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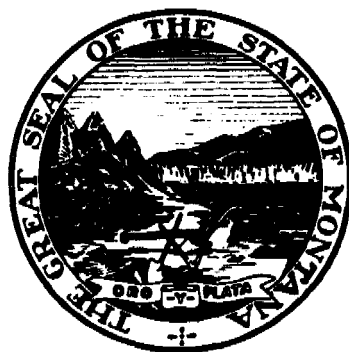
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SEP 15 1989

OF MONTANA  
**MONTANA  
ADMINISTRATIVE  
REGISTER**

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SEPTEMBER 14, 1989  
PAGES 1301-1360



SEP 15 1989

## MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	AMENDED NOTICE OF PUBLIC
adoption of rules pertaining to	)	HEARING ON PROPOSED
medicare supplement insurance	)	ADOPTION OF RULES AND
minimum standards and proposed	)	AMENDMENT OF ARM 6.6.505
amendment of ARM 6.6.505 through	)	THROUGH ARM 6.6.511 and
ARM 6.6.511 and ARM 6.6.513	)	ARM 6.6.513

TO: All Interested Persons.

1. On September 6, 1989, at 9:00 a.m., a public hearing was scheduled to be held in Room 260 of the Mitchell Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of rules pertaining to medicare supplement insurance minimum standards and the proposed amendment of ARM 6.6.505 through ARM 6.6.511 and ARM 6.6.513. The public hearing will not be held at that time because of untimely notification to interested persons. Therefore, a public hearing will be held on October 6, 1989, at 9:00 a.m., in Room 260 of the Mitchell Building, 111 Sanders, Helena, Montana.

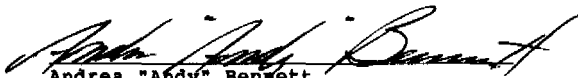
2. The proposed amendments to ARM 6.6.505 through ARM 6.6.511 and ARM 6.6.513 carry out changes in the federal Medicare Catastrophic Coverage Act of 1988 with respect to medicare supplement insurance. The new proposed rules set minimum standards for such insurance and implement the National Association of Insurance Commissioners' model regulation governing minimum standards for medicare supplement insurance.

3. The text of the proposed adoption or amendment is published at pages 1039-1061 and pages 1230-1253 of the Montana Administrative Register, Issues No. 15 and 16.

4. Interested persons may present oral or written comments at the hearing. Written comments may also be submitted to David Barnhill, P.O. Box 4009, Helena, Montana, no later than October 16, 1989.

5. David Barnhill will preside over the hearing.

6. The authority of the State Auditor to adopt or amend the above is based on 33-1-313, MCA, and the rules implement sections 33-15-303 and 33-22-901 through 33-22-924, MCA.

  
Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

Certified to the Secretary of State this 5th day of September, 1989.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE STATE BANKING BOARD

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of a new rule	)	THE PROPOSED ADOPTION OF NEW
pertaining to application pro-	)	RULE I. APPLICATION PRO-
cedures for merger of	)	CEDURE FOR APPROVAL TO MERGE
affiliated banks	)	AFFILIATED BANKS

TO: All Interested Persons:

1. On October 20 at 9:00, a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.
2. The proposed new rule will read as follows:

"I. APPLICATION PROCEDURE FOR APPROVAL TO MERGE

AFFILIATED BANKS (1) Under authority granted by 32-1-203, MCA, the state banking board adopts the following rules for the consolidation or merger into one bank of any two or more affiliated banks doing business in this state.

(2) Applicant banks shall publish notice of intent to merge or consolidate. This notice shall be published in a newspaper of general circulation in the community or communities where the banking offices of all the merging banks are located, or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once each week on the same day for five consecutive weeks, and, when published in a daily newspaper, one additional publication shall be made on the thirtieth day from the date of the first publication. The application shall be mailed or delivered to the department of commerce not more than thirty (30) days subsequent to the first publication of notice.

(3) The application shall contain the following information:

(a) The exact corporate name and address of each bank participating in the merger or consolidation, and the proposed names of the resultant bank.

(b) The name and address of, and the dates of publication in, the newspapers in which the required notice is published.

(c) The resolution or an authentic copy of the resolution, authorizing the merger adopted by a majority of the board of directors and ratified by the consent in writing of the shareholders of each bank owning at least two-thirds of its capital stock outstanding.

(d) A year-end financial statement for each participating bank and/or a consolidated statement for multi-bank holding company.

(e) A pro-forma financial statement showing projected assets and liabilities, and first year earnings for the consolidated organization.

(f) For the resultant bank, a list of the names of the directors and principal executive officers, their ages, titles, salaries and shares owned in the participating institutions and the resultant bank, including a brief resume of the educational background, banking experience and other qualifications of each and explanation of the extent of common ownership, direct or indirect, or common management of the participating institution and the length of time such common ownership or management has existed.

(g) A specification and explanation of any new services that would be offered as a result of the proposed merger that individual participants presently do not offer, and any existing services that will be discontinued as a result of the merger.

(h) If national banks are parties to the merger, the following information will be required for each national bank:

(i) Year-end call reports for three previous years plus the previous quarter.

(ii) Year-end financial statements.

(iii) Director's audit reports, if available.

(iv) Office of the comptroller of the currency administrative orders under which the bank might be operating.

(4) An application fee of two thousand dollars (\$2,000) plus two hundred (\$200) for each bank involved in the merger shall be paid to the state of Montana at the time of application and thereafter shall not be refunded in whole or in part.

(5) If an application is incomplete in any respect or if additional information is required, the applicants will be so notified by the department and allowed up to thirty (30) days in which to perfect the application or provide additional information. An extension of this thirty (30) day period may be obtained from the department upon a showing of good cause therefore. For good cause, the state banking board may delay processing or extend the comment period. Processing will be completed no earlier than the 15th day nor generally not later than the 45th day following the date of the last required publication of notice.

(6) The board will consider all comments received relevant to the application and may take final action by a duly-noticed telephone conference call with a quorum of the board participating.

(7) The application shall be in letter form addressed to the State Banking Board, c/o Commissioner of Financial Institutions, Department of Commerce, 1520 East Sixth Avenue, Lee Metcalf Building, Room 50, Helena, Montana 59620-0542.

(8) This rule will be effective January 1, 1990."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-371, MCA

**REASON:** This rule is being proposed to implement House Bill 151 which is Chapter 322, Laws of 1989.

3. Interested persons 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 State Banking Board, Department of Commerce, 1520 East Sixth Avenue, Lee Metcalf Building, Room 50, Helena, Montana 59620-0542, no later than October 12, 1989.

4. Geoffrey L. Brazier, of Helena, has been designated to preside over and conduct the hearing.

STATE BANKING BOARD

BY 

MICHAEL L. LETSON, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 5, 1989.

BEFORE THE DEPARTMENT OF  
FAMILY SERVICES OF THE  
STATE OF MONTANA

In the matter of the )	NOTICE OF PROPOSED
amendment of Rules 11.5.1002 )	AMENDMENT OF RULES
and 11.14.105 pertaining to )	11.5.1002 AND 11.14.105
day care rate payments and )	PERTAINING TO DAY CARE
parental access to day care )	RATES PAYMENTS AND
facilities )	PARENTAL ACCESS TO DAY
)	CARE FACILITIES. NO
)	PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On October 14, 1989, the Department of Family Services proposes to amend Rules 11.15.1002 and 11.14.105 which pertain to day care rate payments and parental access to day care facilities.

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

11.5.1002 DAY CARE RATES (1) Full day care services (six or more hours per day) are paid at a rate of ~~\$8.00-50~~ (\$9.50 FY'91) per day per child in care in day care homes. The maximum rate for group day care homes is ~~\$8.50~~ 9.00 (\$10.00 FY'91) per child per day of care. The maximum rate for centers is ~~\$9.00~~ 50 (\$10.50 FY'91) per child per day of care. These rate increases shall be paid beginning July 1, 19859.

(2) Part-time care (less than six hours per day) is paid at a rate of ~~90-95¢~~ (\$1.05 FY'91) per hour per child in day care homes, ~~95¢~~ \$1.00 (\$1.10 FY'91) per hour per child in group day care homes, and ~~\$1.005~~ (\$1.15 FY'91) 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 ~~75¢~~ \$1.00 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 ~~\$11.00~~ 50 (\$12.50 FY'91) 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 ~~\$1.25~~ 30 (\$1.40 FY'91) per hour per child, up to a maximum of a full day or night care special rate of ~~\$11.00~~ 50 (\$12.50 FY'91) and subject to the same requirements as applied to the daily rate.

Subsections (5) and (6) remain the same.

AUTH: Sec. 53-4-111 and 53-4-503, MCA  
IMP: Sec. 53-4-514, MCA

11.14.105 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES Subsections (1) through (7) remain the same.

(8) The license or registrant shall allow custodial and non-custodial parental access to the facility at any time during which child day care services are provided, barring any court order preventing parent-child contact.

Subsections (8), (9) and (10) are renumbered to (9), (10) and (11) and otherwise remain the same.

AUTH: Sec. 53-4-503, MCA  
IMP: Sec. 53-4-504 and 53-4-508, MCA

3. Rationale:

The 1989 Montana Legislative session passed HB 100 increasing the amount appropriated to the Department of Family Services' budget for day care payments. The proposed amendment to Rule 11.5.1002 ARM, reflects the increase of rate payments and makes the Department's payments to day care facilities more commensurate with current rates.

Rule 11.14.105 ARM, is being amended to conform to federal law [45 CFR 255.4 (c)(1)], which states that all day care facilities shall allow custodial and non-custodial parental access to the facility. Nonconformity would endanger the Department's federal funding with respect to day care facility payments.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than October 12, 1989.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request, along with any written comments he has, to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than October 12, 1989.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly

affected has been determined to be 115 persons based on 1,125 day care facilities licensed by the Department of Family Services.

*Robert L. Thullen*

Director, Department of Family Services

Certified to the Secretary of State Dec. 24, 1989.

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

In the matter of the proposed	)	NOTICE OF
repeal of ARM 16.45.101 and	)	EXTENSION OF
16.45.102 and the adoption of new	)	COMMENT PERIOD
rules I through LXIII relating to	)	
underground storage tanks and	)	
reimbursement for petroleum	)	
storage tank release clean ups	)	

(Underground Storage Tanks)

To: All Interested Persons

1. On August 17, 1989 The Department of Health and Environmental Sciences published a notice of public hearing on the proposed repeal of ARM 16.45.101 and 16.45.102 and the adoption of sixty-three new rules relating to underground storage tanks and reimbursement for petroleum storage tank release cleanups, at page 1075 of the 1989 Montana Administrative Register, Issue No. 15, as MAR Notice No. 16-2-349.

2. The notice of proposed rulemaking referred to in paragraph number 1 provided that public comments to the record would be received through September 15, 1989 and that rules repealed and adopted by the Department would become effective October 1, 1989.

3. Because of requests received from persons who wish to submit comments for the public record on the proposed repeal and adoption of rules, the Department has determined to extend the public comment period through October 10, 1989 and that rules repealed and adopted by the Department would become effective October 26, 1989.

4. Written data, views or arguments may therefore be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 10, 1989.

  
DONALD E. PIZZINI, Director

Certified to the Secretary of State September 5, 1989.

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

In the Matter of the Adop-	)	NOTICE OF PUBLIC
tion of Rules I through	)	HEARING ON ADOPTION
VII, pertaining to dispos-	)	AND AMENDMENT OF
al of underground coal	)	STRIP AND UNDERGROUND
mine waste, Rules VIII	)	COAL AND URANIUM
through XI pertaining to	)	MINING AND RECLAMATION
individual civil penalties,	)	RULES
and Rule XII, pertaining	)	
to restrictions on	)	
financial interests of	)	
multiple interest advisory	)	
boards; and amendment of	)	
ARM 26.4.301, 26.4.303,	)	
26.4.304, 26.4.305,	)	
26.4.313, 26.4.321,	)	
26.4.324, 26.4.325,	)	
26.4.404, 26.4.405,	)	
26.4.501, 26.4.522,	)	
26.4.624, 26.4.639,	)	
26.4.711, 26.4.721,	)	
26.4.805, 26.4.836,	)	
26.4.837, 26.4.1129, and	)	
26.4.1221.	)	

TO: All Interested Persons

1. On October 5, 1989, at 7:00 p.m., a public hearing will be held in the Lewis and Clark room, Student Union Building, Eastern Montana College, Billings, Montana, to consider the amendment of 26.4.301, 26.4.303, 26.4.304, 26.4.305, 26.4.313, 26.4.321, 26.4.324, 26.4.325, 26.4.404, 26.4.405, 26.4.501, 26.4.522, 26.4.624, 26.4.639, 26.4.711, 26.4.721, 26.4.805, 26.4.836, 26.4.837, 26.4.1129, and 26.4.1221 and adoption of New Rules I through XII.

2. The proposed new rules do not replace or modify any rule currently found in the Administrative Rules of Montana.

3. The proposed new rules provide as follows:

RULE I PLACEMENT AND DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: SPECIAL APPLICATION REQUIREMENTS (1) Each application must contain, where applicable, a narrative and appropriate maps and cross-sections prepared to meet the standards of ARM 26.4.305, describing the proposed disposal methods and sites for placing underground development waste in accordance with Rule III.

(2) Each plan must describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site or structure and be

prepared in accordance with ARM 26.4.320. (AUTH: 82-4-204, 205, and 231, MCA; IMP: 82-4-222, MCA.)

RULE II PLACEMENT AND DISPOSAL OF COAL PROCESSING WASTE: SPECIAL APPLICATION REQUIREMENTS (1) Each application must contain, where applicable, a narrative explaining the construction, modification, use, maintenance, removal, and reclamation of coal processing waste removal, handling, storage, transportation and disposal sites and structures in the permit area in accordance with Rule VII, including appropriate maps that meet the requirements of ARM 26.4.305 and describing the location of each source of waste, waste storage area, and waste disposal structure.

(2) Each application must contain a general plan and detailed design plan for each coal processing waste disposal area and structure proposed within the permit area.

(a) Each general plan must:

(i) be prepared by, or under the direction of and certified by a qualified registered professional engineer experienced in the construction of earth and rock fill embankments;

(ii) contain a description, a map prepared according to ARM 26.4.305, and appropriate cross sections of the structure and its location;

(iii) contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past or future underground mining activities; and

(v) contain a certification statement that includes a schedule setting forth the dates that any detailed design plan for structures that are not submitted with the general plan will be submitted to the department. The department must have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(b) Each detailed design plan for a structure must:

(i) be prepared by, or under the direction of, and certified by a qualified registered professional engineer experienced in the construction of earth and rock embankments with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) describe the operation and maintenance requirements for each structure;

(iii) describe the timetable and plans to remove each structure, if appropriate; and

(iv) include geotechnical investigations and design and construction specifications for the structure. (AUTH: 82-4-204, 205, and 231, MCA; IMP: 82-4-222, MCA.)

RULE III DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: GENERAL REQUIREMENTS (1) To the extent that underground development waste is not proposed for backstowing, it must be

demonstrated, to the satisfaction of the department, that valid physical, economic, safety, environmental or other reasons exist for not doing so. Underground development waste to be returned to underground mine workings must be disposed in accordance with a program approved by the department.

(2) Underground development waste materials from activities located outside the permit area may be disposed of in the permit area only with approval of the department. Approval must be based upon a showing that disposal will be in accordance with this rule and all applicable rules.

(3) Underground development waste must be hauled or conveyed to and placed in designated disposal areas within a permit area. The waste must be placed in a controlled manner to ensure:

(a) that the leachate and surface runoff will be in compliance with ARM 26.4.631 and 26.4.633;

(b) stability and prevention of mass movement during and after construction;

(c) that reclamation and revegetation of the disposal area pursuant to subchapters 5 through 8, except, in the case of waste disposal structures, those provisions of subchapter 5 related to approximate original contour, will be achieved;

(d) that a public hazard will not be created; and

(e) that combustion will not occur.

(4) Each waste disposal structure must be designed using current prudent design standards, certified by a registered professional engineer, and approved by the department. Coal waste refuse structures must meet the requirements of 30 C.F.R. 77.214 and 77.215.

(5) All vegetation and other organic materials must be removed from the disposal area and the soil must be removed, segregated, and stored or replaced pursuant to ARM 26.4.701 through 26.4.703. If approved by the department, organic material may be used as mulch or may be included in the soil to control erosion, promote growth of vegetation, or increase moisture retention of the soil.

(6) Slope protection must be provided to minimize surface erosion at the site. Diversions necessary to control erosion, prevent water infiltration, and ensure stability must be installed. Diversion design must conform with the requirements of ARM 26.4.635 through 26.4.637. All disturbed areas, including diversion ditches that are not riprapped, must be vegetated upon completion of construction.

(7) Except for head-of-hollow and valley fills, disposal structures must be located on the most moderately sloping and naturally stable areas available, except that the department may approve disposal in another area upon finding that disposal in that area would be more environmentally protective. Materials suitable for disposal must be placed upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(8) The waste must be hauled or conveyed and placed in horizontal lifts of not greater than 4 feet in thickness in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(9) The final configuration of a structure must be suitable for post-mining land uses approved in accordance with ARM 26.4.762, except that no depressions or impoundments may be placed on the completed structure.

(10) The final configuration of the structure must be designed to minimize erosion. Terraces may be utilized to control erosion and enhance stability if approved by the department. The outslope of the fill must not exceed 1v:3h, unless otherwise approved in writing by the department, but in no case may the outslope exceed 1v:2h.

(11) Where the natural slope in the disposal area exceeds 1v:3h, or such lesser slope as may be designated by the department based on local conditions, key-way cuts (excavations to stabilized bedrock) or rock toe buttresses must be constructed to stabilize the fill. Where the toe of the underground development waste rests on a downslope, stability analyses must be performed in accordance with ARM 26.4.320 to determine the size of the rock toe buttresses and keyway cuts.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, an underdrain system consisting of durable rock must be constructed from the wet areas in a manner that prevents infiltration of the water into the underground development waste material.

(13) The underdrain system for a structure must be constructed in accordance with the following:

(a) Underdrains must consist of non-degradable, non-acid and non-toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or other nondurable material.

(b) A system of underdrains must:

(i) be installed along the natural drainage system;

(ii) extend from the toe to the head of the fill; and

(iii) contain lateral drains to each area of potential drainage or seepage.

(c) A filter system to insure the proper functioning of the rock underdrain system must be designed and constructed using standard geotechnical engineering methods.

(d) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. The minimum size of the main underdrain must meet the following specifications:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
<hr/>			
Less than 1,000,000			
yd <sup>3</sup> .....	Sandstone.....	10	4
yd <sup>3</sup> .....	Shale.....	16	8
More than 1,000,000			
yd <sup>3</sup> .....	Sandstone.....	16	8
yd <sup>3</sup> .....	Shale.....	16	16

(14) An alternative subdrainage system may be utilized after approval by the department upon a thorough analytical demonstration that such an alternative will ensure the applicable static safety factor, stability of the fill, and protection of the surface and groundwater in accordance with applicable rules.

(15) Drainage must not be directed over the outslope of the fill.

(16) Surface water runoff from the area above a structure must be diverted away from the structure and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger event specified by the department. Surface runoff from the structure surface must be diverted to stabilized channels off the fill that will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design must comply with the requirements of ARM 26.4.637.

(17) The foundation and abutments of a structure must be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials must be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions must include the effect of underground mine workings, if any, upon the stability of the structure.

(18)(a) A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect each structure during construction. The professional engineer or specialist must be experienced in the construction of earth and waste structures.

(b) The inspections must be made at least quarterly throughout construction and during critical construction periods. Critical construction periods include, at a minimum:

(i) foundation preparation including the removal of all organic material and soil;

(ii) placement of underdrains and protective filter systems;

(iii) installation of final surface drainage systems; and

(iv) the final grading and revegetation of the site.

(c) Regular inspections by the engineer or specialist must also be conducted during placement and compaction of

underground development waste. More frequent inspections must be conducted if a danger of harm exists to the public health and safety or the environment. Inspections must continue until the refuse structure has been finally graded and revegetated or until a later time as required by the department.

(d) The qualified registered professional engineer shall provide a certified report to the department promptly after each inspection that the structure has been constructed and maintained as designed and in accordance with the approved plan and this sub-chapter. The report must include appearances of instability, structural weakness, and other hazardous conditions.

(e) The certified report on the drainage system and protective filters must include color photographs taken during and after construction, but before underdrains are covered with underground development waste. If the underdrain system is constructed in phases, each phase must be certified separately. The photographs accompanying each certified report must be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(f) A copy of each inspection report must be retained at or near the minesite.

(19) If any inspection discloses that a potential hazard exists, the department must be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department must be notified immediately. The department shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public. The department shall also notify adjacent landowners, residences, and businesses as appropriate, of the potential hazard and of the actions being taken. (AUTH: 82-4-204, 205, and 231(10)(h), MCA; IMP: 82-4-227, 231, ~~232~~, and 233, MCA.)

RULE IV DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE:  
VALLEY FILL (1) Disposal of underground development waste in valley fills must meet all the requirements of Rule III, and the following additional requirements of this rule.

(2) The fill must be designed to attain a long-term static safety factor of 1.5 and the design must be based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(3) Underground development waste must be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than 4 feet, or less if required by the department, to:

(a) achieve densities designed to ensure mass stability;

(b) prevent mass movement;

- (c) avoid contamination of the rock underdrain; and
- (d) prevent formation of voids.
- (4) The top of the fill must be graded no steeper than 1v:5h, unless otherwise approved in writing by the department.
- (5) To control surface runoff, each terrace bench must be graded to a slope of 1v:20h toward the fill. A ditch must be constructed on the inside of each terrace to intercept runoff and divert it toward the channels specified in (16) of Rule III. (AUTH: 82-4-204, 205, and 231(10)(h), MCA; IMP: 82-4-227, 231, 232, and 233, MCA.)

RULE V DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: HEAD OF HOLLOW FILL (1) Disposal of underground development waste in a head-of-hollow fill must meet all the requirements of Rules III and IV, except that a rock-core chimney drain may be utilized instead of the subdrain and surface diversion system if the fill is not located in an area containing an intermittent or perennial stream.

(2) The alternative rock-core chimney drain system incorporated into head-of-hollow fills must be designed and constructed as follows:

(a) The fill must have, along the vertical projection of the main buried stream channel or fill a vertical core of durable rock at least 16 feet wide, or such greater width as the department may require, which must extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains must connect this rock core to each area of potential drainage or seepage in the disposal area. Rock used in the rock core and underdrains must meet the requirements of Rule III(13).

(b) A filter system to ensure the proper functioning of the rock core must be designed and constructed using standard geotechnical engineering methods.

(c) The grading must drain surface water from the out-slope of the fill toward the rock core. The maximum slope of the top of the fill must be 1v:5h, unless otherwise approved in writing by the department. A drainage sump may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge runoff through or over the rock drain, if stability of the fill is not impaired. In no case may this sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on a fill must be graded with a 3 to 5 percent slope toward the fill and a 1 percent slope toward the rock core.

(3) The drainage control system for the head-of-hollow fill must be capable of passing safely the runoff from a 100-year, 24-hour precipitation event, or larger event specified by the department. (AUTH: 82-4-204, 205, and 231(10)(h), MCA; IMP: 82-4-227, 231, 232, and 233, MCA.)

RULE VI DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE:

DURABLE ROCK FILLS (1)(a) The department may approve disposal of underground development waste in a durable rock fill on a site-specific basis, provided the method of construction is certified by a registered professional engineer experienced in the design of earth and rockfill embankments and provided the requirements of Rule III and this rule are met. Underground development waste is eligible for disposal in durable rock fills if it is rock material consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the waste to slaking must be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department. Underground development waste must be transported and placed in a specified and controlled manner that will ensure stability of the fill.

(b) The method of waste placement must be designed to ensure mass stability and prevent mass movement.

(c) Loads of noncemented clay shale and/or clay underground development waste in the fill must be mixed with hard rock underground development waste in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. These noncemented materials must comprise no more than 20 percent of the fill volume as determined by tests performed by a registered professional engineer and approved by the department.

(2)(a) Stability analyses must be made by a qualified registered professional engineer in accordance with Rule I.

(b) Parameters used in the stability analyses must be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(c) The durable rock fill must be designed with the following factors of safety:

Case	Design Condition	Minimum Factor Of Safety
I	End of construction	1.5
II	Earthquake	1.1

(3)(a) The design of the durable rock fill constructed as a head-of-hollow or valley fill must include an internal drainage system that will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(b) Anticipated discharge from springs and seeps must be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system must be based on the maximum anticipated discharge.

(c) All granular material used for the drainage system must be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone, or other durable rock that do not slake in water.

(d) The internal drain system must be protected by a properly designed filter system.

(4) Surface water runoff from the areas adjacent to and above the fill must not be allowed to flow into the fill and must be diverted into stabilized channels that are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design must comply with the requirements of ARM 26.4.637.

(5) The top surface of the completed fill must be graded such that the final slope after settlement will be no steeper than 1v:5h, unless otherwise approved in writing by the department, toward properly designed drainage channels constructed in undisturbed ground along the periphery of the fill. Surface runoff from the top of the fill must not be allowed to flow over the outslope of the fill.

(6) Surface runoff from the outslope of the fill must be diverted off the fill to properly designed channels that will pass safely a 100-year, 24-hour precipitation event. Diversion design must comply with the requirements of ARM 26.4.637.

(7) Terraces must be constructed on the outslope if necessary for control of erosion. Terraces must meet the following requirements:

(a) The slope of the outslope between terrace benches must not exceed 1v:3h, unless otherwise approved in writing by the department.

(b) To control surface runoff, each terrace bench must be graded to a slope of 1v:20h toward the fill.

(c) A ditch must be constructed on the inside of each terrace to intercept runoff and divert it toward the channels specified in (6) of this rule. (AUTH: 82-4-204, 205, and 231(10)(h), MCA; IMP: 82-4-227, 231, 232, and 233, MCA.)

RULE VII DISPOSAL OF COAL PROCESSING WASTE (1) To the extent that coal processing waste is not proposed for backstowing, it must be demonstrated to the satisfaction of the department that valid physical, economic, safety, environmental or other reasons exist for not doing so. Coal processing waste to be returned to underground mine works must be disposed of in accordance with a program approved by the department.

(2) All coal processing waste that is not backstowed must be hauled or conveyed and placed in new and existing disposal areas approved by the department. These areas must be within a permit area.

(3) Coal processing waste may be disposed of in head-of-hollow or valley fill configurations, including in an underground development waste fill, if the total drainage area above the disposal area is less than one square mile and the processing waste is:

(a) placed in accordance with (6) through (10) of this rule;

(b) demonstrated to be non-toxic, non-acid-forming, and otherwise nondeleterious or disposed of in accordance with ARM 26.4.505; and

(c) demonstrated to be consistent with the design stability of the fill.

(4) Coal processing waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles, may not be disposed of in the permit area unless it can be demonstrated that:

(a) disposal will be conducted in accordance with ARM 26.4.510; and

(b) there will be no instability of the disposal area or the fill.

(5)(a) All coal processing waste disposal areas must be inspected, on behalf of the operator, by a qualified and registered professional engineer, in accordance with Rule III(18) and the additional requirements of this section.

(b) Inspection must occur at least quarterly, beginning within 7 days after the preparation of the disposal area begins. The department may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste has been graded and has been covered in accordance with (9) of this rule, and soil has been distributed in accordance with ARM 26.4.702, or at such a later time as the department may require.

(c) Inspections must include such observations and tests as may be necessary to evaluate the potential hazards to human life and property, to ensure that all organic material and soil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under Rule II and approved by the department.

(d) The inspector shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(6) Coal processing waste disposal areas and structures must be designed, constructed, and reclaimed in compliance with Rule III and the requirements of this rule. In addition, if disposal in valley or head-of-hollow fill is proposed, the relevant requirements of Rules IV and V apply.

(7) A properly designed subdrainage system must be installed. Each system must:

(a) freely drain all water discharged beneath the fill;

(b) be protected by an adequate filter;

(c) be covered so as to protect against the entrance of surface water or leachate from the coal processing waste; and

(d) meet the requirements of Rule III(13).

(8)(a) During construction or modification of all coal processing waste structures, coal processing waste must be:

(i) spread in layers no more than 24 inches in thickness; and

(ii) compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste.

Dry densities must be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specifications T99-74 (Twelfth Edition) (July 1978) or an equivalent method AASHTO T99-74 is hereby incorporated by reference as it exists on the date of adoption of this rule. This publication is on file and available for inspection at the Helena and Billings offices of the department.

(b) Variations may be allowed in the requirements of (a) above for disposal of dewatered fine coal waste (minus 28 sieve size) with approval of the department.

(9) Following grading of the coal processing waste disposal area, the site must be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material, and in a manner that does not impede flow from sub-drainage systems. Toxic, acid-forming and other deleterious coal processing waste must be handled and covered in accordance with ARM 26.4.505(2) and 26.4.501(2). The coal processing waste disposal area must be revegetated in accordance with subchapter 7 of this chapter.

(10) Coal processing waste fires must be extinguished by the operator in accordance with a plan approved by the department and in compliance with the applicable requirements of the mine safety and health administration. The plan must contain, at a minimum, provisions to ensure that only those persons authorized by the operator and who have an understanding of the procedures to be used may be involved in the extinguishing operations. (AUTH: 82-4-204, 205, and 231(10)(h), MCA; IMP: 82-4-227, 231, 232, and 233, MCA.)

#### RULE VIII INDIVIDUAL CIVIL PENALTIES: WHEN ASSESSED

(1) Except as provided in (2), the department may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(2) The department may not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the department to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days. (AUTH: 82-4-205, MCA; IMP: 82-4-254, MCA.)

#### RULE IX INDIVIDUAL CIVIL PENALTIES: AMOUNT

(1) In determining the amount of an individual civil penalty assessed under Rule VIII, the department shall consider the criteria specified in ARM 26.4.1212, including:

(a) the individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular coal mining operation;

(b) the seriousness of the violation, failure or refusal (as indicated by the extent of damage, the cost of reclamation or both), including any irreparable harm to the

environment and any hazard to the health or safety of the public; and

(c) the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(d) The penalty may not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the department may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the department, until abatement or compliance is achieved. (AUTH: 82-4-205, MCA; IMP: 82-4-254, MCA.)

RULE X INDIVIDUAL CIVIL PENALTIES; PROCEDURE FOR ASSESSMENT

(1) The department shall serve on each individual to be assessed an individual civil penalty and a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(2) The notice of proposed individual civil penalty assessment becomes a final order 30 days after service upon the individual unless:

(a) the individual files within 30 days of service of the notice of proposed individual civil penalty assessment a request for hearing; or

(b) the department and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(3) For purposes of this section, service is sufficient if it would satisfy Rule 4 of the Montana Rules of Civil Procedure for service of a summons and complaint.

(4) The hearing on the individual civil penalty must be a contested case hearing subject to Title 2, chapter 4, parts 6 and 7, MCA. (AUTH: 82-4-205, MCA; IMP: 82-4-254, MCA.)

RULE XI INDIVIDUAL CIVIL PENALTIES: PAYMENT (1) If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a request for hearing or abatement agreement, the penalty is due upon issuance of the final order.

(2) If an individual named in a notice of proposed individual civil penalty assessment files a request for hearing, the penalty is due upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty, unless enforcement of the order is stayed pursuant to 2-4-702, MCA.

(3) If the department and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, the individual

named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order stating that the penalty is due on the date of the final order or a written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(4) Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty is subject to interest at the rate established quarterly by the U.S. department of the treasury for use in applying late charges on late payments to the federal government, pursuant to Treasury Financial Manual 6-8020.20. The treasury current value of funds rate is published by the fiscal service in the notices section of the Federal Register. Interest on unpaid penalties runs from the date payment first was due until the date of payment.

(5) Failure to pay overdue penalties may result in initiation of litigation; reporting to the department of revenue, the state auditor, the internal revenue service, credit bureaus, or to all or any combination of them; or referral to collection agencies. These remedies are not exclusive.

(6) Delinquent penalties are subject to a late payment penalty, in addition to the interest specified in (4), of 6 percent per annum. This penalty begins to accrue on the 92nd day and runs until the date of payment.

(7) For all delinquent fees, interest and any penalties, the debtor shall pay a processing and handling charge based upon the following components:

(a) for debts referred to a collection agency, the amount charged to the department by the collection agency;

(b) for debts processed and handled by the department, a standard amount set annually by the department based upon similar charges by collection agencies for debt collection. In addition, if the case is referred to the department's attorneys but paid prior to litigation, the estimated average cost to prepare the case for litigation as of the time of payment must also be paid;

(c) for debts referred to the department's attorneys and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(d) if not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(8) No prejudgment interest accrues on any processing and handling charges. (AUTH: 82-4-204, 205, MCA; IMP: 82-4-254, MCA.)

RULE XII RESTRICTIONS ON FINANCIAL INTERESTS: MULTIPLE INTEREST ADVISORY BOARDS Members of advisory boards and commissions (established in accordance with state law or rules to represent multiple interests) who perform a function or duty under the Act shall file an OSM Form 705-1 with the Commissioner in accordance with the schedule established for

employees in 26.4.1219(2). They shall recuse themselves from proceedings that may affect their direct or indirect financial interests. (AUTH: 82-4-204, 205, MCA; IMP: 82-4-254, MCA.)

The proposed rule amendments provide as follows:

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

Subsections (1) through (23) remain the same.

(24) "Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

Subsections (24) through (30) remain the same but are renumbered (25) through (31)

~~(31)~~ (32) "Cumulative hydrologic impact area" means the area, including the permit and mine plan area, within which impacts to the hydrologic balance resulting from the proposed operation may interact with the impacts of all previous, existing and anticipated mining on surface and ground water systems. "Anticipated mining" includes, at a minimum, the entire projected lives through bond release of all operations with pending applications and all operations required to meet diligent development requirements for leased federal coal for which there is actual mine-development information available.

Subsections (32) through (46) remain the same but are renumbered (33) through (47).

~~(47)~~ (48) "Head-of-hollow fill" means a fill structure consisting of any material, other than ~~coal-processing-waste and~~ organic material, placed in the uppermost reaches of a hollow or a naturally occurring drainage where side slopes of the existing hollow or drainage measured at the steepest point are greater than 20% or the average slope of the profile of the hollow or drainage from the toe of the fill to the top of the fill is greater than 10%. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area. (See ARM 26.4.520(14).)

Subsections (48) through (60) remain the same, but are renumbered (49) through (61).

~~(61)~~ (62) "Knowingly," for purposes of Rule VIII, means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

~~(61)~~ (63) "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. ~~Changes-of-land-use-or-uses from one of the following categories to another shall be con-~~

~~sidered as a change to an alternate land use that is subject to approval by the department.~~

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

(d) "Commercial forest land" means land producing or being managed to produce stands of industrial wood that will be utilized as such. Commercial forest land must also produce or be managed to produce in excess of 20 cubic feet per acre per year of industrial wood. Currently inaccessible and inoperable areas are included, except where such areas are small and unlikely to become suitable for production of industrial wood in the foreseeable future. Land that is used for facilities in support of forest harvest and management operations and is adjacent to, or an integral part of, these operations is also included.

Paragraph (61)(e) through subsection (81) remain the same but are renumbered (63)(e) through (83).

~~(82)(84)~~ "Previously mined area" means land on which coal mining operations were previously conducted, except those lands ~~on which an operator had secured a permit issued under subject to the standards of the Montana Strip and Underground Mine Reclamation Act or of the Surface Mine Control and Reclamation Act of 1977.~~

Subsections (83) through (97) remain the same but are renumbered (85) through (99).

~~(98)(100)~~ "Road" means a surface right-of-way for purposes of travel by land vehicles used in prospecting or strip or underground mining or reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access, haul, and ramp roads constructed, used, reconstructed, improved or maintained for use in prospecting or strip or underground mining operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways that are used for part of the road construction procedure, and that are promptly replaced by roads associated with the prospecting or mining operation, ~~and that are located in the identical right-of-way as the pioneer or construction roadway.~~

Paragraph (98)(a) through subsection (99) remain the same but are renumbered (100)(a) through (101).

~~(100)(102)~~ "Sediment" means undissolved organic or inorganic material greater than 0.45 microns micrometers in size transported or deposited by water.

Subsections (101) through (125) remain the same but are renumbered (103) through (127).

~~(126)(128)~~ "Valley fill" means a fill structure consisting of any material other than ~~coal waste and~~ organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20% or the average slope of the profile of the valley

from the toe of the fill to the top of the fill is greater than 10%.

Subsections (127) and (128) remain the same, but are renumbered (129) and (130).

(131) "Violation, failure, or refusal," for purposes of Rule VIII means:

(a) a violation of a condition of a permit issued pursuant to 82-4-221 or 82-4-226, MCA; or

(b) a failure or refusal to comply with any order issued under 82-4-251, MCA, or any order incorporated into a final decision issued under Title 82, chapter 4, part 2, MCA, except an order incorporated in a decision issued under 82-4-254(3), MCA;

~~(129)~~ (132) "Waste" means, earth materials that are generated as a result of mineral preparation or, in some cases, mining and are not marketed by the operator. The term includes earth materials resulting from physical or chemical processing, cleaning, or concentrating of the mineral. It also includes "coal processing waste" and "underground development waste" as defined in this rule and materials that contain reject mineral resulting from selective extraction of the mineral. "Waste" does not include "spoil, overburden, or soil" as those terms are defined in this rule.

Subsections (130) and (131) remain the same, but are renumbered (133) and (134).

(135) "Willfully," for purposes of Rule VIII, means that an individual acted:

(a) either intentionally, voluntarily, or consciously, and

(b) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal. (AUTH: 82-4-204, 205, MCA; IMP: 82-4-203, MCA.)

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

Subsections (1) through (3) remain the same.

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

Subsections (5) through (23) remain the same.  
(AUTH: 82-4-204, 205, MCA; IMP: 82-4-222, MCA.)

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

Subsection (1) remains the same.

(2) a listing, location and description of all archaeological, historical, ethnological and cultural resources and values of the proposed mine plan and adjacent area. Such

resources and values must be located and identified on accompanying maps. Sites listed on, eligible for, or potentially eligible for the National Register of Historic Places must be so identified. Published research or other information must be referenced and copies of referenced reports must be made available to the department upon request. The department may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places through collection of additional information, conduct of field investigations, or other appropriate analyses;

Subsections (3) and (4) remain the same.

(5) all hydrologic and geologic data necessary to evaluate baseline conditions, probable hydrologic consequences and cumulative hydrologic impacts of mining, and to develop a plan to monitor water quality and quantity pursuant to ARM 26.4.314(3) and 82-4-222, MCA. Groundwater quality monitoring shall at a minimum, be conducted quarterly and include total dissolved solids, field specific conductance corrected to 25°C, pH, total iron, total manganese, major cations (Ca, Mg, Na, K), major anions (SO<sub>4</sub>, HCO<sub>3</sub>, CO<sub>3</sub>, Cl, NO<sub>3</sub>) and water levels. Such data must be generated in accordance with ARM 26.4.645 (2) and (3) and 26.4.646 (1), (1)(a), (3), (5), and (6). Existing baseline data, with departmental approval, may supplement data collected by the applicant. If the information necessary to provide the description is not available from the appropriate state and federal agencies, the applicant may gather and submit this information to the department as part of the permit application. The application must not be deemed complete until this information is made available in the application;

Subsection (6) through subparagraph (7)(a)(iii) remain the same.

(iv) a narrative addressing the suitability or unsuitability of the materials to be handled for reclamation purposes. This narrative must address or reference the data, characteristics of materials, and aspects of reclamation described in section (6) above, paragraphs (7)(a)(ii) and (iii) ~~above of this subsection (a), and~~ ARM 26.4.322(2)(a)-(iii); and

Subparagraph (7)(a)(v) through subsection (8) remain the same.

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

(a) a vegetative map at a scale of 1 inch equals 400 feet or as otherwise approved by the department, ~~acceptable to the department,~~ which delineates community types based on two or more dominant species which by their structure, number, or coverage, have the greatest functional influence on the type. Other methods for delineating community types may be used with prior approval by the department;

Paragraph (9)(b) through subsection (12) remain the same.

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

26.4.305 MAPS

Subsection (1) remains the same.

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

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

~~(i) maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and~~

~~(ii) spoil disposal facility, maps, plans, and cross-sections may only be prepared by a qualified registered professional engineer;~~

~~(b)(a) Each map containing information pursuant to section (1) above must be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized in affidavit form. The department may reject a map as incomplete if its accuracy is not so attested. The department may require maps other than those prepared pursuant to section (1) above to be certified.~~

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

~~(i) maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and~~

~~(ii) spoil disposal facility, maps, plans, and cross-sections may only be prepared by a qualified registered professional engineer.~~

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

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

26.4.313 RECLAMATION PLAN Each reclamation plan must contain a description of the reclamation operations proposed, including the following information:

Subsection (1) through paragraph (3)(a) remain the same.

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

26.4.515. An operator may propose alternate plans other than highwall reduction if the restoration will be consistent with the purposes of 82-4-232(7), MCA and ARM 26.4.821 through 26.4.8254;

Paragraph (3)(c) through subsection (7) remain the same.  
(AUTH: 82-4-204, 205, MCA; IMP: 82-4-222, MCA.)

26.4.321 TRANSPORTATION FACILITIES PLAN (1) Each application must contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description must include a map, appropriate cross-sections, and the following:

Subsections (1) through (4) remain the same, but are redesignated (a) through (d).

(2) Plans for low-water crossings must contain drawings of the perennial and intermittent stream channels so that the department can maximize the protection of the stream.

(3) The plans and drawings for each road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or a registered land surveyor, with experience in the design and construction of roads. The road designs must meet the performance standards outlined in ARM 26.4.601 through 26.4.606. (AUTH: 82-4-204, 205, MCA; IMP: 82-4-222, MCA.)

26.4.324 PRIME FARMLANDS: SPECIAL APPLICATION REQUIREMENTS

Subsection (1) through paragraph (3)(b) remain the same.

(c) the postmining land use of the affected prime farmland ~~must~~ will be cropland, special use pasture, grazing land, or wildlife habitat that is consistent with the restoration of the real or potential productivity of the prime farmland; and

Paragraph (3)(d) remains the same.  
(AUTH: 82-4-204, 205, MCA; IMP: 82-4-222, MCA.)

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

Subsection (1) through subparagraph (3)(c)(ii) remain the same.

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

(i) geologic data, including geologic structure, and surficial geologic maps, and geologic cross-sections;

Subparagraph (3)(d)(ii) through paragraph (3)(f) remain the same.

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

26.4.404 REVIEW OF APPLICATION

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

(5) The department shall assure that:

(a) cultural resource locations remain confidential;  
and

(b) a determination of effect is completed for all listed eligible cultural resource sites in accordance with 36 CFR 800.2.

(c) coordination of the review process for cultural resource compliance is carried out in accordance with the provisions of the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), where Federal or Indian lands are involved; and

(d) the permit review process is coordinated with applicable requirements of the endangered species act of 1973, as amended (16 U.S.C. 1531 et seq.); the fish and wildlife coordination act, as amended (16 U.S.C. 661 et seq.); the migratory bird treaty act of 1918, as amended (16 U.S.C. 703 et seq.); the national historic preservation act of 1966, as amended (16 U.S.C. 470 et seq.); and the bald eagle protection act, as amended (16 U.S.C. 469 et seq.).

Subsections (6) through (9) remain the same.

(AUTH: 82-4-204, 205, MCA; IMP: 82-4-226, 231, MCA.)

#### 26.4.405 FINDINGS AND NOTICE OF DECISION

Subsection (1) through paragraph (6)(e) remain the same.

(f) the applicant has complied with applicable federal and state cultural resource requirements, including 26.4.318, 26.4.1131 and 26.4.1137.

Paragraphs (g) through (l) remain the same.

(m) if the application is for a remaining operation, the permit area is a "previously mined area."

Subsections (7) and (8) remain the same.

(AUTH: 82-4-204, 205, MCA; IMP: 82-4-226, 231, MCA.)

#### 26.4.501 GENERAL BACKFILLING AND GRADING CESSATION-OF OPERATIONS-AND-MISCELLANEOUS-REQUIREMENTS

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

(AUTH: 82-4-204, 205, MCA; IMP: 82-4-231, 232, MCA.)

26.4.522 PERMANENT CESSATION OF OPERATIONS (1) An operator person who permanently ceases strip or underground mining operations shall close or backfill and otherwise permanently reclaim all affected areas, in accordance with the act, rules adopted thereunder, and the permit as approved by the department.

Subsections (2) and (3) remain the same.

(AUTH: 82-4-204, 205, MCA; IMP: 82-4-231, 232, MCA.)

26.4.624 SURFACE BLASTING REQUIREMENTS (1) The department may limit the area covered, timing, and sequence of blasting, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

Subsection (1) through paragraph (5)(b) remain the same, but are renumbered (2) through (6)(b).

(c) The operator may satisfy the provisions of this section by meeting any of the four specifications in the chart in section 45(6)(a) above.

(d) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements, except as noted in ~~(5)~~(6)(a) above.

Subsections (6) and (7) remain the same, but are renumbered (7) and (8).

~~(8)~~(9) Flyrock, including blasted material traveling along the ground, must not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under section ~~(4)~~(5) of this rule.

Subsections (9) and (10) remain the same, but are renumbered (10) and (11).

~~(11)~~(12) If blasting is conducted in such a manner as to avoid adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of section ~~(10)~~(11) does not apply at the following locations:

Paragraphs (a) and (b) remain the same.

~~(12)~~(13) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in section ~~(13)~~(14) of this rule. If the blasting is conducted in accordance with this equation, the peak particle velocity is deemed to be within the limits specified in section ~~(10)~~(11) above.

~~(13)~~(14) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula  $W = (D/D_s)^2$  where  $W$  = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period;  $D$  = the distance, in feet, from the blast to the nearest public building or structure, dwelling, school, church, or commercial or institutional building or structures, except as noted in section ~~(11)~~(12) above; and  $D_s$  = the scaled distance factor, using the values identified in section ~~(10)~~(11) above. (AUTH: 82-4-204, 205, MCA; IMP: 82-4-231, MCA.)

#### 26.4.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES

Subsections (1) through (18) remain the same.

(19) Each pond, including those not meeting the size or other criteria of 30 CFR 77.216(a), must be designed and inspected regularly during construction under the supervision of, and certified after construction by, a qualified registered professional engineer experienced in the construction of impoundments. After construction, inspections must be made and reports filed in the same manner as for dams and embankments under ARM 26.4.642(8).

Subsections (20) and (21) remain the same.

(22)(a) Sedimentation ponds and other treatment facilities must not be removed:

(i) sooner than 2 years after the last augmented seeding within the drainage, unless otherwise approved by the department in compliance with ARM 26.4.633 and ARM 26.4.638. A pond removed sooner than 2 years after the last augmented seeding within the drainage must be replaced by a sediment control measure determined by the department to be best technology currently available and evidence is provided that the drainage basin has stabilized to the extent that it was in the undisturbed state;

~~(ii) until the disturbed area has been restored and the vegetation requirements of ARM 26.4.711 through 26.4.735 are met;~~

~~(iii)~~ (ii) until the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream; and

~~(iv)~~ (iii) until evidence is provided that demonstrates that the drainage basin has stabilized to the extent that it was in the undisturbed state.

Paragraph (22)(b) through subsection (25) remain the same.

(AUTH: 82-4-204, MCA; IMP: 82-4-231, MCA.)

26.4.711 ESTABLISHMENT OF VEGETATION (1) A diverse, effective, and permanent vegetative cover of the same seasonal variety and utility as the vegetation native to the area of land to be affected must be established. This vegetative cover must also be capable of meeting the criteria set forth in 82-4-233, MCA and must be established on all areas of land affected except on road surfaces and below the low-water line of permanent impoundments that are approved as a part of the postmining land use. Vegetative cover is considered of the same seasonal variety if it consists of a mixture of species of equal or superior utility when compared with the natural vegetation during each season of the year. Reestablished plant species must be compatible with the plant species of the area. Reestablished vegetation must meet the requirements of applicable state and federal laws and regulations governing seeds, poisonous and noxious plants and introduced species-laws-and-regulations. For areas designated prime farmland that are to be revegetated to a vegetative cover as previously described in this rule, the requirements of ARM 26.4.811 and 26.4.815 must also be met. Vegetative cover and stocking and planting of trees and shrubs must not be less than that required to achieve the approved postmining land use. The department shall make the necessary determinations based on local and regional conditions after consultation with and approval by the appropriate state agencies. (AUTH: 82-4-204, MCA; IMP: 82-4-233, 235, MCA.)

26.4.721 ERADICATION OF RILLS AND GULLIES (1) When rills or gullies deeper than 9 inches form in areas that have been regraded and resoiled, the rills and gullies must be filled, graded, or otherwise stabilized and the area reseeded

or replanted. The department shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation. The department shall also specify time frames for completion of repair work. Repair work will result in restarting the period of responsibility for reestablishing vegetation, unless it can be demonstrated that such work is a normal conservation practice and is limited to minor erosional features on land for which proper erosion-control practices are in use and to rills and gullies that affect only small areas and do not recur. (AUTH: 82-4-204, MCA; IMP: 82-4-233, 235, MCA.)

26.4.805 ALLUVIAL VALLEY FLOORS: SIGNIFICANCE DETERMINATION (1) The significance of the impact of the proposed operations on farming is based on the relative importance of the vegetation and water of the grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the department as suitable for site-specific protection of agricultural activities in alluvial valley floors. The effect of the proposed operations on farming is "significant" if the operations ~~would remove-from-production~~, over the life of the mine, have more than a negligible impact on the farm's agricultural production ~~that would decrease the expected annual production from agricultural activities normally conducted at the farm.~~ (AUTH: 82-4-204, 205, MCA; IMP: 82-4-227, 231, MCA.)

26.4.836 REMINING: ELIGIBILITY FOR ABANDONED MINE LAND STATUS Subsection (1) remains the same.

(2) ~~Areas that will be directly disturbed by remining operations may remain eligible for abandoned mine reclamation funding pursuant to ARM 26.4.1233, if the applicant demonstrates that the approved remining and reclamation plan will not increase the overall reclamation costs of the site to the department. Any remining operation must fulfill the reclamation responsibilities described in the permit. To the extent that these responsibilities do not include reclamation of site problems or characteristics otherwise eligible for abandoned mine land funding, these site problems or characteristics may remain eligible for that funding. In so doing,~~  
t

(3) The applicant may choose to adopt a reclamation plan for the site that is on file with the department, provided that the applicant demonstrates that this plan is in compliance with ARM 26.4.835. (AUTH: 82-4-204, 205, MCA; IMP: 82-4-239, 242, MCA.)

26.4.837 REMINING: BONDING

Subsection (1) remains the same.

(2) ~~If approval is granted for a remining and reclamation plan that does not adversely affect eligibility for abandoned mine land reclamation funding on the site pursuant~~

~~to ARM 26.4-836, the~~ The performance bond for the area must be the estimated ~~additional~~ total cost to the department ~~for reclamation - (consistent with the approved plan) - that would be above and beyond that which would be necessary for reclamation of the site prior to any remaining operation in accordance with the approved reclamation plan.~~ (AUTH: 82-4-204, 205, MCA; IMP: 82-4-223, MCA.)

26.4.1129 ANNUAL REPORT (1) Each ~~permitt~~ operator shall file copies of an annual report with the department within a time period specified in 82-4-237, MCA until such time as full bond is released.

Subsections (2) and (3) remain the same.  
(AUTH: 82-4-205, MCA; IMP: 82-4-237, MCA.)

26.4.1221 SMALL OPERATOR ASSISTANCE PROGRAM: PROGRAM SERVICES To the extent possible with available federal funds, the department shall, for a coal mine operating permit applicant who meets the criteria of ARM 26.4.1222 and who requests assistance,

Subsections (1) and (2) remain the same.  
(AUTH: 82-4-204, 205, MCA; IMP: 82-4-221, MCA.)

4. The Board and Department are proposing Rules I through VII because currently there are no standards in the rules for surface disposal of waste from underground coal mining. Both the federal surface mining law (30 U.S.C. 1201 et seq.) and 82-4-231(10)(h), MCA, require adoption of standards, necessary to protect public safety and the environment. It is necessary to adopt these rules in the near future because it appears that Montana will soon, and for the first time, receive an application for an underground mine involving the surface disposal of significant amounts of waste. Rules VIII through XI are proposed because the Office of Surface Mining (OSM), the federal coal regulatory agency, has required Montana to adopt rules similar to those found in 30 C.F.R. Part 846. These rules are necessary to establish procedures and standards for imposition of individual civil penalties. Rule XII is proposed because OSM has required Montana to adopt a rule similar to 30 C.F.R. 705.4(d) and related rules. Adoption of Rule XII is necessary to ensure that members of multiple interest advisory boards are not personally interested in matters on which they render advice. The amendments to the existing rules are necessary to implement the new rules listed above, implement changes required by OSM upon its review of the January 1989 rules, implement changes the Department considers necessary to comply with recent OSM rule revisions, eliminate several minor inconsistencies between the rules and the Strip and Underground Mine Reclamation Act, clarify several ambiguous rules, and correct typographical and cross-referencing errors in the rules.

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

addition to whatever other data, views, or arguments interested persons wish to submit, the Board and Department are specifically requesting comments on Rule VII(8)(a)(ii), which requires that coal processing waste structures be compacted to obtain 90% of maximum dry density. Although this requirement is contained in its 1979 regulations, OSM later removed it for the reason that this dry density standard assumes homogeneity of waste materials. OSM concluded that waste materials are heterogeneous and adopted instead requirements that the disposal facility be designed to obtain long-term static safety factor of 1.5 and that the foundation and abutments be stable under all conditions of construction. See 30 C.F.R. 816.81 (c)(2), 48 Fed. Reg. 44018, and 53 Fed. Reg. 21767. These latter requirements are contained in the proposed rules. The Department and Board request data, views, and arguments as to whether the 90% compaction standard should also be included in the rules. Written data, views, or arguments may also be submitted to Bonnie Lovelace, Chief, Coal and Uranium Bureau, Department of State Lands, Capitol Station, Helena, Montana 59620, no later than October 16, 1989. Mailed comments must be postmarked no later than that date.

6. Gary Amestoy, Administrator of the Reclamation Division, has been designated to conduct the hearing.

  
Dennis D. Casey, Commissioner

Certified to the Secretary of State September 5, 1989.

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

In the matter of proposed new )	
rules to reject permit )	NOTICE OF PUBLIC HEARING ON
applications for consumptive )	PROPOSED ADOPTION OF NEW RULES
uses and to modify permits for )	TO REJECT PERMIT APPLICATIONS
nonconsumptive uses in rock )	IN ROCK CREEK BASIN
creek basin )	

To: All Interested Persons.

1. On November 8, 1989, at 7:00 p.m., a public hearing will be held at Elks Lodge, 114 North Broadway in Red Lodge, Montana to consider the adoption of new rules to reject permit applications in Rock Creek Basin.

2. The proposed new rules read as follows:

**RULE I DEFINITIONS** For the purposes of these rules, the following definitions shall apply:

(1) "Application" means an application for beneficial water use permit, form no. 600, or application for provisional permit for completed stockwater pit or reservoir, form no. 605.

(2) "Consumptive use" means a use of water which removes water from the source of supply, such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others.

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

(4) "Infiltration gallery" means a collection system consisting of one or more perforated pipes, culverts, or screens placed horizontally beneath the streambed or vertically adjacent to the streambed, by which surface water is appropriated.

(5) "Rock Creek Basin" means the Rock Creek drainage area located in hydrologic Basin 43D, a tributary of the Clarks Fork of the Yellowstone River in Carbon County, Montana. The entire Rock Creek drainage, from its headwaters to its confluence with the Clarks Fork of the Yellowstone, including Red Lodge Creek, Spring Creek, Dry Creek, Willow Creek, Clear Creek, West Fork of Rock Creek, and all unnamed tributaries is contained in the closure area, as outlined on Exhibit "A" (a copy of which is available for review from the department).

(6) "Nonconsumptive use" means a beneficial use of water which does not cause a reduction in the source of supply, and where substantially all of the diverted water returns to the source of supply with little or no delay and without adverse effect to the quality of water.

(7) "Surface water" means all water at the surface of the ground including any river, stream, creek, ravine, coulee, undeveloped spring, or lake, regardless of its character or manner of occurrence, including but not limited to, diffused surface water, sewage effluent, waste water, and return flows and any subsurface water which is a part of the surface flows.

AUTH: 85-2-112(7) and 85-2-319, MCA; IMP: 85-2-319, MCA

17-9/14/89

MAR Notice No. 36-21-18

**RULE II BASIN CLOSURE** (1) The department shall reject applications for surface water permits within the Rock Creek Basin for any diversions for consumptive uses, including infiltration galleries, during the period from June 1 through September 30.

(2) Permits for nonconsumptive uses during the closure period shall be modified or conditioned to provide that there will be no decrease in the source of supply, no disruption in the stream conditions below the point of return, and no adverse effect to prior appropriators within the reach of stream between the point of diversion and the point of return. The applicant for a nonconsumptive use shall prove by substantial credible evidence its ability to meet the conditions imposed by this rule.

(3) These rules apply to all surface water within the Rock Creek Basin.

(4) Any applications which would utilize a storage facility to impound water only outside the period from June 1 through September 30, and from which water could subsequently be used during any portion of the year, is exempt from these rules. Permit applications for storage, except applications for provisional permits for completed stockwater pits or reservoirs, form no. 605, will be received and processed. All form no. 605 permit applications will be rejected.

(5) Emergency appropriations of water as defined in ARM 36.12.101(6) and 36.12.105 shall be exempt from these rules.

(6) These rules apply only to applications received by the department after the date of adoption of these rules.

(7) The department may, if it determines changed circumstances justify it, reopen the basin to additional appropriations and amend these rules accordingly after public notice and hearing.

AUTH: 85-2-112(7) and 85-2-319, MCA; IMP: 85-2-319, MCA

3. The rationale for Rule I is that it defines the boundaries of the basin to be closed, i.e., where water permit applications will be rejected, and other terms used in these rules. The rationale for Rule II is that appropriable water only exists during extremely high stream flow events. On March 14, 1984, a petition was filed according to § 85-2-319, MCA, with the department of natural resources and conservation. The petition was signed by 73 water users in the Rock Creek Basin requesting the department to reject all new appropriations of water for consumptive uses. The petitioners claim there are no unappropriated water, that the rights of prior appropriators will be adversely affected, and that further uses will interfere unreasonably with other planned uses. Local Rock Creek water users have historically petitioned the district courts for appointment of water commissioners to apportion water on all major drainages in the Rock Creek Basin. Furthermore, the board of natural resources and conservation granted to the Montana department of fish, wildlife and parks an instream reservation for the eighty-fifth percentile of the flows of Rock Creek. The department in response to the petition for basin closure made a water availability study of the

Rock Creek Basin. The department's study showed a critical water shortage during the period of June 1 through September 30. As a result of this study the department is proposing to reject water use permit applications for certain uses of water from June 1 through September 30. This rule is intended to assist in preserving existing stream flows for senior appropriators. Since unappropriated waters exist so infrequently in the source of supply from June 1 through September 30, any further uses during that time will adversely affect prior appropriators. This rule sets out the period for closure, the class of applications affected and the type of appropriations that are exempt from the rules. This rule also allows the department in its discretion to reopen the basin to additional appropriations if changed circumstances justify it. Reopening of the basin would necessitate amending these rules after public notice and hearing.

4. Interested parties may present their data, views or arguments in writing or orally at the hearing. Written data, comments or arguments in support of or in opposition to the adoption must be submitted to the Department of Natural Resources and Conservation, Water Rights Bureau, 1537 Ave. D, Suite 105, Billings, MT 59102 no later than November 15, 1989.

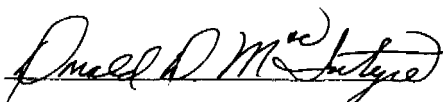
5. Questions concerning the proposed adoption or requests for a copy of the Rock Creek Basin map of the affected area should be directed to the department of natural resources and conservation at the above Billings address, or call 657-2105. In Helena, Montana, call 444-6610.

6. Keith Kerbel has been designated to preside over and conduct the hearing.

Department of Natural Resources  
and Conservation

Donald D. MacIntyre  
Chief Legal Counsel

By:



Certified to the Secretary of State, September 5, 1989.



STATE OF MONTANA  
DEPARTMENT OF AGRICULTURE  
BEFORE THE MONTANA AGRICULTURE DEVELOPMENT COUNCIL

In the matter of the adoption of )	NOTICE OF AN ADOPTION
new rules pertaining to the "Growth)	OF RULES PERTAINING
Through Agriculture Program and the)	TO THE "GROWTH
transfer of ARM 8.121.103, )	THROUGH AGRICULTURE
8.121.201, 8.121.301, 8.121.401 )	PROGRAM" AND AMEND-
and the amendment of ARM 8.121.301 )	MENT OF ARM 8.121.301

TO: ALL INTERESTED PERSONS

On August 7, 1989, the Department of Agriculture filed a Notice of Adoption of the New, Amended, and Transferred rules in the above entitled matter. That Notice was published on August 17, 1989 in Issue #15, MAR 1989, at p. 1190. This Notice is to advise that such adoption inadvertently neglected to include the assignment of rule numbers to Rule XII which was assigned Rule No. 4.16.501, and Rule XIII which was assigned Rule No. 4.16.502.

MONTANA DEPARTMENT OF AGRICULTURE

  
E.M. Snortland, Director

Certified to the Secretary of State September 5, 1989

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to inactive	)	8.58.412 INACTIVE LICENSES,
licenses, reactivation of	)	8.58.413 REACTIVATION OF
licenses and continuing educa-	)	LICENSES AND 8.58.415A
tion	)	CONTINUING EDUCATION

TO: All Interested Persons:

1. On April 27, 1989, the Board of Realty Regulation published a notice of public hearing on the amendment of the above-stated rules at page 467, 1989 Montana Administrative Register, issue number 8.

2. The Board has amended 8.58.412 exactly as proposed and has amended 8.58.413 and 8.58.415A as proposed but with the following changes:

"8.58.413 REACTIVATION OF LICENSES (1) and (1)(a) will remain as proposed.

(b) submit proof of obtaining 15 classroom or equivalent hours of continuing education ~~in-the-two-years-prior-to reactivation-for-any-inactive-license-held-on-inactive-status-for-longer-than-one-year~~ FOR EACH TWO YEAR PERIOD OF INACTIVE STATUS OR ANY COMBINATION OF ACTIVE AND INACTIVE STATUS."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-204, 37-51-302, MCA

"8.58.415A CONTINUING EDUCATION (1) Each active real estate licensee is hereby required to receive and successfully complete a minimum of 15 classroom or equivalent hours of continuing education in any two (2) year period, beginning January 1, 1988.

(2) through (4) will remain as proposed."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-204, MCA

SUPPLEMENTAL REASON FOR AMENDMENTS: The existing rules limit inactive status to a period of one year. This necessitates annual reactivation and its accompanying requirements -- fees, filing and record keeping. However, there is no prohibition of successive years of inactivation, and a licensee can simply go inactive at the same time of reactivation -- duplicating fees, filing, record keeping. This process generates needless effort and expense for both licensees and the Board. Furthermore, so long as adequate safeguards exist for protection of the public at the time of reactivation, there is no reason for not allowing a licensee to be on inactive status for more than one year. Continuing education will permit licensees to maintain knowledge and competence while on inactive status.

3. The Board has thoroughly considered all oral and written comments received. Those comments and the Board's responses thereto are as follows:

17-9/14/89

Montana Administrative Register

COMMENT: At the public hearing, Sharon Cleary, representing the Montana Association of Realtors, and Marty Heller, member of the Montana Association of Realtors and broker-owner in Helena, commented that 15 hours of classroom or equivalent continuing education should be required for each two years that a licensee is inactive prior to reactivation. This requirement need not be met during each two year period, but must be met prior to activation. Problems may presently arise when an inactive licensee reactivates for a single transaction and there is more danger of this type of problem with the proposed indefinite inactivation. A licensee who is inactive for ten years, for example, might not have the current knowledge required to competently handle a transaction. Ms. Cleary submitted a written proposal for amendment. Mr. Heller suggested that the problem giving rise to the proposed amendment, if administrative, might possibly be better taken care of by a fee increase.

RESPONSE: The Board agrees with the comments of Ms. Cleary and Mr. Heller. The Board has amended the proposal accordingly.

COMMENT: Staff of the Administrative Code Committee commented that the statement of reasonable necessity should be expanded on in the adoption notice to explain what the problems are and how the proposed amendments will solve the problems.

RESPONSE: The Board concurs and the statement of reasonable necessity has been amended accordingly.

4. No other comments or testimony were received.

BOARD OF REALTY REGULATION

BY: 

MICHAEL L. LETSON, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 5, 1989.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF VETERINARY MEDICINE

In the matter of the adoption ) NOTICE OF ADOPTION OF NEW  
of a new rule pertaining to ) RULE I. (8.64.701) ADVISORY  
an advisory committee ) COMMITTEE

TO: All Interested Persons:

1. On July 27, 1989, the Board of Veterinary Medicine published a notice of public hearing on the proposed adoption of the above-stated rule at page 952, 1989 Montana Administrative Register.
2. The Board has adopted the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF VETERINARY MEDICINE  
JAMES N. BROGGER, DVM, PRESIDENT

BY: 

MICHAEL L. LETSON, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 5, 1989.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

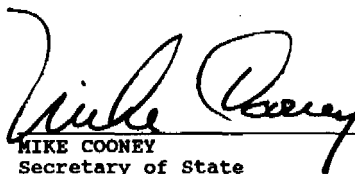
In the matter of revising	)	NOTICE OF ADOPTION (RULES
rules regarding fee sched-	)	I-III) 44.2.201 - 44.2.203,
ules for filing documents	)	AMENDMENT OF 44.6.105, 44.6.107
in the Secretary of State's	)	AND REPEAL OF 44.6.106,
office and establishing new	)	FEEES FOR FILING DOCUMENTS AND
rules for facsimile filings	)	FACSIMILE FILING AND PRIORITY
and priority fees.	)	FEEES.

TO: All Interested Persons:

1. On July 27, 1989, the office of the Secretary of State published notice of proposed adoption of rules establishing new rules for facsimile filing and priority fees and amendment of 44.6.105 Fees for Filing Documents - Uniform Commercial Code; 44.6.107 Fees for Filing Notice of Agricultural Liens and repeal of 44.6.106 at page 963, 1989 Montana Administrative Register, issue number 14.

2. The Secretary of State has adopted, amended and repealed the rules as proposed.

3. The office received only one comment from the Legislative Council regarding a citation cited in the authority of the rules. The office will correct the citation by deleting the reference to the chapter laws. No other comments were received.

  
MIKE COONEY  
Secretary of State

Dated this 5th day of September, 1989.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of ARM 44.3.1403 regarding	)	RULE I - 44.3.1403
Interpretive rule requesting	)	REGARDING REQUESTING
absentee ballots via facsimile	)	ABSENTEE BALLOTS VIA
messages.	)	FACSIMILE MESSAGES.

TO: All Interested Persons.

1. On June 15, 1989, the Secretary of State's office published a notice of public hearing on the above stated interpretive rule at page 749 of the Montana Administrative Register, Issue No. 11.

2. The Secretary of State has adopted the interpretive rule as proposed but with the following changes.

44.3.1403 FACSIMILE REQUESTS FOR ABSENTEE BALLOTS (1)  
An election administrator may treat a facsimile copy request for an absentee ballot as an original a mail request if all other requirements of section 13-13-212, MCA are met.

(2) A facsimile copy may be accepted under subsection (1) if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

AUTH: 13-1-201, MCA

IMP: 13-13-212, MCA

3. The office received two comments on the above interpretive rule.

COMMENT: John MacMaster of the Legislative Council indicated that the rule needed to reference mail request to better reflect the intent of 13-13-212, MCA.

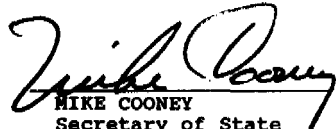
RESPONSE: His comment was incorporated in the final version of the rule.

COMMENT: Mary Lee Dietz, Fallon County Clerk and Recorder expressed her concern that this rule was mandating that the local Clerk and Recorders had to provide facsimile service for persons requesting absentee ballots.

RESPONSE: It was not the intention of the rule to require county governments to expend money to purchase facsimile machines. This measure only applies to those coun-

ties that have access to facsimile machines and want to provide the service to voters of their counties.

No further comments were received.

  
MIKE COONEY  
Secretary of State

Dated this 5th day of September, 1989

VOLUME NO. 43

OPINION NO. 29

DISASTER AND EMERGENCY SERVICES - State reimbursement to school districts for transportation services during school closure resulting from governor's declaration of emergency;

SCHOOL DISTRICTS - State reimbursement to school districts for transportation services during school closure resulting from governor's declaration of emergency;

MONTANA CODE ANNOTATED - Sections 10-3-104(2)(a), 20-9-806, 20-10-145, 20-10-145(1).

HELD: The state may not reimburse school districts for school bus transportation for February 2 and 3, 1989, when the districts closed in accordance with the governor's declaration of emergency.

August 11, 1989

Ted O. Lympus  
Flathead County Attorney  
P.O. Box 1516  
Kalispell MT 59903-1516

Dear Mr. Lympus:

You have requested my opinion on the following question:

Must the state reimburse school districts for school bus transportation for February 2 and 3, 1989, when the districts closed in accordance with the governor's declaration of emergency?

The controlling statute concerning state transportation reimbursement is section 20-10-145, MCA. That statute states, in pertinent part: "The state transportation reimbursement ... shall be computed on the basis of the number of days the transportation services were actually rendered." § 20-10-145(1), MCA. Because the governor may, pursuant to section 10-3-104(2)(a), MCA, suspend the regulatory provisions of any statute in dealing with an emergency, and because the governor in his executive order referenced section 20-9-806, MCA, it has been argued that transportation reimbursement should be made to school districts even though bus services were not actually rendered. I am constrained to disagree with that argument for the following reasons.

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Section 10-3-104(2) (a), MCA, provides:

(2) In addition to any other powers conferred upon the governor by law, he may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster. [Emphasis supplied.]

The governor's executive order, after declaring that a state of emergency existed, provided:

I further direct that such school closures resulting from this Executive Order shall be considered closed by reason of a declaration of emergency by the Governor as provided for in Section 20-9-806, MCA.

Section 20-9-806, MCA, states:

If a school is closed by reason of a declaration of emergency by the governor, the pupil-instruction days lost during the closure need not be rescheduled to meet the minimum requirement for pupil-instruction days that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

Nothing in the governor's executive order indicates that in his declaration of emergency the governor intended to suspend the state's transportation reimbursement formula. The language of the governor's order is specific, mentioning only one statute, § 20-9-806, MCA, which is very focused in purpose and does not mention reimbursement for transportation. Section 10-3-104(2)(a), MCA, describes the governor's discretionary authority during an emergency and provides that the governor may suspend the provisions of any regulatory statute. While the governor invoked the procedure of section 20-9-806, MCA, there is nothing in section 10-3-104(2)(a), MCA, or his executive order to suggest that the transportation reimbursement restrictions found in section 20-10-145(1), MCA, would be suspended.

THEREFORE, IT IS MY OPINION:

The state may not reimburse school districts for school bus transportation for February 2 and 3, 1989, when the districts closed in accordance with the governor's declaration of emergency.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Racicot". The signature is written in a cursive, slightly stylized font.

MARC RACICOT  
Attorney General

VOLUME NO. 43

OPINION NO. 30

ELECTIONS - United States Senate election as statewide race for purposes of section 13-10-601(1), MCA;  
OFFICES - United States Senate election as statewide race for purposes of section 13-10-601(1), MCA;  
MONTANA CODE ANNOTATED - Sections 13-1-103(15), 13-10-601(1).

HELD: The phrase "statewide office" as used in section 13-10-601(1), MCA, the statute that provides for automatic qualification to hold a primary election, means an office for which a statewide election is held, including the office of United States Senator. Thus, because the only election decided by a statewide vote in 1990 is for a seat in the United States Senate, a political party must have a candidate for United States Senator receive the requisite number of votes in the 1990 election in order to automatically qualify to nominate candidates by primary election in 1992.

August 29, 1989

The Honorable Mike Cooney  
Secretary of State  
Room 225, State Capitol  
Helena MT 59620

Dear Mr. Cooney:

You have requested my opinion on the following issue:

Must a political party have a candidate participate in the 1990 United States senatorial race in Montana in order to remain qualified for ballot status in the 1992 election?

Section 13-10-601, MCA, provides political parties two methods for qualifying to nominate candidates by primary election. Qualification is automatic under subsection (1) if the party has received significant support in the past. Subsection (2) permits a minor party to qualify for holding a primary if a petition signed by the requisite number of voters is filed. Your question concerns the automatic qualification provided for in subsection (1), which states:

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Every political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor at the last general election shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

Because the only election decided by a statewide vote in 1990 is for a seat in the United States Senate, the question becomes whether a United States Senate seat falls within the definition of "statewide office" as that phrase is used in section 13-10-601(1), MCA.

Montana has no case law concerning this issue and the legislative history of section 13-10-601(1), MCA, does not elaborate on the term "statewide." Although the phrase "public office" is defined in the Montana Code, "statewide office" is not. Section 13-1-103(15), MCA, states that "public office" means a state, county, municipal, school, or other district office that is filled by the people at an election. The fact that section 13-10-601(1), MCA, uses the phrase "statewide office" rather than "public office" or "state office" suggests that the Legislature did not expressly intend to restrict ballot qualification to elected officials in the state system.

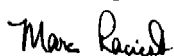
A reasonable interpretation of "statewide office" is an office for which a statewide election is held. United States Senators are elected by the voters of the entire state to represent the state in the federal system. A 1948 Maryland decision, Vaughn v. Boone, 62 A.2d 351 (Md. 1948), recognized this distinction in its discussion of presidential electors nominated by their parties. The Maryland Court ruled that the phrase "statewide office" embraced "all offices to be filled by voters of the entire state." Id. at 353.

THEREFORE, IT IS MY OPINION:

The phrase "statewide office" as used in section 13-10-601(1), MCA, the statute that provides for automatic qualification to hold a primary election, means an office for which a statewide election is held, including the office of United States Senator. Thus, because the only election decided by a statewide vote in 1990 is for a seat in the United States Senate, a political party must have a candidate for United States Senator receive the requisite number of votes in the 1990 election in

order to automatically qualify to nominate  
candidates by primary election in 1992.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Racicot". The signature is written in a cursive, slightly stylized font.

MARC RACICOT  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.  |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1989. This table includes those rules adopted during the period July 1, 1989 through September 30, 1989 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, 1989, 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 1989 Montana Administrative Register.

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