantly, an action to recover tax or license fee payments is equitable, and a "defendant may rely upon any defense which shows that in equity and good conscience the

plaintiff is not entitled to recover in whole or in part...." Heileman Brewing Co. v. City of LaCrosse, 105 Wis. 2d 152, 312 N.W.2d 875, 880 (Ct. App. 1980).

The present question is, therefore, whether any of the license payments were made involuntarily. While admittedly the payments were required as a condition for possessing or using the electronic poker machines, licensees were under no compulsion to install the machines. As the court in Universal Film Exchanges v. Board of Finance and Revenue, 185 A.2d at 548, observed:

> Few taxes or license fees would ever be collected if sanctions or penalties were not provided or imposed for nonpayment, and consequently most taxing and licensing acts have sanctions or penalties to enforce payments. To hold that such provisions amount in law to duress and compulsion would be to hold that all taxes and license fees in all such cases were paid under duress and compulsion.... [Emphasis in original.]

The reservation of recoupment rights made by some licensees did not render the payments involuntary. First, the payments were in fact voluntary. Unlike protests which have caused tax or license payments to be viewed as involuntary in some cases, no challenge to the city's authority to assess the fee was made. See Restatement of Restitution § 75j (1937) ("[p]rotest means a statement by the taxpayer to the collecting officer that he makes payment unwillingly because he believes the tax is invalid"). The filing of a protest with a payment of taxes otherwise voluntarily made does not deprive the payment of its voluntary character. Southern Service Company v. Los Angeles County, 15 Cal. 2d 1, 97 P.2d 963, 968 (1940). Second, all payments were made with actual or constructive knowledge under the applicable ordinance that refunds were not available. A municipality may, absent statutory regulation to the contrary, require full, annual payment of a license fee without regard to whether the licensee intends, or is able, to use the benefits of the license for the entire year. Third, equitable considerations dictate that, when a licensee knew or should have known that the applicability of the Card Games Act to electronic poker games was disputed and pending before the Montana Supreme Court, recoupment should not be

permitted. If concerned over the possibility of paying fees for a period in excess of that during which the machines might be utilized, a prudent licensee could have refrained from use or possession of the machines until their legality was conclusively established.

THEREFORE, IT IS MY OPINION:

> Municipalities are not required to refund any portion of prepaid, annual license fees tendered in connection with the use or possession of electronic poker game machines for the period following issuance of the Montana Supreme Court's decision in Gallatin County v. D&R Music & Vending.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1984. This table includes those rules adopted during the period July 1, 1984 through September 30, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1984, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1984 Montana Administrative Registers.

ADMINISTRATION, Department of, Title 2

I	State Plan of Operation for Distribution of Federal Surplus Property, p. 746, 956
I-IV	and other rules - Moving and Relocation Expenses, p. 735, 957
I-VII	Discipline Handling Policy, p. 740, 958
I-XIX	Veteran's and Handicapped Person's Employment Preference, p. 93, 425
I-XXII	Purchasing Rules, p. 1564, 1918
2.21.6402	and other rules - Minimum Standards for Performance Appraisal, p. 905, 1087
2.23.101	and other rules - Operation of a Merit System, p. 858, 1128
2.31.101	ANSI Standards for Aerial Passenger Tramways, p. 350, 409, 811
2.32.101	Uniform Building Code - Doors - Health Care Facilities, p. 622, 744, 1024
2.32.210	Review of School Plans in Areas Where There is a Local Government Code Enforcement Program, p. 624, 1024
2.32.401	National Electrical Code - Minimum Standards and Requirements for Electrical Installations, p. 626, 1024
2.32.501	Standard for Recreational Vehicles - Construction, p. 628, 1025

AGRICULTURE, Department of, Title 4

STATE AUDITOR, Title 6

COMMERCE, Department of, Title 8

Service Charge - Fee Schedule - Non-Discrimination, p. 1880, 370
X-XXIII Montana In-State Investment Fund - Policy - Eligibility Criteria - Preferences - Application Procedures - Fees - Loans - Commitment of Funds, p. 1888, 379
I-XII Municipal Finance Consolidation Act Program, p. 862
8.97.301 and other rules - Definitions - Rates, Service Charges and Fee Schedules - Board In-State Investment Policy - Eligibility Criteria - Economic Development Linked Deposit Program - Loan Participation - Montana Economic Development Bond Program, p. 667, 869, 922, 1026

(Health Facility Authority)
8.120.206 Fees - Initial and Annual Planning Service, p. 418, 696

EDUCATION, Title 10

(Superintendent of Public Instruction)
I State Special Education Complaint Procedures, p. 479, 817
I Obligation of Debts Incurred for the Purchase of Property, p. 754, 972
10.41.101 and other rules - Vocational Education - General Rules - Postsecondary Vocational Education - Vocational Education in Secondary Schools, p. 135, 818

(Board of Public Education)
I Gifted and Talented Children, p. 756, 1182
I Educational Media Library, p. 1168
10.55.101 and other rules - Accreditation Standards of the Board of Education, p. 5, 827
10.55.205 and other rules - Supervisory and Administrative Time - Policy Governing Pupil Instruction-Related Days Approved for Foundation Program Calculations, p. 1163
10.55.302 Certificates - First Aid Training for Personnel Coaching Athletics, p. 871, 1161
10.55.402 Minimum Units Required for Graduation, p. 758
10.57.106 Life Certificates, p. 1166
10.58.101 and other rules - Standards for State Approval of Teacher Education Programs Leading to Interstate Reciprocity of Teacher Certification, p. 176, 831
10.62.101 and other rules - Certification of Fire Services Training Schools, p. 760

(Montana Arts Council and Montana Historical Society)
I Cultural and Aesthetic Project Grant Evaluation, p. 553

(Montana Historical Society)
10.121.801 and other rules - Criteria for Grants Evaluations, p. 680

FISH, WILDLIFE AND PARKS, Department of, Title 12

I	Disabled Persons, p. 236, 441
I	Acceptable License Agent Security, p. 237, 441
12.3.104	Establishment of Landowner Priority in Issuance of Antelope or Deer Hunting Licenses, p. 1021
12.3.202	Classes of License Agents, p. 236, 441
12.5.401	Oil and Gas Leasing Policy for Department-Controlled Lands, p. 1594, 762, 1084
12.6.201	and other rules - Field Trial Regulations, p. 1023
12.6.801	Boating Closures, p. 1597, 502
12.6.901	Water Safety Regulations, p. 1597, 502

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I	Certificate of Need - Psychiatric Hospital Services, p. 1895
I-VII	Standards for Intermediate Developmental Disability Care Facilities - Adult Day Care Centers, General Services/Administration and Food Service Requirements - Personal Care Homes, Residency Application Procedures, Screening Requirements and Appeal Procedures, p. 556
16.8.1102	Air Quality Permit Requirements, p. 239, 503
16.10.305	Sale of Milk and Milk Products in Food Processing Establishments, p. 1701, 26
16.14.801	and other rules - Cleaning of Cesspools, Septic Tanks and Privies, p. 241, 504
16.16.101	and other rules - Sanitation in Subdivisions, p. 765, 1027, 1104
16.32.301	and other rules - Health Care Facilities - Adult Day Care Centers - Personal Care Facilities, p.556, 973
16.32.302	and other rules - Chemical Dependency Treatment Centers - Minimum Construction Standards - Licensing and Certification, p. 558, 918, 929, 973, 1090
16.32.373	Standards for Licensure of Hospice Programs, p. 570, 879
16.38.301	and other rules - Fees Charged by the Department's Chemical Laboratory for the Performance of Laboratory Analyses, p. 873, 1092

HIGHWAYS, Department of, Title 18

18.8.502	and other rules - Trip Permits - Insurance Requirements - Regulations Covering Movement of Oversize Homes and Buildings, p. 11, 389
18.8.516	Haystack Movers - Commercial Self-Propelled, p. 11, 389
18.8.1001	Mobile Home - Oversize Permits, p. 11, 389

INSTITUTIONS, Department of, Title 20

20.3.415 Definitions - Certification System for Chemical Dependency Personnel, p. 681, 930
20.7.102 Emergency Rule - Prisoner Application Procedure, General Statute Requirements, p. 1084, 1899, 390
20.11.108 and other rules - Reimbursement Policies, p. 790

JUSTICE, Department of, Title 23

I Instructor Certification Requirements, p. 582
I-III Child Safety Restraint System Standards and Exemptions, p. 571, 1040
(Board of Crime Control)
23.14.401 and other rules - Peace Officer Standards and Training, Employment and Requirements, p. 573, 880
23.14.412 and other rules - Qualifications for Certification of Academy and Training Courses - Certification Requirements for Trainee Attendance and Performance, p. 576, 881

LABOR AND INDUSTRY, Department of, Title 24

(Human Rights Commission)
I-VII Maternity Leave, p. 482, 949
(Board of Personnel Appeals)
I-II Disqualification of Hearing Examiners - Dismissal of Complaint, p. 1708, 599
24.26.102 and other rules - Freedom from Interference, Restraint, Coercion, Retaliation - Employer Counter Petition - Petition for Decertification - Complaint - Answer - Exceptions - Petitions, p. 1708, 599
(Workers' Compensation Division)
I-VIII Employer's Insurance Requirements - Independent Contractor Exemption Procedures, p. 486, 983
24.29.3201 Corporate Officers - Election Not to be Bound, p. 488, 983

STATE LANDS, Department of, Title 26

I-II Assessment and Waiver of Civil Penalties, p. 1905, 442
I-IV Certification of Coal or Uranium Mine Blasters, p. 1901, 420

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Oil and Gas Conservation)
I Emergency Rule - Workable Ignitor Systems on Wells Producing Hydrogen Sulfide Gas, p. 324, 932
I Burning of Waste Gas and Ignitor Systems on Wells Producing Hydrogen Sulfide Gas, p. 877, 1042
I-XXXIII Procedural Rules, p. 1620, 697
36.12.102 and other rules - Forms - Application and Special Fees, p. 494, 882

36.22.307 and other rules - Forms - Submittal Date of Reports, p. 683, 931

PUBLIC SERVICE REGULATION, Department of, Title 38

I-VII Charges Related to Utility Line Moves Associated with Movement of Structures, p. 360, 1131, 1185
38.3.201 and other rules - Motor Carrier, Railroad and Utility Fees, p. 950, 1129

REVENUE, Department of, Title 42

I Deduction of Windfall Profits Tax From Net Proceeds, p. 1326, 242, 243, 505
I Deduction from Corporation License Tax for Sale of Land to Beginning Farmers, p. 1796, 392
I Deduction from Individual Income Tax for Sale of Land to Beginning Farmers, p. 1798, 391
42.12.129 Determination of Proximity to a Place of Worship or School, p. 1653, 1914, 325
42.12.203 Inter-Quota Area Transfers of All-Beverage Licenses, p. 1650, 1915, 326
42.12.321 and other rule - Special Permits, p. 1657, 1913, 325

SECRETARY OF STATE, Title 44

I-VI Absentee Ballot Envelopes, p. 1660, 1802, 18, 394
1.2.217 Rule History Notes, p. 586, 883

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

I-IV Participation of Rural Hospitals in the Medicaid Program as Swing-Bed Facilities, p. 798, 996
46.5.116 Protective Services, Information System Operator, p. 1525, 1838, 1108
46.5.501 and other rules - Procedure for Obtaining Substitute Care Services - Eligibility Requirements - Services Provided - Foster Care Maintenance Payments, p. 1110
46.5.612 and other rules - Licensing of Child Care Agencies, p. 1804, 327
46.6.102 and other rules - Rehabilitative and Visual Services, p. 296, 511
46.6.2510 and other rules - Blind Vendors Program - Certification - Transfer and Termination - Vendor Responsibilities - Set Aside Funds - Contracts with Vending Companies - Vendor Rights and Responsibilities, p. 691, 991
46.10.308 and other rules - Eligibility Requirements Regarding AFDC Program, p. 1170
46.11.101 Food Stamp Program, p. 1713, 294, 1085

46.11.111 and other rules - Food Stamps, Determining Eligibility For the Food Stamp Program - Reporting Requirements - Determining Benefits - Certification Periods, p. 687, 993

46.12.3803 Medically Needy Income Standards, p. 1916, 1933, 328, 998

46.13.106 and other rules - Low Income Energy Assistance Program - Benefit Award Matrices - Income Standards, p. 1113

46.25.712 and other rules - State General and Medical Relief Assistance, p. 1810, 802